



Islamorada, Village of Islands

VILLAGE COUNCIL ORIENTATION

November 7, 2024 - 5:30 PM
Founders Park Community Center
87000 Overseas Highway
Islamorada, FL 33036

AGENDA

- I. **INTRODUCTIONS**
 - A. Department Heads introduce themselves and their department's core duties (one hour)
- II. **LEGAL REQUIREMENTS FOR SERVING ON COUNCIL**
 - A. Village Attorney summarizes legal responsibilities for serving on Council (one hour)
- III. **VILLAGE ADMINISTRATION SUPPORT**
 - A. Village Manager and Village Clerk summarize efficiencies to support Council (45 minutes)
- IV. **QUESTIONS AND ANSWERS**
 - A. Q&A (15 minutes or as needed)

Options for Viewing the Village Council Orientation:

The public is encouraged to watch the meeting on Monroe County's MCTV Comcast Channel 77. Alternatively, the public may view the meeting streamed live on the Village website from their personal computer, tablet or phone via the following link:

https://www.islamorada.fl.us/departments/communications/live_village_broadcast_meeting.php

ADA Assistance:

These meetings are open to the public. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in

this meeting because of that disability should contact the ADA Coordinator at (305) 664-6448 or by email at ADA@islamorada.fl.us at least 48 hours before the scheduled meeting

CHARTER

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House Bill No 1265

CHAPTER 97-348

House Bill No. 1265

An act relating to Monroe County; creating the "Islamorada, Village of Islands"; providing legislative intent; providing municipal boundaries and municipal powers; providing a council-manager form of government; providing for election of a village council; providing for membership, qualifications, terms, powers, and duties of its members, including the mayor; providing for a vice mayor; providing for compensation and expenses; providing general powers and duties; providing circumstances resulting in vacancy in office; providing grounds for forfeiture and suspension; providing for filling of vacancies; providing for meetings; providing for keeping of records; providing for adoption, distribution, and recording of technical codes; providing a limitation upon employment of council members; providing that certain interference with village employees shall constitute malfeasance in office; establishing the fiscal year; providing for adoption of annual budget and appropriation; providing amendments for supplemental, reduction, and transfer of appropriations; providing for limitations; providing for appointment of charter offices, including a village manager and village attorney; providing for removal, compensation, and filling of vacancies; providing qualifications, powers, and duties; providing for nonpartisan elections and for matters relative thereto; providing for recall; providing for initiative and referenda; providing the village a transitional schedule and procedures for first election; providing for first-year expenses; providing for adoption of transitional ordinances, resolutions, comprehensive plan, and local development regulations; providing for accelerated entitlement to state-shared revenues; providing for gas tax revenue; providing for a transition agreement between Monroe County and Islamorada, Village of Islands; providing land descriptions of the village; providing for future amendments of the charter; providing for standards of conduct in office; providing for severability; providing for a referendum approval; providing effective dates.

Be It Enacted by the Legislature of the State of Florida.

Editor's note(s)—Printed herein is the Charter of Islamorada, Village of Islands, Florida, Laws of Fla. ch. 97-348, as adopted at referendum on November 4, 1997. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

Sec 1 Short Title

This act, together with any future amendments thereto, shall be known and may be cited as the "Islamorada, Village of Islands," hereinafter referred to as "the charter."

Sec 2 Legislative Intent

The Legislature hereby finds and declares that:

- (1) The Islamorada area in Monroe County includes a compact and contiguous community of approximately 7,100 residents susceptible to urban services, and constitutes a community amenable to separate municipal government.
- (2) It is in the best interests of the public health, safety, and welfare of the residents of the Islamorada area to form a separate municipality for the Islamorada area with all the powers and authority necessary to provide adequate and efficient municipal services to its residents.
- (3) It is intended that this charter and the incorporation of the Islamorada area will serve to preserve and protect the distinctive characteristics of the individual communities within the boundaries of Islamorada, Village of Islands.

Sec 3 Incorporation Of Municipality; Corporate Limits

There is hereby created, effective December 31, 1997, in Monroe County, a new municipality to be known as Islamorada, Village of Islands, which shall have a council-manager form of government. The corporate boundaries of Islamorada, Village of Islands, hereinafter referred to as "village," shall be as described in section 11[10].

Sec 4 Municipal Powers

The village shall be a body corporate and politic and shall have all the powers of a municipality under the Constitution and laws of the State of Florida, as fully and completely as though such powers were specifically enumerated in this charter, unless otherwise prohibited by or contrary to the provisions of this charter. The village shall have all governmental, corporate, and proprietary powers necessary to enable it to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal services unless expressly prohibited by law. The powers of the village shall be liberally construed in favor of the village.

Sec 5 Village Council

- (1) *Village council; composition; qualifications of council members.*
 - (a) There shall be a five-member village council, consisting of council members each elected from and representing the village at large.
 - (b) There shall be five separate council seats to be designated as Seat 1, Seat 2, Seat 3, Seat 4, and Seat 5. Candidates must qualify for council elections by seat, and the councilmembers elected to those seats shall hold Seats 1 through 5 respectively.
 - (c) To qualify for office:
 - (i) Each candidate for the office of village council shall be a registered voter in the State of Florida and a resident of the village.
 - (ii) At the time of qualification, each candidate for a council seat shall reside within the boundaries of the village and, if elected, shall maintain such residency throughout his or her term of office. For the initial election, following the

referendum approving the creating of the village, candidates for office shall qualify as provided in section 9(2). Thereafter, candidates shall qualify as provided in section 8(3).

(2) *Term of office.* The term of office for councilmembers shall be two years. Each councilmember shall remain in office until a successor is elected and assumes the duties of the position, except as otherwise provided herein. No councilmember shall serve more than eight consecutive years in office.¹

(3) *The mayor; powers and duties.*

(a) The village council, at its first regular meeting after the fourth Tuesday of each November, shall elect from its membership a mayor and vice-mayor who shall serve at the pleasure of the village council and who shall have the same legislative powers and duties as any other councilmember, except as provided in paragraph (b). Notwithstanding the foregoing provisions, the election of the Mayor and Vice Mayor in a year in which there is a Village Council election, shall occur at the first regular Council meeting after the election certification has been conducted and approved by the Village's Canvassing Board.

(b) In addition to carrying out the regular duties under paragraph (a), the mayor shall preside at the meetings of the council and shall be recognized as the head of village government for service of process, ceremonial matters, and the signature or execution of ordinances, contracts, deeds, bonds, and other instruments and documents. The mayor shall have no administrative duties other than those necessary to accomplish these actions, or such other actions as may be authorized by the village council, consistent with general or special law.

(4) *The vice-mayor.* The vice-mayor shall serve as acting mayor during the absence of disability of the mayor. In the absence of the mayor and the vice-mayor, the remaining councilmember[s] shall select a councilmember to serve as acting mayor.

(5) *Compensation and expenses.* Village councilmembers shall initially be compensated at the rate of \$300 ² per month, and shall be entitled to receive reimbursement in accordance with Florida Statutes for authorized travel and per diem expenses incurred in the performance of their official duties. The village council, by not less than four affirmative votes, may elect to provide for an increase in compensation by ordinance. However, no such ordinance establishing or increasing compensation shall take effect until approved by a majority of the village electors at the next regular election which follows the adoption of said ordinance.

(6) *General powers and duties of council.* Except as otherwise prescribed herein or provided by law, legislative and police powers of the village shall be vested in the council. The council shall provide for the exercise of its powers and for the performance of all duties and obligations imposed on the village by law.

(7) *Vacancies; forfeitures of office; suspension; filling of vacancies.*

(a) *Vacancies.* A vacancy in the office of a councilmember shall occur upon the death of the incumbent, removal from office as authorized by law, resignation, appointment to other public office which creates dual office holding, judicially determined incompetency, or forfeiture of office as described in paragraph (b).

(b) *Forfeiture of office.* A councilmember shall forfeit his or her office upon determination by the council, acting as a body, at a duly noticed public meeting that he or she:

(i) Lacks at any time, or fails to maintain during his or her term of office, any qualification for the office prescribed by this charter or otherwise required by law;

- (ii) Is convicted of a felony, or enters a plea of guilty or nolo contendere to a crime punishable as a felony, even if adjudication is withheld;
 - (iii) Is convicted of a first degree misdemeanor arising directly out of his or her official conduct or duties, or enters a plea of guilty or nolo contendere thereto, even if adjudication of guilt has been withheld;
 - (iv) Is found to have violated any standard of conduct or code of ethics established by law for public officials and has been suspended from office by the Governor, unless subsequently reinstated as provided by law; or
 - (v) Is absent from three consecutive regular council meetings without justifiable reason, or for any other reason established in this charter.
- (c) *Suspension from office.* A councilmember shall be suspended from office upon return of an indictment or issuance of any information charging the councilmember with any crime which is punishable as a felony or with any crime arising out of his or her official duties which is punishable as a first degree misdemeanor. Pursuant thereto:
- (i) During the period of suspension, the councilmember shall not perform any official act, duty, or function, or receive any pay, allowance, emolument, or privilege of office.
 - (ii) If the councilmember is subsequently found not guilty of the charge, or if the charge is otherwise dismissed, reduced, or altered in such a manner that suspension would no longer be required as provided herein, the suspension shall be lifted and the councilmember shall be entitled to receive full back pay and such other emoluments or allowances as he or she would have been entitled to had the suspension not occurred.
- (d) *Filling of vacancies.*
- (i) If a vacancy occurs in the office of mayor, the vice-mayor shall serve as mayor until a new mayor is elected as provided in paragraph (3)(a) and assumes the duties of his or her office.
 - (ii) If any vacancy occurs in the office of any councilmember and the remainder of the unexpired term is less than 50 percent, the remaining councilmembers shall, within 30 days following the occurrence of such vacancy, by majority vote, appoint a person to fill the vacancy for the remainder of the unexpired term. If, however, the remainder of the unexpired term is equal to or exceeds 50 percent, the remaining councilmembers shall, within 30 days following the occurrence of such vacancy, by majority vote, appoint a person to fill the vacancy until the next regularly scheduled village election.
 - (iii) Any person appointed to fill a vacant seat on the council shall be required to meet the qualifications of the seat to which he or she is appointed.

State law reference(s)—Charter or ordinance to provide for method of filling vacancies, F.S. § 166.031(6).

(8) *Village council meetings.* The council shall conduct regular meetings at such times and places as the council shall prescribe by resolution. Such meetings shall be public meetings within the meaning of F.S. § 286.011, and shall be subject to notice and other requirements of law applicable to public meetings. Pursuant thereto:

- (a) Special meetings may be held at the call of the mayor, or in his or her absence, at the call of the vice-mayor. Special meetings may also be called upon the request of a

majority of the councilmembers. Unless of an emergency nature, the person or persons calling such a meeting shall provide not less than 72 hours' prior notice of the meeting to the public.

- (b) Elected or reelected councilmembers shall be inducted into office at the first regularly scheduled meeting following certification of their election.
- (c) A majority of the council shall constitute a quorum. No action of the council shall be valid unless adopted by an affirmative vote of the majority of the councilmembers in attendance, unless otherwise provided by law. All actions of the village council shall be by ordinance, resolution, or motion.

(9) *Village records.* The council shall, in a properly indexed book kept for the purpose, provide for the authentication and recording in full of all minutes of meetings, and all ordinances and resolutions adopted by the council, and the same shall at all times be a public record. The council shall further maintain a current codification of all ordinances. Such codification shall be printed and shall be made available for distribution to the public on a continuing basis. All ordinances or resolutions of the council shall be signed by the mayor, or vice-mayor in the absence or disability of the mayor, or by the acting mayor in the absence or disability of both the mayor and the vice-mayor, and attested to by the village clerk.

(10) *Adoption of codes.* The council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance and may amend the code in the adopting ordinance or later amendatory ordinance. The procedures and requirements governing such an adoption ordinance shall be prescribed for ordinances generally, except that:

- (a) Requirements regarding distribution and filing of copies of the ordinance shall not be construed to require distribution and filing of copies of the adopted code of technical regulations, except as provided in paragraph (b).
- (b) A copy of each adopted code of technical regulations, as well as of the adoptive ordinance, shall be authenticated and recorded by the village clerk.

State law reference(s)—Ordinance adoption procedures, F.S. § 166.041.

(11) *Limitation of employment of councilmembers.* No councilmember shall be in the employment of the village while in office, nor shall any former councilmember be employed by the village until after the expiration of one year from the time of leaving office.

(12) *Noninterference by village council.* Except for the purposes of inquiry and information, the council and its members including committees thereof, are expressly prohibited from interfering with the performance of the duties of any employee of the village government who is under the direct or indirect supervision of the village manager or village attorney. Such action shall be malfeasance within the meaning of F.S. §§ 112.317, 112.51.

(Ord. No. 03-13, § 3, 12-11-2003; Ord. No. 03-14, § 2, 12-11-2003, referendum 3-9-2004; Ord. No. 07-02, § 2, 2-8-2007, referendum 5-15-2007; Ord. No. 08-03, § 3, 6-26-2008; referendum 11-2-2010; Ord. No. 11-15, § 2, 6-23-2011; Ord. No. 11-19, 9-8-2011, referendum 1-31-2012)

¹Editor's note(s)—Subsection 5(2) of the Charter was amended by Ord. No. 03-14, adopted December 11, 2003 through a referendum held on March 9, 2004. The amendments to subsection 5(2) shall apply prospectively to councilmembers elected after March 9, 2004. The subsection formerly provided that "the term of office for councilmembers shall be four years" and that "no councilmember shall serve more than eight consecutive years in office." [This editor's note was furnished by the village clerk.]

²Editor's note(s)—In Ord. No. 05-23 the village council increased council compensation to \$1,000.00 per month which was effective in March of 2006. [This editor's note was furnished by the village clerk.]

HISTORY

Amended by Ord. [05-23](#) on 12/15/2005

Amended by Ord. [10-09](#) § 2 on 6/14/2010

Sec 6 Budget And Appropriations

- (1) *Fiscal year.* The village shall have a fiscal year which shall begin on October 1 of each year and end on September 30 of the succeeding year.

State law reference(s)—Establishment of fiscal year required, F.S. § 166.241(2).

- (2) *Budget adoption.* The council shall by resolution adopt a budget on or before the 30th day of September of each year, following a minimum of two public hearings on the proposed budget. A resolution adopting the annual budget shall constitute appropriation of the amounts specified therein as expenditures from funds indicated.

- (3) *Appropriation amendments during the fiscal year.*

- (a) *Supplemental appropriations.* If, during the fiscal year, revenues in excess of those estimated in the budget are available for appropriation, the council by resolution may make supplemental appropriations for the year, in an amount not to exceed such excess.
- (b) *Reduction of appropriations.* If, at any time during the fiscal year, it appears probable to the village manager that the revenues available will be insufficient to meet the amount appropriated, the village manager shall report same to the council without delay, indicating the estimated amount of the deficit, any remedial action taken, and recommendations as to any other steps that should be taken. The council shall then take such further action as it deems necessary to prevent or minimize any deficit and, for that purpose, the council may by resolution reduce one or more appropriations accordingly.
- (c) *Limitations; effective date.* No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated, or by more than the unencumbered balance thereof. Other provisions of law to the contrary notwithstanding, the supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

Sec 7 Charter Officers

- (1) *Designation.* The village manager and the village attorney are redesignated as charter officers, except that the office of village attorney may be contracted to an attorney or law firm.

- (2) *Appointment; removal; compensation; filling of vacancies.*

- (a) The charter officers shall be appointed by a majority vote of the full council and shall serve at the pleasure of the council.
- (b) The charter officers shall be removed from office only by a majority vote of the full council. Upon demand by a charter officer, a public hearing shall be held prior to such removal.
- (c) The compensation of the charter officers shall be fixed by the village council.
- (d) The village council shall begin the process to fill a vacancy in a charter office within 90 days of the vacancy. An acting village manager or an acting village attorney may be appointed by the council during a vacancy in such charter office.
- (e) The charter officers shall not be a candidate for village council while holding their charter officer position.

- (3) *Village manager.* The village manager shall be the chief administrative officer of the village.
- (a) *Qualifications.* The village manager shall be selected on the basis of experience, expertise, and management ability as it pertains to running municipal government.
 - (b) *Powers and duties.* The village manager shall:
 - (i) As the chief administrative officer of the village, direct and supervise the administration of all departments, offices, and agencies of the village, except the offices of village attorney, and except as otherwise provided by this charter or by law.
 - (ii) Appoint, suspend, or remove any employee of the village or appointive administrative officer provided for, by, or under this charter, except the office of village attorney, and except as may otherwise be provided by law, this charter, or personnel rules adopted pursuant to the charter. The village manager may authorize any administrative officer who is subject to his or her direction and supervision to exercise these powers with respect to subordinates in that officer's department, office, or agency.
 - (iii) Ensure that all laws, provisions of this charter, and acts of the council are faithfully executed.
 - (iv) Prepare and submit the annual budget, and capital program to the council in the form prescribed by ordinance.
 - (v) Attend meetings of the village council.
 - (vi) Draw and sign vouchers upon depositories as provided by ordinance, and keep, or cause to be kept, a true and accurate account of same.
 - (vii) Sign all licenses issued by the village, and issue receipts for all moneys paid to the village, and deposit said moneys in the proper depositories on the first banking day after receipt. The village manager may delegate the responsibilities of this subparagraph to an appropriate village employee who shall be bonded.
 - (viii) Provide administrative services in support of the official duties of the mayor and the council.
 - (ix) Keep the council advised as to the financial condition and future needs of the village and make recommendations to the council concerning the affairs of the village.
 - (x) Submit to the council, and make available to the public, a complete report on finances and administrative activities of the village as of the end of each fiscal year.
 - (xi) Sign contracts on behalf of the village to the extent authorized by ordinance.
 - (xii) Perform such other duties as are specified in this charter or as may be required by the council.

(4) *Village attorney.* The village attorney shall be the chief legal officer of the village.

- (a) *Qualifications.* The village attorney shall be a member of The Florida Bar in good standing.
- (b) *Powers and duties.* The village attorney:

- (i) Shall serve as chief legal advisor to the village council, the charter officers, and all village departments, offices, and agencies.
- (ii) May hire such assistants as may be required, when approved by the village council.
- (iii) Shall attend village council meetings unless excused by the village council, and shall perform such professional duties as may be required by law or by the council in furtherance of the law.
- (iv) Shall prepare an annual budget for the operation of the office of the village attorney and shall submit this budget to the village manager for inclusion in the annual village budget, in accordance with uniform village procedures.

Sec 8 Elections

- (1) *Electors*. Any person who is a resident of the village, who has qualified as an elector of this state, and who registers in the manner prescribed by law shall be an elector of the village.
- (2) *Nonpartisan elections*. All elections for the village councilmembers shall be conducted on a nonpartisan basis without any designation of political party affiliation.
- (3) *Qualifying for office*. Any resident of the village who wishes to become a candidate for a village elective office shall qualify with the village clerk no sooner than the second Tuesday prior to the Monroe County's primary election at noon and ending no later than noon on the following Tuesday of the year in which the election is to be held.
- (4) *Schedule for general elections*. The regular village election shall be held on the first Tuesday after the first Monday in November of each even numbered year. Such village elections shall be general village elections.
- (5) *Schedule for other elections*.
 - (a) An election to fill the remainder of an unexpired term shall be held as provided in subsection (4).
 - (b) Special municipal elections shall be held in the same manner as regular elections, except that the village council, by ordinance, shall fix the time for holding of such elections.
- (6) *Determination of election to office*. If only one candidate qualifies for a seat, said candidate shall be deemed to be elected to office for that particular seat. If two or more candidates qualify for a seat, the names of those candidates shall be placed on the ballot, by seat, at the general election. The candidate receiving the highest number of the votes cast for each seat in the election shall be elected to such office. If the vote at the election results in a tie, the outcome shall be determined by lot.
- (7) *Village canvassing board*. The village canvassing board shall be no less than three members and composed of those members of the village council who are not candidates for reelection and the village clerk, who shall act as chairperson. If there are less than two eligible councilmembers to serve, board members shall be appointed by the council. At the close of the polls of any village election, or as soon thereafter as practicable, the canvassing board shall meet at a time and place designated by the chairperson and shall proceed to publicly canvass the vote as shown by the returns when on file in the office of the village clerk, and then shall publicly canvass the absentee elector ballots. The canvassing board shall prepare and sign a

certificate containing the total number of votes cast for each candidate or other measure voted upon. The certificate shall be placed on file with the village clerk.

- (8) *Recall of village councilmembers.* Any member of the village council may be removed from office by the electors of the village following the procedures for recall established by general law.

State law reference(s)—Recall, F.S. § 100.361.

- (9) *Initiative and referendum.*

(a) *Power to initiate and reconsider ordinances.*

- (i) *Initiative.* The electors of the village shall have the power to propose ordinances to the village council and, if the village council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a village election, provided that such power shall not extend to the annual budget or capital program or any ordinance appropriating money, levying taxes, or setting salaries of village officers or employees.

(ii) *Referendum.*

- A. The village council shall have the power, by resolution, to call for a referendum vote by the electors of the village at any time, provided that the purpose of such referendum is presented to the village at a public hearing at least 60 days prior to the adoption of said resolution. Any resolution calling for a referendum vote of the electors of the village must be passed by the affirmative vote of not less than four members of the council.
- B. The electors of the village shall have the power to require reconsideration by the village council of any adopted ordinance and, if the village council fails to repeal an ordinance so reconsidered, to approve or reject it at a village election, provided that such power shall not extend to the annual budget or capital program or any ordinance appropriating money, levying taxes, or setting salaries of village officers or employees.
- C. Notwithstanding anything in subparagraph 2.b. to the contrary, the referendum power shall extend to any ordinance levying ad valorem taxes, provided that the ordinance increases the total village tax rate above 5 mills, and that all petitions with respect to the referendum are filed within 30 days after the date of adoption of the ordinance.

- (b) *Commencement of proceedings.* Any ten electors may commence initiative or referendum proceedings by filing with the village clerk an affidavit stating that they shall constitute the petitioner's committee and be responsible for circulating the petition and filing it in proper form stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. Promptly after the affidavit of the petitioner's committee is filed, the village clerk may, at the committee's request, issue the appropriate petition blanks to the petitioner's committee at the committee's expense.

(c) *Petitions.*

- (i) Initiative and referendum petitions must be signed by electors of the village equal in number to at least ten percent of the total number of electors registered to vote in the last regular village election.

- (ii) All papers of a petition shall be assembled as one instrument of filing. Each signature shall be executed in ink and shall be followed by the printed name and address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- (iii) Each paper of a petition shall have attached to it, when filed, an affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be, and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- (iv) Except as otherwise provided in subsubparagraph 2.b., all initiative and referendum petitions must be filed within 60 days of the date on which proceedings with respect to such initiative or referendum are commenced, and all requirements of the process, including, but not limited to, the submission of the signatures required, must be completed no later than 90 days following the date of filing said initiative or referendum petition.

(d) *Procedure for filing.*

- (i) Within 20 days after an initiative petition or a referendum petition is filed, the village clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioner's committee by registered mail. Grounds for insufficiency are only those specifics in subparagraph (c)3. that are not met. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioner's committee files a notice of intent to amend it with the designated official within two business days after receiving the copy of the certificate and files a supplementary petition upon additional papers within ten days after receiving the copy of such certificate. Such supplementary petition shall comply with original petition requirements, and within five days after it is filed, the village clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioner's committee by registered mail. If a petition or an amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioner's committee does not elect to amend or request the village council review under subparagraph 2. within the time required, the village clerk shall promptly present a certificate to the village council and such certificate shall then be a final determination as to the sufficiency of the petition.
- (ii) *The village council review.* If a petition has been certified insufficient and the petitioner's committee does not file notice of intent to amend it or if an amended petition has been certified insufficient, the committee may, within two business days after receiving the copy of such certificate, file a request that it be reviewed by the village council. The village council shall review the certificate at its next meeting following the village council's filing of such request and approve or disapprove it, and determination shall then be final as to the sufficiency of the petition.

(e) *Action on petitions.*

- (i) *Action by village council.* When an initiative or referendum petition has been determined insufficient, the village council shall promptly consider the proposed

initiative ordinance or reconsider the referendum ordinance by voting its repeal. The repeal of an ordinance relating to the levy of ad valorem taxes shall be by ordinance. If the village council fails to adopt a proposed initiative ordinance without any change in substance within 45 days or fails to repeal the referendum ordinance within 30 days or, in the case of a referendum authorized pursuant to subsubparagraph (a)2.c., within five days after the date on which the petition is determined to be sufficient, it shall submit the proposed initiative or referendum ordinance to the electors of the village. If the village council fails to act on a proposed initiative ordinance or a referendum ordinance within the time period specified, the village council shall be deemed to have failed to adopt the proposed initiative ordinance or failed to repeal the referendum ordinance on the last day that the village council was authorized to act on such matter.

- (ii) *Submission to electors.* The vote of the village on a proposed initiative or referendum ordinance shall be held not less than 30 or more than 60 days from the date the village council acted or was deemed to have acted pursuant to subparagraph (e)1. that the petition was determined sufficient. If no regular election is to be held within the period described in this paragraph, the village council shall provide for a special election, except that the village council may, in its discretion, provide for a special election at an earlier date within the described period. Copies of the proposed initiative or referendum ordinance shall be made available at the polls.
- (iii) *Withdrawal of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the 15th day preceding the day scheduled for a vote of the village by filing with the village clerk a request for withdrawal signed by at least eight members of the petitioner's committee. Upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

(f) *Results of election.*

- (i) If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
- (ii) If a majority of the qualified electors voting on a referendum ordinance vote[s] against it, it shall be considered repealed upon certification of the election results.

(Ord. No. 03-13, § 3, 12-11-2003, referendum 3-9-2004; Ord. No. 07-02, § 2, 2-8-2007, referendum 5-15-2007; Ord. No. 07-04, § 2, 3-8-2007; Ord. No. 11-15, § 2, 6-23-2011; Ord. No. 11-19, § 2, 9-8-2011, referendum 1-31-2012)

Sec 9 Transition Schedule

- (1) *Referendum.* The referendum election called for by this act shall be held on November 4, 1997, at which time the following question shall be placed upon the ballot:

INCORPORATION OF THE VILLAGE OF ISLAMORADA

"Shall Chapter _____, Laws of Florida, creating the Islamorada, Village of Islands and

providing its Charter be approved?"

☐	Yes
☐	No

In the event this question is answered affirmatively by a majority of voters voting in the referendum, the provisions of this charter will take effect as provided in section 14[13].

(2) *Initial election of councilmembers.*

- (a) *Dates.* Following the adoption of this charter in accordance with subsection (1), the Monroe County Commission shall call a special election for the election of the five village councilmembers to be held on March 12, 1998. In the event no candidate for an office receives a majority of the votes cast for said office, then a runoff election shall be held on March 26, 1998.
- (b) *Qualifying period.* Between noon on January 30, 1998, and noon on February 13, 1998, any individual who wishes to run for one of the five initial seats on the council shall qualify as a candidate with the Monroe County Supervisor of Elections in accordance with the provisions of this charter and general law.
- (c) *Certificate of election results.* For the initial election, the Monroe County Commission shall appoint a canvassing board which shall certify the results of the election.
- (d) *Induction into office.* Those candidates who are elected on March 12, 1998, and March 26, 1998, shall take office at the initial village council meeting, which shall be held at 7:00 p.m., on March 28, 1998, at the Islamorada Public Library.
- (e) *Initial terms of office.* In order to provide for staggering terms of office, the initial term of office for those three council candidates receiving the highest number of votes in the initial election shall be four years, and for the remaining elected candidates two years.

(3) *Creation and establishment of village.* For the purpose of compliance with F.S. § 200.066, relating to assessment and collection of ad valorem taxes, the village is hereby created and established effective December 31, 1997, notwithstanding anything to the contrary contained herein, the village although crated and established as of December 31, 1997, shall not be operational until March 26, 1998.

(4) *First year expenses.* The village council, in order to provide moneys for the expenses and support of the village, shall have the power to borrow money necessary for the operation of village government until such time as a budget is adopted and revenues are raised in accordance with the provisions of this charter.

(5) *Transitional ordinances and resolutions.* The village council shall adopt ordinances and resolutions required to effect the transition. Ordinances adopted within 60 days after the first council meeting may be passed as emergency ordinances. These transitional ordinances, passed as emergency ordinances, shall be effective for no longer than 90 days after adoption, and thereafter may be readopted, renewed, or otherwise continued only in the manner normally prescribed for ordinances.

(6) *Transitional comprehensive plan and land development regulations.*

- (a) Until such time as the village adopts a comprehensive plan, the applicable provisions of the Comprehensive Plan of Monroe County, as the same exists on the day the village commences corporate existence, shall remain in effect as the village's transitional comprehensive plan. However, all planning functions, duties, and authority shall thereafter be vested in the Village Council of Islamorada which shall be deemed the local

planning agency until and unless the council establishes a separate local planning agency. Prior to the adoption of a village comprehensive master plan, any amendment to any zoning as established in the current county land use plan shall only be by an ordinance adopted by the affirmative vote of not less than four members of the council. Any increase in the residential density or intensity, as established in the current county land use plan which is adopted by the village shall only be by an ordinance adopted by the affirmative vote of not less than four members of the council.

- (b) All powers and duties of the planning commission, zoning authority, any boards of adjustment, and the County Commission of Monroe County, as set forth in these transitional zoning and land use regulations, shall be vested in the Village Council of Islamorada until such time as the village council delegates all or a portion thereof to another entity.
- (c) Subsequent to the commencement of the village's corporate existence, no amendment of the comprehensive plan or land development regulations enacted by the Monroe County Commission shall be deemed as an amendment of the village's transitional comprehensive plan or land development regulations or otherwise take effect within the village's corporate limits unless approved by the village council.

(7) *State shared revenues.* Islamorada, Village of Islands shall be entitled to participate in all shared revenue programs of the State of Florida effective immediately on the date of incorporation. The provisions of F.S. § 218.23(1), shall be waived for the purpose of eligibility to receive revenue sharing funds from the date of incorporation through the state fiscal year 1997-1998. F.S. § 218.26(3), shall be waived for the 1997-1998 state fiscal year and the apportionment factors for the municipalities and counties shall be recalculated pursuant to F.S. § 218.245. Initial population estimates for calculating eligibility for shared revenues shall be determined by the University of Florida Bureau of Economic and Business Research. Should the bureau be unable to provide an appropriate population estimate, the Monroe County Planning Division estimate should be utilized.

(8) *Gas tax revenues.* Notwithstanding the requirements of F.S. § 336.025, to the contrary, Islamorada, Village of Islands shall be entitled to receive local option gas tax revenues beginning October 1, 1998.

Sec 10 Land Description

The corporate boundaries of the village shall be as follows:

From the West end of the Channel Two bridge (approximately Mile Marker 72.5) to the West end of the Tavernier Creek Bridge (approximately Mile Marker 90.8), including the entire islands of Plantation Key, Windley Key, Upper Matecumbe Key, Lower Matecumbe Key, and Teatable Key, and all land filled in between the islands, all connected by U.S. One, Overseas Highway; all of the above within Monroe County, Florida.

Sec 11 General Provisions

- (1) *Charter amendments.* This charter may be amended in accordance with the provisions for charter amendments as specified in the Municipal Home Rule Powers Act, F.S. ch. 166, as the same be amended from time to time, or its successor, or as may otherwise be provided by general law. The form, content, and certification of any petition to amend shall be established by ordinance.

State law reference(s)—Charter amendments, F.S. § 166.031.

- (2) *Standards of conduct.* All elected officials and employees of the village shall be subject to the standards of conduct for public officers and employees set by general law. In addition, the village council shall, no later than six months from the effective date of incorporation, establish by ordinance a code of ethics for officials and employees of the village which may be supplemental to general law, but in no case may such an ordinance diminish the provisions of general law. The intent of this provision of the charter is to require more stringent standards than those provided under general law.
- (3) *Height restrictions.* The maximum height of a structure in the village, as defined in the code, shall be 35 feet, excluding chimneys, spires and steeples on structures utilized for institutional and public uses only, radio or television antennas, flagpoles, solar apparatus and utility poles, excluding the replacement of a structure to existing height if destroyed by a natural disaster and providing for a variance procedure.

(Ord. No. 07-02, § 2, 2-8-2007, referendum 5-15-2007)

HISTORY

Amended by Ord. [07-02](#) on 2/7/2007

Sec 12 Severability

If any provisions of this act, or the application thereof to any person or circumstance, is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Sec 13 Approval By Electors

This act shall take effect only upon its approval by a majority vote of those qualified electors residing within the proposed corporate limits of the proposed Islamorada, Village of Islands as described in section 11[10], voting in a referendum election to be called by the Monroe County Commission and to be held on November 4, 1997, in accordance with the provisions of law relating to elections currently in force, except that:

- (1) If the qualified voters residing in the area known as Plantation Key consisting of Precincts 25 and 26 do not approve this act by a majority vote in both Precincts 25 and 26, this act shall not take effect. If approved by the electorate, including that in Precincts 25 and 26, section 3, section 9(2), and section 9(3) shall take effect upon certification of the election results by the Monroe County Supervisor of Elections.
- (2) The remainder of this act shall take effect upon becoming a law.

Became a law without the Governor's approval May 30, 1997.

Filed in Office [of the] Secretary of State May 29, 1997.



Summary of Florida's Sunshine Law and Public Records Act

Please note that the following is only provided as a summary of the following requirements. A more thorough training program must be completed each year by Councilmembers in accordance with state law.

A. The Sunshine Law

- Meetings of Two or More Councilmembers: Meetings and discussions between two or more Councilmembers upon any issue which will foreseeably appear before the Council must be at a public meeting;
- Technical Requirements for Public Meeting: The public meeting must be advertised in a newspaper of general circulation or on the Village website, open to the public, and minutes must be promptly taken and recorded;
- Formal and Casual Gatherings: The Sunshine Law applies to formal and casual gatherings at which two or more Councilmembers discuss some matter on which foreseeable action will be taken by the Village;
- No Responses to Another Councilmember's Writings: While the Sunshine Law is not violated if one Councilmember issues a position paper or email on a matter that will be discussed at a public meeting, a violation will occur if another Councilmember responds to that communication;
- Sunshine Law Applies to Electronic Communications: A discussion between Councilmembers about matters that could foreseeably come before the Council for action using telephones, e-mail, Facebook, blogs or other electronic means would violate the Sunshine Law. To accurately track the communications of Councilmembers for responses to public records requests, members are strongly encouraged to only use their Village issued email address to conduct any Village business;
- Meeting Participation via Electronic Means: Absent Councilmembers may, under certain circumstances established by Village Resolution, participate in Council meetings using interactive electronic media as long as a quorum is present at the meeting site and other technical requirements are met.
- Sunshine Law Follows Delegated Authority: The Sunshine Law applies to actions by a single Councilmember if she or he has been delegated authority to act on behalf of the Village;
- Members of Different Elected Bodies Can Usually Meet: Members of different elected bodies can meet without violating the Sunshine Law

unless one of them has been delegated authority to act for her/his elected body;

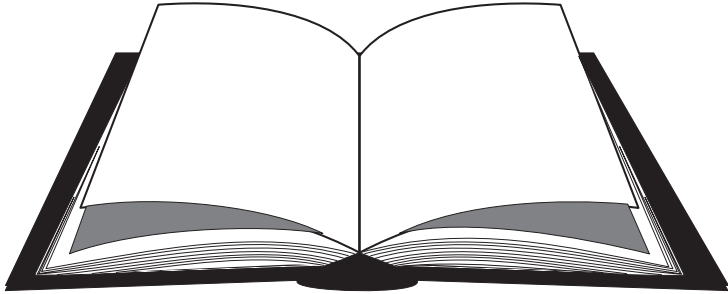
- No Meetings through Use of Intermediaries: The Sunshine Law is violated if a person (who is not a Councilmember) acts as a liaison between Councilmembers through which a *de facto* discussion is conducted upon some matter on which foreseeable action will be taken by the Council;
- Members-Elect are Subject to Sunshine Law: The Sunshine Law applies to Councilmembers-Elect;
- Candidates' Nights/Community Forums: The Sunshine Law precludes Councilmembers from discussing between themselves at a Candidates' Night or community forum any matters on which foreseeable action will be taken by the Council;
- Social Gatherings: The Sunshine Law does not preclude Councilmembers from meeting together socially so long as they do not discuss matters on which foreseeable action will be taken by the Council;
- Written Ballots are Permitted: Written ballots may be used at Council meetings if they are made openly at a public meeting, show the name of the person voting, the Councilmember's selection, and the ballots are available for inspection as public records;
- Secret Ballots are Prohibited: Secret ballots are not permitted under the Sunshine Law;
- Councilmembers Must Vote Unless a Conflict Exists: A vote must be recorded for each Councilmember present unless a conflict exists and all steps are taken for abstention and disclosure of a voting conflict;
- Permitted Types of Closed Door Meetings: The Village Council is permitted to conduct meetings to the exclusion of the public upon a limited range of matters such as attorney-client sessions, collective bargaining strategy sessions;
- Non-Binding Effect of Actions at Improper Meetings: Any action taken outside of a Sunshine Law meeting is non-binding and void *ab initio*; and
- Penalties for Violation of Sunshine Law: An elected official who knowingly violates the Sunshine Law is guilty of a second degree misdemeanor and may face the following penalties:
 1. Imprisonment for up to 60 days;
 2. Fines up to \$500;
 3. Suspension from office;
 4. Removal from office; and
 5. Liability for reasonable attorney's fees.

B. Public Records Act

- Public Records Defined: All materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge;
- Electronic and Digital Records: Public records apply to written, electronic, digital and any other form of record made or received by an agency in connection with the transaction of official business. Applicable records include, without limitation, the following:
 1. Computer records,
 2. Electronic calendars,
 3. Databases, and
 4. Word processing files;
- E-mail – Official Business: E-mail messages made and received by Councilmembers in connection with official business are public records and must be retained in accordance with state retention records;
- E-mail – Personal: Private e-mail stored in government computers does not automatically become a public record by virtue of that storage. The recommended best practice is to conduct ALL public business through the Village email address;
- E-mail – Disclosure Statement: An automatic footer message should be placed on your official e-mail messages warning recipients that their e-mail address in a response becomes a public record.
- Telephone Bills: Records of telephone calls made from agency telephones are generally subject to disclosure;
- Draft Documents: Once circulated for review, comment or information, a draft document is a public record subject to inspection even if it is not finalized or has not been distributed to its intended recipients;
- Confidential and Exempt Records: If a public records request is made, any requested document will be reviewed by Village staff to determine whether it is confidential or exempt from public inspection under applicable law.
- Collective Bargaining Work Product Exemption: All work products developed by the Village in preparation of negotiations are confidential and exempt from public inspection.
- Time to Respond to Public Records Requests: The Village must respond in the reasonable time necessary to retrieve the record and delete those portions of the record that are confidential or exempt from inspection.

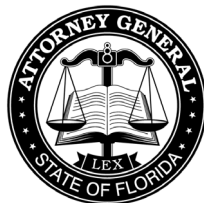
- Penalties for Violation of Public Records Act: A public officer who knowingly violates the Public Records Act may be convicted of a first degree misdemeanor and may face the following penalties:
 1. Up to 1 year in prison,
 2. Fines up to \$1,000, and
 3. Suspension or removal from office;
- Attorney's Fees and Costs for Violation: If a civil action is commenced and the Village is found to have violated the Public Records Act, the court may award reasonable attorney's fees and costs against the Village.

GOVERNMENT-IN- THE-SUNSHINE MANUAL



2024 Edition

*A Reference For Compliance
with Florida's Public Records
and Open Meetings Laws*



Florida Office of the Attorney General

Volume 46

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A Public Policy of Open Government

INTRODUCTION

Our system of open government is a valued and intrinsic part of the heritage of our state. Each day, Floridians use these laws to inform themselves as citizens, to attend government meetings and to review government records. As a result of these efforts, government leaders can be held accountable for their actions.

The Founding Fathers of our country recognized this fundamental truth during our nation's infancy and it remains just as valid today. As James Madison said: "Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

Florida is nationally recognized for its strong support for government in the sunshine and this commitment is reflected in our statutes and Constitution. As Attorney General, I remain committed to the principles of transparency embodied in these laws and the benefits they secure for our state.

This year's edition of the Government in the Sunshine Manual incorporates laws, judicial decisions, and Attorney General opinions in place as of October 1, 2023. Additional information about Florida's Sunshine Laws, including answers to frequently asked questions, is available through the Office of the Attorney General's Internet homepage, which may be reached at myfloridalegal.com.

Suggestions from those who use this Manual are welcome and appreciated. Please forward comments to: Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399.

Ashley Moody
Attorney General

Legislative Highlights

The following are some of the more significant actions which occurred during the 2023 legislative session relating to the public's right of access to meetings and records.

Amusement ride investigations – Provides that all investigatory records made or received by the Department of Agriculture and Consumer Services are confidential and exempt until such time as the investigation is completed or ceases to be “active” as that term is defined in the exemption. **Chapter 23-51, Laws of Florida, amending s. 616.242(14)(b), F.S.**

Autopsy report of death of minor due to domestic violence – Provides that an autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt, except as provided in the exemption. **Chapter 23-44, Laws of Florida, amending s. 406.135, F.S.**

Communications services locations, project proposals, and challenges – Establishes confidentiality for information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under cited statute or pursuant to a federal broadband access grant program implemented by the department, if such information is not otherwise publicly available and release would reveal information specified in the exemption. **Chapter 23-177, Laws of Florida, creating s. 119.071(1)(h), F.S.**

Data privacy investigative information – Information received by the Department of Legal Affairs pursuant to a notification of a violation of specified data privacy statutes or pursuant to an investigation of those provisions by the department or a law enforcement agency is confidential and exempt until such time as investigation is completed or ceases to be active, although certain information remains confidential. **Chapter 23-262, Laws of Florida, creating ss. 501.1735(6), F.S., and 501.722, F.S. This law takes effect July 1, 2024.**

Disabilities registry – All records and personal identifying information related to the enrollment of persons in a persons with disabilities registry under cited law held by a local law enforcement agency are confidential and exempt. Disclosure is authorized as provided in the exemption. **Chapter 23-313, Laws of Florida, creating s. 402.88(4), F.S.**

Elder abuse fatality review teams – Confidential or exempt information obtained by an elder abuse or vulnerable adult fatality review team retains its confidential or exempt status when held by the review team. Information contained in a record created by a review team that reveals the identity of a victim of abuse, exploitation or neglect or the identity of persons responsible for the welfare of such victim is confidential and exempt from disclosure requirements. Portions of review team meetings relating to abuse, exploitation, or neglect or abuse-related deaths of elderly persons or otherwise vulnerable adults, and the prevention of such abuse, exploitation, neglect, or deaths, during which exempt or confidential information, the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed, are exempt from open meetings requirements. **Chapter 23-261, Laws of Florida, creating s. 415.1103(10), F.S.**

Email addresses and secure login credentials – Email addresses and secure login credentials held by the Department of State pursuant to specified statutes authorizing electronic filing of records are exempt from disclosure requirements. **Chapter 23-52, Laws of Florida, amending s. 15.16, F.S.**

Genealogy investigative information – Investigative genetic genealogy information and materials as defined in the exemption are confidential and exempt from disclosure requirements. Certain disclosures are authorized. **Chapter 23-235, Laws of Florida, creating s. 119.071(2)(r), F.S.**

Health care choice discrimination investigations – A complaint alleging a business entity's, a governmental entity's or an educational institution's violation of cited statutes, and all information relating to an investigation of such complaint, held by the Department of Legal Affairs or the Department of Health is confidential and exempt from disclosure requirements until the investigation is completed or is no longer "active" as defined in the exemption, although specified information remains confidential. Certain disclosures are authorized. **Chapter 23-42, Laws of Florida, amending s. 381.00318, F.S.**

Interstate Teacher Mobility Compact – Any portion of a meeting of the Interstate Teacher Mobility Compact Commission or its executive committee in which specified information is discussed is exempt from open meetings requirements. Recordings, minutes, and records generated during any portion of any exempt meeting are exempt from disclosure requirements. Records relating to an investigation of a teacher received from another member state held by the commissioner or the Florida Department of Education pursuant to the Compact are exempt from disclosure requirements until such time as the investigation ceases to be "active" as defined in the exemption, or until such time as a preliminary investigation has been concluded with a finding that there is probable cause to proceed and a complaint is filed. **Chapter 23-166, Laws of Florida, creating s. 1012.9931, F.S.**

Inspectors and investigators for the Department of Agriculture and Consumer Services – Home addresses and other specified personal information about current or former inspectors or investigators of the Department of Agriculture and Consumer Services, and their spouses and children, are exempt from disclosure requirements. **Chapter 23-153, Laws of Florida, amending s. 119.071(4)(d), F.S.**

Judicial assistants personal information – Home addresses and other specified personal information about current judicial assistants as defined in the exemption and their spouses and children are exempt from disclosure requirements. **Chapter 23-131, Laws of Florida, amending s. 119.071(4)(d), F.S.**

Photographs and video and audio recordings of killing of minor – Photographs and video and audio recordings of the killing of a minor are confidential and exempt from disclosure requirements. Disclosure is authorized under specified circumstances. **Chapter 23-44, Laws of Florida, amending s. 119.071(2)(p), F.S.**

Psychology Interjurisdictional Compact – A psychologist's personal identifying information, other than the psychologist's name, licensure status, or licensure number, obtained from the coordinated licensure information system, and held by the Department of Health or the Board of Psychology is exempt from disclosure requirements unless disclosure is authorized by the reporting state. A meeting or portions of a meeting of the Psychology Interjurisdictional Compact Commission at which matters specifically exempted from disclosure by state or federal law are discussed is exempt from the Sunshine Law. Records generated during an exempt meeting are exempt from disclosure requirements. **Chapter 23-141, Laws of Florida, creating s. 490.0076, F.S.**

Safe-school officers – Any information that may identify whether a particular individual has been assigned as a safe-school officer at a private school and that is held by a law enforcement agency is exempt from disclosure requirements. **Chapter 23-19, Laws of Florida, amending s. 1002.42(18), F.S.**

Security or transportation services provided to the Governor – Records held by a law enforcement agency relating to security or transportation services provided to the Governor or other persons pursuant to cited law, are exempt from disclosure requirements. **Chapter 23-58, Laws of Florida, amending s. 943.68, F.S.**

PART I

GOVERNMENT IN THE SUNSHINE LAW

A. SCOPE OF THE SUNSHINE LAW

Florida's Government in the Sunshine Law, s. 286.011, F.S., commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels. The law is equally applicable to elected and appointed boards, and applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. *See Parris v. State*, 359 So. 3d 1178 (Fla. 4th DCA 2023) (Ciklin, J., concurring specially), noting that “[m]eetings of two or more fellow government officials who are subject to the Sunshine Law are not allowed if any words of any type pertaining to any possible foreseeable issue will be communicated in any way unless they are open to the public to whom reasonable notice has been provided.” Members-elect to such boards or commissions are also subject to the Sunshine Law, even though they have not yet taken office. There are three basic requirements of s. 286.011, F.S.:

- (1) meetings of public boards or commissions must be open to the public;
- (2) reasonable notice of such meetings must be given; and
- (3) minutes of the meetings must be taken and promptly recorded.

The complete text of the Government in the Sunshine Law and related statutes may be found in Appendix B.

A constitutional right of access to meetings of collegial public bodies is recognized in Art. I, s. 24, Fla. Const. *See Frankenmuth Mutual Insurance Company v. Magaha*, 769 So. 2d 1012, 1021 (Fla. 2000), noting that the Sunshine Law “is of both constitutional and statutory dimension.” Virtually all collegial public bodies are covered by the open meetings mandate of this constitutional provision with the exception of the judiciary and the state Legislature, which has its own constitutional provision requiring access. The only exceptions are those established by law or by the Constitution. The complete text of Art. I, s. 24, Fla. Const., may be found in Appendix A of this manual.

The Government in the Sunshine Law applies to “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision.” The statute thus applies to public collegial bodies within this state, at the local as well as state level. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971). “All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted.” *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). *Accord Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021).

The Sunshine Law is equally applicable to elected and appointed boards or commissions. AGO 73-223. Special district boards (AGO 74-169) and boards created by interlocal agreement (AGO 84-16) are also included. *And see* Inf. Op. to Martelli, July 20, 2009 (State Fair Authority, created by statute as a public corporation, subject to Sunshine Law). *Cf. Turner v. Wainwright*, 379 So. 2d 148, 155 (Fla. 1st DCA 1980), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980) (legislative requirement that certain board meetings must be open to the public does not imply that the board could meet privately to discuss other matters).

B. WHAT ENTITIES ARE COVERED BY THE SUNSHINE LAW? APPLICATION OF THE SUNSHINE LAW TO:

1. Advisory boards

Advisory boards and committees created by public agencies may be subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them. The “dispositive question” is whether the committee has been delegated “decision-making authority,” as opposed to mere “information-gathering or fact-finding authority.” *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). “Where the committee has been delegated decision-making authority, the committee’s meetings must be open to public scrutiny, regardless of the review procedures eventually used by the traditional governmental body.” *Id. Accord Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021), quoting extensively from *Sarasota Citizens for Responsible Government*, in finding that textbook evaluation committees created by the superintendent pursuant to school board policy to recommend textbooks, had been delegated decision-making authority and were therefore subject to the Sunshine Law even though the school board made the final decision to approve the textbooks. *And see* AGO 23-04, noting that “the power to make recommendations may qualify as decision-making authority even though the entity delegating that authority has the power to reject the recommendation.”

For example, in *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974), a citizen planning committee appointed by a city council to assist in revision of zoning ordinances was found to be subject to the Sunshine Law. The *Gradison* court, concluding that the committee served as the alter ego of the council in making tentative decisions, stated that “any committee established by the Town Council to act in any type of advisory capacity would be subject to the provisions of the government in the sunshine law.” *Id.* at 476. *See also Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694, 695 (Fla. 3d DCA 1988) (committee which compiled a report that was perfunctorily accepted by the board made a significant ruling affecting decision-making process and was subject to s. 286.011); and *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county ordinance to serve in an advisory capacity to the county manager). *Accord* AGOs 98-13 (citizen advisory committee appointed by city council to make recommendations to the council regarding city government and city services), and 01-84 (school advisory council created pursuant to former s. 229.58 [now s. 1001.452], F.S.).

The Sunshine Law does not establish a lesser standard for members of advisory committees that are subject to the Sunshine Law. *See Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994) (“[T]he Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials”). Nor is there an exception from the Sunshine Law for an advisory group created by a county commissioner and composed of volunteers. *See* Inf. Op. to Wallace, January 7, 2019, emphasizing that it is the nature of the functions of an advisory group that determines the application of the Sunshine Law, not the manner of their appointment or their volunteer status.

a. Advisory boards appointed by a single public official

The Sunshine Law applies to advisory committees appointed by a single public official as well as those appointed by a collegial board. *See* Inf. Op. to Wallace, January 7, 2019 (“In the first place, advisory groups appointed by a single public official are not immunized from the public meetings requirement”).

For example, in *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), the Florida Supreme Court determined that the Sunshine Law applied to an ad hoc advisory committee appointed by a university president to screen applications and make recommendations for the position of law school dean, because the committee, in deciding which applicants to reject from further consideration, performed a policy-based, decision-making function. *See also Silver Express*

Company v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee established by agency purchasing director to consider and rank various contract proposals deemed subject to Sunshine Law); *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021) (textbook committees created by the superintendent pursuant to school board policy to evaluate and rank textbooks for approval by the school board governed by s. 286.011, F.S., because they “clearly ‘helped to crystalize the decision to be made’ by the School Board,” quoting from *Silver Express*, 691 So. 2d at 1100); and *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com (Sunshine Law applies to committee formed by school board planning director to develop and recommend to the superintendent proposed new school attendance boundaries). *Accord* AGOs 05-05 (fact that advisory group was created by chief of police and not city commission and its recommendations were made to police chief would not remove group from ambit of the Sunshine Law); 85-76 (ad hoc committee appointed by mayor for purpose of making recommendations concerning legislation); 87-42 (ad hoc committee appointed by mayor to meet with Chamber of Commerce and draft proposal for transfer of city property). *And see* Inf. Op. to Lamar, August 2, 1993 (transition team appointed by mayor to make recommendations regarding governmental reorganization).

b. Fact-finding committees

A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for advisory committees established for fact-finding only. “[A] committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only conducts such activities.” *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). *See also* *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172 (Fla. 1st DCA 2017); and *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985). *Accord* AGO 95-06 (when a group, on behalf of a public entity, functions solely as a fact-finder or information gatherer with no decision-making authority, no “board or commission” subject to the Sunshine Law is created).

“In determining whether a committee is subject to the Sunshine Law, the actual function of the committee must be scrutinized to determine whether it is exercising part of the decision-making function by sorting through options and making recommendations to the governmental body.” Inf. Op. to Randolph, June 10, 2010. Thus, if an advisory committee has a decision-making function in addition to fact-finding, the Sunshine Law is applicable. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983), recognizing that while a “search and screen” committee had a fact-gathering role in soliciting and compiling applications, the committee also “had an equally undisputed decision-making function in screening the applicants” by deciding which of the applicants to reject from further consideration, and thus was subject to the Sunshine Law. *And see* AGO 94-21 (application of Sunshine Law to members of a negotiating team created by a city commission). *Cf. Collier County Public Schools v. Mason Classical Academy*, 342 So. 3d 753 (Fla. 2d DCA 2022), noting that discussions between two school district employees and the school district attorney conducted as part of the fact-finding process in an investigation of a charter school “clearly were not meetings pursuant to section 286.011(1) because neither employee was a school board member or part of a decision-making committee”).

Accordingly, the determination as to whether an advisory committee created by a public official is subject to the Sunshine Law will necessarily depend on the duties and responsibilities performed by the committee. *See* Inf. Op. to Wallace, January 7, 2019, noting that the mere designation of a committee’s function as “providing feedback” to the public official is not dispositive of the status of the committee for Sunshine Law purposes; instead, “the key determination will be the exact nature of the feedback being requested and provided.” *See also* AGO 98-13 (application of the Sunshine Law to a community advisory committee appointed by a city commission).

Moreover, the “fact-finding exception” applies only to advisory committees and not to boards that have “ultimate decision-making governmental authority.” *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1071-1072 (Fla. 5th DCA 2008). In *Finch*, the court held that the “fact-finding exception” did not apply to a school board as the ultimate decision-making body; thus the board could not take a fact-finding bus tour without complying with the Sunshine Law even though school board members were separated from each other by several rows of seats, did not discuss their preferences or opinions, and no vote was taken during the trip. *And see* Inf. Op. to Sugarman, August 5, 2015 (pension board not authorized to travel out of state to meet with financial consultants).

c. Staff committees

The Sunshine Law applies to meetings of elected or appointed boards; it does not ordinarily apply to staff committees or meetings. *See, e.g., Occidental Chemical Company v. Mayo*, 351 So. 2d 336 (Fla. 1977), *disapproved in part on other grounds, Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992); *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 101 (Fla. 1st DCA 1996); and AGO 89-39. The Sunshine Law does not apply “when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her duties.” *Knox v. District School Board of Brevard*, 821 So.2d 311, 315 (Fla. 5th DCA 2002).

Thus, a committee composed of staff that is responsible for advising and informing the decision-maker through fact-finding consultations is not subject to the Sunshine Law. *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976) (meetings of committee appointed by public college president to report on employee working conditions not subject to Sunshine Law). *Cf.* AGO 08-63 (although Sunshine Law does not apply to orientation sessions held by counties for special magistrates hired to hear value adjustment board petitions, “nothing would preclude a county from allowing the public to attend such orientations in order to enhance the knowledge of citizens who appear before value adjustment boards”).

Accordingly, a state agency did not violate the Sunshine Law when agency employees conducted an investigation into a licensee’s alleged failure to follow state law, and an assistant director made the decision to file a complaint as “[c]ommunication among administrative staff in fulfilling investigatory, advisory, or charging functions does not constitute a ‘Sunshine’ Law violation.” *Baker v. Florida Department of Agriculture and Consumer Services*, 937 So. 2d 1161 (Fla. 4th DCA 2006), *review denied*, 954 So. 2d 27 (Fla. 2007). *And see Knox v. District School Board of Brevard, supra*, concluding that a team of employees appointed by an area superintendent to meet with her to interview, evaluate and recommend applicants to the superintendent served only in a “fact-finding or advisory” capacity since the superintendent received all applications for the position and he decided which applicants he would interview and nominate to the school board.

Similarly, the court in *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000), ruled that the Sunshine Law did not apply to informal meetings of staff where the discussions were “merely informational,” where none of the individuals attending the meetings had any decision-making authority during the meetings, and where no formal action was taken or could have been taken at the meetings.

Accordingly, “meetings among agency staff to assess and make recommendations regarding contract management do not implicate” open meetings requirements. *Florida Environmental Regulation Specialists, Inc. v. Florida Department of Environmental Protection*, 342 So. 3d 710 (Fla. 1st DCA 2022). The court observed that “there was no delegation of policy making authority to any group of staff members at the department and the decision to terminate the contract was made by the agency official tasked with doing so.” *Id. See also Molina v. City of Miami*, 837 So. 2d 462, 463 (Fla. 3d DCA 2002) (police discharge of firearms committee not subject to Sunshine Law because the committee “is nothing more than a meeting of staff members who serve in a fact-finding advisory capacity to the chief”); *J.I. v. Department of Children and Families*, 922 So. 2d

405 (Fla. 4th DCA 2006) (Sunshine Law not applicable to Department of Children and Families permanency staffing meetings conducted to determine whether to file a petition to terminate parental rights); and *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017) (Sunshine Law inapplicable to meetings “held solely for the purpose of gathering information”).

However, if a staff committee has been delegated decision-making authority as opposed to mere fact-finding or information-gathering, the Sunshine Law applies to the committee. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983). It is the nature of the act performed, not the makeup of the committee or the proximity of the act to the final decision, which determines whether a committee composed of staff is subject to the Sunshine Law. *Id.* See *News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 548 (Fla. 2d DCA 1982), concluding that it would be “ludicrous” to hold that “a certain committee is governed by the Sunshine Law when it consists of members of the public, who are presumably acting for the public, but hold that a committee may escape the Sunshine Law if it consists of individuals who owe their allegiance to, and receive their salaries from, the governing authority;” and *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners*, 810 So. 2d 526, 531-532 (Fla. 2d DCA 2002) (staff committee members delegated decision-making authority from public officials no longer function as staff members but “stand in the shoes of such public officials” insofar as the Sunshine Law is concerned).

Thus, in *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997), the district court determined that a committee composed primarily of staff that was created by a college purchasing director to assist and advise her in evaluating contract proposals was subject to the Sunshine Law. The committee’s job to “weed through the various proposals, to determine which were acceptable and to rank them accordingly” was sufficient to bring the committee within the scope of the Sunshine Law. See also *Roscow v. Abreu*, No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004), available in the Cases database at the open government site at myfloridalegal.com (committee created by the state department of transportation and composed of officials from state, local, and federal agencies was subject to the Sunshine Law because the committee was responsible for screening and evaluating potential corridors and alignments for a possible expansion of the Suncoast Parkway); AGO 05-06 (city development review committee, composed of several city officials and representatives of various city departments to review and approve development applications, is subject to the Sunshine Law); and AGO 86-51 (land selection committee appointed by water management district and delegated decision-making authority to consider projects for inclusion on a list of proposed acquisition projects must comply with Sunshine Law “even though such committee may be composed entirely of district staff and its decisions and recommendations are subject to further action by the district’s governing board”).

The *Silver Express* decision was cited in a recent case finding that textbook committees established by a school superintendent to evaluate textbooks using a “quantitative ‘rubric for evaluation’” as provided in a school board policy were subject to the Sunshine Law. The court noted that even though the superintendent had the statutory duty to recommend textbooks to the school board, the school board had the authority to select the textbooks. Because the textbooks with the highest number of points were selected for recommendation to the school board, the textbook committee selections constituted rankings and “clearly ‘helped to crystalize the decision to be made by’” the school board. *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021), quoting *Silver Express*, 691 So. 2d at 1100.

Similarly, in *Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that a meeting of a pre-termination conference panel established pursuant to a county ordinance and composed of a department head, personnel director, and equal opportunity director should have been held in the Sunshine. Even though the county administrator had the sole authority to discipline employees, that authority had been delegated to the department head

who in turn chose to share that authority with the other members of the panel.

By contrast, in *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 763 (Fla. 2010), the Court found that a county administrator's discussions with staff and consultants while negotiating a memorandum of understanding with a baseball team did not violate the Sunshine Law because the administrator's "so-called negotiations team only served an informational role." According to the Court, "[t]his is not a situation where [the administrator] and the individuals he consulted made joint decisions. Cf. *Dascott v. Palm Beach County*, [supra]." See also *McDougall v. Culver*, 3 So. 3d 391 (Fla. 2d DCA 2009) and *Jordan v. Jenne*, 938 So. 2d 526 (Fla. 4th DCA 2006).

2. Candidates or members-elect

a. Candidates

The Sunshine Law does not apply to candidates for office, unless the candidate is an incumbent seeking reelection. AGO 92-05.

b. Members-elect

The requirements of the Sunshine Law apply not only to meetings of covered boards or commissions but also to "meetings with or attended by any person elected to such board or commission, but who has not yet taken office." Section 286.011(1), F.S. Thus, members-elect are subject to the Sunshine Law in the same manner as board members who are currently in office. See also *Hough v. Stembbridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973) (individual, upon election to public office, loses his or her status as a private individual and acquires a position more akin to that of a public trustee and therefore is subject to s. 286.011, F.S.). Cf. Inf. Op. to Lamar, August 2, 1993 (Sunshine Law applies to transition team made up of citizens appointed by the mayor to make recommendations on city government reorganization). And see *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available in the Cases database at the open government site at myfloridalegal.com (Sunshine Law applied to advisory committee members "from the moment each member was selected to be on the [committee]").

A candidate who is unopposed is not considered to be a member-elect subject to the Sunshine Law until the election has been held. AGO 98-60. *Accord* Inf. Op. to Popowitz, August 12, 2016. The Popowitz opinion references a 2010 opinion from the Division of Elections (Div. of Elections Op. 10-09, July 26, 2010), finding that the date of a candidate's election to office could be deemed to be either the date specified by a court in an election case, election day itself, the date the final canvassing board certifies the election results, or some other date, depending upon the particular factual situation involved.

3. Commissions created by the Florida Constitution

Boards or commissions created by the Constitution which prescribes the manner of the exercise of their constitutional powers are not subject to s. 286.011, F.S., when carrying out such constitutionally prescribed duties. See *Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977) (judicial nominating commissions are not subject to s. 286.011, F.S.). Cf. *In re Advisory Opinion of the Governor*, 334 So. 2d 561 (Fla. 1976) (clemency power does not exist by virtue of legislative enactment; rather Constitution sufficiently prescribes rules for the manner of exercise of the power); and AGO 77-65 (Ch. 120, F.S., inapplicable to Constitution Revision Commission established by Art. XI, s. 2, Fla. Const.). Compare *Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1st DCA), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980), holding that the Parole Commission [now known as the Florida Commission on Offender Review, see s. 1, Ch. 14-191, Laws of Florida] which Art. IV, s. 8(c), Fla. Const., recognizes may be created by *law*, is subject to s. 286.011, F.S.

However, Art. I, s. 24, Fla. Const., establishes a constitutional right of access to meetings

of any collegial public body of the executive branch of state government by providing that such meetings must be open and noticed to the public unless exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution.

4. Ex officio board members

An ex officio board member is subject to the Sunshine Law regardless of whether he or she is serving in a voting or non-voting capacity. AGO 05-18. *Accord* Inf. Op. to Ardaman, June 24, 2021 (mayor who serves as a non-voting ex officio member of various municipal boards is subject to the Sunshine Law). *And see* *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available in the Cases database at the open government site at myfloridalegal.com (finding that the Sunshine Law applied equally to all members of an advisory committee, including a staff member appointed as a non-voting member of the committee whose role was only to advise the voting committee members).

5. Federal entities

Federal agencies, *i.e.*, agencies created under federal law, operating within the state, do not come within the purview of the state Sunshine Law. AGO 71-191. Thus, meetings of a federally-created council are not subject to s. 286.011, F.S. AGO 84-16.

However, if a board is created pursuant state law, the Sunshine Law applies even if federal officials serve on the board. *See* Inf. Op. to Markham, September 10, 1996 (technical oversight committee established by state agencies as part of settlement agreement in federal lawsuit subject to Sunshine Law); and Inf. Op. to Green, December 11, 1998 (tri-state river commission established pursuant to *state and* federal law is subject to the Sunshine Law). *See also* Inf. Op. to Knox, January 6, 2005 (St. Johns River Alliance, Inc., a non-profit corporation formed to help carry out the federal American Heritage Rivers Initiative and the associated intergovernmental Partnership Agreement among state, local and federal governmental entities, is subject to s. 286.011, F.S., requirements); and *Roscow v. Abreu*, No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004), available in the Cases database at the open government site at myfloridalegal.com (committee created by the state department of transportation and composed of officials from state, local, and federal agencies was subject to the Sunshine Law because the committee was responsible for screening and evaluating potential corridors and alignments for a possible expansion of the Suncoast Parkway). *Cf. Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine).

6. Governor and Cabinet

Article IV, s. 4 of the Florida Constitution, establishes “a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture.” The Governor and Cabinet serve as the head of certain departments within the executive branch. In addition, the Governor and Cabinet have responsibilities that arise under the Constitution. *See* Art. IV, s. 8, Fla. Const. (clemency).

The Sunshine Law does not apply to those powers of the Governor and Cabinet which derive from the Constitution; thus, the Governor and Cabinet in dispensing pardons and the other forms of clemency authorized by Art. IV, s. 8(a), Fla. Const., are not subject to s. 286.011, F.S. *Cf. In re Advisory Opinion of the Governor*, 334 So. 2d 561 (Fla. 1976) (Constitution sufficiently prescribes rules for the manner of exercise of gubernatorial clemency power; legislative intervention is, therefore, unwarranted).

Section 286.011, F.S., however, does apply to those functions of the Governor and Cabinet which are statutory responsibilities as opposed to duties arising under the Constitution. Thus, the Governor and Cabinet are subject to the Sunshine Law when sitting in their capacity as a board created by the Legislature or whose powers are prescribed by the Legislature, such as the

Board of Trustees of the Internal Improvement Trust Fund or the Florida Department of Law Enforcement. In such cases, the Governor and Cabinet are not exercising powers derived from the Constitution but are subject to the “dominion and control” of the Legislature.

Moreover, Art. I, s. 24, Fla. Const., requires that meetings of “any collegial public body of the executive branch of state government” be open and noticed to the public. The only exceptions to this constitutional right of access are those meetings which have been exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or which are specifically closed by the Constitution. *And see* Article III s. 4(e), Fla. Const., providing, in relevant part that “all prearranged gatherings, between . . . the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

7. Individual board members

Section 286.011, F.S., applies to public boards and commissions, *i.e.*, collegial bodies, and has been applied to meetings of “two or more members” of the same board or commission when discussing some matter which foreseeably will come before the board or commission. Therefore, the statute does not ordinarily apply to an *individual* member of a public board or commission or to public officials who are not board or commission members. *See National Council of Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017); and *Mitchell v. School Board of Leon County*, 335 So. 2d 354 (Fla. 1st DCA 1976). *See also* Inf. Op. to Dillener, January 5, 1990 (Sunshine Law not normally applicable to meeting of town council member with private citizens). *Cf. Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991), *review denied*, 598 So. 2d 75 (Fla. 1992), stating that *ex parte* (*i.e.*, from one side only) communications in quasi-judicial proceedings raise a presumption that the contact was prejudicial to the decision-making process; and s. 286.0115, F.S., enacted in response to the *Jennings* case, relating to access to local public officials in quasi-judicial proceedings.

However, there have been circumstances where the application of the Sunshine Law to individual board members has been considered. As stated by the Supreme Court, the Sunshine Law is to be construed “so as to frustrate all evasive devices.” *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974). *And see* AGO 89-39 (aides to county commissioners are not subject to the Sunshine law unless they have been delegated decision-making functions outside of the ambit of normal staff functions, are acting as liaisons between board members, or are acting in place of the board or its members at their direction).

a. Individual board member meeting with a member of another public board

The Sunshine Law does not apply to a meeting between individuals who are members of *different* boards *unless* one or more of the individuals has been delegated the authority to act on behalf of his or her board. *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984). *Accord* AGO 84-16 (meeting between the chair of a private industry council created pursuant to federal law and the chair of a five-county employment and training consortium created pursuant to state law is not subject to Sunshine Law, unless there is a delegation of decision-making authority to the chair of the consortium); and Inf. Op. to McClash, April 29, 1992 (Sunshine Law generally not applicable to county commissioner meeting with individual member of metropolitan planning organization). *And see News-Press Publishing Company, Inc. v. Lee County, Florida*, 570 So. 2d 1325 (Fla. 2d DCA 1990) (Sunshine Law not applicable to mediation proceeding attended by individual members of city and county boards who were in litigation because only one member of each board was present at the proceedings and no final settlement negotiations could be made during the mediation conference).

An individual city council member may, therefore, meet privately with an individual member of the municipal planning and zoning board to discuss a recommendation made by that board since two or more members of either board are not present, provided that no delegation

of decision-making authority has been made and neither member is acting as a liaison. AGO 87-34. *Accord* AGOs 99-55 (school board member meeting with member of advisory committee established by school board), and 97-52 (discussions between individual member of community college board of trustees and school board member regarding acquisition of property by school board).

b. Mayor meeting with individual city commissioner or city council member

If the mayor is a member of the council or has a voice in decision-making through the power to break tie votes, meetings between the mayor and a member of the city council to discuss some matter which will come before the city council are subject to the Sunshine Law. AGO 83-70. *And see* Inf. Op. to Ardaman, June 24, 2021 (Sunshine Law applies to discussions between a member of the city council and a mayor who serves as a non-voting member of the council).

On the other hand, if the mayor is *not* a member of the city council and does not possess any power to vote even in the case of a tie vote but possesses only the power to veto legislation, the mayor may privately meet with an individual member of the city council without violating the Sunshine Law, provided the mayor is not acting as a liaison between members and neither individual has been delegated the authority to act on behalf of the council. AGOs 90-26 and 85-36. *And see* Inf. Op. to Cassady, April 7, 2005 (mayor who is not a member of the city council and cannot vote even in the event of a tie, may meet with an individual council member to discuss the mayor's recommendations to the council concerning prospective appointees). *Cf. City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since mayor was responsible under the city charter for disciplining city employees, mayor in carrying out this function was not subject to s. 286.011, F.S.).

c. Use of nonboard members or staff to act as liaisons or to conduct a de facto meeting of the board

As a general rule, individual board members “may call upon staff members for factual information and advice without being subject to the Sunshine Law’s requirements.” *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010). *And see* AGO 81-42 (the fact that a city council member has expressed his or her views or voting intent on an upcoming matter to a news reporter prior to the scheduled public meeting does not violate the Sunshine Law so long as the reporter is not being used by the member as an intermediary in order to circumvent the requirements of s. 286.011, F.S.). *Compare, State v. Dorworth*, No. 14-MM-5841 (Fla. Orange Co. Ct. October 21, 2014), *affirmed*, No. 14-AP-48 (Fla. 9th Cir. Ct. August 19, 2015), available in the Cases database at the open government site at myfloridalegal.com, dismissing a misdemeanor charge against a lobbyist who was accused of violating the Sunshine Law by relaying information between board members and thereby aiding the members to meet without complying with the Sunshine Law. The trial judge determined that by charging the lobbyist, the state attorney “expanded the reach of the Sunshine Law to private citizens; and, the Legislature did not intend for the statute to apply to private citizens.”

However, because the Sunshine Law must be construed to “frustrate all evasive devices,” the law is implicated by a meeting between a board member and a nonboard member who is being used as a liaison for board members. *See Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018), citing to AGOs 96-35 (city manager may not ask each commissioner to state his or her position on a specific matter that will foreseeably be considered by the commission at a public meeting, in order to provide the information to the members of the commission) and 75-59 (city manager may meet individually with city council members “to discuss city business provided that the manager does not act as a liaison for board members by circulating information and thoughts of individual councilmembers to the rest of the board”). *See also Parris v. State*, 359 So. 3d 1178 (Fla. 4th DCA 2023) (Ciklin, J., concurring specially) (warning about conducting private meetings through use of surrogates, such as aides, friends, relatives, or other government officials).

Therefore, a city manager should refrain from asking each commissioner to state his or her position on a specific matter which will foreseeably be considered by the commission at a public meeting in order to provide the information to the members of the commission. AGO 89-23. *See also* Inf. Op. to Goren, October 28, 2009 (while individual city commissioners may seek advice or information from staff, city should be cognizant of the potential that commissioners seeking clarification by follow-up with staff when staff responses are provided to all commissioners could be considered to have participated in a de facto meeting of the commissioners by using staff as a conduit between commissioners). *Compare Sarasota Citizens for Responsible Government v. City of Sarasota*, *supra* at 765 (private staff meetings with individual county commissioners in preparation for a public hearing on a proposed memorandum of understanding [MOU] did not violate the Sunshine Law because the meetings were “informational briefings regarding the contents of the MOU” and “[t]here is no evidence that [county] staff communicated what any commissioner said to any other commissioner”).

Additionally, in *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979), the court held that a series of scheduled successive meetings between the school superintendent and individual members of the school board were subject to the Sunshine Law. While normally meetings between the school superintendent and an individual school board member would not be subject to s. 286.011, F.S., these meetings were held in “rapid-fire succession” in order to avoid a public airing of a controversial redistricting problem. Thus, even though the superintendent was “adamant that he did not act as a go-between during these discussions and [denied] that he told any one board member the opinions of the others,” the one-to-one meetings amounted to a de facto meeting of the school board in violation of s. 286.011, F.S. *Id.* at 580. *See also Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (4th DCA 2018) (evidence did not “conclusively refute” allegations that a series of telephone calls between the city attorney and individual city councilmembers to discuss termination of and severance pay to, the city manager constituted a Sunshine Law violation; accordingly, trial court should not have entered summary judgment in favor of the city). *Cf. State v. Foster*, 12 FLW Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005). In *Foster*, the judge rejected the argument made by the commissioners, that the Sunshine Law permitted city commissioners to attend a private breakfast meeting at which the sheriff spoke and the commissioners individually questioned the sheriff but did not direct comments or questions to each other. The court denied the commissioners’ motion for summary judgment and ruled that the discussion should have been held in the Sunshine because the sheriff was a “common facilitator” who received comments from each commissioner in front of the other commissioners.

Similarly, in *Citizens for a Better Royal Palm Beach, Inc. v. Village of Royal Palm Beach*, No. CL 9114417 AA (Fla. 15th Cir. Ct. May 14, 1992), available in the Cases database at the open government site at myfloridalegal.com, the court invalidated a contract for the sale of municipal property when it determined that after the proposal to sell the property which had been discussed and approved at a public meeting collapsed, the city manager met individually with council members and from those discussions the property was sold to another group. The circuit court found that these meetings resulted in a substantial change in the terms of sale and that the execution of the contract, therefore, violated the Sunshine Law. *See also Sentinel Communications Company v. School Board of Osceola County*, No. CI92-0045 (Fla. 9th Cir. Ct. April 3, 1992), available in the Cases database at the open government site at myfloridalegal.com (series of private meetings between school superintendent and individual school board members to consider staff recommendations concerning administrative structure of the school system and to privately address any of the board’s concerns, should have been held in the sunshine; while individual board members are not prohibited from meeting privately with staff or the superintendent for informational purposes or on an ad hoc basis, the Sunshine Law “shall be construed to prohibit the scheduling of a series of such meetings which concern a specific agenda”); AGO 23-04 (Sunshine Law does not permit members of a university presidential search committee to use a search firm to survey individual committee members and anonymously rank candidates to affect which candidates the committee will consider at a future meeting); and AGO 93-90 (board that

is responsible for assessing the performance of its chief executive officer [CEO] should not use a review procedure in which individual board members evaluate the CEO's performance and send their individual written comments to the board chair for compilation and subsequent discussion with the CEO).

Not all staff decisions, however, are required to be made or approved by a board. Thus, the district court concluded in *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978), that the decision to appeal made by legal counsel to a public board after discussions between the legal staff and individual members of that board was not subject to the Sunshine Law. *And see* Inf. Op. to Biasco, July 2, 1997 (administrative officers or staff who serve public boards should not poll board members on issues which will foreseeably come before the board although an administrative officer is not precluded from contacting individual board members for their views on a matter when the officer, and not the board, has been vested with the authority to take action).

d. Delegation of authority to individual to act on behalf of the board

"The Sunshine Law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the Sunshine Law by undertaking to delegate the conduct of public business through an alter ego." *IDS Properties, Inc. v. Town of Palm Beach*, 279 So. 2d 353, 359 (Fla. 4th DCA 1973), *certified question answered sub nom.*, *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). *See also News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 547-548 (Fla. 2d DCA 1982) (when public officials delegate de facto authority to act on their behalf in the formulation, preparation, and promulgation of plans on which foreseeable action will be taken by those public officials, those delegated that authority stand in the shoes of such public officials insofar as the Sunshine Law is concerned).

In *News-Press Publishing Company v. Lee County*, 570 So. 2d 1325 (Fla. 2d DCA 1990), a newspaper challenged the trial court's decision to require the parties (two cities and a county) to participate in mediation and to each appoint a representative "with full authority to bind them." The judge then amended the order to allow the parties to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court concluded that the mediation's narrow scope did not give rise to a substantial delegation affecting the board's decision-making function so as to require the mediation to be open to the public. 570 So. 2d at 1327. *And see Broward County v. Conner*, 660 So. 2d 288, 290 (Fla. 4th DCA 1995), *review denied*, 669 So. 2d 250 (Fla. 1996) (since Sunshine Law provides that actions of a public board are not valid unless they are made at an open public meeting, a county's attorneys would not be authorized to enter into a settlement agreement on the commission's behalf "without formal action by the county commission at a meeting as required by the statute"). *Compare Lee County v. Pierpont*, 693 So. 2d 994 (Fla. 2d DCA 1997), *affirmed*, 710 So. 2d 958 (Fla. 1998) (authorization to county attorney to make settlement offers to landowners not to exceed appraised value plus 20%, rather than a specific dollar amount, did not violate the Sunshine Law). Moreover, the Attorney General's Office has advised that a single member of a board who has been delegated the authority to negotiate the terms of a lease on behalf of the board "is subject to the Sunshine Law and, therefore, cannot negotiate for such a lease in secret." AGO 74-294. *Accord* AGO 84-54. Similarly, when an individual member of a public board, or a board member and the executive director of the board, conducts a hearing or investigatory proceeding on behalf of the entire board, the hearing or proceeding must be held in the sunshine. AGOs 75-41 and 74-84. *And see* AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

The Attorney General's Office has advised that a single member of a board who has been delegated the authority to negotiate the terms of a lease on behalf of the board "is subject to the Sunshine Law and, therefore, cannot negotiate for such a lease in secret." AGO 74-294. *Accord* AGO 84-54. Similarly, when an individual member of a public board, or a board member and the executive director of the board, conducts a hearing or investigatory proceeding on behalf

of the entire board, the hearing or proceeding must be held in the sunshine. AGOs 75-41 and 74-84. *And see* AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

However, if the board member has been authorized only to gather information or function as a fact-finder, the Attorney General's Office has concluded that the Sunshine Law does not apply. *See e.g.* AGOs 95-06, 93-78, and 90-17 (if board member is authorized only to explore various contract proposals, with such proposals being related back to the governing body for consideration, the discussions between the board member and the applicant are not subject to the Sunshine Law). *Cf. State, Department of Management Services v. Lewis*, 653 So. 2d 467 (Fla. 1st DCA 1995) (issuance of an order of reconsideration by a board chair does not violate the Sunshine Law where the purpose of the order is to provide notice of a hearing to the parties and allow them an opportunity to provide argument on the issue).

More recently, the First District Court of Appeal ruled that a statute (s. 627.091[6], F.S.), requiring a "committee" of a national insurance rating organization to comply with the Sunshine Law when meeting to discuss the need to alter Florida rates, did not apply to an actuary who performed this function instead of a committee. *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017). In *Fee*, the court noted that the term "committee" has been defined as a "subordinate group," not a single person, and that "the multi-person concept of the term 'committee' further finds support in well-established precedent construing the Sunshine Law."

Moreover, if the individual, rather than the board, is vested by law, charter, or ordinance with the authority to take action, such discussions are not subject to s. 286.011, F.S. *See City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since the mayor was responsible under the city charter for disciplining city employees and since the mayor was not a board or commission and was not acting for a board, meetings between the mayor and a city employee concerning the employee's duties were not subject to s. 286.011, F.S.). *Cf.* AGO 13-14 (where contract terms regarding the police chief's employment have been discussed and approved at a public city commission meeting, Sunshine Law does not require that the consistent written employment contract drafted by the town attorney as directed by the commission be subsequently presented to and approved at another commission meeting).

8. Judiciary

The open meetings provision found in Art. I, s. 24, Fla. Const., does not include meetings of the judiciary. In addition, separation of powers principles make it unlikely that the Sunshine Law, a legislative enactment, could apply to the courts established pursuant to Art. V, Fla. Const. AGO 83-97. Thus, questions of access to judicial proceedings usually arise under other constitutional guarantees relating to open and public judicial proceedings, Amend. VI, U.S. Const., and freedom of the press, Amend. I, U.S. Const.

However, a circuit conflict committee established by the Legislature to approve attorneys handling conflict cases is subject to the Sunshine Law, even though the chief judge or his or her designee is a member, because the "circuit conflict committees are created by the Legislature, subject to its dominion and control." AGO 83-97. *And see Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973) (Sunshine Law applies to quasi-judicial functions; a board exercising quasi-judicial functions is not a part of the judicial branch of government).

a. Criminal proceedings

A court possesses the inherent power to control the conduct of proceedings before it. *Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1 (Fla. 1982); and *State ex rel. Miami Herald Publishing Company v. McIntosh*, 340 So. 2d 904 (Fla. 1976). A three-pronged test for closing criminal proceedings has been developed to provide "the best balance between the need for open government and public access, through the media, to the judicial process, and the

paramount right of a defendant in a criminal proceeding to a fair trial before an impartial jury.” *Lewis, supra* at 7. And see *Morris Publishing Group, LLC v. State*, 136 So. 3d 770, 779 (Fla. 1st DCA 2014); and *Miami Herald Media Company v. State*, 218 So. 3d 460 (Fla. 3d DCA 2017). The factors to be considered are whether:

- 1) closure is necessary to prevent a serious and imminent threat to the administration of justice;
- 2) no alternatives are available, other than change of venue, which would protect the defendant’s right to a fair trial; and
- 3) closure would be effective in protecting the defendant’s rights without being broader than necessary to accomplish that purpose.

b. Civil proceedings

Stressing that *all* trials, civil and criminal, are public events and that there is a strong presumption of public access to these proceedings, the Supreme Court in *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988), set forth the following factors which must be considered by a court in reviewing a request for closure of civil proceedings:

- 1) a strong presumption of openness exists for all court proceedings;
- 2) both the public and news media have standing to challenge any closure order with the burden of proof being on the party seeking closure;
- 3) closure should occur only when necessary
 - a) to comply with established public policy as set forth in the Constitution, statutes, rules or case law;
 - b) to protect trade secrets;
 - c) to protect a compelling governmental interest;
 - d) to obtain evidence to properly determine legal issues in a case;
 - e) to avoid substantial injury to innocent third parties; or
 - f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.
- 4) whether a reasonable alternative is available to accomplish the desired result and if none exists, the least restrictive closure necessary to accomplish its purpose is used;
- 5) the presumption of openness continues through the appellate review process and the party seeking closure continues to have the burden to justify closure.

And see Amendments to the Florida Family Law Rules of Procedure, 723 So. 2d 208, 209 (Fla. 1998), reiterating support for the *Barron* standards and stating that “public access to court proceedings and records [is] important to assure testimonial trustworthiness; in providing a wholesome effect on all officers of the court for purposes of moving those officers to a strict conscientiousness in the performance of duty; in allowing nonparties the opportunity of learning whether they are affected; and in instilling a strong confidence in judicial remedies, which would be absent under a system of secrecy;” and *Lake v. State*, 193 So. 3d 932, 934 (Fla. 4th DCA 2016) (trial court did not depart from essential requirements of law by refusing to close Jimmy Ryce Act civil commitment review proceeding; statutory provision requiring that certain treatment records introduced into evidence be maintained under seal unless opened by the judge “does not require that the press and public be barred from any discussion of treatment or treatment records during a review hearing”).

c. Depositions

While the courts have recognized that court proceedings are public events and the public

generally has access to such proceedings, the general public and the press do not have a right under the First Amendment or the rules of procedure to attend discovery depositions. See *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 380 (Fla. 1987), *cert. denied*, 108 S.Ct. 346 (1987), stating that while discovery depositions in criminal cases are judicially compelled for the purpose of allowing parties to investigate and prepare, they are not judicial proceedings. Accord *Post-Newsweek Stations, Florida, Inc. v. State*, 510 So. 2d 896 (Fla. 1987) (media not entitled to notice and opportunity to attend pretrial discovery depositions in criminal cases); and *SCI Funeral Services of Florida, Inc. v. Light*, 811 So. 2d 796 (Fla. 4th DCA 2002) (upholding protective order closing depositions to the media based on privacy concerns). Cf. *Lewis v. State*, 958 So. 2d 1027 (Fla. 5th DCA 2007) (while *Burk* applied to unfiled depositions made during an ongoing, active criminal prosecution, materials related to defendant's prosecution, including depositions, are subject to disclosure after the case becomes final).

d. Florida Bar grievance proceedings

An attorney's claim that the Florida Bar violated the Sunshine Law by refusing to allow him to attend a grievance committee meeting of the Bar was rejected in *Florida Bar v. Committee*, 916 So. 2d 741, 744-745 (Fla. 2005): "The grievance committee meetings of the Bar are private, and therefore the Bar is justified in prohibiting [the attorney] from attendance." The Court reiterated its statement from *The Florida Bar: In re Advisory Opinion*, 398 So. 2d 446, 447 (Fla. 1981), that "[n]either the legislature nor the governor can control what is purely a judicial function."

e. Grand juries

Section 905.24, F.S., provides that "[g]rand jury proceedings are secret"; thus, these proceedings are not subject to s. 286.011, F.S. See *Clein v. State*, 52 So. 2d 117, 120 (Fla. 1950) (it is the policy of the law to shield the proceedings of grand juries from public scrutiny); and *In re Getty*, 427 So. 2d 380, 383 (Fla. 4th DCA 1983) (public disclosure of grand jury proceedings "could result in a myriad of harmful effects"). The grand jury has also been referred to as a "coordinate branch of the judiciary, and as an arm, appendage, or adjunct of the circuit court." *State ex rel. Christian v. Rudd*, 302 So. 2d 821, 828 (Fla. 1st DCA 1974). Cf. *Butterworth v. Smith*, 110 S.Ct. 1376 (1990), striking down a Florida statute to the extent that it prohibited a witness from disclosing his own testimony before a grand jury after the grand jury's term has ended.

In addition, hearings on certain grand jury procedural motions are closed. The procedural steps contemplated in s. 905.28(1), F.S., for reports or presentments of the grand jury relating to an individual which are not accompanied by a true bill or indictment, are cloaked with the same degree of secrecy as is enjoyed by the grand jury in the receipt of evidence, its deliberations, and final product. Therefore, a newspaper has no right of access to grand jury procedural motions and to the related hearing. *In re Grand Jury, Fall Term 1986*, 528 So. 2d 51 (Fla. 2d DCA 1988). And see *Palm Beach Newspapers, Inc., v. Doe*, 460 So. 2d 406 (Fla. 4th DCA 1984) (hearing ancillary or related to a grand jury session constitutes a proceeding which comes within the protection of s. 905.24); and *In re Subpoena to Testify Before Grand Jury Directed to Custodian of Records*, 864 F.2d 1559 (11th Cir. 1989) (while a court must hold a hearing and give reasons for closure of criminal court proceedings, a court is not required to give newspapers a hearing and give reasons for closure of grand jury proceedings).

f. Judicial nominating commissions/Judicial Qualifications Commission

Judicial nominating commissions for the Supreme Court of Florida, the district courts of appeal, or for a judicial circuit for the trial courts within the circuit are not subject to the Sunshine Law. *Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977). Article V, s. 11(d), Fla. Const., however, requires that except for its deliberations, the proceedings of a judicial nominating commission and its records are open to the public. While the deliberations of a commission are closed, such a limitation appears to be applicable to that point in the

proceedings when the commissioners are weighing and examining the reasons for and against a choice. Inf. Op. to Russell, August 2, 1991.

The statewide judicial nominating commission for workers' compensation judges, however, is not a judicial nominating commission as contemplated by the Constitution; thus, such a commission created pursuant to the workers' compensation law is subject to s. 286.011, F.S. AGO 90-76.

Proceedings of the Judicial Qualifications Commission are confidential. However, upon a finding of probable cause and the filing of formal charges against a judge or justice by the commission with the Clerk of the Supreme Court, all further proceedings of the commission are public. Article V, s. 12(a)(4), Fla. Const.

g. Mediation proceedings

(1) Court-ordered mediation

Court-ordered mediation and arbitration are to be conducted according to the rules of practice and procedure adopted by the Florida Supreme Court. Sections 44.102(1) and 44.103(1), F.S. *And see* rule 10.360(a), Florida Rules For Certified and Court-Appointed Mediators ("A mediator shall maintain confidentiality of all information revealed during mediation *except* where disclosure is required or permitted by law or is agreed to by all parties."). (e.s.) *Cf. Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that written mediation communications are confidential pursuant to ss. 44.103(3) and 44.405(1), F.S., and must be redacted from the full transcript of a closed litigation session when it becomes public pursuant to s. 286.011(8), F.S.

Public access to court-ordered mediation proceedings between two cities and a county was raised in *News-Press Publishing Company, Inc. v. Lee County, Florida*, 570 So. 2d 1325 (Fla. 2d DCA 1990). Initially, the judge required the parties to have present a representative "with full authority to bind them"; however, after the media objected to the closure of the mediation proceeding, the judge amended the order to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court noted that no two members of any of the public boards would be present at the mediation proceedings and that the mediation's narrow scope did not give rise to a substantial delegation affecting the boards' decision-making function so as to require the mediation to be open to the public. 570 So. 2d at 1327. *Cf. Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine; "[w]e cannot condone hiding behind federal mediation, whether intentionally or unintentionally, in an effort to thwart the requirements of the Sunshine Law.").

Similarly, in *O'Connell v. Board of Trustees*, 1 F.L.W. Supp. 285 (Fla. 7th Cir. Ct. Feb. 9, 1993), the court noted that as to public agencies, mediation is subject to the Sunshine Law; thus, no more than one member of a collegial body should attend the mediation conference. *And see* Fla. R. Civ. P. 1.720(d), stating that "[i]f a party to mediation is a public entity required to operate in compliance with chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity." *Accord* Fla. R. App. P. 9.720(a).

(2) Other mediation proceedings

Mediation meetings conducted pursuant to the Florida Governmental Conflict Resolution Act, ss. 164.101-164.1061, F.S., which involve officials or representatives of local governmental entities who have the authority to negotiate on behalf of that governmental entity are subject to the Sunshine Law. Inf. Op. to McQuagge, February 13, 2002. Similarly, a closed attorney-

client session may not be held to discuss settlement negotiations on an issue that is the subject of ongoing mediation pursuant to a partnership agreement between a water management district and others which is not in litigation. AGO 06-03.

h. Statutes providing for closed court proceedings

Certain court proceedings may be closed in accordance with Florida Statutes as follows:

- (1) **Adoption:** Hearings held under the Florida Adoption Act are closed. Section 63.162(1), F.S. *See In re Adoption of H.Y.T.*, 458 So. 2d 1127 (Fla. 1984) (statute providing that all adoption hearings shall be held in closed court is not unconstitutional).
- (2) **Dependency:** Except as provided in s. 39.507, F.S., dependency adjudicatory hearings are open to the public unless, by special order, the court determines that the public interest or welfare of the child is best served by closing the hearing. Section 39.507(2), F.S. *And see Mayer v. State*, 523 So. 2d 1171 (Fla. 2d DCA), *review dismissed*, 529 So. 2d 694 (Fla. 1988) (former version of statute requiring hearings to be closed did not violate First Amendment).
- (3) **Guardian advocate appointments:** Hearings for appointment of guardian advocates are confidential. Section 39.827(4), F.S.
- (4) **HIV test results:** Court proceedings in cases where a person is seeking access to human immunodeficiency virus (HIV) test results are to be conducted in camera unless the person tested agrees to a hearing in open court or the court determines that a public hearing is necessary to the public interest and proper administration of justice. Section 381.004(2)(e)9., F.S.
- (5) **Pregnancy termination notice waiver:** Hearings conducted in accordance with a petition for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy shall remain confidential and closed to the public, as provided by court rule. Section 390.01114(6)(f), F.S.
- (6) **Termination of parental rights:** Hearings involving termination of parental rights are confidential and closed to the public. Section 39.809(4), F.S. *See Natural Parents of J.B. v. Florida Department of Children and Family Services*, 780 So. 2d 6 (Fla. 2001), upholding the constitutionality of the statute. *And see J.I. v. Department of Children and Families*, 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law does not apply to Department of Children and Families permanency staffing meetings conducted to determine whether to file petition to terminate parental rights). *Cf. Stanfield v. Florida Department of Children and Families*, 698 So. 2d 321 (Fla. 3d DCA 1997) (trial court may not issue “gag” order preventing a woman from discussing a termination of parental rights case because “[t]he court cannot prohibit citizens from exercising their First Amendment right to publicly discuss knowledge that they have obtained independent of court documents even though the information may mirror the information contained in court documents”).
- (7) **Victim and witness testimony in certain circumstances:** Except as provided in s. 918.16(2), F.S., if any person under 16 years of age or any person with an intellectual disability is testifying in any civil or criminal trial concerning any sex offense, the judge shall clear the courtroom, except for listed individuals. Section 918.16(1), F.S. If the victim of a sex offense is testifying concerning that offense, the court shall clear the courtroom, except for listed individuals, upon request of the victim, regardless of the victim’s age or mental capacity. Section 918.16(2), F.S. *Cf. Pritchett v. State*, 566 So. 2d 6 (Fla. 2d DCA), *review denied*, 570 So. 2d 1306 (Fla. 1990) (where a trial court failed to make any findings to justify closure, application of s. 918.16, F.S., to the trial of a defendant charged with capital sexual battery violates the defendant’s constitutional right to a public trial). *Accord Kovaleski v. State*, 854 So. 2d 282 (Fla. 4th DCA 2003), *cause dismissed*, 860 So. 2d 978 (Fla. 2003).

For a more complete listing of statutory exemptions, please see Appendix D and the Index.

9. Legislature

Article I, s. 24, Fla. Const., requires that meetings of the Legislature be open and noticed as provided in Art. III, s. 4(e), Fla. Const., except with respect to those meetings exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution. *And see* Art. III, s. 4(c), Fla. Const. (votes of members during final passage of legislation pending before a committee and, upon request of two members of a committee or subcommittee, on any other question, must be recorded).

Pursuant to Art. III, s. 4(e), Fla. Const., the rules of procedure of each house of the Legislature must provide that all legislative committee and subcommittee meetings of each house and joint conference committee meetings be open and noticed. Such rules must also provide:

[A]ll prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

In accordance with Article III, s. 4(e), both the Senate and the House of Representatives have adopted rules implementing this section. Senate Rules may be found online at flsenate.gov. Rules of the House of Representatives may be found at myfloridahouse.gov.

10. Married couple serving on the same board

There is no *per se* violation of the Sunshine Law for a husband and wife to serve on the same public board or commission so long as they do not discuss board business without complying with the requirements of s. 286.011, F.S. AGO 89-06.

11. Private organizations

The Attorney General's Office has recognized that private organizations generally are not subject to the Sunshine Law unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity. AGO 07-27.

However, as discussed below, the Sunshine Law applies to private entities created by law or by public agencies, and to private entities providing services to governmental agencies and acting on behalf of those agencies in the performance of their public duties.

a. Private entities created pursuant to law or by public agencies

The Supreme Court has stated that “[t]he Legislature intended to extend application of the ‘open meeting’ concept so as to bind every ‘board or commission’ of the state, or of any county or political subdivision over which [the Legislature] has dominion or control.” *City of Miami Beach v. Berns*, 245 So. 2d 38, 40 (Fla. 1971).

Accordingly, if a private entity has been created by law or by a public agency to perform a public function, the Sunshine Law applies. *See National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017), noting the application of the Sunshine Law to

governmental bodies and to private entities created by a public entity. *Accord* AGO 00-08 (“a board or commission created by a public agency or entity is subject to section 286.011, Florida Statutes”).

For example, in AGO 04-44, the Attorney General advised that a nonprofit corporation established by state law to manage corrections work programs of the Department of Corrections, was subject to the Sunshine Law. *And see* AGOs 98-42 (association legislatively designated as the governing organization of athletics in Florida public schools), 97-17 (not-for-profit corporation created by a city redevelopment agency to assist in the implementation of its redevelopment plan), and 16-01 and 98-01 (board of trustees of an insurance trust fund created pursuant to collective bargaining agreement between a city and the employee union). *Cf.* s. 20.41(6) and (8), F.S., providing that area agencies on aging, described as “nongovernmental, independent, not-for-profit corporations” are “subject to [the Public Records Act], and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings.”

b. Private entities providing services to public agencies

A private corporation performing services for a public agency and receiving compensation for such services is not by virtue of this relationship alone subject to the Sunshine Law unless the public agency’s governmental or legislative functions have been delegated to it. *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252 (Fla. 1980) (airlines are not by virtue of their lease with the aviation authority public representatives subject to the Sunshine Law). *And see* AGOs 98-47 (Sunshine Law does not apply to private nongovernmental organization when the organization counsels and advises private business concerns on their participation in a federal loan program made available through a city), 80-45 (the receipt of Medicare, Medicaid, government grants and loans, or similar funds by a private nonprofit hospital does not, standing alone, subject the hospital to the Sunshine Law); and Inf. Op. to Gaetz and Coley, December 17, 2009 (mere receipt of federal grant does not subject private economic development organization to Sunshine Law).

However, although private entities are generally not subject to the Sunshine Law simply because they do business with public agencies, the Sunshine Law can apply if a public entity has delegated “the performance of its public purpose” to a private entity. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 382-383 (Fla. 1999). *Accord National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017); and *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021).

For example, in *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659, 660 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1289 (Fla. 2010), the court deemed it “undisputed” that a not-for-profit corporation charged by the City of Pensacola with overseeing the development of public waterfront property “is subject to the requirements of the Sunshine Law.”

Similarly, the Attorney General’s Office has found meetings of the following entities to be subject to the Sunshine Law: Family Services Coalition, Inc., board of directors, performing services for the Department of Children and Families which services would normally be performed by the department, AGO 00-03; Astronauts Memorial Foundation when performing duties funded under the General Appropriations Act, AGO 96-43; nonprofit organization designated by county to fulfill role of county’s dissolved cultural affairs council, AGO 98-49; nonprofit corporation specifically created to contract with county for operation of a public golf course on county property acquired by public funds, AGO 02-53; downtown redevelopment task force which, although not appointed by city commission, stood in place of the city commission when considering downtown improvement issues, AGO 85-55; and a private nonprofit corporation, if the county accepts the corporation’s offer to review, recodify, and prepare draft amendments to the county zoning code, AGO 83-95. *Cf.* Inf. Op. to Bedell, December 28, 2005 (private nonprofit organization which entered into an agreement with a city to operate a theater, received city funding in the form of a loan for this purpose, and leased property from the city, should comply

with the Sunshine Law when holding discussions or making decisions regarding the theater).

More recently, the First District determined a national insurance rating organization with statutory responsibility to file proposals for changes in Florida rates was not subject to the Sunshine Law. The court determined that the state insurance agency retained the responsibility to approve or disapprove rates and “did not delegate any authority to carry out an agency function required to be performed in the sunshine.” *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017). See also *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021) (private entity that entered into a contract with a state agency to perform certain services was not subject to the Sunshine Law because the public entity did not delegate the performance of its public purpose to the private corporation).

c. Application of the Sunshine Law to specific private entities

(1) Direct-support organizations

In AGO 05-27, after reviewing the responsibilities of a nonprofit corporation created pursuant to statute as a direct-support organization and the organization's relationship to the public agency, the Attorney General's Office concluded that the organization was subject to the Sunshine Law. See also Inf. Op. to Chimento, June 27, 1990 (Sunshine Law applies to school district direct-support organizations created pursuant to statute; although the direct-support organizations “constitute private nonprofit corporations, they seek to assist the district school board in carrying out its functions of meeting the educational needs of the students in the county”). And see AGOs 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions subject to Sunshine Law), and 11-01 (Sunshine Law applies to Biscayne Park Foundation, Inc., created as a nonprofit foundation to act as an instrumentality on behalf of the Village of Biscayne Park and intended to enhance the Village's opportunities to raise monies through special events, sponsorships, donations, and grants for the Village).

The Legislature has specifically exempted portions of meetings of some direct-support organizations. For example, any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committee of the board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011, F.S. Section 1004.28(5) (c), F.S. See also s. 292.055(9), F.S. (portions of meetings of Department of Veterans' Affairs direct-support organization during which the identity of a donor or potential donor who wishes to remain anonymous is discussed are exempt).

(2) Economic development organizations

Several Attorney General Opinions have considered whether the Sunshine Law applies to private economic development organizations. These opinions have concluded that the Sunshine Law applies when there has been a delegation of a public agency's authority to conduct public business such as carrying out the terms of the county's economic development strategic plan. AGO 10-30. See also AGO 10-44 (Sunshine Law applies to nonprofit corporation delegated authority to carry out the terms of the county's green economic development plan). Compare Inf. Op. to Gaetz and Coley, December 17, 2009 (open government laws did not apply to private economic development corporation since no delegation of a public agency's governmental function was apparent and the corporation did not appear to play an integral part in the decision-making process of the agency). Cf. *Economic Development Commission v. Ellis*, 178 So. 3d 118, 123 (Fla. 5th DCA 2015) (trial court erred by using the “delegation of function” test to conclude that a private entity under contract with a county to provide economic development services was subject to the Public Records Act because there was “not a clear, compelling, complete delegation of a governmental function” to the entity; instead, the court should have used the “totality of factors” test to make this determination). For more information on the “delegation of function” and “totality of factors” tests, please refer to the discussion on pages 62-65.

(3) Homeowners' associations

The Sunshine Law does not generally apply to meetings of a homeowners' association board of directors. *Inf. Op. to Fasano*, June 7, 1996. Other statutes govern access to records and meetings of these associations. *See, e.g.*, s. 720.303(2), F.S. (homeowners' association board of directors); s. 718.112(2)(c), F.S. (condominium board of administration); s. 719.106(1)(c), F.S. (cooperative board of administration); and s. 723.078(2)(c), F.S. (mobile home park homeowners' association board of directors). *Cf.* AGOs 99-53 (an architectural review committee of a homeowners' association is subject to the Sunshine Law where that committee, pursuant to county ordinance, must review and approve applications for county building permits), and 07-44 (property owners association subject to open government laws when acting on behalf of a municipal services taxing unit).

(4) Political parties

Meetings of political parties are not subject to s. 286.011, F.S. *Inf. Op. to Armesto*, September 18, 1979.

(5) Volunteer fire departments

In AGO 04-32, the Attorney General advised that boards of directors of volunteer fire departments that provide firefighting services to the county and use facilities and equipment acquired with county funds are subject to the Sunshine Law. *Cf.* AGO 00-08 (meetings of Lee County Fire Commissioner's Forum, a nonprofit corporation created by fire districts operating in Lee County, at which two or more members of the same district board discuss matters that may foreseeably come before the board for official action are subject to the Sunshine Law). *And see Schwartzman v. Merritt Island Volunteer Fire Department*, 352 So. 2d 1230 (Fla. 4th DCA 1977), *cert. denied*, 358 So. 2d 132 (Fla. 1978) (private nonprofit volunteer fire department, which had been given stewardship over firefighting, which conducted its activities on county-owned property, and which was funded in part by public money, was an "agency" for purposes of the Public Records Act, and its membership files, minutes of its meetings and charitable activities were subject to disclosure).

12. Staff member or public official also serving as member of public board

In some cases, staff members or public officials also serve as members of public boards. If so, discussions between those board members that involve matters which foreseeably could come before the board must be held in the Sunshine. For example, a 1993 Attorney General Opinion concluded that communications between the sheriff and the state attorney, as members of the county's criminal justice commission, would be subject to the Sunshine Law when such discussions involve matters which foreseeably would come before the commission. AGO 93-41. *Cf.* AGO 11-04, noting that if the state attorney and sheriff elect to appoint individuals to serve on a county criminal justice commission in the place of each officer, as authorized by county ordinance, neither the state attorney nor the sheriff would be a member of the commission so as to make these communications subject to the Sunshine Law. *See now*, s. 286.01141, F.S. (2013), creating a Sunshine Law exemption for that portion of a meeting of a duly constituted local advisory criminal justice commission at which members of the commission discuss active criminal intelligence or investigative information that is currently being considered by or which may foreseeably come before the commission, provided that public disclosure of the discussion is made at any public meeting of the commission at which the matter is being considered.

However, the Sunshine Law is applicable only to discussions of matters which may foreseeably come before the board. For example, the Sunshine Law would not apply to meetings between the mayor and city commissioners where a mayor performs the duties of city manager and the city commissioners individually serve as the head of a city department when the meeting is held solely by these officers in their capacity as department heads for the purpose of coordinating administrative and operational matters between executive departments of city government for which no formal action by the governing body is required or contemplated. Those matters which normally come before, or should come before, the city commission for discussion or action,

however, must not be discussed at such meetings. AGO 81-88. *Accord* AGOs 83-70 and 75-210 (mayor may discuss matters with individual city council member which concern his or her administrative functions and would not come before the council for consideration and further action).

Similarly, the Sunshine Law would not apply to a school faculty meeting simply because two or more members of school advisory council who are also faculty members attend the faculty meeting as long as council members refrain from discussing matters that may come before the council for consideration. Inf. Op. to Hughes, February 17, 1995; and Inf. Op. to Boyd, March 14, 1994.

C. WHAT MEETINGS OF MEMBERS OF BOARDS ARE COVERED? APPLICATION OF THE SUNSHINE LAW TO:

1. Board members attending meetings or serving as members of another public board

a. Board members attending meetings of another public board

Several Attorney General Opinions have considered whether one or more members of a board may attend or participate in a meeting of another public board. For example, in AGO 99-55, the Attorney General's Office said that a school board member could attend and participate in the meeting of an advisory committee appointed by the school board without prior notice of his or her attendance. However, the opinion cautioned that "if it is known that two or more members of the school board are planning to attend and participate, it would be advisable to note their attendance in the advisory committee meeting notice."

Moreover, while recognizing that commissioners may attend meetings of a second public board and comment on agenda items that may subsequently come before the commission for final action, the Attorney General Opinions have also advised that if more than one "commissioner is in attendance at such a meeting, no discussion or debate may take place among the commissioners on those issues." AGO 00-68. *Accord* AGO 98-79 (city commissioner may attend a public community development board meeting held to consider a proposed city ordinance and express his or her views on the proposed ordinance even though other city commissioners may be in attendance; however, the city commissioners in attendance may not engage in a discussion or debate among themselves because "the city commission's discussions and deliberations on the proposed ordinance must occur at a duly noticed city commission meeting"). *See also* AGOs 05-59 and 77-138.

b. Board members serving as members of another public board

Board members who also serve on a second public board may participate in the public meetings of the second board held in accordance with s. 286.011, F.S., and express their opinions without violating the Sunshine Law. AGO 07-13. In other words, "when two county commissioners are presently serving on [a regional planning] council this does not turn a meeting of the planning council into a county commission meeting, and the Sunshine Law does not require any additional or different notice of planning council meetings because of the presence of these county commission members." *Id.* Similarly, AGO 98-14 concluded that membership of three city council members on the metropolitan planning organization did not turn a council meeting into a metropolitan planning organization meeting that required separate notice. Because, however, the discussion of metropolitan planning organization matters was planned for the council meeting, the city council had properly included mention of such items in its notice of the council meeting.

Additionally, in AGO 91-95, the Attorney General's Office concluded that a county commissioner may attend and participate in the discussion at a public meeting held by the governing board of a county board on which another commissioner serves. However, "in an effort to satisfy the spirit of the Sunshine Law," the opinion also recommended that the published notice

of the county board “include mention of the anticipated attendance and participation of county commission members in board proceedings.” *Id.*

2. Board member meeting with his or her alternate

Since the alternate is authorized to act only in the absence of a board or commission member, there is no meeting of two individuals who exercise independent decision-making authority at the meeting. There is, in effect, only one decision-making official present. Therefore, a meeting between a board member and his or her alternate is not subject to the Sunshine Law. AGO 88-45.

3. Community forums sponsored by private organizations

A “Candidates’ Night” sponsored by a private organization at which candidates for public office, including several incumbent city council members, will speak about their political philosophies, trends, and issues facing the city, is not subject to the Sunshine Law unless the council members discuss issues coming before the council among themselves. AGO 92-05. *Compare* Inf. Op. to Jove, January 12, 2009, concluding that a public forum hosted by a city council member with city council members invited to attend and participate in the discussion would be subject to s. 286.011, F.S.

Similarly, in AGO 94-62, the Attorney General’s Office concluded that the Sunshine Law does not apply to a political forum sponsored by a private civic club during which county commissioners express their position on matters that may foreseeably come before the commission, so long as the commissioners avoid discussions among themselves on these issues. *And see* AGO 08-18 (participation by two city council members in a citizens police academy does not violate the Sunshine Law; “[t]he educational course is not changed into a meeting of a board or commission . . . by the attendance and participation of members of the city council in the course work of the academy”).

However, caution should be exercised to avoid situations in which private political or community forums may be used to circumvent the statute’s requirements. AGO 94-62. *See Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (Sunshine Law must be construed “so as to frustrate all evasive devices”). For example, in *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005), the court rejected the city commissioners’ argument that the Sunshine Law permitted them to attend a private breakfast meeting at which the sheriff spoke and the commissioners individually questioned the sheriff but did not direct comments or questions to each other. Instead, the court denied the commissioners’ motion for summary judgment and ruled that the discussion should have been held in the Sunshine because the sheriff was a “common facilitator” who received comments from each commissioner in front of the other commissioners.

More recently, members of a city planning and zoning commission violated the Sunshine Law when they participated in discussions at meetings of a community improvement organization which involved planning and zoning matters. *City of Bradenton Beach v. Metz*, No. 2017 CA 003581 (Fla. 12th Cir. Ct. August 9, 2019), available online in the Cases database at the open government site at myfloridalegal.com. The trial judge found that the commissioners’ participation in the discussions was particularly troubling because they continued to attend, despite Sunshine Law concerns expressed by the city attorney.

4. Confidential records discussions

The Florida Supreme Court has stated that in the absence of a statute exempting a meeting in which privileged material is discussed, s. 286.011, F.S., should be construed as containing no exceptions. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

The Public Records Act was amended in 1991 after several district courts held that certain proceedings could be closed when considering confidential material. Section 119.07(7), F.S., provides that an exemption from s. 119.07, F.S., “does not imply an exemption from s. 286.011.

The exemption from s. 286.011 must be expressly provided.” Thus, exemptions from the Public Records Act do not by implication allow a public agency to close a meeting where exempt records are to be discussed in the absence of a specific exemption from the Sunshine Law. *See* AGOs 10-04 and 91-75 (school board), 04-44 (PRIDE), 93-41 (county criminal justice commission), and 91-88 (pension board).

For example, while s. 288.075(2), F.S., allows a private corporation to request confidentiality for certain records relating to a planned corporate relocation to Florida, this exemption “applies only to records and does not constitute an exemption from the provisions of the Government in the Sunshine Law . . .” AGO 04-19. *Accord* AGO 80-78 and Inf. Op. to Rooney, June 8, 2011.

In AGO 05-03, the Attorney General advised that a federal law prohibiting disclosure of certain identifying information did not authorize a state committee to close its meetings, although the committee should take steps to ensure that identifying information is not disclosed at such meetings. *And see* AGO 12-20 (county transportation board designated as “appropriate local official” authorized by statute to receive and investigate whistle-blower complaints must comply with the open meetings requirements in the Sunshine Law; however, the board must also “protect the confidential information it is considering at a meeting and must not disclose the name of the whistle-blower unless one of the specific circumstances listed in the statute is present). *Cf.* AGO 96-40 (town may not require a complainant to sign a waiver of confidentiality before accepting a whistle-blower’s complaint for processing since the Legislature has provided for confidentiality of the whistle-blower’s identity).

Similarly, in AGO 96-75, the Attorney General’s Office advised that since under s. 286.011(8), F.S., the transcript of a closed attorney-client session is open to public inspection once the litigation is concluded, the city and its attorney should be sensitive to any discussions of confidential medical reports during such a meeting and take precautions to protect the confidentiality of such medical reports so that when the transcript is opened for inspection, the privacy of the employee will not be breached. *Compare Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that the statements made in AGO 96-75, regarding taking steps to protect confidentiality and privacy applied to “an *individual’s* medical record in the context of a workers’ compensation claim,” and did not address “the confidentiality of mediation communications involving information regarding *multiple* persons,” these mediation communications are confidential pursuant to ss. 44.102(3) and 44.405(3), F.S., and should be redacted from the full public transcript. [Emphasis supplied by the court].

5. E-mail, text messages, and other written communications between board members

The Sunshine Law requires boards to meet in public; boards may not take action on or engage in private discussions of board business via written correspondence, e-mails, text messages, or other electronic communications. Thus, members of an advisory committee created to make recommendations to the superintendent on school attendance boundaries violated the Sunshine Law when they exchanged private electronic communications (emails and Facebook messages) relating to committee business. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com. *See also* AGO 89-39 (members of a public board may not use computers to conduct private discussions among themselves about board business).

Similarly, city commissioners may not use an electronic newsletter to communicate among themselves on issues that foreseeably may come before the commission. Inf. Op. to Syrkus, October 31, 2000. *And see* AGO 09-19 (members of a city board or commission may not engage on the city’s Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action); and Inf. Op. to Martelli, July 20, 2009 (authority should discuss business at publicly noticed meetings “rather than in a series of letters between authority members”). *Cf.* Inf. Op. to Galaydick, October 19, 1995 (school board

members may share laptop computer even though computer's hard drive contains information reflecting ideas of an individual member as long as computer is not being used as a means of communication between members).

Thus, a procedure whereby a board takes official action by circulating a memorandum for each board member to sign whether the board member approves or disapproves of a particular issue, violates the Sunshine Law. *Inf. Op. to Blair*, May 29, 1973. *And see Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting"); *Schweickert v. Citrus County Port Authority*, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), available online in the Cases database at the open government site at myfloridalegal.com (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting); and AGO 93-90 (board not authorized to use employee evaluation procedure whereby individual board members send their individual written comments to the board chair for compilation and subsequent private discussion with the employee). *Compare Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency "evaluation team" members who individually evaluated competing proposals, individually assigned scores, and individually submitted their scores for consideration by others, did not take "formal action" and thus were not obligated to conduct a meeting subject to the Sunshine Law).

However, a commissioner may send a written report to other commissioners on a subject that will be discussed at a public meeting without violating the Sunshine Law, if prior to the meeting, there is no interaction related to the report among the commissioners and the report, which must be maintained as a public record, is not being used as a substitute for action at a public meeting. AGO 89-23. *And see* AGO 01-20 (e-mail communication of information from one council member to another is a public record but does not constitute a meeting subject to the Sunshine Law when it does not result in the exchange of council members' comments or responses on subjects involving foreseeable action by the council). *Cf. Inf. Op. to Kessler*, November 14, 2007 (procedural rule requiring county commissioner to make a written request to commission chair to withdraw an item from the consent agenda does not violate the Sunshine Law).

If, on the other hand, the report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to s. 286.011, F.S. AGO 90-03. Similarly, in AGO 96-35, the Attorney General's Office concluded that while a school board member may prepare and circulate an informational memorandum or position paper to other board members, the use of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law. "Such action would be equivalent to private meetings discussing the public business through the use of memoranda without allowing an opportunity for public input." *Id.*

In addition, the Attorney General's Office stated that while it is not a "direct violation" of the Sunshine Law for members to circulate their own written position papers on the same subject as long as the board members avoid any discussion or debate among themselves except at an open public meeting, this practice is "strongly discourage[d]." AGO 07-35. *See also* AGO 01-21 (city council's discussions and deliberations on matters coming before the council must occur at a duly noticed city council meeting and the circulation of position statements must not be used to circumvent the requirements of the statute); AGO 08-07 (city commissioner may post comment regarding city business on blog or message board; however, any subsequent postings by other commissioners on the subject of the initial posting could be construed as a response subject to the Sunshine Law); and *Inf. Op. to Jove*, January 22, 2009 (posting of anticipated vote on blog).

6. Fact-finding or inspection trips

The Sunshine Law does not prohibit *advisory* boards from conducting inspection trips provided that the board members do not discuss matters which may come before the board for official action. See *Bigelow v. Howze*, 291 So. 2d 645 (Fla. 2d DCA 1974); and AGO 02-24 (two or more members of an advisory group created by a city code to make recommendations to the city council or planning commission on proposed development may conduct vegetation surveys without subjecting themselves to the requirements of the Sunshine Law, provided that they do not discuss among themselves any recommendations or comments the committee may make).

The “fact-finding exception” to the Sunshine Law, however, does not apply to a board with “ultimate decision-making authority.” See *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008), holding that a district school board, as the ultimate decision-making body, violated the Sunshine Law when the board, together with school officials and members of the media, took a bus tour of neighborhoods affected by the board’s proposed rezoning even though board members were separated from each other on the bus, did not express any opinions or their preference for any of the rezoning plans, and did not vote during the trip. See also *Citizens for Sunshine, Inc. v. School Board of Martin County*, 125 So. 3d 184 (Fla. 4th DCA 2013) (three school board members violated the Sunshine Law when they visited an adult education school and talked with a school administrator, teachers, and students, because the “undisputed evidence showed that the defendant board members, without providing notice, conducted a meeting at the adult education school relating to matters on which foreseeable action would have been taken.”). Cf. *Citizens for Sunshine v. City of Sarasota*, No. 2013 CA 007532 (Fla. 12th Cir. Ct. July 8, 2016), *aff’d sub nom. Citizens for Sunshine, Inc. v. Chapman*, 225 So. 3d 810 (Fla. 2d DCA 2017), available online in the Cases database at the open government site at myfloridalegal.com, in which the trial judge held that a city commissioner did not violate the Sunshine Law when she spoke about city commission issues at a private event organized by local merchants even though another commissioner was in the audience.

7. Informal discussions, workshops, organizational sessions, election of officers

The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present or that an item be listed on a board agenda in order for a meeting of members of a public board or commission to be subject to s. 286.011, F.S. As the Florida Supreme Court said, “collective inquiry and discussion stages” are embraced within the terms of the statute. *Town of Palm Beach v. Gradison*, 296 So. 2d 474, 477 (Fla. 1974).

Accordingly, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010). And see *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); and *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969). “Under Florida law, there is no such thing as an ‘informal’ conference or ‘unofficial’ caucus or pass-you-in-the hallway information gathering (or sharing) by two or more government officials subject to the Sunshine Law which would thereby remove such communication from the Sunshine Law’s ambit. Indeed, such ‘innocuous’ meetings have been held to be illegal and nothing short of the unlawful crystallization of secret decisions to a point just short of public discussion and ceremonial acceptance.” *Parris v. State*, 359 So. 3d 1178 (Fla. 4th DCA 2023) (Ciklin, J., concurring specially).

It is the how and the why officials decided to so act which interests the public, not merely the final decision. As the court recognized in *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985):

Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire decision-making process that the legislature intended to affect by the enactment of the statute before us.

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment appeal during a recess of a board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. Similarly, the Attorney General's Office advised that the following gatherings are subject to the Sunshine Law: a public forum hosted by a city council member with city council members invited to attend and participate in the discussion, *Inf. to Jove*, January 12, 2009; "executive work sessions" held by a board of commissioners of a housing authority to discuss policy matters, AGO 76-102; "workshop meetings" of a planning and zoning commission, AGO 74-94; and "conference sessions" held by a town council before its regular meetings, AGO 74-62. *Cf.* AGO 04-58 ("coincidental unscheduled meeting of two or more county commissioners to discuss emergency issues with staff" during a declared state of emergency is not subject to s. 286.011 if the issues do not require action by the county commission).

The Sunshine Law applies to an organizational session of a board. *Ruff v. School Board of Collier County*, 426 So. 2d 1015 (Fla. 2d DCA 1983). Discussions between two members of a three-member complaint review board regarding their selection of a third member are subject to s. 286.011, F.S. AGO 93-79. Additionally, the Sunshine Law is applicable to meetings held to elect officers of the board. AGOs 72-326 and 71-32 (boards may not use secret ballots to elect officers).

The Sunshine Law is, therefore, applicable to all functions of covered boards and commissions, whether formal or informal, which relate to the affairs and duties of the board or commission. "[T]he Sunshine Law does not provide that cases be treated differently based upon their level of public importance." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 868 (Fla. 3d DCA 1994). *See, e.g., Inf. Op. to Nelson*, May 19, 1980 (meeting with congressman and city council members to discuss "federal budgetary matters which vitally concern their communities" should be held in the sunshine because "it appears extremely likely that discussion of public business by the council members [and perhaps decision making] will take place at the meeting").

8. Investigative meetings

The Sunshine Law is applicable to investigative inquiries of public boards or commissions. The fact that a meeting concerns alleged violations of laws or regulations does not remove it from the scope of the law. AGO 74-84; and *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973).

A number of statutory exemptions to the Sunshine Law have been enacted to close meetings of some agencies (usually state agencies) when those agencies are making investigatory determinations. For example, s. 112.324(2)(c)(d) and (e), F.S., provides that any proceeding related to a complaint, referral, or preliminary investigation conducted by the Commission on Ethics or other specified entities is exempt from open meetings requirements until the complaint is dismissed as legally insufficient, the alleged violator requests in writing that the proceedings be made public, the Commission on Ethics determines that it will not investigate a referral, or until the Commission or other specified entity determines whether probable cause exists to believe that a violation has occurred. *Compare* ss. 455.225(4) and 456.073(4), F.S. (meetings of probable cause panels of the Department of Business and Professional Regulation and Department of Health exempt from Sunshine Law until 10 days after probable cause is found to exist or until confidentiality is waived by subject of investigation).

9. Litigation meetings

In the absence of a legislative exemption, discussions between a public board and its attorney are subject to s. 286.011, F.S. *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985) (s. 90.502, F.S., providing for the confidentiality of attorney-client communications under the Florida Evidence Code, does not create an exemption for attorney-client communications at public meetings; application of the Sunshine Law to such discussions does not usurp Supreme Court's constitutional authority to regulate the practice of law, nor is it at odds with Florida Bar rules providing for attorney-client confidentiality).

However, a discussion or activity that is not a meeting for purposes of the Sunshine Law shall not be construed to waive the attorney-client privilege established in s. 90.502, F.S. Section 90.502(6), F.S. See *Collier County Public Schools v. Mason Classical Academy, Inc.*, 342 So. 3d 753 (Fla. 2d DCA 2022), in which the court observed that s. 90.502(6), F.S., permits school district employees to claim the attorney-client privilege if they can establish that their conversations with counsel were protected by the privilege.

There are statutory exemptions, however, which apply to some discussions of pending litigation between a public board and its attorney.

a. Settlement negotiations or strategy sessions related to litigation expenditures

Section 286.011(8), F.S., provides:

Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, *provided* that the following conditions are met:

- (a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.
- (b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- (c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
- (d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.
- (e) The transcript shall be made part of the public record upon conclusion of the litigation. (e.s.)

(1) Strict compliance with statutory conditions

It has been held that the Legislature intended a strict construction of s. 286.011(8), F.S. *City of Dunnellon v. Aran*, 662 So. 2d 1026 (Fla. 5th DCA 1995). "The clear requirements of the statute are neither onerous nor difficult to satisfy." *Id.* at 1027. *Accord School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99 (Fla. 1st DCA 1996).

While section 286.011(8), F.S., does not specify who calls the closed attorney-client meeting, it requires that the governmental entity's attorney "shall advise the entity at a public meeting that he or she desires advice concerning the litigation." Thus, the exemption merely provides a governmental entity's attorney an opportunity to receive necessary direction and information from the governmental entity regarding pending litigation. AGO 04-35. Accordingly, one of the conditions that must be met prior to holding a closed attorney-client meeting is that the city attorney must indicate to the city council at a public meeting that he or she wishes the advice of the city council regarding the pending litigation to which the city is presently a party before a court or administrative agency. Inf. Op. to Vock, July 11, 2001. "If the city attorney does not advise the city council at a public meeting that he or she desires the council's advice regarding the litigation, the city council is not precluded from providing such advice to the city attorney but it must do so at a public meeting." *Id.*

The requirement that the board's attorney advise the board at a public meeting that he or she desires advice concerning litigation is not satisfied by a previously published notice of the closed session; such an announcement must be made at a public meeting of the board. AGO 04-35. The request may be made during a special meeting provided that the special meeting at which the request is made is open to the public, reasonable notice has been given, and minutes are taken. AGO 07-31.

In *City of Dunnellon v. Aran, supra*, the court said that a city council's failure to announce the names of the lawyers participating in a closed attorney-client session violated the Sunshine Law. The court rejected the city's claim that when the mayor announced that attorneys hired by the city would attend the session (but did not give the names of the individuals), his "substantial compliance" was sufficient to satisfy the statute. Cf. *Zorc v. City of Vero Beach*, 722 So. 2d at 901, noting that deviation from the agenda at an attorney-client session is not authorized; while such deviation is permissible if a *public* meeting has been properly noticed, "there is no case law affording the same latitude to deviations in closed door meetings."

(2) Permitted discussions during closed session

Section 286.011(8)(b), F.S., states that the subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures. If a board goes beyond the "strict parameters of settlement negotiations and strategy sessions related to litigation expenditures" and takes "decisive action," a violation of the Sunshine Law results. *Zorc v. City of Vero Beach*, 722 So. 2d at 900. And see AGO 99-37 (closed-meeting exemption may be used only when the attorney for a governmental entity seeks advice on settlement negotiations or strategy relating to litigation expenditures; such meetings should not be used to finalize action or discuss matters outside these two narrowly prescribed areas). Accord AGO 04-35.

Section 286.011(8), F.S., "simply provides a governmental entity's attorney an opportunity to receive necessary direction and information from the government entity. No final decisions on litigation matters can be voted on during these private, attorney-client strategy meetings. The decision to settle a case, for a certain amount of money, under certain conditions is a decision which must be voted upon in a public meeting." *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 100 (Fla. 1st DCA 1996), quoting Staff of Fla. H.R. Comm. on Gov't Operations, CS/HB 491 (1993) Final Bill Analysis & Economic Impact Statement 2 (Fla. State Archives), at 3.

Thus, "[t]he settlement of a case is exactly that type of final decision contemplated by the drafters of section 286.011(8) which must be voted upon in the sunshine." *Zorc v. City of Vero Beach*, 722 So. 2d at 901. Accord AGO 08-17 (any action to approve a settlement or litigation expenditures must be voted on in a public meeting).

Accordingly, a court found that a city did not comply with s. 286.011(8), F.S., when it held closed meetings that "covered a wide range of political and policy issues not connected

to” settlement of pending litigation regarding a comprehensive plan amendment or litigation expenses relating to the pending cases which at that point were on appeal. “While some of the discussion at these meetings did in fact involve the costs associated with the pending litigation, by and large the meetings pertained to finding a way to readopt the comprehensive plan amendment that had been invalidated by the court and to avoid future litigation regarding the readopted amendment.” *Anderson v. City of St. Pete Beach*, 161 So. 3d 548, 553 (Fla. 2d DCA 2014).

Similarly, a city council violated the Sunshine Law where the “great majority” of the discussion at an attorney-client session concerned the specifics of a proposed amendment to the city’s trespass ordinance which was designed to address concerns expressed in a federal court decision finding the ordinance to be unconstitutional. *City of St. Petersburg v. Wright*, 241 So. 3d 903 (Fla. 2d DCA 2018). The participants at the closed meeting “did not limit themselves to discussing settlement or litigation expenditures” in the federal litigation. *Id.* See also *Freeman v. Times Publishing Company*, 696 So. 2d 427 (Fla. 2d DCA 1997) (discussion of methods or options to achieve continuing compliance with a long-standing federal desegregation mandate [such as whether to modify the boundaries of a school zone to achieve racial balance] must be held in the sunshine). Compare *Bruckner v. City of Dania Beach*, 823 So. 2d 167, 172 (Fla. 4th DCA 2002) (closed city commission meeting to discuss various options to settle a lawsuit involving a challenge to a city resolution, including modification of the resolution, authorized because the commission “neither voted, took official action to amend the resolution, nor did it formally decide to settle the litigation”).

(3) Entity involved in *pending* litigation

Section 286.011(8) permits an entity to use the exemption if the entity “is presently a party before a court or administrative agency” For example, a city council and its attorney may hold a closed-door meeting pursuant to this statute to discuss settlement negotiations or strategy related to litigation expenditures for pending litigation involving a workers’ compensation suit against the city because the system prescribed in ch. 440, F.S., “operates as a means of adjudicating workers’ compensation claims and would be considered litigation before an administrative agency.” AGO 96-75.

In *Brown v. City of Lauderhill*, 654 So. 2d 302 (Fla. 4th DCA 1995), the court said it could “discern no rational basis for concluding that a city is not a ‘party’ to pending litigation in which it is the real party in interest.” And see *Zorc v. City of Vero Beach*, 722 So. 2d at 900 (city was presently a party to ongoing litigation by virtue of its already pending claims in bankruptcy proceedings); and AGOs 09-15 (exemption applicable when city is real party in interest of a pending lawsuit despite not being a named party at the time of the meeting), and 08-17 (health care district may hold a closed attorney-client meeting to discuss settlement negotiations and strategies related to litigation expenditures for pending litigation in which its wholly-owned subsidiary holding company is the named party).

Although the *Brown* decision established that the exemption could be used by a city that was a real party in interest on a claim involved in *pending* litigation, that decision does not mean that an agency may meet in executive session with its attorney where there is only the *threat* of litigation. See AGOs 04-35 and 98-21 (s. 286.011[8] exemption “does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable”).

Similarly, s. 286.011(8), F.S. “may not be used to conduct a closed meeting during a mandatory arbitration proceeding, when there is no pending legal proceeding in a court or before an administrative agency.” AGO 13-17. And see AGOs 06-03 (exemption not applicable to pre-litigation mediation proceedings), 09-14 (exemption not applicable to discussion of terms of mediation in conflict resolution proceedings under the “Florida Governmental Conflict Resolution Act,” ss. 164.101-164.1061, F.S.), and 09-25 (town council which received pre-suit notice letter under the Bert J. Harris Act, s. 70.001, F.S., is not a party to pending litigation for purposes of s. 286.011[8], F.S.); and Inf. Op. to Barrett, February 17, 2016 (board not

authorized to use exemption to discuss pending investigation and subpoena where there is no ongoing judicial or administrative proceeding).

(4) Persons authorized to attend closed session

Only those persons listed in the statutory exemption, *i.e.*, the entity, the entity's attorney, the chief administrative officer of the entity, and the court reporter are authorized to attend a closed attorney-client session. Thus, other staff members, consultants, or officials are not allowed to be present. *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d at 101. *See Zorc v. City of Vero Beach*, 722 So. 2d 891, 898 (Fla. 4th DCA 1998), *review denied*, 735 So. 2d 1284 (Fla. 1999) (city charter provision requiring that city clerk attend all council meetings does not authorize clerk to attend closed attorney-client session; municipality may not authorize what the Legislature has expressly forbidden); AGO 01-10 (clerk of court not authorized to attend); and AGO 09-52 (attorneys representing superintendent not authorized to attend closed session to discuss settlement of administrative action in which school board is the named party). *Cf.* AGO 95-06 (s. 286.011(8), F.S., does not authorize the temporary adjournment and reconvening of meetings in order for members who are attending such a session to leave the room and consult with others outside the meeting).

Since the entity's attorney is permitted to attend the closed session, if the school board hires outside counsel to represent it in pending litigation, both the school board attorney and the litigation attorney may attend a closed session. AGO 98-06. *See Zorc v. City of Vero Beach*, 722 So. 2d at 898 (attendance of special counsel authorized). *And see* AGO 08-42 (qualified interpreters for the deaf are treated by the Americans with Disabilities Act as auxiliary aids in the nature of hearing aids and other assistive devices and may attend litigation strategy meetings of a board or commission to interpret for a deaf board member without violating section 286.011(8), F.S.). *Cf.* AGO 15-13 (mayor who is a voting member of the city council is not precluded from attending closed session relating to pending litigation in which city council is a party, even though plaintiffs have also sued the mayor in his individual capacity).

(5) Determination of "conclusion" of the litigation

Section 286.011(8)(e), F.S., provides that transcripts of closed meetings "shall be made part of the public record upon conclusion of the litigation." *See* AGO 15-03 (transcript of a litigation strategy session which was closed to the public while the litigation was ongoing became a public record once the litigation was concluded). *Cf. Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that the mediation communications disclosed by a governmental agency during a closed session must be redacted from the transcript of the meeting when it becomes public record; the exemptions from disclosure for mediation communications in ss. 44.102(1) and 44.405(1), F.S., are not inconsistent with the requirements of s. 286.011(8)(e), F.S.

The statute does not recognize a continuation of the exemption for "derivative claims" made in separate, subsequent litigation. AGO 13-13. For example, a transcript of a closed meeting to discuss settlement of a quiet title lawsuit became a public record upon the entry of a final judgment in that case, even though the same parties were now embroiled in an inverse condemnation lawsuit. *Chmielewski v. City of St. Pete Beach*, 161 So. 3d 521 (Fla. 2d DCA 2014). Similarly, a claim for payment of attorney's fees does not extend the application of the exemption after a final judgment has been entered and a mandate issued. *Inf. Op. to Boutsis*, December 13, 2012.

Accordingly, a dismissal with prejudice pursuant to a settlement agreement that confers continuing jurisdiction on the court to enforce the terms of the settlement agreement operates as a conclusion of the litigation. AGO 15-03. By contrast, litigation that is ongoing but temporarily suspended pursuant to a stipulation for settlement has not been concluded for purposes of s. 286.011(8), F.S., and a transcript of meetings held between the city and its attorney to discuss

such litigation may be kept confidential until conclusion of the litigation. AGO 94-64. *And see* AGO 94-33 (public agency may maintain the confidentiality of a record of a strategy or settlement meeting between a public agency and its attorney until the suit is dismissed with prejudice or the applicable statute of limitations has run); and Inf. Op. to Boutsis, *supra* (legislative history of s. 286.011[8], F.S., indicates “that the Legislature intended the exemption to continue through the appeals segment of the litigation”). *Cf. Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007), concluding that the phrase “conclusion of the litigation or adversarial administrative proceedings” for purposes of the attorney work product exemption from the public records law found in s. 119.071(1)(d), F.S., encompasses postjudgment collection efforts such as a legislative claims bill.

In AGO 13-21, the Attorney General’s Office observed that s. 286.011(8)(e), F.S., “should be seen as a tool which governmental boards or commissions may employ in their discretion but the statute should not be read as a prohibition against the release of such records prior to the conclusion of . . . litigation.” Therefore, a city council, as the collegial body to which the exemption applies, may waive the exemption and release transcripts of meetings held pursuant to s. 286.011(8), F.S., prior to the conclusion of litigation. *Id.*

b. Risk management exemption

Section 768.28(16)(c), F.S., states that portions of meetings and proceedings relating solely to the evaluation of claims or to offers of compromise of claims filed with a risk management program of the state, its agencies and subdivisions, are exempt from s. 286.011, F.S. The minutes of such meetings and proceedings are also exempt from public disclosure until the termination of the litigation and settlement of all claims arising out of the same incident. Section 768.28(16)(d), F.S.

This exemption is limited and applies only to tort claims for which the agency may be liable under s. 768.28, F.S. AGO 04-35. The exemption is not applicable to meetings held prior to the filing of a tort claim with the risk management program. AGO 92-82. Moreover, a meeting of a city’s risk management committee is exempt from the Sunshine Law only when the meeting relates solely to the evaluation of a tort claim filed with the risk management program or relates solely to an offer of compromise of a tort claim filed with the risk management program. AGO 04-35.

Unlike s. 286.011(8), F.S., s. 768.28(16), F.S., does not specify the personnel who are authorized to attend the meeting. *See* AGO 00-20, advising that personnel of the school district who are involved in the risk management aspect of the tort claim being litigated or settled may attend such meetings without jeopardizing the confidentiality provisions of the statute.

10. Personnel matters

In the absence of a specific statutory exemption, meetings of a public board or commission to discuss personnel matters are subject to the Sunshine Law. *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), *disapproved in part on other grounds, Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985).

a. Collective bargaining discussions

(1) Strategy sessions

A limited exemption from s. 286.011, F.S., exists for discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body of the public employer relative to collective bargaining. Section 447.605(1), F.S. A similar exemption is contained in s. 110.201(4), F.S., for discussions between the Department of Management Services and the Governor, between the department and the Administration Commission or agency heads, or between any of their respective representatives, relative to collective bargaining.

A duly-appointed labor negotiating committee of a city that does not have a city manager or city administrator qualifies as the “chief executive officer” for purposes of s. 447.605(1), F.S., and may use the exemption when meeting with the city council to discuss collective bargaining. AGO 85-99. *And see* AGO 99-27, concluding that a committee formed by the city manager to represent the city in labor negotiations may participate in closed executive sessions conducted pursuant to s. 447.605(1), F.S. The exemption also extends to meetings of the negotiating committee itself which are held to discuss labor negotiation strategies, including when the committee adjourns during negotiations to hold a caucus among its members to determine the strategy to be employed in ongoing negotiations. *Id.*

If a school superintendent’s responsibility to conduct collective bargaining on behalf of the school board has been completely delegated to a separate labor negotiating committee and the superintendent does not participate in the collective bargaining negotiations, the exemption afforded by s. 447.605(1), F.S., applies to discussions between the committee and the school board only and does not encompass discussions among the committee, school board and superintendent. AGO 98-06.

The exemption afforded by s. 447.605(1), F.S., applies only in the context of actual and impending collective bargaining negotiations. AGO 85-99. It does not allow private discussions of a proposed “mini-PERC ordinance” or the stance a public body intends to adopt in regard to unionization and/or collective bargaining. AGO 75-48. Moreover, a public body may not conduct an entire meeting outside the Sunshine Law merely by discussing one topic during the course of that meeting which may be statutorily exempt from s. 286.011, F.S. AGO 85-99.

Section 447.605(1), F.S., does not directly address the dissemination of information that may be obtained at the closed meeting, but there is clear legislative intent that matters discussed during such meetings are not to be open to public disclosure. AGO 03-09.

(2) Negotiations

The collective bargaining negotiations between the chief executive officer and a bargaining agent are not exempt and pursuant to s. 447.605(2), F.S., must be conducted in the sunshine. Once the collective bargaining process begins, when one side or its representative, whether before or after the declaration of an impasse, meets with the other side or its representative to discuss anything relevant to the terms and conditions of the employer-employee relationship, the meeting is subject to the Sunshine Law. *City of Fort Myers v. News-Press Publishing Company, Inc.*, 514 So. 2d 408, 412 (Fla. 2d DCA 1987). *Accord Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014), *review denied*, No. SC 16-2490 (Fla. February 24, 2016). *See also* AGO 99-27. As with other meetings subject to s. 286.011, F.S., minutes of the negotiation meeting must be kept. Inf. Op. to Fulwider, June 14, 1993.

The Legislature has, therefore, divided Sunshine Law policy on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Sunshine Law. *City of Fort Myers v. News-Press Publishing Company, Inc.*, 514 So. 2d at 412. *And see Brown v. Denton*, 152 So. 3d at 12 (By holding closed-door negotiations that resulted in changes to public employee pension benefits, “the [city and pension board] ignored an important party who also had the right to be in the room -- the public.”). *Cf. Palm Beach County Classroom Teachers’ Association v. School Board of Palm Beach County*, 411 So. 2d 1375, 1376 (Fla. 4th DCA 1982) (collective bargaining agreement cannot be used “to circumvent the requirements of public meetings” in s. 286.011, F.S.).

b. Disciplinary, grievance, and complaint review proceedings

Meetings of a board or commission to conduct disciplinary proceedings are subject to the Sunshine Law. *See, e.g.*, AGO 92-65 (employee termination hearing conducted by housing authority commission). *And see News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 647-

648 (Fla. 1977), in which the Court disapproved of a county's use of "pseudonyms or cloaked references" during a county commission meeting held to reprimand an unnamed department head.

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment appeal during a recess of a board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. And see *Barfield v. City of West Palm Beach*, No. CL94-2141-AC (Fla. 15th Cir. Ct. May 6, 1994), available online in the Cases database at the open government site at myfloridalegal.com. (complaint review board of a city police department is subject to the Sunshine Law); AGO 80-27 (sheriff civil service board created by special act is subject to the Sunshine Law). Cf. AGO 93-79 (discussions between two members of a three-member complaint review board regarding their selection of the third member of the board must be conducted in accordance with s. 286.011, F.S.).

Similarly, in *Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that a meeting of a pre-termination conference panel established pursuant to county ordinance and composed of a department head, personnel director, and equal opportunity director should have been held in the Sunshine. Even though the county administrator had the sole authority to discipline employees, that authority had been delegated to the department head who in turn chose to share that authority with the other members of the panel. See also AGO 10-14 (team created by charter school board of directors to review employment decisions is subject to the Sunshine Law). Cf. AGO 77-132 (personnel council composed of citizens appointed by members of county commission to hear appeals from county employees who have been disciplined not authorized to deliberate in secret).

A grievance committee established as "the final hearing body for all matters determined to be grievances and [authorized] to uphold, modify, or deny any grievance" is subject to the Sunshine Law "because the [committee] clearly exercises decision-making authority." *Dascott v. Palm Beach County*, *supra* at 13. And see AGO 84-70 (Sunshine Law applies to staff grievance committee created to make a determination of "all facts and circumstances" and nonbinding recommendations to a county administrator regarding disposition of employee grievances). Cf. *Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375 (Fla. 4th DCA 1982), in which the court affirmed the lower tribunal's refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance arbitration hearing. A collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S. *Id.* at 1376.

By contrast, in *Jordan v. Jenne*, 938 So. 2d 526, 530 (Fla. 4th DCA 2006), the court determined that the Sunshine Law did not apply to a professional standards committee responsible for reviewing charges against a sheriff's deputy and making recommendations to the inspector general, because the inspector general made the "ultimate decision" on discipline and did not deliberate with the committee. See also *McDougall v. Culver*, 3 So. 3d 391 (Fla. 2d DCA 2009) (Internal Affairs memorandum containing findings and recommendations circulated to senior officials for review and comment before submission to the sheriff for a decision on disciplinary action did not constitute a meeting under the Sunshine Law since officials only provided a recommendation but did not deliberate with the sheriff or have decision-making authority).

Similarly, if the mayor as chief executive officer, rather than the city council, is responsible under the city charter for disciplining city employees, meetings between the mayor and a city employee concerning discipline of the employee are not subject to the Sunshine Law. *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989). And see AGO 07-54 (while post-termination hearings before city manager are not subject to the

Sunshine Law, hearings before a three-member panel appointed by the city manager should be open).

c. Evaluations

The Sunshine Law applies to meetings of a board of county commissioners when interviewing applicants for county positions appointed by the board, when conducting job evaluations of county employees answering to and serving at the pleasure of the board, and when conducting employment termination interviews of county employees who serve at the pleasure of the board. AGO 89-37.

A board that is responsible for assessing the performance of its chief executive officer (CEO) should conduct the review and appraisal process in a proceeding open to the public as prescribed by s. 286.011, F.S., instead of using a review procedure in which individual board members evaluate the CEO's performance and send their individual written comments to the board chair for compilation and subsequent discussion with the CEO. AGO 93-90. However, meetings of individual school board members with the superintendent to discuss the individual board members' evaluations do not violate the Sunshine Law when such evaluations do not become the board's evaluation until they are compiled and discussed at a public meeting by the school board for adoption by the board. AGO 97-23.

d. Selection and screening committees

The Sunshine Law applies to advisory committees created by an agency to assist in the selection process. In *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), a committee created to screen applications and make recommendations for the position of a law school dean was held to be subject to s. 286.011, F.S. By screening applicants and deciding which applicants to reject from further consideration, the committee performed a policy-based, decision-making function delegated to it by the president of the university. See also *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979) (Sunshine Law governs advisory group created by city manager to assist in screening applications and to recommend several applicants for the position of chief of police), and AGO 77-43 (Sunshine Law applies to committee selected by a county bar association on behalf of the school board to screen applicants and make recommendations for the position of school board attorney).

Accordingly, the Sunshine Law applies to a state university presidential search and selection committee. AGO 23-04. Moreover, the Sunshine Law does not permit committee members to use a search firm to survey individual committee members and anonymously rank candidates to affect which candidates the committee will consider at a future meeting. *Id.* While s. 1004.098(2)(a), F.S., provides an exemption for portions of certain meetings of the search committee, this exemption applies only when the committee complies with the criteria of the exemption, such as recording the entire portion of the exempt meeting. *Id.*

However, if the sole function of the screening committee is simply to gather information for the decision-maker, rather than to accept or reject applicants, the committee's activities are outside the Sunshine Law. See *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985), holding that the Sunshine Law was not violated when the city manager, who was responsible for selecting the new police chief, asked several people to sit in on the interviews, as the only function of this group was to assist the city manager in acquiring information on the applicants he had chosen by asking questions during the interviews and then discussing the qualifications of each candidate with the city manager after the interview. And see *Knox v. District School Board of Brevard*, 821 So. 2d 311, 314 (Fla. 5th DCA 2002), holding that an interview team composed of staff was not subject to s. 286.011, F.S., even though the team made recommendations since "all the applications went to the superintendent and he decided which applicants to interview and nominate to the school board."

11. Purchasing meetings

a. Application of Sunshine Law

A committee appointed by a public college's purchasing director to consider proposals submitted by contractors was held to be subject to the Sunshine Law because its function was to "weed through the various proposals, to determine which were acceptable and to rank them accordingly." *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997). *Accord* Inf. Op. to Lewis, March 15, 1999 (panels established by state agency to create requests for proposals and evaluate vendor responses are subject to the Sunshine Law), and AGO 80-51 (Sunshine Law applicable to city selection committee screening proposals from consultants and audit firms). *And see Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting"); and *Schweickert v. Citrus County Port Authority*, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), , available online in the Cases database at the open government site at myfloridalegal.com (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting). *Compare Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency "Evaluation Team" members who individually evaluated the competitors' proposals, individually assigned scores, and individually submitted their scores for consideration by the "Negotiation Team" were not required to conduct a public meeting to perform these functions because "the Evaluation Team [or more accurately, its individual members] neither ranked the competitors nor excluded any from consideration of the ultimate decider, the Negotiation Team").

In *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995), the court ruled that a board's selection and negotiation committee violated the Sunshine Law when competing bidders were requested to excuse themselves from the public committee meeting during presentations by competitors. *Cf. Pinellas County School Board v. Suncam, Inc.*, 829 So. 2d 989 (Fla. 2d DCA 2002) (school board violated the Sunshine Law when it refused to permit videotaping of a public meeting held to evaluate general contractor construction proposals). *See now* s. 286.0113(2)(b), F.S., discussed below, providing an exemption from the Sunshine Law for portions of certain competitive solicitation meetings and requiring a complete recording of the exempt portions.

b. Recording requirement for exempt meetings

Section 286.0113(2)(b)1. and 2., F.S., provide that any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation, is exempt from the Sunshine Law. In addition, any portion of a team meeting at which negotiation strategies are discussed is also exempt. *See Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017), in which the court rejected the agency's argument that the exemption applies to the *entirety* of any meeting at which negotiation strategies are discussed, even those portions that have nothing to do with procurement. However, the court also said that "the exempted 'portion' includes not only the negotiation-strategies discussions themselves, but also meeting activities inextricably intertwined with those discussions." *Id.* at 1269. *Cf.* s. 255.0518, F.S. (sealed bids received pursuant to a competitive solicitation for construction or repairs of a public building or public work must be opened at a public meeting conducted in compliance with the Sunshine Law).

The term "[c]ompetitive solicitation" means "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 286.0113(2)(a)1., F.S.

The term “team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation. Section 286.0113(2)(a)2., F.S.

A complete recording must be made of the exempt meeting; no portion of the exempt meeting may be held off the record. Section 286.0113(2)(c), F.S. *Cf.* AGO 10-42 (where statute required that closed proceedings of state committee be recorded and that no portion be off the record, audio recording of the proceedings “would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded”).

The recording and any records presented at the exempt meeting are exempt from public disclosure until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier. Section 286.0113(2)(c)1. and 2., F.S. *And see* s. 286.0113(2)(c)3., F.S. (exempt status of recording if the agency rejects all bids, proposals, or replies, and concurrently provides notice of its intent to reissue a competitive solicitation).

12. Quasi-judicial matters, proceedings or hearings

The Sunshine Law does not authorize boards to conduct closed-door hearings or deliberations simply because the board is acting in a “quasi-judicial” capacity. *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973). *And see Occidental Chemical Company v. Mayo*, 351 So. 2d 336, 340n.7 (Fla. 1977), *disapproved in part on other grounds*, *Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992) (characterization of the Public Service Commission’s decision-making process as “quasi-judicial” did not exempt it from s. 286.011, F.S.); and *Palm Beach County Classroom Teacher’s Association v. School Board of Palm Beach County*, 411 So. 2d 1375 (Fla. 4th DCA 1982), affirming the lower court’s refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance hearing.

Thus, in the absence of statutory exemption, “[t]he fact that a board or commission is acting in a quasi-judicial capacity does not remove it from the reach of section 286.011, Florida Statutes.” AGO 10-04. *And see* AGOs 92-65, 83-43 and 77-132. *Cf.* AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

13. Real property negotiations

In the absence of a statutory exemption, the negotiations by a public board or commission for the sale or purchase of property must be conducted in the sunshine. *See City of Miami Beach v. Berns*, 245 So. 2d 38, 40 (Fla. 1971) (city commission not authorized to hold closed sessions to discuss condemnation issues). In addition, if the authority of the public board or commission to acquire or lease property has been delegated to a single member, that member is subject to s. 286.011, F.S., and is prohibited from negotiating the acquisition or lease of the property in secret. AGO 74-294. *Cf.* AGO 95-06 (statutory exemption from Ch. 119, F.S., for certain records relating to the proposed purchase of real property does not authorize a city or its designee to conduct negotiations for purchase of property outside the Sunshine Law).

Advisory committees charged with land acquisition responsibilities are also subject to the Sunshine Law. *See* AGOs 87-42 (ad hoc committee appointed by mayor to meet with the Chamber of Commerce to discuss a proposed transfer of city property), and 86-51 (land selection committee appointed by water management district to evaluate and recommend projects for acquisition). *Cf. Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857 (Fla. 3d DCA 1994) (committee established by county commission to negotiate lease agreement subject to s. 286.011).

14. Security meetings

While there is no general exemption from open meetings requirements that applies to all discussions relating to “security,” s. 286.0113(1), F.S., states that the portion of a meeting

that would reveal a security or firesafety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a), F.S. (providing an exemption from the Public Records Act for a “security or firesafety system plan”) is exempt from open meetings requirements. *See* Inf. Op. to Sherman, July 2, 2018, noting that the phrasing of s. 286.0113(1), F.S., and the statement of legislative intent included in the session law show that the exemption applies to any portion of a meeting in which a record as defined in s. 119.071(3)(a) would be revealed.

Section 119.0725(2), F.S., discussed more fully on page 158 provides confidentiality for specified cybersecurity information held by an agency. Any portion of a meeting that would reveal cybersecurity information made confidential in s. 119.0725(2), F.S., is exempt from open meetings requirements. Section 119.0725(3), F.S. An exempt portion may not be off the record and must be recorded and transcribed; the recording and transcript are confidential. *Id.* *See also* s. 282.318(6) (portions of meetings held to discuss specified cybersecurity records held by state agencies are exempt); s. 286.0113(3)(a), F.S. (exemption for portions of meetings held by local government owned utilities that would reveal information technology security records made exempt under s. 119.0713(5), F.S.); s. 1004.0962(5), F.S. (exemption for portions of meetings held to discuss a postsecondary educational institution’s “campus emergency response”); and s. 1004.055(2), F.S. (exemption for portions of meetings held to discuss specified information technology security records maintained by postsecondary educational institutions). *Cf.* s. 286.0113(4)(b), F.S. (exemption for portions of meetings that would reveal building plans or geographical maps indicating the actual or proposed location of 911, E911, or public safety radio communication system infrastructure).

15. Social events

Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings. AGO 92-79. *Accord* Inf. Op. to Batchelor, May 27, 1982.

Therefore, a luncheon meeting held by a private organization for members of a public board or commission at which there is no discussion among such officials on matters relating to public business would not be subject to the Sunshine Law merely because of the presence of two or more members of a covered board or commission. AGO 72-158. *Cf.* AGO 71-295, cautioning that “[p]ublic bodies should avoid secret meetings, from which the public and the press are effectively excluded, preceding official meetings, even though such secret meetings are held ostensibly for purely social purposes only and with the understanding that the members of the public body will, in good faith, attempt to avoid any discussion of official business.”

16. Telephone conversations and virtual meetings

a. Private phone conversations

Private phone conversations between board members to discuss matters which foreseeably will come before that board for action violate the Sunshine Law. “To interpret the statute as applying only to in-person meetings would render an absurd result.” *Gilliams v. State*, 359 So. 3d 784 (Fla. 4th DCA 2023). *See also Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 785 (Fla. 4th DCA 2018), recognizing that a series of phone conversations between councilmembers and the city attorney implicated the Sunshine Law. *And see* the discussion on pages 23-24 regarding the application of the Sunshine Law to emails, text messages, and other written communications between board members.

b. Authorization to conduct and participate in public meetings via teleconferencing, video conferencing, or other electronic media

(1) Sunshine Law

Although both the Florida Constitution and the Sunshine Law require that, unless exempt by law, meetings of a government board must be “public meetings” that are “open to the public,”

neither provision requires that members of the public board be physically present during the meeting. See *Burton v. Oates*, 362 So. 3d 311 (Fla. 5th DCA 2023) (city commissioner did not violate the Sunshine Law when she attended a public virtual commission meeting where specific procedures were available for the public to attend through a virtual platform). Accord AGO 20-03. And see Inf. Op. to Stebbins, December 1, 2015 (board's use of electronic media technology to increase public participation in meetings and the use of such media to allow members of a board or commission to participate in a duly noticed public meeting does not necessarily raise Sunshine Law issues, "but rather implicates the ability of a board or commission to conduct public business with a quorum.").

(2) In person quorum requirements

The Attorney General's Office has advised that if a quorum is required to conduct official business, boards may only conduct meetings by teleconferencing or other technological means if they are authorized to do so by law or the in person requirement for constituting a quorum is lawfully suspended during a state of emergency. AGO 20-03. Attorney General Opinion 20-03 emphasized, however, that "if meetings are conducted by teleconferencing or other technological means, public access must still be afforded which permits the public to attend the meeting. That public access may be provided by teleconferencing or technological means." Cf. *Jackson v. City of South Bay*, 358 So. 3d 18 (Fla. 4th DCA 2023), noting that a 2020 Executive Order which temporarily allowed certain virtual meetings in response to a declared state of emergency expressly recognized that the Sunshine Law remained in effect.

Similarly, "[a]s an administrative arm of the city's governing body . . . it would appear that the same legislative requirement for the physical presence of a quorum in order to conduct municipal business would apply when the retirement board is carrying out its delegated duties." AGO 10-34. Thus, in January 2021, the Attorney General's Office concluded that in the absence of legislation providing otherwise, the same physical presence quorum requirement that governs school board meetings would apply to meetings of school board advisory committees. Inf. Op. to Myrick, January 28, 2021. See now s. 1001.43(10), F.S., effective July 1, 2021, providing that members of school district "special committees and advisory committees may attend meetings in person or through the use of telecommunications networks such as telephonic and video conferencing."

(a) State boards

In AGO 98-28, the Attorney General's Office concluded that s. 120.54(5)(b)2., F.S., authorizes *state* boards to conduct public meetings via entirely electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing points of access for the public. See Rule 28-109, F.A.C. And see AGO 20-03, noting that state boards have been conducting meetings using "communications media technology" since 1997.

(b) Local boards

(1) Meetings

As to *local* boards, the Attorney General's Office has noted that the authorization in s. 120.54(5)(b)2., to conduct meetings entirely through the use of electronic media technology applies only to *state* agencies. AGOs 20-03 and 98-28. Thus, unless the in-person requirement to constitute a quorum has been waived by law or lawfully suspended during a state of emergency, a quorum of the board must be physically present. AGO 20-03.

For example, since s. 1001.372(2)(b), F.S., requires a district school board to hold its meetings at a "public place in the county," a quorum of the board must be physically present at the meeting of the school board. *Id.* And see AGOs 09-56 (where a quorum is required and absent a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum). and 10-34 (city may not adopt an ordinance allowing members of a city board to appear by electronic means to constitute a quorum). Cf. s. 120.525(4),

F.S., allowing a voting member of a regional planning council that covers three or more counties who participates via telephone or videoconferencing to be counted towards a quorum, provided that at least one third of the voting members are present at the meeting location and that notice of intent to participate remotely is given at least 24 hours prior to the meeting; and s. 163.01(18), F.S., authorizing certain entities created by interlocal agreement to conduct public meetings and workshops by means of communications media technology.

However, if a quorum of a local board is physically present, “the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;] . . . [w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board.” AGO 03-41.

For example, if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting. AGO 94-55. *And see* AGOs 92-44 (participation and voting by ill county commissioner), and 02-82 (physically-disabled city advisory committee members participating and voting by electronic means).

(2) Workshops

The physical presence of a quorum has not been required where electronic media technology (such as video conferencing and digital audio) is used to allow public access and participation at *workshop* meetings where no formal action will be taken. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken. *See* Inf. Op. to Stebbins, December 1, 2015 (approval of board meeting minutes constitutes official action; vote to approve minutes not exempted from quorum requirements). Moreover, as discussed above, boards conducting workshop meetings electronically must still comply with the Sunshine Law.

For example, the Attorney General’s Office advised that airport authority members may conduct informal discussions and workshops over the Internet, provided proper notice is given, and interactive access by members of the public is provided. AGO 01-66. Such interactive access must include not only public access via the Internet but also at designated places within the authority boundaries where the airport authority makes computers with Internet access available to members of the public who may not otherwise have Internet access. *Id.* For meetings, however, where a quorum is necessary for action to be taken, the physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. *Id.* Internet access to such meetings, however may still be offered to provide greater public access. *Id.* *Cf.* AGO 08-65, noting that a city’s plan to provide additional public access to on-line workshop meetings by making computers available at a public library “should ensure that operating-type assistance is available at the library where the computers are located.”

However, the use of an electronic bulletin board to discuss matters over an extended period of days or weeks, which does not permit the public to participate online, violates the Sunshine Law by circumventing the notice and access provisions of that law. AGO 02-32. *And see* Inf. Op. to Ciocchetti, March 23, 2006 (even though the public would be able to participate online, a town commission’s proposed use of an electronic bulletin board to discuss matters that foreseeably may come before the commission over an extended period of time would not comply with the spirit or letter of the Sunshine Law because the burden would be on the public to constantly monitor the site in order to participate meaningfully in the discussion). *Compare* AGO 08-65 (city advisory boards may conduct workshops lasting no more than two hours using an on-line bulletin board if proper notice is given and interactive access to members of the public is provided).

Moreover, there is no apparent authority for the use of electronic media technology to allow board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public electronic access to the remote meeting. Inf. Op. to Sugarman, August 5, 2015.

D. NOTICE AND PROCEDURES

1. Agenda

The Sunshine Law does not *mandate* that an agency provide notice of each item to be discussed via a published agenda although the Attorney General's Office has recommended the publication of an agenda, if available. The courts have rejected such a requirement because it could effectively preclude access to meetings by members of the general public who wish to bring specific issues before a governmental body. See *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973); and *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (posted agenda unnecessary and public body not required to postpone meeting due to inaccurate press report which was not part of the public body's official notice efforts).

Thus, the Sunshine Law does not require boards to consider only those matters on a published agenda. "[W]hether to impose a requirement that restricts every relevant commission or board from considering matters not on an agenda is a policy decision to be made by the legislature." *Law and Information Services, Inc. v. City of Riviera Beach*, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996). And see *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (Sunshine Law does not prohibit use of consent agenda procedure).

Even though the Sunshine Law does not prohibit a board from adding topics to the agenda of a regularly noticed meeting, the Attorney General's Office has advised boards to postpone formal action on any added items that are controversial. See AGO 03-53, stating that "[i]n the spirit of the Sunshine Law, the city commission should be sensitive to the community's concerns that it be allowed advance notice and, therefore, meaningful participation on controversial issues coming before the commission."

While the Sunshine Law requires notice of *meetings*, not of the individual *items* which may be considered at that meeting, other statutes, codes, or ordinances may impose such a requirement and agencies subject to those provisions must follow them. See Inf. Op. to Mattimore, February 6, 1996.

For example, s. 120.525(2), F.S., requires that agencies subject to the Administrative Procedure Act must prepare an agenda in time to ensure that a copy may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic form excluding confidential and exempt information, shall be published on the agency's website. *Id.* After the agenda has been made available, changes may be made only for good cause. *Id.*

Similarly, special districts are required to post certain information on the district's official website, including: "[a]t least 7 days before each meeting or workshop, the agenda of the event." Section 189.069(2)(a)15., F.S. The information must remain on the website for at least 1 year after the event. *Id.*

2. Location of meetings

a. Facilities that discriminate or unreasonably restrict access to the facility

Section 286.011(6), F.S., prohibits boards or commissions subject to the Sunshine Law from holding their meetings at any facility which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in such a manner as to unreasonably

restrict public access to such a facility. *And see* s. 286.26, F.S., relating to accessibility of public meetings to the physically handicapped.

Public boards or commissions, therefore, are advised to avoid holding meetings at places where the public and the press are effectively excluded. AGO 71-295. Thus, a police pension board should not hold its meetings in a facility where the public has limited access and where there may be a “chilling” effect on the public’s willingness to attend by requiring the public to provide identification, to leave such identification while attending the meeting, and to request permission before entering the room where the meeting is held. AGO 96-55. *And see* Inf. Op. to Galloway, August 21, 2008, in which the Attorney General’s Office expressed concerns about holding a public meeting in a private home in light of the possible “chilling effect” on the public’s willingness to attend.

While a city may not require persons wishing to attend public meetings to provide identification as a condition of attendance, it may impose certain security measures on members of the public entering a public building, such as requiring the public to go through metal detectors. AGO 05-13.

b. Luncheon meetings

Public access to meetings of public boards or commissions is the key element of the Sunshine Law, and public agencies are advised to avoid holding meetings in places not easily accessible to the public. The Attorney General’s Office has suggested that public boards or commissions avoid the use of luncheon meetings to conduct board or commission business. These meetings may have a “chilling” effect upon the public’s willingness or desire to attend. People who would otherwise attend such a meeting may be unwilling or reluctant to enter a public dining room without purchasing a meal and may be financially or personally unwilling to do so. Inf. Op. to Campbell, February 8, 1999; and Inf. Op. to Nelson, May 19, 1980. *Cf. City of Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971), in which the Florida Supreme Court observed: “A secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public.” *See also* the discussion on page 49 relating to inaudible discussions.

c. Out-of-town meetings

The fact that a meeting is held in a public room does not make it public within the meaning of the Sunshine Law; for a meeting to be “public,” the public must be given advance notice and provided with a reasonable opportunity to attend. *Bigelow v. Howze*, 291 So. 2d 645, 647-648 (Fla. 2d DCA 1974). *See also* the discussion on page 25 relating to inspection and fact-finding trips.

Accordingly, a school board workshop held outside county limits over 100 miles away from the board’s headquarters violated the Sunshine Law where the only advantage to the board resulting from the out-of-town gathering (elimination of travel time and expense due to the fact that the board members were attending a conference at the site) did not outweigh the interests of the public in having a reasonable opportunity to attend. *Rhea v. School Board of Alachua County*, 636 So. 2d 1383 (Fla. 1st DCA 1994). The court refused to adopt a rule prohibiting any board workshops from being held at a site more than 100 miles from its headquarters, instead applying a balancing of interests test to determine which interest predominates in a given case. As stated by the court, “[t]he interests of the public in having a reasonable opportunity to attend a Board workshop must be balanced against the Board’s need to conduct a workshop at a site beyond the county boundaries.” *Id.* at 1385. *And see* Inf. Op. to Sugarman, August 5, 2015 (no apparent authority for use of electronic media technology to allow city pension board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public with electronic access to the remote meeting).

In addition, there may be other statutes which limit where board meetings may be held.

See, e.g., s. 125.001, F.S. (meetings of the board of county commissioners may be held at any appropriate public place in the county); s. 1001.372, F.S. (school board meetings may be held at any appropriate public place in the county). And see AGOs 08-01 and 03-03 (municipality may not hold commission meetings at facilities outside its boundaries). See now ss. 166.0213(1), F.S. (governing body of municipality with 500 or fewer residents may hold meetings within 5 miles of the exterior jurisdictional boundary of the municipality at such time and place as may be prescribed by ordinance or resolution); 166.0213(2), F.S. (governing body of a municipality may hold joint meetings to receive, discuss, and act upon matters of mutual interest with the governing body of the county within which the municipality is located or the governing body of another municipality at such time and place as shall be prescribed by ordinance or resolution); and 125.001(2), F.S. (authorizing boards of county commissioners to hold joint public meetings with governing boards of adjacent counties or municipalities upon due public notice within the jurisdiction of all participating counties and municipalities; provided that an authorizing resolution is adopted, no official vote is taken at the joint meeting, and the joint meeting may not take the place of a public hearing required by law). Cf. AGO 20-03, noting that a quorum of the board must be physically present at the meeting of a board which is required to be held at a place within the body's jurisdiction. For more information on this issue, please see the discussion on pages 37-38.

Conduct which occurs outside the state which would constitute a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3), F.S. Such violations are prosecuted in the county in which the board or commission normally conducts its official business. Section 910.16, F.S.

d. Size of meeting facilities

The Sunshine Law requires that meetings of a public board or commission be “open to the public.” If a large turnout is expected for a particular meeting, the Attorney General's Office has recommended that public boards and commissions take reasonable steps (such as moving the meeting to a larger room) to accommodate those who wish to attend. Inf. Op. to Galloway, August 21, 2008. If the largest available public meeting room cannot accommodate all of those who are expected to attend, the use of video technology (e.g., a television screen outside the meeting room) may be appropriate. See *Kennedy v. St. Johns River Water Management District*, No. 2009-0441-CA (Fla. 7th Cir. Ct. September 27, 2010), *per curiam affirmed*, 84 So. 3d 331 (Fla. 5th DCA 2011), available online in the Cases database at the open government site at myfloridalegal.com (even though not all members of the public were able to enter the meeting room, board did not violate the Sunshine Law when it held a meeting at the board's usual meeting place and in the largest available room; the court noted, however, that the board set up a computer with external speakers so that those who were not able to enter the meeting room could view and hear the proceedings).

3. Minutes

a. Scope of minutes requirement

Section 286.011(2), F.S., requires that minutes of a meeting of a public board or commission shall be promptly recorded and open to public inspection. Workshop meetings are not exempted from this requirement. AGOs 08-65 and 74-62. And see *Lozman v. City of Riviera Beach*, No. 502007CA007552XXXXMBAN (Fla. 15th Cir. Ct. June 9, 2009), *per curiam affirmed*, 46 So. 3d 573 (Fla. 4th DCA 2010), available online in the Cases database at the open government site at myfloridalegal.com (minutes required for city council's agenda review meetings).

Because the term “promptly” is not defined in the statute, it “should be construed in its plain and ordinary sense.” Inf. Op. to Board of Trustees, January 27, 2009. The informal advisory opinion notes that Webster's New Universal Unabridged Dictionary (2003) defines “prompt” as done, performed, delivered, etc., at once or without delay.

The use of the term “shall” in s. 286.011(2) “requires mandatory compliance.” *Jackson v. City of South Bay*, 358 So. 3d 18 (Fla. 4th DCA 2023). In *Jackson*, the district court reversed the trial judge’s conclusion that a canvassing board’s delay in producing minutes until several months after an agreed upon deadline did not violate the Sunshine Law. The trial judge had cited the “busy election,” the COVID pandemic, and the board’s good faith conduct as justification for the delay in producing the meeting minutes. However, the appellate court said that unlike the Public Records Act, the Sunshine Law does not contain a good faith exception.

Draft minutes of a board meeting may be circulated to individual board members for corrections and studying prior to approval by the board, so long as any changes, corrections, or deletions are discussed and adopted during the public meeting when the board adopts the minutes. AGOs 02-51 and 74-294. *Cf.* Inf. Op. to Stebbins, December 1, 2015 (vote to approve minutes constitutes official action of a board; no authority to exempt a vote to approve minutes from quorum requirements).

The minutes are public records when the person responsible for preparing the minutes has performed his or her duty even though they have not yet been sent to the board members or officially approved by the board. AGO 91-26. *And see Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (city violated both the language and the purpose of s. 286.011[2] by denying public access to its minutes until after approval).

Section 286.011, F.S., does not specify who is responsible for taking the minutes of public meetings. This appears to be a procedural matter which the individual boards or commissions must resolve. Inf. Op. to Baldwin, December 5, 1990.

b. Content of minutes

The term “minutes” as used in s. 286.011, F.S., contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting; accordingly a verbatim transcript is not required. AGO 82-47. *And see State v. Adams*, No. 91-175-CC (Fla. Sumter Co. Ct. July 15, 1992), available online in the Cases database at the open government site at myfloridalegal.com (no violation of Sunshine Law where minutes failed to reflect brief discussion concerning a proposed inspection trip). *Cf.* s. 20.052(5)(c), F.S., requiring that minutes, including a record of all votes cast, be maintained for all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency.

c. Tape recording or Internet archive as minutes

The Sunshine Law does not require that public boards and commissions tape record their meetings. *See* AGO 86-21. However, other statutes may require that certain proceedings be recorded. *See Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (statute mandating that a “complete recording” be made of portions of a closed negotiation team meeting requires more than an agenda and meeting notes). *Cf.* AGO 10-42 (where statute requires that all closed proceedings of child abuse death review committee be recorded and that no portion be off the record, audio recording of the proceedings “would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded”).

However, while a board is authorized to tape record the proceedings if it chooses to do so, the Sunshine Law also requires written minutes. AGO 75-45. Similarly, while a board may archive the full text of all workshop discussions conducted on the Internet, written minutes of the workshops must also be prepared and promptly recorded. AGO 08-65.

Moreover, the tape recordings are public records and their retention is governed by schedules established by the Division of Library and Information Services of the Department of State in accordance with s. 257.36(6), F.S. AGO 86-21. *Accord* AGO 86-93 (tape recordings of school board meetings are subject to Public Records Act even though written minutes are required to be prepared and made available to the public).

d. Use of transcript as minutes

Although a written transcript is not required, a board may use a written transcript of the meeting as the minutes, if it chooses to do so. Inf. Op. to Fulwider, June 14, 1993.

4. Notice requirements**a. Reasonable notice required**

A vital element of the Sunshine Law is the requirement that boards subject to the law provide “reasonable notice” of all meetings. See s. 286.011(1), F.S. Even before the statutory amendment in 1995 expressly requiring notice, the courts had stated that in order for a public meeting to be in essence “public,” reasonable notice of the meeting must be given. See *Hough v. Stembridge*, 278 So. 2d 288, 291 (Fla. 3d DCA 1973); *Yarbrough v. Young*, 462 So. 2d 515, 517 (Fla. 1st DCA 1985).

Reasonable public notice is required for all meetings subject to the Sunshine Law and is required even though a quorum is not present. AGO 90-56. And see *Baynard v. City of Chiefland, Florida*, No. 38-2002-CA-000789 (Fla. 8th Cir. Ct. July 8, 2003) available online in the Cases database at the open government site at myfloridalegal.com (reasonable notice required even if subject of meeting is “relatively unimportant”). Notice is required even though meetings of the board are “of general knowledge” and are not conducted in a closed door manner. *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309, 310 (Fla. 1st DCA 1991). “Governmental bodies who hold unnoticed meetings do so at their peril.” *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994).

The Sunshine Law does not define the term “reasonable notice.” However, in *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018), the court referenced AGO 73-170, which concluded that the type of notice given depends on the purpose for the notice, the character of the event about which the notice is given, and the nature of the rights to be affected. “Where there is no specific legislative directive as to what constitutes reasonable notice as a matter of law, we agree with the Attorney General that it is a fact specific inquiry.” *Transparency*, at 787. And see *Parris v. State*, 359 So. 3d 1178 (Fla. 4th DCA 2023), upholding a city councilmember’s conviction for violating the Sunshine Law, and rejecting as “meritless” her argument that the lack of definitions for the terms “reasonable notice” and “open to the public” in the statute render it unconstitutionally vague. To the extent that interpretation is required, “the well-established case law and the plain and ordinary meaning of the terms provide ample guidance.” *Parris v. State*, *supra*.

Therefore, the type of notice is variable and depends upon the facts of the situation and the board involved. In each case, an agency must give notice at such time and in such a manner as to enable the media and the general public to attend the meeting. AGOs 00-08, 04-44, 80-78 and 73-170. And see *Rhea v. City of Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991) (purpose of the notice requirement is to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wish). Cf. *Lyon v. Lake County*, 765 So. 2d 785, 790 (Fla. 5th DCA 2000) (where county attorney provided citizen with “personal due notice” of a committee meeting and its function, it would be “unjust to reward” the citizen by concluding that a meeting lacked adequate notice because the newspaper advertisement failed to correctly name the committee). See also *Suncam, Inc. v. Worrall*, No. CI97-3385 (Fla. 9th Cir. Ct. May 9, 1997), available online in the Cases database at the open government site at myfloridalegal.com (Sunshine Law requires notice to the general public; agency not required to provide “individual notice” to company that wished to be informed when certain meetings were going to occur).

For example, “burying a notice inside a committee application and calendar on the instructional materials page of the [school district’s] website is an unreasonable way to give public

notice of a meeting” of a school board textbook committee that is subject to the Sunshine Law. *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021). Additionally, the notices did not mention that the meetings were open to the public. By contrast, the school board posted notices of regular school board meetings on the public notice page of the district website and in an electronic newsletter.

While the Attorney General’s Office cannot specify the type of notice which must be given in all cases, the following notice guidelines are suggested:

1. The notice should contain the time and place of the meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.
2. The notice should be prominently displayed in the area in the agency’s offices set aside for that purpose, *e.g.*, for cities, in city hall, and on the agency’s website, if there is one.
3. Except in the case of emergency or special meetings, notice should be provided at least 7 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.
4. Special meetings should have no less than 24 and preferably at least 72 hours reasonable notice to the public. *See Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (three days notice of special meeting deemed adequate).
5. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is highly effective in providing notice of upcoming meetings.

The notice procedures set forth above should be considered as suggestions which will vary depending upon the circumstances of each particular situation. *See* AGO 73-170 (“If the purpose for notice is kept in mind, together with the character of the event about which notice is to be given and the nature of the rights to be affected, the essential requirements for notice in that situation will suggest themselves”). *See also* AGOs 00-08, 94-62 and 90-56. An individual challenging the adequacy of a meeting notice is not required “to allege and prove that some member of the public was not afforded an opportunity to attend the meeting because notice was not adequate,” because this “is not an element of a cause of action for a Sunshine Law violation.” *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 787 (Fla. 4th DCA 2018).

Thus, in *Rhea v. City of Gainesville*, 574 So. 2d 221 (Fla. 1st DCA 1991), the court held that a complaint alleging that members of the local news media were contacted about a special meeting of the city commission one and one-half hours before the meeting stated a sufficient cause of action that the Sunshine Law had been violated. *Compare News and Sun-Sentinel Company v. Cox*, 702 F. Supp. 891 (S.D. Fla. 1988) (no Sunshine Law violation occurred when on March 31, a “general notice” of a city commission meeting scheduled for April 5 was posted on the bulletin board outside city hall); and *Lozman v. City of Riviera Beach*, No. 502008CA027882 (Fla. 15th Cir. Ct. December 8, 2010), *per curiam affirmed*, 79 So. 3d 36 (Fla. 4th DCA 2012), available online in the Cases database at the open government site at myfloridalegal.com (no violation of Sunshine Law where notice of special meeting held on Monday, September 15 was posted at city hall and faxed to the media on Friday, September 12 and members of the public [including the media] attended the meeting).

The determination as to who will actually prepare the notice or agenda is essentially “an integral part of the actual mechanics and procedures for conducting that meeting and, therefore, aptly relegated to local practice and procedure as prescribed by . . . charters and ordinances.” *Hough*, 278 So. 2d at 291.

b. Notice requirements when meeting adjourned to a later date

If a meeting is to be adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting should also be noticed. AGO 90-56.

c. Notice relating to record needed for appellate review

Section 286.0105, F.S., requires:

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

This statute applies to every “board, commission, or agency of this state.” See AGO 19-14 (Education Practices Commission, established in s. 1012.79, F.S., is a “commission” for purposes of s. 286.0105, F.S.)

The notice requirement in s. 286.0105, F.S., “is imposed at each occasion where notice of a meeting or hearing is required and is to be included in the notice to be given to the public of such meeting.” *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com, quoting from AGO 89-82. See also *Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that with the adoption of s. 286.0105, F.S., “the legislature understood the importance of a verbatim record for appellate review of government board decisions.”

d. Paid advertising requirements and additional notice provisions imposed by other statutes, codes, or ordinances

While the Sunshine Law requires only that *reasonable* public notice be given, a public agency may be subject to additional notice requirements imposed by other statutes, charters or codes. In such cases, the requirements of that statute, charter, or code must be strictly observed. Inf. Op. to Mattimore, February 6, 1996.

For example, while the Sunshine Law does not mandate that an agency use a paid advertisement to provide public notice of a meeting, other statutes may specify publication requirements for certain actions. See *Yarbrough v. Young*, 462 So. 2d 515, 517n.1 (Fla. 1st DCA 1985) (Sunshine Law does not require city council to give notice “by paid advertisements” of its intent to take action regarding utilities system improvements, although the Legislature “has required such notice for certain subjects,” e.g., 166.041[3][c], F.S.). See also s. 189.015(1), F.S. (notice requirements for meetings of the governing bodies of special districts); and s. 1001.372(2)(c), F.S. (school board meetings). Cf. s. 50.0311, F.S. (Internet website publication of governmental agency notices).

Similarly, a board or commission subject to Ch. 120, F.S., the Administrative Procedure Act, must comply with the notice and publication requirements of that act. See, e.g., s. 120.525, F.S. Those requirements, however, are imposed by Ch. 120, F.S., not s. 286.011, F.S., although the notice of a board or commission meeting published pursuant to Ch. 120, F.S., also satisfies the notice requirements of s. 286.011, F.S. *Florida Parole and Probation Commission v. Baranko*, 407 So. 2d 1086 (Fla. 1st DCA 1982).

5. Public comment

Prior to the adoption of s. 286.0114, F.S. (2013), Florida courts had determined that s. 286.011, F.S., provides a right to attend public meetings, but does not provide a right to be heard.

See *Herrin v. City of Deltona*, 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013) (phrase “open to the public” as used in s. 286.011, F.S., means that “meetings must be properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings”). See also *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1289 (Fla. 2010); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010).

However, as the court observed in *Herrin*, s. 286.0114(2), F.S., now mandates that “[m]embers of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.” The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the opportunity “occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.” Section 286.0114(2), F.S.

The terms “proposition” or “official action” are not defined in the statute, nor is there a distinction between official action taken at a formal meeting versus an informal setting, such as a workshop. Inf. Op. to Jacquot, April 25, 2014. “In light of the purpose of the statute to allow public participation during the decisionmaking process on a proposition, it should be liberally construed to facilitate that purpose.” *Id.*

Section 286.0114(3), F.S., states that the public’s “opportunity to be heard” does not apply to:

1. An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
2. An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
3. A meeting that is exempt from s. 286.011; or
4. A meeting during which the board or commission is acting in a quasi-judicial capacity. See AGO 17-01 (s. 286.0114, F.S., does not require that members of the public be given a reasonable opportunity to be heard at quasi-judicial code enforcement hearings held by a special magistrate pursuant to authority delegated from the county code enforcement board).

The statute does not prohibit a board or commission from “maintaining orderly conduct or proper decorum in a public meeting.” Section 286.0114(2), F.S. In addition, the opportunity to be heard is “subject to rules or policies adopted by the board or commission” as provided in s. 286.0114(4), F.S. These rules or policies are limited to those that:

1. Provide guidelines regarding the amount of time an individual has to address the board or commission;
2. Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
3. Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
4. Designate a specified period of time for public comment.

If a board or commission adopts such rules or policies and complies with them, it is deemed to be acting in compliance with the statute. Section 286.0114(5), F.S. See *Larson v. Palm Beach County*, No. 502016CA001706 (Fla. 15th Cir. Ct. September 26, 2019), *per curiam affirmed*, 311 So. 3d 853 (Fla. 4th DCA 2021), available online in the Cases database at the open government site at myfloridalegal.com, upholding a board procedural rule giving members of the

public three minutes to speak on all items on the consent agenda versus three minutes on each regular agenda item. *And see City of Miami v. Airbnb, Inc.*, 260 So. 3d 478, 483-484 (Fla. 3d DCA 2018) (temporary injunction prohibiting city from requiring speakers at public hearings to give their names and addresses was overbroad). *Cf. Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989) (mayor's actions in attempting to confine the speaker to the agenda item in the city commission meeting and having the speaker removed when the speaker appeared to become disruptive constituted a reasonable time, place and manner regulation and did not violate the speaker's First Amendment rights); and *Moms for Liberty-Brevard County v. Brevard Public Schools*, 582 F. Supp. 3d 1214 (M. D. Fla. 2022), *affirmed*, No. 22-10297 (11th Cir. November 21, 2022). *Compare Lozman v. City of Riviera Beach, Fla.*, 138 S.Ct. 1945 (2018), in which the U.S. Supreme Court held that the existence of probable cause for a speaker's arrest for failure to follow the city council's rules of procedure did not bar the speaker's First Amendment retaliation claim.

A circuit court is authorized to issue injunctions for the purpose of enforcing s. 286.0114, F.S. Section 286.0114(6), F.S. However, an action taken by a board or commission which is found to be in violation of that statute is not void as a result of the violation. Section 286.0114(8), F.S.

6. Restrictions on public attendance

a. Cameras and tape recorders

A board or commission may adopt reasonable rules and policies which ensure the orderly conduct of a public meeting and require orderly behavior on the part of those persons attending a public meeting. A board, however, may not ban the use of nondisruptive recording devices. *Pinellas County School Board v. Suncam, Inc.*, 829 So. 2d 989 (Fla. 2d DCA 2002) (school board's ban on unobtrusive videotaping invalid). *Accord* AGO 91-28. *And see* AGO 77-122 (silent nondisruptive tape recording of district meeting permissible).

The Legislature in Ch. 934, F.S., appears to implicitly recognize the public's right to silently record public meetings. AGO 91-28. Chapter 934, F.S., the Security of Communications Act, regulates the interception of oral communications. Section 934.02(2), F.S., however, defines "[o]ral communication" to specifically exclude "any public oral communication uttered at a public meeting . . ." *See also* Inf. Op. to Gerstein, July 16, 1976, stating that public officials may not complain that they are secretly being recorded during public meetings in violation of s. 934.03, F.S.

b. Exclusion of certain members of the public

The term "open to the public" as used in the Sunshine Law means open to *all* persons who choose to attend. AGO 99-53. *Cf. Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of Tampa*, 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to be no case law "squarely resolving" whether a wrongful exclusion of one person would void all actions taken at the meeting, "there is legal support for that proposition").

Thus the court in *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995), ruled that a procurement committee violated the Sunshine Law by requesting that bidders voluntarily excuse themselves from each other's presentations. *See now* s. 286.0113(2), F.S., providing an exemption from the Sunshine Law for any portion of a meeting at which a vendor makes an oral presentation or answers questions as part of a competitive solicitation, and requiring a complete recording of the exempt portion of the meeting.

Staff of a public agency clearly are members of the public as well as employees of the agency; they cannot, therefore, be excluded from public meetings. AGO 79-01. Section 286.011, F.S., however, does not preclude the reasonable application of ordinary personnel policies, for example, the requirement that annual leave be used to attend meetings, provided that such policies do not frustrate or subvert the purpose of the Sunshine Law. *Id.*

Although not directly addressing the open meetings laws, courts of other states have ruled that in the absence of a compelling governmental interest, agencies may not single out and exclude a particular news organization or reporter from press conferences. *See, e.g., Times-Picayune Publishing Corporation v. Lee*, 15 Media L. Rep. 1713 (E.D. La. 1988); *Borrea v. Fasi*, 369 F. Supp. 906 (D. Hawaii 1974); *Quad-City Community News Service, Inc. v. Jebens*, 334 F. Supp. 8 (S.D. Iowa 1971); and *Southwestern Newspapers Corporation v. Curtis*, 584 S.W.2d 362 (Tex. Ct. App. 1979).

c. Inaudible discussions

A school district advisory committee violated the Sunshine Law when it conducted “breakout sessions” where the members discussed committee business at two separate tables which meant that members at one table could not hear what was being discussed at the other table and members of the public could not hear what was being discussed at the sessions. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com. *And see* AGO 71-159 (cautioning against discussions of public business which are audible only to “a select few” who are at the table with board members). *Cf. Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com (two members of a civil service board violated the Sunshine Law when they held a private discussion concerning a pending employment appeal during a recess of a board meeting).

7. Time and length of meeting

In *Greenbarg v. Metropolitan Dade County Board of County Commissioners*, 618 So. 2d 760 (Fla. 3d DCA 1993), the court held that there was “no impropriety” when a county commission continued to meet until the “early morning hours.”

8. Use of codes or preassigned numbers in order to avoid identifying individuals

Section 286.011, F.S., requires that meetings of public boards or commissions be “open to the public at all times” *See Neu v. Miami Herald Publishing Company*, 462 So. 2d 821, 823 (Fla. 1985), disapproving a procedure permitting representatives of the media to attend a city council meeting provided that they agreed to “respect the confidentiality” of certain matters: “Under the Sunshine Law, a meeting is either fully open or fully closed; there are no intermediate categories.”

The use of preassigned numbers or codes at public meetings to avoid identifying the names of applicants violates s. 286.011, F.S., because “to permit discussions of applicants for the position of a municipal department head by a preassigned number or other coded identification in order to keep the public from knowing the identities of such applicants and to exclude the public from the appointive or selection process would clearly frustrate or defeat the purpose of the Sunshine Law.” AGO 77-48. *Accord* AGO 76-240 (Sunshine Law prohibits the use of coded symbols at a public meeting in order to avoid revealing the names of applicants for the position of city manager). *And see News-Press Publishing Company v. Wisner*, 345 So. 2d 646, 648 (Fla. 1977) (“public policy of this state as expressed in the public records law and the open meetings statute eliminate any notion that the commission was free to conduct the county’s personnel business by pseudonyms or cloaked references”).

9. Voting

a. Abstention

Section 286.012, F.S., provides:

A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is

to be taken or adopted may not abstain from voting . . . and a vote *shall* be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, or s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is or appears to be a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice. (e.s.)

A member of a state, county, or municipal board who is present at a meeting is thus prohibited from abstaining from voting except as authorized in s. 286.012, F.S. See AGO 02-40 (s. 286.012, F.S., applies to advisory board appointed by a county commission). Cf. Inf. Op. to Dickens, August 10, 2006 (nothing in the language of s. 286.012 indicates that a member who temporarily absents himself or herself from the dais [but is still present in the meeting room] during a vote should be recorded as an affirmative vote).

Failure of a member to vote, however, does not invalidate the entire proceedings. *City of Hallandale v. Rayel Corporation*, 313 So. 2d 113 (Fla. 4th DCA 1975), *cause dismissed sua sponte*, 322 So. 2d 915 (Fla. 1975) (to rule otherwise would permit any member to frustrate official action merely by refusing to participate). And see Inf. Op. to Dickens, *supra* (failure of a member to vote does not render a voted matter invalid if a quorum is present and the required number of affirmative votes have been cast by the voting members).

Section 286.012, F.S., applies *only* to state, county, and municipal boards. AGO 04-21. Special district boards are not subject to its provisions and may adopt their own rules regarding abstention, subject to s. 112.3143, F.S. AGOs 04-21, 85-78 and 78-11.

Questions as to what constitutes a conflict of interest and when board members are prohibited from voting under the above statutes should be referred to the Florida Commission on Ethics.

b. Proxy votes

In the absence of statutory authority, proxy voting by board members is not allowed. AGO 78-117.

c. Roll call vote

While s. 286.012, F.S., requires that each member present cast a vote either for or against the proposal under consideration by the public board or commission, it is not necessary that a roll call vote of the members present and voting be taken so that each member's specific vote on each subject is recorded. The intent of the statute is that all members present cast a vote and that the minutes so reflect that by either recording a vote *or* counting a vote for each member. *Ruff v. School Board of Collier County*, 426 So. 2d 1015 (Fla. 2d DCA 1983) (roll call vote so as to *record* the individual vote of each such member is not necessary). Cf. s. 20.052(5)(c), F.S., requiring that minutes, including a record of all votes cast, be maintained for all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency.

d. Written or secret ballot

A secret ballot violates the Sunshine Law. See AGO 73-264 (members of a personnel board

may not vote by secret ballot during a hearing concerning a public employee). *Accord* AGOs 72-326 and 71-32 (board may not use secret ballots to elect the chair and other officers of the board).

However, board members are not prohibited from using written ballots to cast a vote as long as the votes are made openly at a public meeting, the name of the person who voted and his or her selection are written on the ballot, and the ballots are maintained and made available for public inspection in accordance with the Public Records Act. *See* AGO 73-344.

In addition, because the Sunshine Law expressly requires that public meetings be open to the public “at all times,” after the ballots are marked, the person who tallies the votes should announce the names of the persons who voted and their votes. For example, a judge found that a board violated the Sunshine Law when the board members’ individual votes for each applicant were not announced at the public meeting. According to the court, “[t]he fact that the ballots are preserved as public records available for public inspection does not satisfy the requirement of openness.” *Schweickert v. Citrus County Port Authority*, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), available online in the Cases database at the open government site at myfloridalegal.com. *See also* AGO 71-32 (if at any time during a public meeting, the proceedings become “covert, secret or not wholly exposed to the view and hearing of the public,” that portion of the meeting is not “open to the public at all times”).

E. STATUTORY EXEMPTIONS

1. Creation and review of exemptions

Article I, s. 24(b), Fla. Const., requires that all meetings of a collegial public body of the executive branch of state government or of local government, at which official acts are to be taken or at which the public business of such body is to be transacted or discussed, be open and noticed to the public. All laws in effect on July 1, 1993, that limit access to meetings remain in force until they are repealed. Article I, s. 24(d), Fla. Const.

The Legislature is authorized to provide by general law passed by two-thirds vote of each house for the exemption of meetings, provided such law states with specificity the public necessity justifying the exemption and is no broader than necessary to accomplish the stated purpose of the law. Article I, s. 24(c), Fla. Const. *See* s. 119.011(8), F.S., defining the term “exemption” to include a provision of general law which provides that a “specified . . . meeting, or portion thereof, is not subject to the access requirements” in s. 286.011, F.S., or Art. I, s. 24, Fla. Const. *And see* *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999) (open meetings exemption for certain hospital board meetings unconstitutional because it did not meet the constitutional standard of specificity as to stated public necessity and limited breadth to accomplish that purpose). *Compare* *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189, 195 (Fla. 1st DCA 2004), upholding a more recent public meetings exemption because “the constitutional concerns expressed by the Florida Supreme Court in *Halifax*” were met due to a more specific legislative justification accompanied by adequate findings to support the breadth of the exemption.

Section 119.15, F.S., the Open Government Sunset Review Act, provides for legislative review of exemptions from the open government laws. Pursuant to the Act, in the fifth year after enactment of a new exemption or expansion of an existing exemption, the exemption shall be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption. Section 119.15(3), F.S. The two-thirds vote requirement for enactment of exemptions set forth in Art. I, s. 24(c), Fla. Const., applies to re-adoption of exemptions as well as initial creation of exemptions. AGO 03-18. *And see* s. 286.011, F.S. (provisions of s. 119.15 “apply to the provisions of law which provide exemptions to s. 286.011, as provided in s. 119.15”).

2. Exemptions are narrowly construed

As a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose, while exemptions should be narrowly construed. *See, e.g., Board of*

Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969); *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983). *And see* *Turner v. Wainwright*, 379 So. 2d 148, 155 (Fla. 1st DCA 1980), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980) (rejecting a board's argument that a legislative requirement that certain board meetings must be open to the public implies that the board could meet privately to discuss other matters); and *Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017), rejecting an agency's argument that a statute providing an exemption for "[a]ny portion of team meeting at which negotiation strategies are discussed" covered the entirety of any meeting at which negotiation strategies were discussed.

The courts have recognized that the Sunshine Law should be construed so as to frustrate all evasive devices. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979); *Wolfson v. State*, 344 So. 2d 611 (Fla. 2d DCA 1977). As the Florida Supreme Court stated in *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260, 264 (Fla. 1973):

Various boards and agencies have obviously attempted to read exceptions into the Government in the Sunshine Law which do not exist. Even though their intentions may be sincere, such boards and agencies should not be allowed to circumvent the plain provisions of the statute. The benefit to the public far outweighs the inconvenience of the board or agency. If the board or agency feels aggrieved, then the remedy lies in the halls of the Legislature and not in efforts to circumvent the plain provisions of the statute by devious ways in the hope that the judiciary will read some exception into the law.

If a board member is unable to determine whether a meeting is subject to the Sunshine Law, he or she should either leave the meeting or ensure that the meeting complies with the Sunshine Law. *See City of Miami Beach v. Berns*, *supra* at 41; *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) ("The principle to be followed is very simple: When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State."). Stated another way, "[w]hen in *any* doubt as to whether a meeting or communication, either directly or indirectly between two or more government officials may be illegal under the Sunshine Law, the easy answer is: 'LEAVE.'" *Parris v. State*, 359 So. 3d 1178 (Fla. 4th DCA 2023) (Ciklin, J., specially concurring).

3. Effect of statutory exemptions

a. Notice requirements

If a statute exempts meetings from the requirements of s. 286.011, F.S., the meetings are also exempt from the notice provisions in that statute that would otherwise apply. AGO 93-86. *Accord* AGO 07-28.

b. Attendance at closed meetings

In some cases, a statutory exemption specifies the persons who are permitted to attend a closed session. For example, s. 286.011(8), F.S., establishing an open meetings exemption for certain discussions pertaining to pending litigation, provides that only the entity, the entity's attorney, the entity's chief administrative officer, and a court reporter may attend the closed meeting. *See* AGO 01-10 (clerk of court not authorized to attend).

However, where an exemption for certain public hospital board meetings relating to a "written strategic plan" did not specify who may attend (other than a court reporter), the Attorney General's Office recommended that the board "strictly limit attendance to only those individuals who are essential to the purpose of the meeting, *i.e.*, to discuss, receive a report on, modify, or approve a strategic plan, in order to avoid what the courts might consider to be a disclosure to the public." AGO 07-28. *And see* AGO 06-34 (members of a local advocacy council, who are attending a closed

session of the statewide advocacy council during the discussion of one of the local council's cases, may not remain in the closed session when the statewide advocacy council is considering cases from other advocacy councils which are unrelated to the local advocacy council's cases).

c. Disclosure of matters discussed at closed meeting

In a 2014 informal opinion, the Attorney General's Office considered whether the unauthorized disclosure by a council member of information discussed during a closed "shade meeting" held pursuant to s. 286.011(8), F.S., would violate the Sunshine Law or have other legal consequences. The opinion concluded that the prohibitions and penalties for violation of the Sunshine Law that are set forth in s. 286.011(3), F.S., appear to be directed only at persons who attend closed meetings that should have been open to the public. *See* Inf. Op. to Pritt, November 26, 2014. Accordingly, the Attorney General's Office was unable to conclude that unauthorized disclosure of matters disclosed at a valid closed session would violate the Sunshine Law. *Id.* However, other statutory provisions, such as ss. 112.313(8), 112.51, or 839.26, F.S., relating to disclosure of privileged information could apply to this situation. *Id.* And *see* AGO 03-09 (exemption for collective bargaining strategy sessions in s. 447.605[1], F.S., does not directly address the dissemination of information that may be obtained at the closed meeting, but there is clear legislative intent that matters discussed during such meetings are not to be open to public disclosure).

4. Special act exemptions

Prior to July 1, 1993, exemptions from the Sunshine Law could be created by special act. Article I, s. 24, Fla. Const., however, now limits the Legislature's ability to enact an exemption from the constitutional right of access to open meetings established thereunder. While exemptions in effect on July 1, 1993, remain in force until repealed, the Constitution requires that exemptions enacted after that date must be by general law. Such law must state with specificity the public necessity for the exemption and be no broader than necessary to accomplish that stated purpose.

F. REMEDIES AND PENALTIES

1. Criminal penalties

A knowing violation of the Sunshine Law is a misdemeanor of the second degree. Section 286.011(3)(b), F.S. *See Carlson v. Florida Department of Revenue*, 227 So. 3d 1261, 1263 (Fla. 1st DCA 2017), declaring that the Sunshine Law is "serious business," because "there is criminal liability for officials who knowingly disregard it." *Cf. Parris v. State*, 359 So. 3d 1178 (Fla. 4th DCA 2023), upholding a conviction for violating the Sunshine Law because sufficient evidence showed that a councilmember "knowingly participated in a meeting that was not 'open to the public' and for which 'reasonable notice' was not given."

A person convicted of a second degree misdemeanor may be sentenced to a term of imprisonment not to exceed 60 days and/or fined up to \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S. The criminal penalties apply to members of advisory councils subject to the Sunshine Law as well as to members of elected or appointed boards. AGO 01-84 (school advisory council members).

Conduct which occurs outside the state which constitutes a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3)(c), F.S. Such violations are prosecuted in the county in which the board or commission normally conducts its official business while violations occurring within the state may be prosecuted in that county. Section 910.16, F.S.

2. Removal from office

When a method for removal from office is not otherwise provided by the Florida Constitution or by law, the Governor may suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising directly out of his or her official duties. Section 112.52(1), F.S. If convicted, the officer may be removed from office by executive order of

the Governor. Section 112.52(3), F.S. A person who pleads guilty or nolo contendere or who is found guilty is, for purposes of s. 112.52, F.S., deemed to have been convicted, notwithstanding the suspension of sentence or the withholding of adjudication. *Id.* Cf. s. 112.51, F.S. (municipal officers) and Art. IV, s. 7, Fla. Const. (state and county officers). *And see Thompson v. Napotnik*, 923 So. 2d 537, 540 (Fla. 5th DCA 2006) (violation of the Sunshine Law can constitute malfeasance for purposes of s. 100.361(2)(d), F.S., providing grounds for recall of elected municipal officers).

3. Noncriminal infractions

Section 286.011(3)(a), F.S., imposes noncriminal penalties for violations of the Sunshine Law by providing that any public officer violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. It has been held that the state attorney may pursue such actions on behalf of the state. *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005). *Accord* AGO 91-38. Cf. *State v. Foster*, 13 F.L.W. Supp. 385a (Fla. 17th Cir. Ct. January 25, 2006), in which the circuit court found that no right to a jury trial is triggered when an individual faces a noncriminal charge of violating the Sunshine Law.

If a nonprofit corporation is subject to the Sunshine Law, its board of directors constitute “public officers” for purposes of s. 286.011(3)(a), F.S. AGO 98-21. *See Goosby v. State*, No. GF05-(001122-001130,001135)-BA (Fla. 10th Cir. Ct. December 22, 2006), available online in the Cases database at the open government site at myfloridalegal.com (members of the Polk County Opportunity Council, which had assumed and exercised a delegated governmental function, were “public officers” for purposes of the Sunshine Law and subject to the imposition of the noncriminal infraction fine). *Compare, State v. Dorworth*, No. 14-MM-5841 (Fla. Orange Co. Ct. October 21, 2014), *affirmed*, No. 14-AP-48 (Fla. 9th Cir. Ct. August 19, 2015), available online in the Cases database at the open government site at myfloridalegal.com, dismissing a misdemeanor charge against a lobbyist who was accused of violating the Sunshine Law by relaying information between board members and thereby aiding the members to meet without complying with the Sunshine Law. The trial judge determined that by charging the lobbyist, the state attorney “expanded the reach of the Sunshine Law to private citizens; and, the Legislature did not intend for the statute to apply to private citizens.”

4. Attorney’s fees

Reasonable attorney’s fees will be assessed against a board or commission found to have violated the Sunshine Law. Section 286.011(4), F.S. *See Indian River County Hospital District v. Indian River Memorial Hospital, Inc.*, 766 So. 2d 233, 235 (Fla. 4th DCA 2000), concluding that the trial court erred by failing to assess attorney’s fees against a nonprofit hospital corporation found to have violated the Sunshine Law. *And see* s. 286.011(5), F.S., authorizing the assessment of attorney fees if a board appeals an order finding the board in violation of the Sunshine Law and the order is affirmed.

While s. 286.011(4), F.S., authorizes an award of appellate fees if a person successfully appeals a trial court order denying access, the statute “does not supersede the appellate rules, nor does it authorize the trial court to make an initial award of appellate attorney’s fees.” *School Board of Alachua County v. Rhea*, 661 So. 2d 331 (Fla. 1st DCA 1995), *review denied*, 670 So. 2d 939, 332 (Fla. 1996). Thus, a person prevailing on appeal must file an appropriate motion in the appellate court in order to receive appellate attorney’s fees. *Id.* If a board appeals an order finding the board in violation of the Sunshine Law, and the order is affirmed, “the court shall assess a reasonable attorney’s fee for the appeal” against the board. Section 286.011(5), F.S.

Attorney’s fees may be assessed against the individual members of the board except in those cases where the board sought, and took, the advice of its attorney. Section 286.011(4) and (5), F.S.

If a member of a board or commission charged with a violation of s. 286.011, F.S., is subsequently acquitted, the board or commission is authorized to reimburse that member for any

portion of his or her reasonable attorney's fees. Section 286.011(7), F.S. *Cf.* AGO 86-35, stating that this subsection does not authorize the reimbursement of attorney's fees incurred during an investigation of alleged sunshine violations when no formal charges were filed, although common law principles may permit such reimbursement.

Reasonable attorney's fees may be assessed against the individual filing an action to enforce the provisions of s. 286.011, F.S., if the court finds that it was filed in bad faith or was frivolous. Section 286.011(4), F.S. The fact that a plaintiff may be unable to prove that a secret meeting took place, however, does not necessarily mean that attorney's fees will be assessed. *See Bland v. Jackson County*, 514 So. 2d 1115, 1116 (Fla. 1st DCA 1987), concluding that although the plaintiff was unable to prove that a meeting in violation of the Sunshine Law took place, the evidence showed that the county commission unanimously voted on the issue in an open public meeting without identifying what they were voting on and without any discussion and under these circumstances an inference might reasonably be drawn that the commissioners had no need to discuss the action being taken because they had already discussed and decided the issue before the public meeting.

5. Civil actions for injunctive or declaratory relief

Section 286.011(2), F.S., states that the circuit courts have jurisdiction to issue injunctions upon application by any citizen of this state. *See Allen v. United Faculty of Miami-Dade College*, 197 So. 3d 604 (Fla. 3d DCA 2016) (Public Employees Relations Commission [PERC] properly dismissed unfair labor practice charge alleging a violation of the Sunshine Law, as s. 286.011, F.S., is enforceable only by the courts, not by PERC). *Cf. Godheim v. City of Tampa*, 426 So. 2d 1084, 1088 (Fla. 2d DCA 1983), rejecting an argument that Godheim lacked standing to raise a Sunshine Law violation, and finding that the Sunshine Law on its face gives him standing without regard to whether he suffered a special injury. *Accord Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021) ("The School Board concedes on appeal that the trial court erred in ruling that the Plaintiffs lacked standing," citing *Godheim*).

While normally irreparable injury must be proved by the plaintiff before an injunction may be issued, in Sunshine Law cases the mere showing that the law has been violated constitutes "irreparable public injury." *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); and *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), *disapproved in part on other grounds*, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985). The plaintiff's burden is to "establish by the greater weight of the evidence" that a meeting which should have been held in the sunshine took place on the date alleged. *Lyon v. Lake County*, 765 So. 2d 785, 789 (Fla. 5th DCA 2000).

A complaint for injunctive relief must allege by name or sufficient description the identity of the public official with whom the defendant public official has violated the Sunshine Law. *Deerfield Beach Publishing, Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988). *And see Forehand v. School Board of Gulf County, Florida*, 600 So. 2d 1187 (Fla. 1st DCA 1992) (plaintiff was not denied a fair and impartial hearing because the board only briefly deliberated in public before a vote was taken as there was no evidence that the board had privately deliberated on this issue); and *Law and Information Services v. City of Riviera Beach*, 670 So. 2d 1014 (Fla. 4th DCA 1996) (patent speculation, absent any allegation that a nonpublic meeting in fact occurred, is insufficient to state a cause of action).

Although a court cannot issue a blanket order enjoining any violation of the Sunshine Law based upon a finding that the law was violated in particular respects, a court may enjoin a future violation that bears some resemblance to the past violation. *See Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 699-700 (Fla. 1969), *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1173 (Fla. 4th DCA 1995), and *Citizens for Sunshine, Inc. v. Martin County School Board*, 125 So. 3d 184 (Fla. 4th DCA 2013). *See also Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (trial court's permanent

injunction affirmed). *Compare Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1170n. 1 (Fla. 2d DCA 1999), in which the court noted that had a citizen appealed the trial court's denial of her motion for temporary injunction based on a selection committee's alleged violation of the Sunshine Law, the appellate court "would have had the opportunity to review this matter before the project was completed and to direct that the City be enjoined from entering into a final contract with the developer until after such time as the ranking of the proposals could be accomplished in compliance with the Sunshine Law."

The future conduct must be "specified, with such reasonable definiteness and certainty that the defendant could readily know what it must refrain from doing without speculation and conjecture." *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, *supra*, quoting from *Board of Public Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969). *And see Lozman v. City of Riviera Beach*, No. 502007CA007552XXXXMB (Fla. 15th Cir. Ct. June 9, 2009), *per curiam affirmed*, 46 So. 3d 573 (Fla. 4th DCA 2010), available online in the Cases database at the open government site at myfloridalegal.com (injunctive relief against future violations of city to record minutes of certain meetings appropriate in light of city's past conduct and consistent refusal to record such minutes even after being advised to do so by the city attorney and because the city "has continuously taken the legal position that local governments are not required by the Sunshine Law to record minutes").

Declaratory relief is not appropriate where no present dispute exists but where governmental agencies merely seek judicial advice different from that advanced by the Attorney General and the state attorney or an injunctive restraint on the prosecutorial discretion of the state attorney. *Askew v. City of Ocala*, 348 So. 2d 308 (Fla. 1977).

6. Validity of action taken in violation of the Sunshine Law and subsequent corrective action

Section 286.011, F.S., provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law is void ab initio. *Town of Palm Beach v. Gnadison*, 296 So. 2d 473 (Fla. 1974). *Accord Sarasota Citizens For Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010), noting that "where officials have violated section 286.011, the official action is void ab initio." *See Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (selection committee rankings resulting from a meeting held in violation of the Sunshine Law are void ab initio and agency enjoined from entering into contract based on such rankings); *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice the meeting under s. 286.011, F.S.); *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (by failing to open its minutes to public inspection and copying in a timely and reasonable manner, prejudice is presumed and therefore city's approval of minutes is null and void ab initio); and *Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014), (upholding trial court ruling that voided an agreement reached after closed-door mediation sessions which resulted in changes to pension benefits of city employees in certain unions). *Compare* s. 286.0114(8), F.S. (an action taken by a board or commission which is found to be in violation of s. 286.0114, F.S. [providing a right to be heard on a proposition before a state or local board or commission] "is not void as a result of that violation").

Similarly, a circuit judge found that where two members of civil service board held a private discussion about a pending case during a recess, the board's subsequent findings in the case were "null and void" and the city must reconvene the board and hear the evidence de novo. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. *And see Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of*

Tampa, 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to be no case law “squarely resolving” whether a wrongful exclusion of one person would void all actions taken at the meeting, “there is legal support for that proposition”).

A violation need not be “clandestine” in order for a contract to be invalidated because “the principle that a Sunshine Law violation renders void a resulting official action does not depend upon a finding of intent to violate the law or resulting prejudice.” *Port Everglades Authority v. International Longshoremen’s Association, Local 1922-1*, 652 So. 2d 1169, 1171 (Fla. 4th DCA 1995). *But see Killearn Properties, Inc. v. City of Tallahassee*, 366 So. 2d 172 (Fla. 1st DCA 1979), *cert. denied*, 378 So. 2d 343 (Fla. 1979) (city which had received benefits under contract was estopped from claiming contract invalid as having been entered into in violation of the Sunshine Law).

Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those decisions which were made at an earlier secret meeting but rather takes “independent final action in the sunshine,” the decision of the board or commission will not be disturbed. *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981). *Accord Bruckner v. City of Dania Beach*, 823 So. 2d 167, 171 (Fla. 4th DCA 2002) (Sunshine violations “can be cured by independent, final action completely in the Sunshine”). *And see Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 861 (Fla. 3d DCA 1994) (adoption of the open government constitutional amendment, Art. I, s. 24, Fla. Const., did not overrule the *Tolar* “standard of remediation”). *Cf. Board of County Commissioners of Sarasota County v. Webber*, 658 So. 2d 1069 (Fla. 2d DCA 1995) (no evidence suggesting that board members met in secret during a recess to reconsider and deny a variance and then perfunctorily ratified this decision at the public hearing held a few minutes later); *B.M.Z. Corporation v. City of Oakland Park*, 415 So. 2d 735 (Fla. 4th DCA 1982) (where no evidence that any decision was made in private, subsequent formal action in sunshine was not merely perfunctory ratification of secret decisions or ceremonial acceptance of secret actions).

Thus, in a case involving the validity of a lease approved by a board of county commissioners after an advisory committee held two unnoticed meetings regarding the lease, a court held that the Sunshine Law violations were cured when the board of county commissioners held open public hearings after the unnoticed meetings, an effort was made to make available to the public the minutes of the unnoticed meetings, the board approved a lease that was markedly different from that recommended by the advisory committee, and most of the lease negotiations were conducted after the advisory committee had concluded its work. *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 860-861 (Fla. 3d DCA 1994).

Similarly, a school board remedied an inadvertent violation of the Sunshine Law when it subsequently held full, open and independent public hearings prior to adopting a redistricting plan. *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008). *And see Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010) (any possible violations that occurred when county commissioners circulated e-mails among each other were cured by four subsequent public meetings involving discussion of multiple proposals); *Jackson v. City of Tallahassee*, 265 So. 3d 736 (Fla. 1st DCA 2019) (public city commission meeting to fill a vacancy on the commission, which included a full discussion of the appointment, candidate presentations, more than an hour of public comment, and numerous speakers, cured any purported violation that may have occurred during the application process). *Cf. Anderson v. City of St. Pete Beach*, 161 So. 3d 548, 553-554 (Fla. 2d DCA 2014), noting that “even when an illicit action is ‘cured’ it does not absolve a public body of its responsibility for violating the Sunshine Law in the first instance; it simply provides a way to salvage a void act by reconsidering it in Sunshine.”

It must be emphasized, however, that only a full open hearing will cure the defect; a violation of the Sunshine Law will not be cured by a perfunctory ratification of the action taken

outside of the sunshine. *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988). See also *Anderson v. City of St. Pete Beach*, 161 So. 3d at 553 (city failed to cure Sunshine Law violation since it merely perfunctorily ratified in public session what had already been decided in closed meetings).

For example, in *Zorc v. City of Vero Beach*, 722 So. 2d 891, 903 (Fla. 4th DCA 1998), review denied, 735 So. 2d 1284 (Fla. 1999), the Fourth District explained why a subsequent city council meeting did not cure the council's prior violation of the Sunshine Law:

It is evident from the record that the meeting was not a full reexamination of the issues, but rather, was merely the perfunctory acceptance of the City's prior decision. This was not a full, open public hearing convened for the purpose of enabling the public to express its views and participate in the decision-making process. Instead, this was merely a Council meeting which was then opened to the public for comment at the City's request. There was no significant discussion of the issues or a discourse as to the language sought to be included. The City Councilmen were provided with transcripts of the hearings, but none reviewed the language previously approved, and the Council subsequently voted to deny reconsideration of the wording.

More recently, the Fourth District reversed an order granting summary judgment in favor of a city which claimed that a special meeting cured an alleged Sunshine Law violation arising from approval of a separation agreement for the departing city manager. The court observed that the entire proceeding lasted less than 15 minutes and "no one mentioned the terms of the agreement, nor did they discuss at length the reasons for the termination." *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 786 (Fla. 4th DCA 2018). According to the court, "[t]he meeting may be more perfunctory . . . than the meeting in *Zorc*." *Id.* And see *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com (minutes of school board meeting did not go into enough depth to carry the school district's burden of proving a cure of an advisory committee's violation of the Sunshine Law; the violation can be remedied only when all matters previously considered by the advisory committee are brought by independent action into the sunshine). Cf. AGO 12-31 (audit committee's statutorily prescribed function to create a request for proposals may not be delegated to a subordinate entity; the committee may not, therefore, ratify a defective request for proposals which was created and issued by the county's financial officer contrary to the requirements of the law).

Similarly, a school board's argument that it had cured Sunshine violations committed by its textbook committees because it held two public board meetings on the textbook recommendations, and also posted all the materials online, was rejected based on a finding that the board had failed to hold "a full and open hearing" on the recommendations. *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021). The court found it significant that under a school board policy, the board could not choose a textbook on its own by considering other alternatives from the textbooks previously considered by the committee. Instead, if the board rejected a textbook, the matter would go back to the textbook committee for a new review and recommendation.

Moreover, an appellate court warned that while subsequent public board meetings may have "cured" a Sunshine Law violation, "if a pattern of Sunshine Law violations existed before this violation, then perhaps we may have found that any subsequent school board actions were merely 'perfunctory ratification[s] of secret actions and decisions.'" *Citizens for Sunshine, Inc. v. Martin County School Board*, 125 So. 3d 184, 189 (Fla. 4th DCA 2013). See *Bert Fish Foundation v. Southeast Volusia Hospital District*, No. 2010-20801-CINS (Fla. 7th Cir. Ct. February 24, 2011), available online in the Cases database at the open government site at myfloridalegal.com (series

of public meetings did not “cure” Sunshine Law violations that resulted from 21 closed door meetings over 16 months; “[t]here was so much darkness for so long, that a giant infusion of sunshine might have been too little or too late”).

7. Damages

The only remedies provided for in the Sunshine Law are a declaration of the wrongful action as void and reasonable attorney fees. *Dascott v. Palm Beach County*, 988 So. 2d 47 (Fla. 4th DCA 2008), *review denied*, 6 So. 3d 51 (Fla. 2009) (equitable recovery of back pay not authorized for employment termination conducted in violation of Sunshine Law).

PART II

PUBLIC RECORDS

A. SCOPE OF THE PUBLIC RECORDS ACT

Florida’s Public Records Law, Ch. 119, F.S., provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. In the absence of a statutory exemption, this right of access applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge. Access to public records has been described as a “cornerstone of our political culture.” *In re Report & Recommendations of Judicial Mgmt. Council of Fla. on Privacy & Elec. Access to Court Records*, 832 So. 2d 712, 713 (Fla. 2002).

Section 119.011(2), F.S., defines “agency” to include:

any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

A right of access to records is also recognized in Art. I, s. 24, Fla. Const., which applies to virtually all state and local governmental entities, including the legislative, executive and judicial branches of government. The only exceptions are those established by law or by the Constitution.

Section 119.011(12), F.S., defines “public records” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980). All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). Exemption summaries are found in Appendix D.

The term “public record” is not limited to traditional written documents. As the statutory definition states, “tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission” can all constitute public records. *And see National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (“public records law is not limited to paper documents but applies, as well, to documents that exist only in digital form”). *Cf. Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (physical specimens relating to an autopsy are not public records because in order to constitute a “public record” for purposes of Ch. 119, “the record itself must be susceptible of some form of copying . . .”).

Clearly, as technology changes the means by which agencies communicate, manage, and store information, public records will take on increasingly different forms. Yet, the comprehensive scope of the term “public records” will continue to make the information open to public inspection unless exempted by law.

Article I, s. 24, Fla. Const., establishes a constitutional right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted pursuant to Art. I, s. 24, Fla. Const., or specifically made confidential by the Constitution. *See State ex rel. Clayton v. Board of Regents*, 635 So. 2d 937 (Fla. 1994) (“[O]ur Constitution requires that public officials must conduct public business in the open and that public records must be made available to all members of the public.”); and *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013) (“A citizen’s access to public records is a fundamental constitutional right in Florida”). The complete text of Art. I, s. 24, Fla. Const., the Public Records and Meetings Amendment, may be found in Appendix A.

B. WHAT ENTITIES ARE COVERED? APPLICATION OF THE PUBLIC RECORDS ACT TO:

1. Advisory boards

The definition of “agency” for purposes of Ch. 119, F.S., is not limited to governmental entities. A “public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency” is also subject to the requirements of the Public Records Act. *See also* Art. I, s. 24(a), Fla. Const., providing that the constitutional right of access to public records extends to “any public body, officer, or employee of the state, *or persons acting on their behalf*. . . .” (e.s.)

Thus, the Attorney General’s Office has concluded that the records of an employee advisory committee, established pursuant to special law to make recommendations to a public hospital authority, are subject to Ch. 119, F.S., and Art. I, s. 24(a), Fla. Const. AGO 96-32. *And see* Inf. Op. to Nicoletti, November 18, 1987, stating that the Loxahatchee Council of Governments, Inc., formed by eleven public agencies to study and make recommendations on local governmental issues was an “agency” for purposes of Ch. 119, F.S.

2. Private organizations

A more complex question is presented when a private corporation or entity provides services for, or receives funds from, a governmental body. The term “agency,” as used in the Public Records Act, includes private entities “acting on behalf of any public agency.” Section 119.011(2), F.S. The Florida Supreme Court has stated that this broad definition of “agency” ensures that a public agency cannot avoid disclosure by contractually delegating to a private entity that which would otherwise be an agency responsibility. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992). *Cf. Booksmart*

Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc., 718 So. 2d 227, 229n.4 (Fla. 3d DCA 1998) (private company operating state university bookstores is an “agency” as defined in s. 119.011[2], F.S., “[n]otwithstanding the language in its contract with the universities that purports to deny any agency relationship”); and *Schwartzman v. Merritt Island Volunteer Fire Department*, 352 So. 2d 1230 (Fla. 4th DCA 1977), *cert. denied*, 358 So. 2d 132 (Fla. 1978) (private nonprofit volunteer fire department, which had been given stewardship over firefighting, which conducted its activities on county-owned property, and which was funded in part by public money, was an “agency” for purposes of the Public Records Act, and its membership files, minutes of its meetings and charitable activities were subject to disclosure).

While the mere act of contracting with, or receiving public funds from, a public agency is not sufficient to subject a private entity to Ch.119, F.S., the following discussion considers when the statute has been held applicable to private entities.

a. Private entities created pursuant to law or by public agencies

The fact that a private entity is incorporated as a nonprofit corporation is not dispositive as to its status under the Public Records Act, but rather the issue is whether the entity is “acting on behalf of” a public agency. The Attorney General’s Office has issued numerous opinions advising that if a private entity is created by law or by a public agency, it is subject to Ch. 119 disclosure requirements. The following are some examples of such entities: Pace Property Finance Authority, Inc., created as a Florida nonprofit corporation by Santa Rosa County to provide assistance in the funding and administration of certain governmental programs, AGO 94-34; South Florida Fair and Palm Beach County Expositions, Inc., created pursuant to Ch. 616, F.S., AGO 95-17; rural health networks established as nonprofit legal entities to plan and deliver health care services on a cooperative basis pursuant to s. 381.0406, F.S., Inf. Op. to Ellis, March 4, 1994. *And see* s. 20.41(8), F.S., providing that area agencies on aging, described as “nongovernmental, independent, not-for-profit corporations” are “subject to [the Public Records Act], and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings.”

b. Private entities contracting with public agencies or receiving public funds

There is no single factor which is controlling on the question of when a private corporation, not otherwise connected with government, becomes subject to the Public Records Act. However, the courts have held that the mere act of contracting with a public agency is not dispositive. *See, e.g., News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, *supra* (private corporation does not act “on behalf of” a public agency merely by entering into a contract to provide architectural services to the agency); *Parsons & Whittemore, Inc. v. Metropolitan Dade County*, 429 So. 2d 343 (Fla. 3d DCA 1983); *Stanfield v. Salvation Army*, 695 So. 2d 501, 503 (Fla. 5th DCA 1997) (contract with county to provide services does not in and of itself subject the organization to Ch. 119 disclosure requirements). *And see Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970 (Fla. 2d DCA 2002) (fact that private development is located on land the developer leased from a governmental agency does not transform the leases between the developer and other private entities into public records).

Similarly, the receipt of public funds, standing alone, is not dispositive of the organization’s status for purposes of Ch. 119, F.S. *See Sarasota Herald-Tribune Company v. Community Health Corporation, Inc.*, 582 So. 2d 730 (Fla. 2d DCA 1991) (mere provision of public funds to the private organization is not an important factor in this analysis, although the provision of a substantial share of the capitalization of the organization is important); and *Times Publishing Company v. Acton*, No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999), available online in the Cases database at the open government site at myfloridalegal.com (attorneys retained by individual commissioners in a criminal matter were not “acting on behalf of” a public agency for purposes of Ch. 119, F.S., even though county commission subsequently voted to pay the legal expenses in accordance with a county policy providing for reimbursement of legal expenses to

officers successfully defending charges filed against them arising out of the performance of their official duties). *Cf.* Inf. Op. to Cowin, November 14, 1997 (fact that nonprofit medical center is built on property owned by the city would not in and of itself be determinative of whether the medical center's meetings and records are subject to open government requirements).

The courts have relied on “two general sets of circumstances” in determining when a private entity is “acting on behalf of” a public agency and must therefore produce its records under Ch. 119, F.S. See *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002); *B & S Utilities, Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17 (Fla. 1st DCA 2008), *review denied*, 4 So. 3d 1220 (Fla. 2009); and *County of Volusia v. Emergency Communications Network, Inc.*, 39 So. 3d 1280 (Fla. 5th DCA 2010). Each of these circumstances or tests is discussed below.

(1) “Totality of factors” test

Recognizing that “the statute provides no clear criteria for determining when a private entity is ‘acting on behalf of’ a public agency,” the Supreme Court adopted a “totality of factors” test to serve as a guide for evaluating whether a private entity is subject to Ch. 119, F.S. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029, 1031 (Fla. 1992). See *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993); *Wells v. Aramark Food Service Corporation*, 888 So. 2d 134 (Fla. 4th DCA 2004).

Accordingly, when a public agency contracts with a private entity to provide goods or services to facilitate the agency's performance of its duties, the courts have considered the “totality of factors” in determining whether there is a significant level of involvement by the public agency so as to subject the private entity to Ch. 119, F.S. See *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, *supra* at 974.

The factors listed by the Supreme Court in *Schwab* include the following:

- 1) the level of public funding;
- 2) commingling of funds;
- 3) whether the activity was conducted on publicly owned property;
- 4) whether the contracted services are an integral part of the public agency's chosen decision-making process;
- 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
- 6) the extent of the public agency's involvement with, regulation of, or control over the private entity;
- 7) whether the private entity was created by the public agency;
- 8) whether the public agency has a substantial financial interest in the private entity;
- 9) for whose benefit the private entity is functioning.

Thus, the application of the totality of factors test will often require an analysis of the statutes, ordinances or charter provisions which establish the function to be performed by the private entity as well as the contract, lease or other document between the governmental entity and the private organization.

For example, in AGO 92-37 the Attorney General's Office, following a review of the Articles of Incorporation and other materials relating to the establishment and functions of the Tampa Bay Performing Arts Center, Inc., concluded that the center was an “agency” subject to the Public Records Act, noting that the center was governed by a board of trustees composed of a number of city and county officials or appointees of the mayor, utilized city property in

carrying out its goals to benefit the public, and performed a governmental function. *See also* AGOs 97-27 (documents created or received by the Florida International Museum after the date of its purchase/lease/option agreement with city subject to disclosure under Ch. 119, F.S.), 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., subject to Public Records Act), and 11-01. *Cf.* Inf. Op. to Goodman, September 26, 2016 (in the absence of a request from the chief of the volunteer fire department or additional information making the relationship between the town and the fire department clearer, the Attorney General's Office may not respond formally to town attorney's inquiry about the application of the Public Records Act to the town's volunteer fire department).

By contrast, an architectural firm providing architectural services associated with construction of school facilities was found to be outside the scope of the Public Records Act. *See News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., supra.* *See also Sipkema v. Reedy Creek Improvement District*, No. CI96114 (Fla. 9th Cir. Ct. May 29, 1996), *per curiam affirmed*, 697 So. 2d 880 (Fla. 5th DCA 1997), *review dismissed*, 699 So. 2d 1375 (Fla. 1997), available online in the Cases database at the open government site at myfloridalegal.com (private security force providing services on Walt Disney World property, including traffic control and accident reports is not subject to Ch. 119), *Trepal v. State*, 704 So. 2d 498 (Fla. 1997) (soft drink company cooperating with law enforcement in the testing of soda bottles during an investigation of a poisoning death is outside the scope of the Public Records Act); and Inf. Op. to Michelson, January 27, 1992 (telephone company supplying cellular phone services to city officials for city business is not an "agency" since the company was not created by the city, did not perform a city function, and did not receive city funding except in payment for services rendered). *Cf. National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 182 (Fla. 1st DCA 2017) (trial court conclusion that insurance rating organization violated Public Records Act was erroneous because the court "expressly declined to apply the *Schwab* factors" prior to making this determination).

Stated another way, "[a] private entity *does not* act on behalf of a public agency merely by entering a contract to provide professional services to the agency." *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021) [Emphasis supplied by the court]. Thus, the Public Records Act did not apply to a private corporation providing health care services pursuant to a contract with a state agency because the private corporation was not created pursuant to any governmental action, the amounts paid were all paid in consideration for professional services already rendered, and the agency did not delegate any decision-making authority to the corporation, nor did it control or regulate the corporation's professional activity or judgment. *Id.* *And see National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 182 (Fla. 1st DCA 2017) (trial court conclusion that insurance rating organization violated Public Records Act was erroneous because the court "expressly declined to apply the *Schwab* factors" prior to making this determination).

(2) Delegation of function test

While the mere act of contracting with a public agency is not sufficient to bring a private entity within the scope of the Public Records Act, there is a difference between a party contracting with a public agency to provide services to the agency and a contracting party which provides services in place of the public body. *News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.*, 695 So. 2d 418 (Fla. 5th DCA 1997), *approved*, 729 So. 2d 373 (Fla. 1999). *And see Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002).

For example, if a private entity contracts to relieve the public body from the operation of a public obligation such as operating a jail or providing fire protection, the open government laws apply. *News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.*, 695 So. 2d 418 (Fla. 5th DCA 1997), *approved*, 729 So. 2d 373 (Fla. 1999). *And see Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 307 (Fla. 3d DCA 2001) (consortium of private businesses created to manage a massive renovation of an airport was an "agency" for purposes of the Public Records

Act because it was created for and had no purpose other than to work on the airport contract; “when a private entity undertakes to provide a service otherwise provided by the government, the entity is bound by the Act, as the government would be”); and *Fox v. News-Press Publishing Company*, 545 So. 2d 941, 943 (Fla. 2d DCA 1989) (upholding a trial court decision finding that business records maintained by a towing company in connection with its contract with a city were public records, as the company “was clearly performing what is essentially a governmental function, i.e., the removal of wrecked and abandoned automobiles from public streets and property”). See also AGOs 08-66 (Public Records Act applies to not-for-profit corporation contracting with city to carry out affordable housing responsibilities and screening applicant files for such housing); 99-53 (while not generally applicable to homeowners associations, Ch. 119 applies to an architectural review committee of a homeowners association which is required by county ordinance to review and approve applications for county building permits as a prerequisite to consideration by the county building department); and 07-44 (property owners association, delegated performance of services otherwise performed by municipal services taxing unit, subject to Public Records Act when acting on behalf of the taxing unit). Compare AGO 87-44 (records of a private nonprofit corporation pertaining to a fund established for improvements to city parks were not public records since the corporation raised and disbursed only private funds and had not been delegated any governmental responsibilities or functions).

Thus, in *Stanfield v. Salvation Army*, 695 So. 2d 501 (Fla. 5th DCA 1997), the Fifth District recognized that the delegation of function test was the appropriate standard to use to determine that records generated by the Salvation Army in performing a contract to provide misdemeanor services for a county were subject to Ch. 119, F.S. As stated by the court: “Because we find the statutory and contractual delegation of governmental responsibility so compelling in this case, it is unnecessary to engage in the factor-by-factor analysis outlined in *Schwab*.” *Stanfield*, 695 So. 2d at 503. *B & S Utilities v. Baskerville-Donovan Inc.*, 988 So. 2d. 17, 21 (Fla. 1st DCA 2008), citing to *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 1999). In *Baskerville*, the court recognized that while the “totality of factors” test favored a private engineering firm’s position that it was not an agency, “the fact that the City delegated its municipal engineering functions” to [the firm] “is dispositive.” *Baskerville*, 988 So. 2d at 22. (e.s.)

The following are other examples of private businesses and nonprofit entities which were delegated a governmental function and thus determined to be subject to the Public Records Act in carrying out that function:

Corrections company operating county jail: *Times Publishing Company v. Corrections Corporation of America*, No. 91-429 CA 01 (Fla. 5th Cir. Ct. December 4, 1991), *affirmed per curiam*, 611 So. 2d 532 (Fla. 5th DCA 1993), available online in the Cases database at the open government site at myfloridalegal.com. And see *Prison Health Services, Inc. v. Lakeland Ledger Publishing Company*, 718 So. 2d 204 (Fla. 2d DCA 1998), *review denied*, 727 So. 2d 909 (Fla. 1999) (medical services).

Employment search firm: *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.* 379 So. 2d 633 (Fla. 1980). Accord AGO 92-80 (materials made or received by recruitment company in the course of its contract with a public agency to seek applicants and make recommendations to the board regarding the selection of an executive director, subject to Ch. 119).

Humane society investigating animal abuse for county: *Putnam County Humane Society, Inc. v. Woodward*, 740 So. 2d 1238 (Fla. 5th DCA 1999).

However, the “delegation of function” test should not be used unless there is a “clear, compelling, complete delegation of a governmental function” to the private entity. *Economic*

Development Commission v. Ellis, 178 So. 3d 118, 123 (Fla. 5th DCA 2015). In *Ellis*, the Fifth District found that the trial judge should not have used the delegation test to determine whether a private economic development entity (EDC) under contract with the county to provide services was an “agency.” The appellate court explained that the EDC was the county’s “primary” but not its “sole” agency for economic development activity. *Id.* The county “continued to carry out economic development activities itself through its own paid county employees and in conjunction with other entities to the exclusion of EDC.” *Id.* In other words, “EDC did not take over the county’s role or completely assume the county’s provision of economic development services.” *Id.* Because “EDC provided services to, not in place of, the county,” the trial judge should have applied the “totality of factors” test instead of the “delegation of function” test. *Id.*

c. Private company delegated authority to keep certain records

If a public agency has delegated its responsibility to maintain records necessary to perform its functions, such records have been deemed to be accessible to the public. *See, e.g., Harold v. Orange County*, 668 So. 2d 1010 (Fla. 5th DCA 1996) (where county hired a private company to be the construction manager on a county project and delegated to the company the responsibility of maintaining records necessary to show compliance with a “fairness in procurement ordinance,” the company’s records for this purpose were public records). *See also Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227 (Fla. 3d DCA 1998), *review denied*, 729 So. 2d 389 (Fla. 1999) (private company operating a campus bookstore pursuant to a contract with a state university is the custodian of public records made or received by the store in connection with university business).

d. Subcontractors

A circuit court has addressed whether a subcontractor may be subject to the Public Records Act if both the subcontractor and contractor have been delegated a public function. In *Multimedia Holdings Corporation v. CRSPE, Inc.*, No 03-3474-G (Fla. 20th Cir. Ct. December 3, 2003), available online in the Cases database at the open government site at myfloridalegal.com, the court required a consulting firm to disclose its timesheets and internal billing records generated pursuant to a subcontract with another firm (CRSPE) which had entered into a contract with a town to prepare a traffic study required by the Department of Transportation. Rejecting the subcontractor’s argument that Ch. 119, F.S., did not apply to it because it was a subcontractor, not the contractor, the court found that the study was prepared and submitted jointly by both consultants; both firms had acted in place of the town in performing the tasks required by the department: “[T]he Public Records Act cannot be so easily circumvented simply by CRSPE delegating its responsibilities to yet another private entity.”

e. Other statutory provisions governing records of private entities

(1) Contract requirements

Section 119.0701, F.S., mandates that all agency contracts for services must contain specific provisions requiring the contractor to comply with public records laws, including retention and public access requirements. The term “contractor” is defined to mean “an individual, partnership, corporation or business entity that enters into a contract for services with a public agency *and* is acting on behalf of the public agency as provided under s. 119.011(2), [F.S.]” Section 119.0701(1)(a), F.S. (e.s.). “Thus, based on the terms of section 119.0701(1)(a), Florida Statutes, the nature and scope of the services provided by a private contractor determine whether he or she is ‘acting on behalf of’ an agency and thus, would be subject to the requirements of the statute.” AGO 14-06. For more information on when a private entity is determined to be “acting on behalf of” a public agency for purposes of s. 119.011(2), F.S., please refer to the preceding discussion on pages 62-65.

In addition, contracts entered into or amended after July 1, 2016, must contain a statement, in the form prescribed by the statute, providing the contact information for the public

agency's custodian of public records in the event that the contractor has questions about its duty to provide public records relating to the contract. Section 119.0701(2)(a), F.S. A request for records for records relating to the contract must be made directly to the public agency. Section 119.0701(3)(a), F.S. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time. *Id.* Sections 119.0701(3) and (4), F.S., establish consequences in the event of a contractor's noncompliance.

Section 287.058(1)(c), F.S., provides, with limited exceptions, that *every* procurement for contracted services by a *state* agency be evidenced by a written agreement containing a provision allowing unilateral cancellation by the agency for the contractor's refusal to allow public access to "all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt" from disclosure.

(2) Legislative appropriation

Section 11.45(3)(e), F.S., states that all records of a nongovernmental agency, corporation, or person with respect to the receipt and expenditure of an appropriation made by the Legislature to that entity "shall be public records and shall be treated in the same manner as other public records are under general law." *Cf.* AGO 96-43 (Astronauts Memorial Foundation, a nonprofit corporation, is subject to the Sunshine Law when performing those duties funded under the General Appropriations Act).

(3) Public funds used for dues

Section 119.01(3), F.S., provides that if an agency spends public funds in payment of dues or membership contributions to a private entity, then the private entity's financial, business and membership records pertaining to the public agency are public records and subject to the provisions of s. 119.07, F.S.

3. Judiciary

a. Public Records Act inapplicable to judicial records

Relying on separation of powers principles, the courts have consistently held that the judiciary is not an "agency" for purposes of Ch. 119, F.S. *See, e.g., Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995) (the judiciary, as a coequal branch of government, is not an "agency" subject to supervision or control by another coequal branch of government); *State v. Wooten*, 260 So. 3d 1060, 1069 (Fla. 4th DCA 2018) ("Access to judicial branch records is governed by the rules and decisions of the Florida Supreme Court, not Chapter 119, Florida Statutes."); and *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). *Cf.* s. 119.0714(1), F.S., stating that "[n]othing in this chapter shall be construed to exempt from [s. 119.07(1), F.S.] a public record that was made a part of a court file *and that is not specifically closed by order of court . . .*" (e.s.) *And see Tampa Television, Inc. v. Dugger*, 559 So. 2d 397 (Fla. 1st DCA 1990) (Legislature has recognized the distinction between documents sealed under court order and those not so sealed, and has provided for disclosure of the latter only).

However, the Florida Supreme Court has expressly recognized that "both civil and criminal proceedings in Florida are public events" and that it will "adhere to the well established common law right of access to court proceedings and records." *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 116 (Fla. 1988). *See also Russell v. Miami Herald Publishing Co.*, 570 So. 2d 979, 982 (Fla. 2d DCA 1990), in which the court stated: "[W]e recognize that the press has a general right to access of judicial records." *And see C.H.-C v. Miami Herald Publishing Co.*, 262 So. 3d 226 (Fla. 3d DCA 2018) (trial court did not abuse its discretion in finding that newspaper had proper interest in access to redacted transcript of judicial review dependency hearing involving minor children).

b. Public access to and protection of judicial branch records, Fla. R. Gen. Prac. & Jud. Admin. 2.420

(1) Scope of the rule

Although the judiciary is not an “agency” for purposes of Ch. 119, F.S., there is a constitutional right of access to judicial records established by Art. I, s. 24, of the Florida Constitution. In accordance with this directive, access to records of the judicial branch is governed by Florida Rule of General Practice and Judicial Administration 2.420, entitled “Public Access to and Protection of Judicial Branch Records.” See 2.420(a), Fla. R. Gen. Prac. & Jud. Admin., providing that “[t]he public shall have access to all records of the judicial branch of government except as provided [in the rule].” Cf. *Morency v. State*, 223 So. 3d 439 (Fla. 5th DCA 2017), noting that “electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes or stenographic tapes of court proceedings” are included within the scope of the rule; and *Wright v. State*, 324 So. 3d 1282 (Fla. 1st DCA 2021) (defendant entitled to obtain electronic records of plea hearing to the extent that such records exist).

According to the Florida Supreme Court, rule 2.420 is “intended to reflect the judiciary’s responsibility to perform both an administrative function and an adjudicatory function.” *In re Amendments to the Florida Rules of Judicial Administration--Public Access to Judicial Records*, 608 So. 2d 472 (Fla. 1992). In its administrative role, the judiciary is a governmental entity expending public funds and employing government personnel. Thus, “records generated while courts are acting in an administrative capacity should be subject to the same standards that govern similar records of other branches of government.” *Id.* at 472-473. See also *Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit*, 840 So. 2d 1008, 1016 (Fla. 2003) (when an individual complains to a chief circuit judge about judicial misconduct involving sexual harassment or sexually inappropriate behavior by a judge, the records made or received by the chief judge “constitute ‘judicial records’ subject to public disclosure absent an applicable exemption”).

An online version of Fla. R. Gen. Prac & Jud. Admin. 2.420 is also available at: www.floridabar.org.

(2) Confidential judicial records

Rule 2.420(c)(1) through (6) lists confidential judicial branch records. Examples include trial and appellate court memoranda, complaints alleging misconduct against judges and other court personnel until probable cause is established, periodic evaluations implemented solely to assist judges in improving their performance, information (other than names and qualifications) about persons seeking to serve as unpaid volunteers unless made public by the court based upon a showing of materiality or good cause, and copies of arrest and search warrants until executed or until law enforcement determines that execution cannot be made.

Rule 2.420(d)(1) states that except as provided in subdivision(d)(1)(C), the clerk of court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of the rule. Subdivision (A) references “information described by any of the subdivisions (c)(1) through (c)(6).” Subdivision (B) contains a list of specific statutory exemptions. Subdivision (d)(1)(C) states that in “civil cases” as that term is defined in the rule, the clerk shall not be required to designate and maintain information as confidential unless the filer follows the notice procedures set forth in subdivision (d)(2), the filer files a Motion to Determine Confidentiality of Court Records as set forth in subdivision (d)(3), the filing is deemed confidential by court order, or the case itself is confidential by law. Cf. s. 119.0714(2)(g), F.S., providing that the clerk of court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk.

Although rule 2.420(c)(1)-(6) lists specific confidential records, subdivision (c)(8) of the rule provides a general exemption from disclosure for records presently deemed to be confidential by court rule, Florida Statutes, prior Florida case law, and by rules of the Judicial Qualifications Commission. See *State v. Buenoano*, 707 So. 2d 714, 718 (Fla. 1998). In addition, Fla. R. Gen. Prac. & Jud. Admin. 2.420(c)(7) provides an exemption for “all records made confidential under the Florida and United States Constitutions and Florida and federal law.”

Subdivision (c)(9)(A) of rule 2.420 establishes the grounds for determining confidentiality of a court record. The degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (c)(9)(A). Fla. R. Gen. Prac. & Jud. Admin. 2.420(c)(9)(B). Cf. *Barfield v. Doe*, 348 So. 3d 1156 (Fla. 4th DCA 2022) (while 2.420(c)(9)(A)(vi) allows a court to shield a record from public view when confidentiality is required to “avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed,” litigants cannot have a reasonable expectation of privacy concerning matters that are inherent to their civil proceeding).

Procedures for judicial determinations of requests for confidentiality of court records and for obtaining access to confidential court records are referenced in rule 2.420(e)-(j). For example, rule 2.420(f)(3) states that “any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court record that reveals the identity of a confidential informant or active criminal investigative information is confidential under subdivision (c)(9)(A)(i), (c)(9)(A)(iii), (c)(9)(A)(v), or (c)(9)(A)(vii) of this rule may be made in the form of a written motion captioned ‘Motion to Determine Confidentiality of Court Records.’”

(3) Procedures for accessing judicial branch records under rule 2.420

“Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.” Fla. R. Gen. Prac. & Jud. Admin. 2.420(m). Requests must be in writing and directed to the custodian. *Id.* See *Morris Publishing Group, LLC v. State*, 13 So. 3d 120 (Fla. 1st DCA 2009), in which the court denied a Florida newspaper’s records request for an audio tape related to a shooting since the request was made orally instead of in writing as required by the rule. In a commentary to the decision incorporating the written request provision, the Court cautioned that the “writing requirement is not intended to disadvantage any person who may have difficulty writing a request; if any difficulty exists, the custodian should aid the requestor in reducing the request to writing.” *Commentary, In re Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002).

A public records request “shall provide sufficient specificity to enable the custodian to identify the requested records. The reason for the request is not required to be disclosed.” Fla. R. Gen. Prac. & Jud. Admin. 2.420(m)(1).

The custodian “is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request.” *Commentary, In re Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002).

The custodian shall determine whether the requested records are subject to the rule, whether there are any exemptions, and the form in which the record is provided. Fla. R. Gen. Prac. & Jud. Admin. 2.420(m)(2). If the request is denied, the custodian shall state in writing the basis for the denial. *Id.*

Expedited review of denials of access to administrative records of the judicial branch shall be provided through an action for mandamus, or other appropriate relief. Fla. R. Gen. Prac. & Jud. Admin. 2.420(l). See *Jacobs Keeley, PLLC v. Chief Judge of the Seventeenth Judicial Circuit*, 169 So. 3d 192 (Fla. 4th DCA 2015). And see *C.H.-C v. Miami Herald Publishing Co.*, 262 So. 3d

226 (Fla. 3d DCA 2018) (trial court did not abuse its discretion in finding that newspaper had proper interest in access to redacted transcript of judicial review dependency hearing involving minor children).

c. Discovery material

The Florida Supreme Court has ruled that there is no First Amendment right of access to unfiled discovery materials. *Palm Beach Newspapers v. Burk*, 504 So. 2d 378 (Fla. 1987) (discovery in criminal proceedings); and *Miami Herald Publishing Company v. Gridley*, 510 So. 2d 884 (Fla. 1987), *cert. denied*, 108 S.Ct. 1224 (1988) (civil discovery). *Cf. Lewis v. State*, 958 So. 2d 1027 (Fla. 5th DCA 2007) (*Burk* applies to a request for unfiled depositions made during an ongoing, active criminal prosecution but does not extend to a defendant's request for deposition transcripts after the conviction becomes final; such transcripts must be produced in accordance with Ch. 119, F.S.). *And see SCI Funeral Services of Florida, Inc. v. Light*, 811 So. 2d 796, 798 (Fla. 4th DCA 2002), noting that even though there is no constitutional right of access to prefiled discovery materials, "it does not necessarily follow that there is a constitutional right to *prevent* access to discovery." (emphasis supplied by the court).

Even though unfiled discovery material is not accessible under the First Amendment, it may be open to inspection under Ch. 119, F.S., if the document is a public record which is otherwise subject to disclosure under that law. *See, e.g., Tribune Company v. Public Records*, 493 So. 2d 480, 485 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987), in which the court reversed a trial judge's ruling limiting inspection of police records produced in discovery to those materials which were made part of an open court file because "this conflicts with the express provisions of the Public Records Act." *And see Smithwick v. Television 12 of Jacksonville, Inc.*, 730 So. 2d 795 (Fla. 1st DCA 1999) (trial court properly required defense counsel to return discovery documents once it realized that its initial order permitting removal of the documents from the court file had been entered in error because the requirements of rule 2.420 had not been met).

Thus, in *Florida Freedom Newspapers, Inc. v. McCrary*, 520 So. 2d 32 (Fla. 1988), the Court noted that where pretrial discovery material developed for the prosecution of a criminal case had reached the status of a public record under Ch. 119, F.S., the material was subject to public inspection as required by that statute in the absence of a court order finding that release of the material would jeopardize the defendant's right to a fair trial. *See also Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010) (government not precluded from asserting applicable statutory exemptions to public records that have been disclosed during discovery to a criminal defendant). *And see Post-Newsweek Stations, Florida, Inc. v. Doe*, 612 So. 2d 549 (Fla. 1992) (public's statutory right of access to pretrial discovery information in a criminal case must be balanced against a nonparty's constitutional right to privacy).

d. Florida Bar

"Given that The Florida Bar is 'an official arm of the court,' see R. Regulating Fla. Bar, Introduction, [the Florida Supreme] Court has previously rejected the Legislature's power to regulate what Florida Bar files were subject to public records law . . ." *The Florida Bar v. Committee*, 916 So. 2d 741, 745 (Fla. 2005). *See also The Florida Bar, In re Advisory Opinion Concerning the Applicability of Ch. 119, Florida Statutes*, 398 So. 2d 446, 448 (Fla. 1981) (Ch. 119, F.S., does not apply to unauthorized practice of law investigative files maintained by the Bar). *Cf. Florida Board of Bar Examiners Re: Amendments to the Rules of the Supreme Court of Florida Relating to Admissions to the Bar*, 676 So. 2d 372 (Fla. 1996) (no merit to argument that under Art. I, s. 24, Fla. Const., all records in possession of Board of Bar Examiners should be open for inspection by applicant and the public).

e. Judicial Qualifications Commission and judicial nominating commissions

Proceedings by or before the Judicial Qualifications Commission are confidential until

formal charges against a justice or judge are filed by the Commission with the clerk of the Florida Supreme Court; upon a finding of probable cause and the filing of formal charges with the clerk, the charges and all further proceedings before the Commission are public. See Art. V, s. 12(a)(4), Fla. Const.; *Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit*, 840 So. 2d 1008 (Fla. 2003).

With regard to judicial nominating commissions, Art. V, s. 11(d), Fla. Const., provides that “[e]xcept for deliberations of the . . . commissions, the proceedings of the commissions and their records shall be open to the public.” See Inf. Op. to Frost, November 4, 1987, concluding that correspondence between a member of a judicial nominating commission and persons wishing to obtain an application for a vacant seat on a District Court of Appeal is a public record subject to disclosure.

However, records pertaining to voting, including vote sheets, ballots, and ballot tally sheets “are clearly part of the deliberation process” and, therefore, are not subject to public disclosure. *Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). In addition, personal notes of individual commission members made during the deliberation process are not subject to disclosure because they are mere “precursors” of governmental records, and thus fall outside the definition of “public record.” *Id.*, citing *Shevin v. Byron, Harless, Schaffer, Reid and Associates Inc.*, 379 So. 2d 633 (Fla. 1980).

f. Jury records

(1) Grand jury

Proceedings before a grand jury are secret; therefore, records prepared for use of the grand jury during the regular performance of its duties are not subject to s. 119.07(1), F.S. See *Buchanan v. Miami Herald Publishing Company*, 206 So. 2d 465 (Fla. 3d DCA 1968), *modified*, 230 So. 2d 9 (Fla. 1969) (grand jury proceedings are “absolutely privileged”); and *In re Grand Jury, Fall Term 1986*, 528 So. 2d 51 (Fla. 2d DCA 1988), affirming a trial court order barring public disclosure of motions filed in accordance with s. 905.28, F.S., to repress or expunge stemming from a grand jury presentment not accompanied by a true bill or indictment. See also AGO 90-48 (as an integral part of the grand jury proceeding to secure witnesses, grand jury subpoenas would fall under the “absolute privilege” of the grand jury and not be subject to disclosure under Ch. 119, F.S.).

Thus, a letter written by a city official to the grand jury is not subject to public inspection. AGO 73-177. Similarly, a circuit court held that the list of grand jurors is confidential. *Wood v. Childers*, No. 13-CA-000877 (Fla. 1st Cir. Ct. April 16, 2013), *per curiam affirmed*, 130 So. 3d 1282 (Fla. 1st DCA 2014) available online in the case database at myfloridalegal.com. Accord Inf. Op. to Alexander, September 8, 1995. However, the clerk of court is not authorized to redact the name of a grand jury foreperson or the acting foreperson from an indictment after it has been made public. AGO 99-09.

It is important to emphasize, however, that the exemption from disclosure for grand jury records does not apply to those records which were prepared by a public agency independent of a grand jury investigation. Thus, public records which are made or received by an agency in the performance of its official duties do not become confidential simply because they are subsequently viewed by the grand jury as part of its investigation. As the court stated in *In re Grand Jury Investigation, Spring Term 1988*, 543 So. 2d 757, 759 (Fla. 2d DCA 1989):

Nor can we allow the grand jury to become a sanctuary for records which are otherwise accessible to the public. The mere fact that documents have been presented to a grand jury does not, in and of itself, cloak them in a permanent state of secrecy.

Accordingly, a state attorney and sheriff must provide public access to investigative records regarding a judge that were compiled independently of and prior to a grand jury's investigation of the judge. *In re Grand Jury Investigation, Spring Term 1988, supra*. See also *In re Subpoena To Testify Before Grand Jury*, 864 F.2d 1559 (11th Cir. 1989) (trial court's authority to protect grand jury process enabled court to prevent disclosure of materials prepared for grand jury proceedings; however, court not empowered to prohibit disclosure of documents assembled independent of grand jury proceedings).

There are a number of statutes which relate to secrecy of grand jury proceedings. See ss. 905.24-905.28, F.S., and s. 905.395, F.S. (statewide grand jury). However, although s. 905.27, F.S., "addresses grand jury proceeding secrecy and non-disclosure, it also specifically recognizes a court's inherent authority to order disclosure." *CA Florida Holdings, LLC v. Aronberg*, 360 So. 3d 1149 (Fla. 4th DCA 2023). And see *Butterworth v. Smith*, 110 S.Ct. 1376 (1990) (provisions of s. 905.27, F.S., which prohibit "a grand juror . . . reporter . . . or any other person" appearing before a grand jury from ever disclosing testimony before the grand jury except pursuant to a court order were unconstitutional insofar as they prohibit a grand jury witness from disclosing his own testimony after the term of the grand jury has ended). Cf. *In re: Final Report of the 20th Statewide Grand Jury*, 343 So. 3d 584 (Fla. 4th DCA 2022) (s. 905.395 F.S., does not prohibit statewide grand jury from including witness testimony in the report it intends to release).

(2) Trial jury

In *Kever v. Gilliam*, 886 So. 2d 263 (Fla. 1st DCA 2004), the appellate court ruled that the clerk of court was required to comply with appellant's public records request for names and addresses of trial court jurors empanelled in his trial. Accord AGO 05-61 (statute requiring Department of Highway Safety and Motor Vehicles to provide driver license information to courts for purposes of establishing jury selection lists does not operate to exempt from public disclosure jurors' names and addresses appearing on a jury list compiled by the clerk of court). Cf. *Sarasota Herald-Tribune v. State*, 916 So. 2d 904, 909 (Fla. 2d DCA 2005) (while "[t]here are unquestionably times when it might be necessary for a trial judge to impose media restrictions on the publication of juror information, . . ." trial court order prohibiting news media from publishing names and addresses of prospective or seated jurors in the high profile murder trial constituted a prior restraint on speech); and *WPTV-TV v. State*, 61 So. 3d 1191 (Fla. 5th DCA 2011) (given exceptional media coverage and public interest in upcoming criminal trial, trial court's decision to withhold location of jury selection until a time proximate to the start of the trial was not a material departure from essential requirements of law).

g. Sunshine in Litigation Act

The Sunshine in Litigation Act, s. 69.081, F.S., provides, with limited exceptions, that no court shall enter an order or judgment which has the purpose or effect of concealing a public hazard or which has the purpose or effect of concealing any information which may be useful to members of the public in protecting themselves from injury which may result from a public hazard. See *State v. American Tobacco Company*, No. CL 95-1466-AH (Fla. 15th Cir. Ct. July 28, 1997), available online in the Cases database at the open government site at myfloridalegal.com (upholding constitutionality of Sunshine in Litigation Act).

Additionally, s. 69.081(8), F.S., provides, subject to certain exceptions, that any portion of an agreement which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy, and may not be enforced. Settlement records must be maintained in compliance with Ch. 119, F.S. See Inf. Op. to Barry, June 24, 1998 (agency not authorized to enter into a settlement agreement authorizing the concealment of information relating to an adverse personnel decision from the remainder of a personnel file).

A governmental entity, except a municipality or county, settling a claim in tort which requires the expenditure of more than \$5,000 in public funds, is required to provide notice pursuant to Ch. 50, F.S., of the settlement in the county in which the claim arose within 60 days of entering into the settlement. No notice is required if the settlement has been approved by a court of competent jurisdiction. Section 69.081(9), F.S.

4. Legislature

The Public Records Act does not apply to the legislative branch. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992) (definition of “agency” in the Public Records Act does not include the Legislature or its members). There is, however, a constitutional right of access to legislative records provided in Art. I, s. 24, Fla. Const., which provides that “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body” This right of access specifically includes the legislative branch. Article I, s. 24(a), Fla. Const. The Legislature, however, may provide by general law for the exemption of records provided that such law must state with specificity the public necessity justifying the exemption and be no broader than necessary to accomplish the stated purpose of the law. Article I, s. 24(c), Fla. Const. Each house of the Legislature is authorized to adopt rules governing the enforcement of this section for records of the legislative branch. *Id.* Any statutes providing limitations on access which were in effect on July 1, 1993, continue in force and apply to records of the legislative branch until repealed. Article I, s. 24(d), Fla. Const.

In accordance with Art. I, s. 24(c), Fla. Const., the Senate and House of Representatives have adopted rules relating to records of the legislative branch. These rules may be accessed online at www.flsenate.gov (Florida Senate) and www.myfloridahouse.gov (Florida House of Representatives).

In addition, s. 11.0431(2), F.S., lists legislative records which are exempt from inspection and copying. The text of s. 11.0431, F.S., is set forth in Appendix E. See *League of Women Voters v. Florida House of Representatives*, 132 So. 3d 135, 153 (Fla. 2013) (“We agree that the first issue to be decided is whether the draft [apportionment] plans fall within the scope of the public records exemption in section 11.0431[2][e], Florida Statutes [2012], and that this exemption should be strictly construed in favor of disclosure”). And see s. 11.26(1), F.S. (legislative employees are forbidden from revealing to anyone outside the area of their direct responsibility the contents or nature of any request for services made by any member of the Legislature except with the consent of the legislator making the request); and s. 15.07, F.S. (the journal of the executive session of the Senate shall be kept free from inspection or disclosure except upon order of the Senate itself or some court of competent jurisdiction).

5. Governor and Cabinet

The Governor and Cabinet have duties which derive from both the Constitution and the Legislature. Because of separation of powers principles, the legislatively created Public Records Act does not apply to records gathered in the course of carrying out a specific duty or function which has been assigned to the Governor and Cabinet by the Constitution rather than by statute. See AGO 86-50, stating that materials collected by the former Parole and Probation Commission [now known as the Florida Commission on Offender Review] pursuant to direction of the Governor and Cabinet for pardons or other forms of clemency authorized by Art. IV, s. 8(a), Fla. Const., are not subject to Ch. 119, F.S.

The Public Records Act, however, does apply to the Governor and Cabinet when sitting in their capacity as a board created by the Legislature or whose powers are prescribed by the Legislature, such as the Board of Trustees of the Internal Improvement Trust Fund. In such cases, the Governor and Cabinet are not exercising powers derived from the Constitution but are subject to the “dominion and control” of the Legislature.

In addition, Art. I, s. 24, Fla. Const., establishes a constitutional right of access by providing that “every person” shall have a right of access to public records of the executive branch

and of “each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution” except as otherwise provided in this section or specifically made confidential in the Constitution.

6. Commissions created by the Constitution

A board or commission created by the Constitution is not subject to Ch. 119, F.S., inspection requirements when such board or commission is carrying out its constitutionally prescribed duties. *Cf. Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977) (judicial nominating commissions are not subject to s. 286.011, F.S.); and AGO 77-65 (Ch. 120, F.S., is inapplicable to Constitution Revision Commission established by Art. XI, s. 2, Fla. Const., because the commission is authorized in that section to adopt its own rules of procedure).

Accordingly, the Public Records Act does not apply to the clemency investigative files and reports produced by the Florida Commission on Offender Review [formerly the Parole Commission] on behalf of the Governor and Cabinet relating to the granting of clemency; release of such materials is governed by the Rules of Executive Clemency adopted by the Governor and Cabinet, sitting as the clemency board. *Parole Commission v. Lockett*, 620 So. 2d 153 (Fla. 1993). *Accord Jennings v. State*, 626 So. 2d 1324 (Fla. 1993). *And see* AGO 86-50.

There is, however, a difference between the status of a commission created by the Constitution which exercises constitutional duties and a commission whose creation is merely authorized by the Constitution and whose duties are established by law. While the former is not subject to the Public Records Act, it has been held that a commission performing duties assigned to it by the Legislature must comply with the open government laws. *See Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1st DCA 1980), *affirmed and remanded*, 389 So. 2d 1181 (Fla. 1980), holding that the Parole Commission [now known as the Florida Commission on Offender Review] which Art. IV, s. 8(c), Fla. Const., recognizes may be created by law, is subject to s. 286.011, F.S., in carrying out its statutory duties and responsibilities relating to parole.

Moreover, Art. I, s. 24, Fla. Const., provides a constitutional right of access for public records of each branch of government, and “each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.” The only exceptions to the right of access are those records exempted pursuant to s. 24 or specifically made confidential by the Constitution. Article I, s. 24(a), Fla. Const. *See King v. State*, 840 So. 2d 1047 (Fla. 2003) (clemency records exempt pursuant to s. 14.28, F.S., providing that records made or received by any state entity pursuant to a Board of Executive Clemency investigation are not subject to public disclosure).

C. WHAT RECORDS ARE COVERED? APPLICATION OF THE PUBLIC RECORDS ACT TO:

This section discusses the application of the Public Records Act to various records made or received by agencies in the course of official business. Many, but not all of the statutory exemptions to disclosure for particular records or information are also referenced. For a more complete listing of statutory exemptions, please refer to Appendices C and D and the Index.

1. Adoption and birth records

Except for birth records over 125 years old which are not under seal pursuant to court order, all birth records are considered to be confidential documents and exempt from public inspection; such records may be disclosed only as provided by law. Section 382.025(1), F.S.; AGO 74-70. *Cf.* s. 383.51, F.S. (the identity of a parent who leaves a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, F.S., is confidential).

Adoption records are also confidential and may not be disclosed except as provided in s. 63.162, F.S. *And see* s. 63.165(1), F.S. (state adoption registry); and s. 63.0541, F.S. (putative father registry).

An unadopted individual, however, has the right to obtain his or her birth records which include the names of the individual's parents from the hospital in which he or she was born. *Atwell v. Sacred Heart Hospital of Pensacola*, 520 So. 2d 30 (Fla. 1988).

2. Autopsy and death records

a. Autopsy reports

Autopsy reports made by a district medical examiner pursuant to Ch. 406, F.S., are generally public records and are open to the public for inspection in the absence of an exemption. AGO 78-23. *And see* *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 777 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986), noting that a former statutory exemption precluding release of autopsy reports had been repealed. *Cf. Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (physical specimens relating to an autopsy are not public records).

However, an autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt. Section 406.135(2)(b), F.S. Specific disclosures are authorized as provided in the exemption. *Id.*

Moreover, “[d]ocuments or records made confidential by statute do not lose such status upon receipt by the medical examiner.” AGO 78-23. *See Church of Scientology Flag Service Org., Inc. v. Wood*, *supra* (predeath medical records in the possession of the medical examiner are not subject to public inspection).

In addition, statutory exemptions from disclosure, such as the exemption for active criminal investigative information, may apply to an autopsy report. AGO 78-23. *See Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991), noting the application of the active criminal investigative information exemption to information contained in autopsy records.

b. Autopsy photographs and recordings

Section 406.135(2)(a), F.S., provides that a photograph or video or audio recording of an autopsy held by a medical examiner is confidential and may not be released except as provided by court order or as otherwise authorized in the exemption. *See* AGOs 03-25 and 01-47, discussing the circumstances under which autopsy photographs and recordings may be viewed or copied. *And see* Inf. Op. to Lynn, July 25, 2007 (exemption applies to photographs and recordings taken or made by the medical examiner as a part of the autopsy process, including those taken before, during, and after the medical examiner performs the actual autopsy procedure). *Cf. Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003) (upholding trial court finding that newspaper failed to establish good cause for release of autopsy photographs of race car driver). *Compare Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 14 (Fla. 2d DCA 2005), *review denied*, 918 So. 2d 293 (Fla. 2005), *cert. dismissed*, 126 S. Ct. 1139 (2006), in which the district court reversed a trial court order that had barred the media from viewing autopsy photographs that were admitted into evidence in open court during a murder trial; according to the appellate court, s. 406.135, F.S., “does not render these *court exhibits* confidential.” (e.s.)

c. Photographs, video and audio recordings that depict or record the killing of a law enforcement officer, or the killing of a minor, or the killing of a victim of mass violence

A photograph or video or audio recording that depicts or records the killing of a law enforcement officer acting in accordance with his or her official duties, or the killing of a minor, or the killing of a victim of mass violence is confidential and exempt from s. 119.07(1), F.S., and may not be disclosed except as authorized in the exemption. Section 119.07(2)(p), F.S. For more information please refer to the discussion on pages 125-126.

d. Death certificates

Information relating to cause of death in all death and fetal death records, and the parentage, marital status, and medical information of fetal death records are confidential and exempt from s. 119.07(1), F.S., except for health research purposes as approved by the Department of Health. Section 382.008(6), F.S. *And see* s. 28.2221(5)(a), F.S. (clerk of court not authorized to place certain records, including death certificates, on a publicly available Internet website); s. 382.008(8), F.S. (confidential information in nonviable birth certificates). *Cf. Department of Health v. Rehabilitation Center at Hollywood Hills, LLC*, 259 So. 3d 979, 982 (Fla. 1st DCA 2018), overturning the lower court's order holding the agency in contempt for failing to produce death certificates of all Floridians who died within a specified time period because, among other things, the final judgment "failed to take into account the confidential or exempt status of information in the death certificates it ordered the Department to produce").

Section 382.025(2)(a), F.S., provides for the Department of Health to authorize the issuance of a certified copy of all or part of a death or fetal death certificate, excluding the portion that is confidential pursuant to s. 382.008, F.S., upon payment of the fee prescribed by that section. The statute also specifies those persons and governmental agencies authorized to receive a copy of a death certificate that includes the confidential portions. All portions of a death certificate cease to be exempt 50 years after the death. Section 382.025(2)(b), F.S.

3. Child and vulnerable adult abuse and protection records

a. Department of Children and Families abuse records

(1) Confidentiality of abuse records

Generally, reports of abused children or vulnerable adults which are received by the Department of Children and Families (DCF) are confidential and exempt from disclosure, except as expressly provided by statute. *See* ss. 39.202(1) and 415.107(1), F.S.

Thus, a union representative may not attend that portion of an investigatory interview between the DCF inspector general and an employee requiring the discussion of information taken from a child abuse investigation that is confidential under s. 39.202, F.S. AGO 99-42. *And see* s. 383.412(2)(b), F.S., providing that any information held by the State Child Abuse Death Review Committee or a local committee which reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, or which reveals the identity of the surviving siblings, family members, or others living in the home of such deceased child is confidential and exempt from disclosure requirements. In addition, the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential. Section 383.412(2)(a), F.S.

All records and reports of the Child Protection Team of the Department of Health are confidential and exempt, and shall not be disclosed, except, upon request, to the state attorney, law enforcement, DCF, and necessary professionals in furtherance of the treatment or additional evaluative needs of the child, by court order, or to health plan payors, limited to that information used for insurance reimbursement purposes. Section 39.202(6), F.S. *And see* s. 415.1103(10)(a), F.S. (information contained in a record created by an elder or vulnerable adult fatality review team that reveals the identity of a victim of abuse, exploitation or neglect or the identity of persons responsible for the welfare of such victim is confidential and exempt from disclosure requirements).

(2) Release of abuse records

Section 39.202(1), F.S., authorizes any person or organization, including DCF, to petition the court to make public DCF records relating to its investigation into alleged abuse, neglect, exploitation or abandonment of a child. The court shall determine if good cause exists for public access to the records and is required to balance the best interest of the child and the interests of the child's siblings, together with the privacy rights of other persons identified in the reports against the public interest. *Id.*

This “balancing process” thus “requires the trial court to weigh the harm to the child against the benefit to the public that would potentially result from the disclosure of the records at issue.” *In re Records of the Department of Children and Family Services*, 873 So. 2d 506, 513 (Fla. 2d DCA 2004). To perform this function, the trial court must conduct an in camera review because “[i]t is impossible to judge the potential impact of the disclosure of information contained in records without knowing what that information is.” *Id.* at 514. *But see Department of Health and Rehabilitative Services v. Gainesville Sun Publishing Company*, 582 So. 2d 725 (Fla. 1st DCA 1991), holding that the trial court was not required to hold a hearing before finding good cause to release the department’s records relating to a child abuse investigation, where shortly after the department’s investigation, the individual who had been investigated killed the victim, the victim’s family, and himself.

In cases involving serious bodily injury to a child, DCF may petition the court for immediate public release of records pertaining to the protective investigation. Section 39.202(2), F.S. The court has 24 hours to determine if good cause exists for public release of the records. If no action is taken by the court in that time, DCF may, subject to specified exceptions, release summary information including a confirmation that an investigation has been conducted concerning the victim, the dates and a brief description of procedural activities undertaken in the investigation, and information concerning judicial proceedings. *Id.*

Similar procedures are established in Ch. 415, F.S., for access to DCF records relating to investigations of alleged abuse, neglect, or exploitation of a vulnerable adult. *See* s. 415.1071, F.S.

The petitioner seeking public access to the records must formally serve DCF with the petition. *Florida Department of Children and Families v. Sun-Sentinel*, 865 So. 2d 1278 (Fla. 2004). A “very narrow” exception to the home venue privilege applies when a petition is filed seeking to make DCF records public. *See Sun-Sentinel, supra*, at 1289, adopting the exception in cases “where a party petitions the court for an order to gain access to public records, and where the records sought are by law confidential and cannot be made public without a determination by the court, pursuant to the petition, that good cause exists for public access.”

Section 39.202(2)(o), F.S., provides that access to child abuse records shall be granted to any person in the event of the child’s death due to abuse, abandonment, or neglect. However, any information identifying the person reporting abuse, abandonment, or neglect, or any information that is otherwise made confidential or exempt by law shall not be released. *Id.* Section 415.107(3)(l), F.S., provides for similar release of records in the event of the death of a vulnerable adult. *And see* s. 39.202(4), F.S., authorizing DCF and the investigating law enforcement agency to release certain identifying information to the public in order to help locate or protect a missing child under investigation or supervision of the department or its contracted service providers. *Cf.* s. 39.202(7), F.S. (duties of custodians of records made confidential under s. 39.202 to provide access as requested by legislative committee acting under s. 11.43, F.S.).

In addition, “it is the intent of the Legislature to provide prompt disclosure of the basic facts of all deaths of children from birth through 18 years of age which occur in this state and which are reported to the [DCF] central abuse hotline.” Section 39.202(1), F.S. Disclosure shall be posted on the DCF public website. *Id.* Section 39.202(2), F.S., lists the information about the child which must be posted.

b. Foster home, licensure and quality assurance records

Records relating to licensure of foster homes, or assessing how the Department of Children and Families is carrying out its duties, including references to incidents of abuse, abandonment, or neglect, contained in such records, do not fall within the parameters of s. 39.202, F.S. AGO 01-54. Such reports are in the nature of quality assurance reports that do not substitute for the protective investigation of child abuse, abandonment, or neglect; to the extent that such incident reports reference an occurrence of abuse, abandonment, or neglect, identifying information that reveals the identity of the victim contained in the reference should be redacted. *Id.* *Cf.* s. 409.175(16), F.S., providing an exemption

for certain personal information about licensed foster parents, foster parent applicants, and their families. *And see* *Boyles v. Mid-Florida Television Corp.*, 431 So. 2d 627, 637 (Fla. 5th DCA 1983), *approved*, 467 So. 2d 282 (Fla. 1985) (summary report compiled during a licensing investigation of a residential facility for developmentally disabled persons, subject to disclosure pursuant to statute [now found at s. 393.067(9), F.S.] providing for public access to inspection reports of such facilities).

c. Guardians ad litem and court monitors

Section 39.0132(4)(a)2., F.S., establishes confidentiality for specified information held by a guardian ad litem. *And see* s. 744.2104(2), F.S. (confidentiality of records held by the Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults, persons with a developmental disability, or persons with a mental illness); s. 744.1076(1)(b), F.S. (except as provided in the exemption, reports of court monitors or emergency court monitors which relate to the medical condition, financial affairs, or mental health of the ward are confidential); s. 744.2103 (2), F.S. (no disclosure of the personal or medical records of a ward of a public guardian shall be made, except as authorized by law); and s. 744.3701, F.S. (court records relating to settlement of a ward or minor's claim).

d. Status of abuse records held by law enforcement agencies

For information regarding the status of abuse records held by law enforcement agencies in the course of a criminal investigation, please refer to the discussion in s. C. 15 relating to law enforcement records.

4. Direct-support organizations

Direct-support organizations established by or pursuant to law to support the efforts of public agencies have been found to be subject to the open government laws. *See* AGOs 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions must comply with open government laws), 11-01 (nonprofit corporation created by municipality and described as its "fundraising arm" subject to open government laws); and 05-27 (Sunshine Law applies to Florida College System institution [formerly community college] direct-support organization as defined in s. 1004.70, F.S.). *Cf.* s. 20.058, F.S., requiring that citizen support organizations or direct-support organizations created or authorized by law or executive order and created, approved, or administered by an agency must submit specified information to the agency which shall then post the information on the agency's website.

However, the Legislature has enacted exemptions for information identifying *donors* to certain direct-support organizations. For example, the identity of donors to a direct-support organization of a district school board, and all information identifying such donors and prospective donors, are confidential and exempt from the provisions of s. 119.07(1), F.S.; that anonymity is required to be maintained in the auditor's report. *See* s. 1001.453(4), F.S.

More commonly, however, the statutory exemption applies only to the identity of donors who wish to remain anonymous. *See, e.g.,* s. 570.691(6), F.S. (identity of a donor or prospective donor to the direct-support organizations authorized to support programs in the Department of Agriculture and Consumer Services "who desires to remain anonymous and all information identifying such donor or prospective donor" is confidential). *Cf.* s. 265.7015, F.S. (if the donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt).

The identity of donors to a university direct-support organization who wish to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report of the organization. Section 1004.28(5)(a), F.S. Other than the auditor's report, management letter, any records related to the expenditure of state funds, and any financial records related to

the expenditure of private funds for travel, all records of a university direct-support organization and any supplemental data requested by the Board of Governors, the Auditor General, board of trustees, and the Office of Program Policy Analysis and Government Accountability [OPPAGA] are confidential and exempt from s. 119.07(1), F.S. Section 1004.28(5)(b), F.S.

By contrast, s. 1004.70(6), F.S., provides that records of the Florida College System institution direct-support organizations other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and OPPAGA, are confidential and exempt from s. 119.07(1), F.S. See *Palm Beach Community College Foundation, Inc. v. WFTV*, 611 So. 2d 588 (Fla. 4th DCA 1993) (direct-support organization's expense records are public records subject to deletion of donor-identifying information).

For more information on exemptions for particular direct-support or citizen-support organizations, please consult Appendix D or the Index.

5. Domestic violence and stalking records

Information about clients received by the Department of Children and Families or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection or otherwise, is confidential and exempt from disclosure except as provided by statute. Section 39.908, F.S. Information about the location of domestic violence centers and facilities is also confidential. *Id.*

A petitioner seeking an injunction for protection against domestic violence may furnish the petitioner's address to the court in a separate confidential filing for safety reasons. Section 741.30(3)(b), F.S. And see ss. 784.046 (4) (b) (repeat violence, sexual violence or dating violence) and s. 784.0485(3)(b) (stalking). In addition, a petition for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to a failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from disclosure. Section 119.0714(1)(k)1., F.S. Prior to July 1, 2017, the petition is exempt only upon request by an individual named in the petition as a respondent. Section 119.0714(1)(k)2., F.S. And see s. 119.0714(1)(k)3., F.S., providing confidentiality for information that can be used to identify the petitioner or respondent until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.

Section 406.135(2)(b), F.S., provides that an autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt. Disclosure is authorized under specified circumstances, as provided in s. 406.135(2) and (3), F.S.

A victim of domestic violence or aggravated stalking may file a written request, accompanied by official verification that a crime has occurred, to have his or her home or employment address, home or employment telephone number, or personal assets exempted from disclosure. Section 119.071(2)(j)1., F.S. For more information on this exemption, please refer to the discussion on pages 122-123. And see s. 741.313(7), F.S. (personal identifying information contained in records documenting an act of domestic violence or sexual violence that is submitted to an agency by an employee seeking to take leave under the requirements of s. 741.313, F.S., is confidential and exempt; a written request for leave submitted by an employee and an agency time sheet reflecting such request are confidential and exempt until 1 year after the leave has been taken). See also s. 787.03(6)(c), F.S. (current address and telephone number of the person taking the minor or incompetent person when fleeing from domestic violence and the current address and telephone number of the minor or incompetent person which are contained in the report made to a sheriff or state attorney under s. 787.03[6][b], F.S., are confidential and exempt from disclosure).

The addresses, telephone numbers, and social security numbers of participants in the Address Confidentiality Program for Victims of Domestic Violence Program [Program] are exempt from disclosure, except as provided in the exemption. Section 741.465(1), F.S. A similar exemption is provided for the names, addresses, and telephone numbers of program participants contained in voter registration and voting records. Section 741.465(2), F.S. *And see s. 741.4651, F.S.* (names, addresses, and telephone numbers of persons who are victims of stalking or aggravated stalking are exempt from public disclosure requirements in the same manner that the names, addresses and telephone numbers of participants in the Program which are held by the Attorney General under s. 741.465, F.S., are exempt, provided that the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with the procedures in ss. 741.401-741.409, F.S.).

Any information in a record created by a domestic violence fatality review team that reveals the identity of a domestic violence victim or the identity of the victim's children is confidential and exempt from disclosure. Section 741.3165, F.S.

6. Drafts and notes

There is no “unfinished business” exception to the public inspection and copying requirements of Ch. 119, F.S. As the Florida Supreme Court stated in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), the term “public record” means “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.” Such material is a “public record” regardless of whether it is in final form or the ultimate product of an agency. *Id.*

Thus, “[i]nteroffice memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records in as much as they supply the final evidence of knowledge obtained in connection with the transaction of official business.” 379 So. 2d at 640. *See also Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 229 (Fla. 3d DCA 1998) (book selection forms completed by state university instructors and furnished to campus bookstore “are made in connection with official business, for memorialization and communication purposes” and are public records); and *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (transcript and response prepared as part of NCAA disciplinary proceeding involving state university were public records because the “the purpose of the transcript was to perpetuate the information presented to the infractions committee” and the response “was designed to communicate information to the body that would hear the appeal within the NCAA”). *Compare Rogers v. Hood*, 906 So. 2d 1220, 1223 (Fla. 1st DCA 2005), *review denied*, 919 So. 2d 436 (Fla. 2005) (unused or unvoted Florida punch card ballots from 2000 election do not constitute public records because they do not “perpetuate, communicate, or formalize knowledge,” but a ballot becomes a public record once it is voted because at that point “the voted ballot, as received by the supervisor of elections in a given county, has memorialized the act of voting”).

Accordingly, any agency record, if circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked “preliminary” or “working draft” or similar label. Examples of such materials include interoffice memoranda, preliminary drafts of agency rules or proposals which have been submitted for review to anyone within or outside the agency, and working drafts of reports which have been furnished to a supervisor for review or approval.

In each of these cases, the fact that the records are part of a preliminary process does not remove them from the definition of “public record.” When material falls within the statutory definition of “public record” in s. 119.011(12), F.S., and has been prepared to “perpetuate, communicate or formalize knowledge,” the record is subject to disclosure even if the agency

believes that release of the nonfinal product could be detrimental. *See, e.g., Gannett Corporation, Inc. v. Goldtrap*, 302 So. 2d 174 (Fla. 2d DCA 1974) (county's concern that premature disclosure of a report could be harmful to the county does not make the document confidential). As with other public records, only the Legislature has the authority to exempt preliminary or draft public records from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). *See, e.g., s. 119.071(1)(d), F.S.*, providing a limited work product exemption for agency attorneys.

While the broad definition of the term “public record” ensures that the public’s right of access includes preliminary and nonfinal records, the *Shevin* decision recognizes that not every record made or received in the course of official business is prepared to “perpetuate, communicate or formalize knowledge.” Accordingly, preliminary drafts or notes prepared for the personal use of the writer may constitute mere “precursors” of public records *if* they are not intended to be the final evidence of the knowledge recorded. *See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla.1980). *And see* the discussion of “attorney notes” on pages 132-133.

Thus, public employees’ notes to themselves “*which are designed for their own personal use* in remembering certain things do not fall within the definition of ‘public record.’” (e.s.) *Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission*, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). *Accord Coleman v. Austin*, 521 So. 2d 247 (Fla. 1st DCA 1988), holding that preliminary handwritten notes prepared by agency attorneys and intended only for the attorneys’ own personal use are not public records. *See also* AGO 10-55 (handwritten personal notes taken by city manager to assist in remembering matters discussed during manager’s interviews of city employees are not public records “if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge”); and Inf. Op. to Trovato, June 2, 2009 (to the extent city commissioner has taken notes for his own personal use and such notes are not intended to perpetuate, communicate, or formalize knowledge, personal notes taken at a workshop or during a commission meeting would not be considered public records). *Compare Barfield v. City of Sarasota*, 21 F. L.W. Supp 874 (Fla. 12th Cir. Ct. May 5, 2014), in which the circuit judge ruled that those portions of police officer’s notes containing his research on homeless shelters became a public record when he made multiple references to them while answering questions during a presentation at a city commission meeting; however the unread portions of the notes did not become a public record because they were not disseminated.

The relevant test is whether the records have been prepared to “perpetuate, communicate, or formalize knowledge of some type.” *See* AGO 05-23, stating that “it is only uncirculated materials that are not in and of themselves intended to serve as the final evidence of the knowledge to be recorded that fall outside of the definition of a public record.” *Accord* AGOs 10-55 (“nonfinal documents need not be communicated to anyone in order to constitute a public record”) and 04-15 (tape recordings of staff meetings made at the request of the executive director by a secretary for use in preparing minutes of the meeting are public records because “they are made at the request of the executive director as an independent record of the proceedings, and, unlike tapes or notes taken by a secretary as dictation, are intended to perpetuate the discussion at a staff meeting”). *See also* Inf. Op. to Yoder, November 10, 2014 (video recording of a school board meeting which was made at the direction of a school board member “appears to be a record intended to perpetuate the discussion at the meeting”).

For example, in *Miami Herald Media Co. v. Sarnoff*, 971 So. 2d 915 (Fla. 3d DCA 2007), the court held that a memorandum prepared by a city commissioner after a meeting with a former city official, summarizing details of what was said and containing alleged factual information about possible criminal activity, was a public record subject to disclosure. The court determined that the memorandum was not a draft or a note containing mental impressions that would later form a part of a government record, but rather formalized and perpetuated his final knowledge gained at the meeting. *See also Grapski v. City of Alachua*, 31 So. 3d 193, 197 (Fla.

1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (canvassing board minutes constitute “final work product of the [b]oard, not a preliminary draft or note”); *City of Pinellas Park, Florida v. Times Publishing Company*, No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001), available online at the open government site at myfloridalegal.com (rejecting city’s argument that employee responses to survey are “notes” which are not subject to disclosure because “as to each of the employees, their responses were prepared in connection with their official agency business and they were ‘intended to perpetuate, communicate, or formalize knowledge’ that they had about their department”); and AGO 05-23 (handwritten notes taken by an assistant city labor attorney during her interviews with city personnel that were reviewed by the city’s labor attorney, used to prepare a disciplinary action form, and then filed, constituted a public record).

7. Education records

a. Charter schools

Section 1002.33(16)(b), F.S., provides that charter schools are subject to the Public Records Act and the Sunshine Law. The open government laws apply regardless of whether the charter school operates as a public or private entity. AGO 98-48. The records and meetings of a not-for-profit corporation granted charter school status are subject to the requirements of Ch. 119, F.S., and s. 286.011, F.S., even though the charter school has not yet opened its doors to students. AGO 01-23. *And see* AGO 2010-14 (records of team created by charter school to review personnel decisions subject to Ch. 119, F.S.).

b. Student records

Public access to student records is limited by statute. In 2009, the Legislature amended the state statutes relating to student records to incorporate the federal Family Education Rights and Privacy Act (FERPA). Section 1002.221(1), F.S., provides that “[e]ducation records as defined in [FERPA], and the federal regulations issued pursuant thereto, are confidential and exempt” from public disclosure and may be released only as authorized in the exemption. “Education records” are defined by FERPA to mean “those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. s. 1232g(a)(4) (A). *Cf.* AGO 10-04 (school board meeting at which student records may be discussed may not be closed to the public in the absence of a statutory exemption from the Sunshine Law; however, “school board should be sensitive to confidential student records that may be reviewed during such a meeting and protect these records to the extent that is possible to protect the privacy of the student involved . . .”). *Compare* s. 1003.57(1)(c), F.S., providing an exemption from the Sunshine Law for hearings on exceptional student identification, evaluation, and eligibility determination; and s. 1006.07(1)(a), F.S. (student expulsion hearings exempted).

Public postsecondary educational institutions are also required to comply with FERPA with respect to the education records of students. Section 1002.225(2), F.S. Section 1006.52(1), F.S., authorizes a public postsecondary educational institution to prescribe the content and custody of records the institution maintains on its students and applicants for admission. A student’s education records and applicant records are confidential and exempt. *Id.* *See Knight News, Inc. v. University of Central Florida*, 200 So. 3d 125, 128 (Fla. 5th DCA 2016) (personally identifiable information contained within records regarding alleged hazing incidents qualifies as confidential student disciplinary records; however, the names of student government officers charged with malfeasance in the performance of student government duties or alleged to have engaged in misconduct with regard to their election or appointment to their position are not confidential under FERPA because “given the statutory scheme [relating to university student government officers] student government officers know or reasonably should know” that they could be disciplined for misconduct in connection with their student government duties).

In *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1211 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010), the court construed FERPA and the

2009 amendments to the Florida Statutes. Recognizing that under FERPA a record “qualifies as an educational record only if it ‘directly’ relates to a student,” the court found that a transcript of an NCAA hearing and an NCAA committee response pertained to allegations of misconduct by the university athletic department, and only tangentially related to students. Therefore, since the transcript and the response had been redacted to remove student-identifying information and thus did not disclose education records, they were not exempt from disclosure. *And see Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013) (student’s unredacted email which criticized instructor’s classroom performance constituted an exempt education record). Compare *WFTV v. School Board of Seminole County, Florida*, 874 So. 2d 48 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004), concluding that under prior student confidentiality laws (which did not incorporate FERPA), a school bus surveillance videotape was a confidential student record and could not be released to the media even with student-identifying information redacted).

In AGO 01-64 the Attorney General, in interpreting the former statutes, stated that a felony complaint/arrest affidavit created and maintained by school police officers for a juvenile or adult who is a student in the public schools is a law enforcement record subject to disclosure, provided that exempt information such as active criminal investigative information is deleted prior to release. *See now* 20 U.S.C. s. 1232g(a)(4)(B)(ii) excluding “records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement” from the definition of “education records.”

c. Children in government-sponsored recreation programs

Section 119.071(5)(c), F.S., exempts information that would identify or locate a child or the parent or guardian of a child, participating in a government-sponsored recreation program. A government-sponsored recreation program means “a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs.” *Id.*

d. School system security—Please see pages 158-159.

e. Testing materials

Testing materials are generally exempt from the disclosure provisions of s. 119.07(1), F.S. *See, e.g.,* s. 1008.23(1)(2), F.S. (examination and assessment instruments, including developmental materials and workpapers directly related to such instruments, which are prepared or administered pursuant to cited statutes). *See* AGO 09-35, concluding that student assessment tests developed by teachers to measure student preparedness for college board advanced placement exams are confidential and exempt from the inspection and copying requirements of Ch. 119, F.S. *Cf.* s. 1008.24(4)(b), F.S. (identity of a school or postsecondary educational institution, personal identifying information of personnel of a school district or postsecondary educational institution, or specific allegations of misconduct obtained or reported in connection with an investigation of a testing impropriety conducted by the Department of Education are confidential and exempt from disclosure until the investigation is concluded or becomes inactive).

8. Election records

a. Ballots

Election records are generally open to public inspection. An individual or group is entitled to inspect the ballots and may take notes regarding the number of votes cast. AGO 93-48. *See also Rogers v. Hood*, 906 So. 2d 1220, 1223 (Fla. 1st DCA 2005), *review denied*, 919 So. 2d 436 (Fla. 2005) (voted ballots are public records because they have “memorialized the act of voting”). *Cf. Trout v. Bucher*, 205 So. 3d 876 (Fla. 4th DCA 2016), stating that the supervisor of elections was not required to charge the hourly rate of the lowest paid person capable of providing ballots for inspection because s. 119.07(4)(d), F.S., authorizes the agency to impose a reasonable charge based on labor costs “actually incurred by the agency or attributable to the agency” when extensive clerical or supervisory assistance is required).

Section 119.07(5), F.S., prohibits any person other than the supervisor of elections or the supervisor's employees from touching the ballots. *And see* s. 101.572, F.S. (no persons other than the supervisor, supervisor's employees, or the county canvassing board shall handle any official ballot or ballot card). However, this restriction does not prohibit the supervisor from producing copies of optically scanned ballots which were cast in an election in response to a public records request. AGO 04-11. *And see* AGO 01-37.

Information regarding requests for vote-by-mail ballots that is recorded by the supervisor of elections pursuant to s. 101.62(2), F.S., is confidential and exempt and shall be made available to or reproduced only for the individuals and entities set forth in the exemption, for political purposes only. Section 101.62(2), F.S.

b. Voter registration and voter records

Section 97.0585(1), F.S., states that the following information is confidential and exempt from public disclosure requirements and may be used only for purposes of voter registration: declarations to register to vote; information relating to the place where a person registered to vote or updated a voter registration; the social security number, driver license number, and the Florida identification number of a voter registration applicant or voter; and all information concerning preregistered voter registration applicants who are 16 or 17 years old. The signature of a voter registration applicant or a voter is exempt from copying requirements. Section 97.0585(2), F.S.. *See also* ss. 741.465(2), F.S. (identifying information concerning participants in the Office of the Attorney General Address Confidentiality Program for Victims of Domestic Violence contained in voter registration and voting records is exempt); and 741.4651, F.S. (exemption for identifying information of stalking victims who have filed a sworn statement of stalking with the Office of the Attorney General and otherwise comply with the procedures set forth in ss. 741.401-741.409, F.S.). *And see* AGO 04-18 (specified officers and employees who are authorized to file a request for exempt status of certain personal information pursuant s. 119.071(4)(d)3., F.S., may request that the supervisor of elections maintain the exempt status of such information contained in petitions or campaign papers).

Section 98.075(2)(b), F.S., allows the Department of State to join a nongovernmental entity composed of state and District of Columbia election officials whose sole purpose is to share and exchange information in order to verify voter registration information. Information received by the department from another state or the District of Columbia which is confidential or exempt pursuant to the laws of that state or the District of Columbia is exempt from disclosure. Section 98.075(2)(c), F.S.

9. Electronic and computer records

a. Electronic databases and files

Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet . . ." *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983). *And see National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (public records law is not limited to paper documents but applies to documents that exist only in digital form); AGO 98-54 (application and disciplinary reports maintained in a computer system operated by a national securities dealers association which are received electronically by state agency for use in licensing and regulating securities dealers doing business in Florida are public records); AGO 91-61 (agency must provide copy of computer disk in response to Ch. 119 request); and AGO 85-03 (computer tape subject to disclosure).

Thus, information such as electronic calendars, databases, and word processing files stored in agency computers, can all constitute public records because records made or received in the course of official business and intended to perpetuate, communicate or formalize knowledge of some type, fall within the scope of Ch. 119, F.S. AGO 89-39. *Compare* AGO 85-87 (to the

extent that “machine-readable intermediate files” may be intended to “communicate” knowledge, any such communication takes place completely within the data processing equipment and in such form as to render any inspection pursuant to Ch. 119, F.S., unintelligible and, except perhaps to the computer itself, meaningless; therefore, these files are analogous to notes used to prepare some other documentary material, and are not public records). *And see Grapski v. Machen*, No. 01-2005-CA-4005 J (Fla. 8th Cir. Ct. May 9, 2006), *affirmed per curiam*, 949 So. 2d 202 (Fla. 1st DCA 2007), available online in the Cases database at the open government site at myfloridalegal.com (spam or bulk mail received by a public agency does not necessarily constitute a public record).

Moreover, the definition of “public records” specifically includes “data processing software” and establishes that a record made or received in connection with official business is a public record, regardless of physical form, characteristics, “or means of transmission.” *See s. 119.011(12)*, F.S. “Automation of public records must not erode the right of access to [public records].” Section 119.01(2)(a), F.S.

Accordingly, electronic public records are governed by the same rule as written documents and other public records--the records are subject to public disclosure unless a statutory exemption exists which removes the records from disclosure. *Cf. AGO 90-04*, stating that a county official is not authorized to assign the county’s right to a public record (a computer program developed by a former employee while he was working for the county) as part of a settlement compromising a lawsuit against the county. *And see* the discussion on pages 132-134 noting that in evaluating whether a public official’s records were made or received in the course of official business for purposes of Ch. 119, the determining factor is the nature of the record, and not whether the record is located in a private or a government computer or communications device.

b. Consideration of public access in design of electronic recordkeeping system

When an agency is designing or acquiring an electronic recordkeeping system, the agency must consider whether the proposed system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange. Section 119.01(2)(b), F.S. *Cf. Inf. Op. to Moore*, October 19, 1993, noting that an agency considering the acquisition of computer software should be responsive to the need for preserving public access to the information through use of the computer’s software and that “[t]he design and development of the software, therefore, should ensure that the system has the capability of redacting confidential or exempt information when a public records request is made.”

Similarly, an agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are online or stored in an electronic recordkeeping system used by the agency. Section 119.01(2)(c), F.S. *And see s. 287.042(3)(h)*, F.S. (Department of Management Services responsible for development of procedures to be used by state agencies when procuring information technology commodities and contractual services that ensure compliance with public records and records retention requirements). *Cf. Rule 1B-26.003*, F.A.C., adopted by the Department of State and providing standards for electronic recordkeeping.

Providing access to public records “is a duty of each agency.” Section 119.01(1), F.S. Section 119.01(2)(a), F.S., states that “[a]utomation of public records must not erode the right of access to those records.” A circuit judge found that an agency violated both policies when it established an automated anti-SPAM system that quarantined the requester’s “entirely legitimate public records request” and allowed it to be deleted and purged a week later, because the agency “altogether failed to establish any procedural safeguards to ensure that legitimate public records requests were not inadvertently sent to SPAM.” *Bracci v. School Board of Lee County*, No. 20-CA-5205 (Fla. 20th Cir. Ct. January 12, 2021), available online in the Cases database at the open government site at myfloridalegal.com.

c. E-Mail

E-mail messages made or received by agency officers and employees in connection with official business are public records and subject to disclosure in the absence of an exemption. AGOs 96-34 and 01-20. See *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013), noting that “electronic communications, such as e-mail, are covered [by the Public Records Act] just like communications on paper.” Cf. s. 668.6076, F.S., requiring agencies that operate a website and use electronic mail to post the following statement in a conspicuous location on the agency website: “Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.”

Similarly, e-mails sent by city commissioners in connection with the transaction of official business are public records subject to disclosure even though the e-mails contain undisclosed or “blind” recipients and their e-mail addresses. AGO 07-14. Cf. *Butler v. City of Hallandale Beach*, 68 So. 3d 278 (Fla. 4th DCA 2011) (affirming a trial court order finding that a list of recipients of a *personal* e-mail sent by mayor from her personal computer was not a public record).

Like other public records, e-mail messages are subject to the statutory restrictions on destruction of public records. See s. 257.36(6), F.S., stating that a public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the Division of Library and Information Services (division) of the Department of State. Thus, an e-mail communication of “factual background information” from one city council member to another is a public record and should be retained in accordance with the retention schedule for other records relating to performance of the agency’s functions and formulation of policy. AGO 01-20.

d. Social media postings

The Attorney General’s Office has stated that the placement of material on a city’s Facebook page presumably would be in connection with the transaction of official business and thus subject to Ch. 119, F.S., although in any given instance, the determination would have to be made based upon the definition of “public record” contained in s. 119.011(12), F.S. AGO 09-19. To the extent that the information on the city’s Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established in accordance with s. 257.36(6), F.S. *Id.* And see AGO 08-07 (city council members who post comments and emails relating to the transaction of city business on a privately owned and operated website “would be responsible for ensuring that the information is maintained in accordance with the Public Records Law”).

The determination as to whether a list or record of accounts which have been blocked from posting to or accessing an elected official’s personal Twitter feed is a public record involves mixed questions of law and fact which cannot be resolved by the Attorney General’s Office. Inf. Op. to Shalley, June 1, 2016. However, “if the tweets the public official is sending are public records [because they were sent in connection with the transaction of official business] then a list of blocked accounts, prepared in connection with those public records ‘tweets,’ could well be determined by a court to be a public record.” *Id.* Cf. *Knight First Amendment Institute v. Trump*, No. 18-1691 (2d Cir. July 9, 2019) (public official engaged in unconstitutional viewpoint discrimination by blocking certain users from access to his Twitter account, which is otherwise open to the public at large and “used for all manner of official duties,” because he disagreed with their speech).

e. Text messages

A public official or employee’s use of a private cell phone to conduct public business via text messaging “can create an electronic written public record subject to disclosure” if the text message is “prepared, owned, used, or retained . . . within the scope of his or her employment or agency.” *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040-1041 (Fla. 4th DCA 2018). Accord *City of Sunny Isles Beach v. Gatto*, 338 So. 3d 1045 (Fla. 3d DCA 2022), noting that a “city commissioner’s text messages may be a public record,” although a private communication by a municipal official

“falls outside the definition of public record.” For more information on personal records created or received by public officials on government or private devices, please see the discussion of that topic on page 133-135.

In order to comply with the requirements of the Public Records Act, “the governmental entity must proceed as it relates to text messaging no differently than it would when responding to a request for written documents and other public records in the entity’s possession—such as emails—by reviewing each record, determining if some or all are exempted from production, and disclosing the unprotected records to the requester.” *O’Boyle v. Town of Gulf Stream*, at 1041. *And see* the discussion on page 165 regarding the entity’s responsibility to conduct a reasonable search to locate text messages that have been requested from the governmental entity, including those located on private accounts or devices.

The retention periods for text messages and other electronic messages or communications “are determined by the content, nature, and purpose of the records, and are set based on their legal, fiscal, administrative, and historical values, regardless of the format in which they reside or the method by which they are transmitted.” *See* General Records Schedule GS1-SL for State and Local Government Agencies, Electronic Communications, available online at dos.myflorida.com/library-archives. Stated another way, it is the content, nature and purpose of the electronic communication that determines how long it is retained, not the technology that is used to send the message. *See also* Inf. Op. to Browning, March 17, 2010, advising that the same[retention] rules that apply to e-mail should apply to electronic communications including SMS communications (text messaging), MMS communications (multimedia content), and instant messaging conducted by government agencies.

f. Cybersecurity

Please see the discussion on that topic on page 158.

10. Emergency records

a. Emergency “911” records

Section 365.171(12)(a), F.S., provides that any record, recording, or information, or portions thereof, obtained by a public agency for the purpose of providing services in an emergency which reveals the name, address, or telephone number or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt from s. 119.07(1), F.S. However, disclosure of the location of a coronary emergency to a private person or entity that owns an automated external defibrillator is authorized in some circumstances, as set forth in the exemption. Section 365.171(12)(b), F.S.

The exemption applies only to the name, address, telephone number or personal information about or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. Section 365.171(12)(a), F.S. *See* AGO 93-60. There is no clear indication that the Legislature intended to include the sound of a person’s voice as information protected from disclosure. AGO 15-01. Moreover, identifying information obtained or created independently of the 911 call, for example from a criminal investigation or offense report created as a result of such investigation, is not exempt under s. 365.171(12)(a), F.S. AGO 11-27.

A tape recording of a “911” call is a public record which is subject to disclosure after the deletion of the exempt information. AGO 93-60. This does not, however, preclude the application of another exemption to such records. Thus, if the “911” calls are received by a law enforcement agency and the county emergency management department, information which is determined by the law enforcement agency to constitute active criminal investigative information may also be deleted from the tape prior to public release. AGO 95-48. *See also* Inf. Op. to

Fernez, September 22, 1997 (while police department is not prohibited from entering into an agreement with the public to authorize access to its radio system, the department must maintain confidentiality of exempt personal information contained in “911” radio transmissions).

Moreover, an audio recording that records the killing of a law enforcement officer acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt and may not be listened to or copied except as authorized in the exemption. Section 119.071(2)(p), F.S. For more information on this exemption, please refer to the discussion on page 125.

Building plans, blueprints and related records which depict the structural elements of 911, E911 or public safety radio communication system infrastructure owned or operated by an agency, are exempt from disclosure. Section 119.071(3)(e)1.a., F.S. Geographical maps indicating actual or proposed locations, including towers, antennae, equipment, and facilities are also exempt. Section 119.071(3)(e)1.b., F.S.

b. Emergency evacuation plans and special needs registry

Section 119.071(3)(a), F.S., provides an exemption from disclosure for a security or firesafety system plan of a private or public entity that is held by an agency. The term “security or firesafety system plan” includes emergency evacuation plans and sheltering arrangements. *And see* s. 119.071(2)(d), F.S., providing an exemption from disclosure for “[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to Part I, chapter 23 [Florida Mutual Aid Act], and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies as defined in s. 252.34, F.S.; and s. 395.1056, F.S., providing an exemption for those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism.

Section 252.355(1), F.S., states that the Division of Emergency Management, in coordination with each local emergency management agency in the state, shall maintain a registry of persons with special needs (*i.e.*, persons who would need assistance during evacuations and sheltering because of physical, mental, cognitive impairment, or sensory disabilities), located within the jurisdiction of the local agency. Records relating to the registration of persons with special needs are confidential and exempt, except such information is available to other emergency response agencies, as determined by the local emergency management director. Section 252.355(4), F.S. Local law enforcement agencies shall be given complete shelter roster information upon request. *Id. Cf.* s. 402.88(4), F.S. (except as authorized in the exemption, all records and personal identifying information related to the enrollment of persons in a persons with disabilities registry held by a local law enforcement agency are confidential and exempt).

c. Emergency medical services records

Please refer to the discussion of this topic found on pages 96-97.

d. Emergency notification

Any information furnished by a person to any agency for the purpose of being provided with emergency notification by the agency is exempt from disclosure requirements. Section 119.071(5)(j)1., F.S. The e-mail addresses and corresponding home, school, and other “watched addresses of concern” provided for participation in the Florida Department of Law Enforcement Offender Alert System come within the scope of this exemption. AGO 11-16. *And see* s. 119.0712(2)(d)1. and 2., F.S. (emergency contact information contained in a motor vehicle record issued by the Department of Highway Safety and Motor Vehicles is confidential and exempt, and, without the express consent of the person to whom such emergency contact information applies, may be released only to law enforcement agencies for purposes of contacting those listed in the event of an emergency or to a receiving facility, hospital, or licensed detoxification or addictions

receiving facility pursuant to cited statutes for the sole purpose of informing a patient's emergency contacts of the patient's whereabouts).

e. Emergency planning information furnished to Division of Emergency Management

The Division of Emergency Management (Division) manages a statewide public awareness program which encourages individuals, families, and businesses to develop disaster plans in preparation for and in response to natural or manmade disasters. *See* s. 2, Ch. 14-188, Laws of Florida. Any information furnished by a person or a business to the Division for the purpose of being provided assistance with emergency planning is exempt. Section 252.905, F.S.

f. Emergency shelter and disaster recovery assistance

The address and telephone number of a person provided public emergency shelter during a storm or catastrophic event and held by the agency, as defined in s. 119.011, F.S., that provided the emergency shelter is exempt. Section 252.385(5), F.S.

Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster are confidential and exempt. Section 119.071(5)(f)1.b., F.S. The exemption authorizes access under specified conditions. Section 119.071(5)(f)2. and 3., F.S.

11. Financial records

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists. *See* AGO 96-96 (financial information submitted by harbor pilots in support of a pilotage rate increase application is not exempt from disclosure requirements).

a. Audit reports

(1) Auditor General audits

The audit report prepared by the Auditor General is a public record once finalized. Section 11.45(4)(c), F.S. The audit workpapers and notes are not a public record; however, those workpapers necessary to support the computations in the final audit report may be made available by a majority vote of the Legislative Auditing Committee after a public hearing showing proper cause. *Id.* And *see* AGO 79-75 ("the term 'audit work papers and notes' should be construed narrowly and limited to such 'raw data' as is commonly considered to constitute the work papers of an accountant"). *Cf.* s. 11.51(4), F.S. (work papers held by the Office of Program Policy Analysis and Government Accountability which relate to an authorized project or a research product are exempt from disclosure).

At the conclusion of the audit, the Auditor General provides the head of the agency being audited with a list of the findings so that the agency head may explain or rebut them before the report is finalized. Section 11.45(4)(d), F.S. The list of audit findings is a public record. AGO 79-75.

(2) Local government audits

The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit becomes final. Section 119.0713(2)(b), F.S. The audit becomes final when the audit report is presented to the unit of local government; until the audit becomes final, the audit workpapers and notes related to such audit report are confidential. *Id.*

Thus, a draft audit report of a county legal department prepared by the clerk of court, acting in her capacity as county auditor, did not become subject to disclosure when the clerk submitted copies of her draft report to the county administrator for review and response. *Nicolai v. Baldwin*,

715 So. 2d 1161, 1163 (Fla. 5th DCA 1998). According to the exemption, the report would become “final,” and hence subject to disclosure, when presented to the county commission. *Id.*

Similarly, draft audit reports relating to city towing companies did not become subject to disclosure even though the towing companies, who had reviewed the reports pursuant to city policy, shared the reports with a news organization which subsequently published an article about them. The court said its decision was compelled by the plain language of the statute, concluding that because the draft audit reports were not final, they were not subject to disclosure. *City of Miami Beach v Miami New Times, LLC*, 314 So. 3d 562 (Fla. 3d DCA 2020). *And see Rushing v. Barfield*, No. 2011-CA-5864-NC (Fla. 12th Cir. Ct. August 4, 2011), *per curiam affirmed*, 83 So. 3d 718 (Fla. 2d DCA 2012), available online in the Cases database at the open government site at myfloridalegal.com (even though an audit has been completed with regard to some matters, clerk authorized to redact those portions of workpapers and notes relating to additional matters under investigation until the audit relating to the additional matters is concluded).

The term “internal auditor” is not defined for purposes of this exemption. However, the term would appear to encompass an official within county government who is responsible under the county code for conducting an audit. AGO 99-07. *Compare* AGO 04-33 (exemption does not apply to audit of guardianship files prepared by clerk of court because that audit “is not an internal audit performed by or on behalf of any of the specified units of local government”).

(3) State agency inspector general audits

Section 20.055(2), F.S., establishes the Office of Inspector General in each state agency. Pursuant to s. 20.055(6), F.S., the inspector general is required to conduct audits of the agency and prepare audit reports of the findings. Such audit reports and workpapers are public records to the extent that they do not include information which has been made confidential and exempt from disclosure. Section 20.055(6)(b), F.S.

b. Bids, proposals and financial statements

Section 119.071(1)(b)2., F.S., provides an exemption for “sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation” until such time as the agency provides notice of an intended decision or until 30 days after opening “the bids, proposals, or final replies,” whichever is earlier. *Cf.* s. 255.0518, F.S., providing that notwithstanding s. 119.071(1)(b), F.S., agencies receiving sealed bids pursuant to a competitive solicitation for construction or repairs of a public building or public work, must open the bids at a public meeting conducted in compliance with the Sunshine Law, and must also announce bidder and price information at that meeting.

The term “competitive solicitation” means “the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.” Section 119.071(1)(b)1., F.S.

If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Section 119.071(1)(b)3., F.S. *And see* s. 286.0113(2)(c), F.S., providing an exemption for the recording of, and records presented at, an exempt meeting held pursuant to s. 286.0113(2)(b), F.S. For more information on this exemption, please refer to the discussion on page 35-36.

Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from disclosure requirements. Section 119.071(1)(c), F.S. *See also* s.

119.0713(3), F.S., limiting access to materials used by municipal utilities to prepare bids; s. 339.55(10), F.S., providing an exemption for financial information of a private entity applicant which the Department of Transportation requires as part of the application process for loans or credit enhancements from the state-funded infrastructure bank; and s. 337.168, F.S., providing restrictions on disclosure of Department of Transportation cost estimates, and the bid analysis and monitoring system.

c. Budgets

Budgets and working papers used to prepare them are normally subject to inspection. *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747 (Fla. 1st DCA 1980); *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976); and *City of Gainesville v. State ex. rel. International Association of Fire Fighters Local No. 2157*, 298 So. 2d 478 (Fla. 1st DCA 1974). *Accord* Inf. Op. to Pietrodangelo, Nov. 29, 1972 (financial operating budget of athletic department of state university constitutes a public record). *Cf. News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 548 (Fla. 2d DCA 1982), holding that the preponderant interest in allowing public participation in the budget process justified the inclusion of an agency's internal budget committee within the provisions of the Government in the Sunshine Law.

The exemption afforded by s. 447.605(3), F.S., for work products developed by the public employer in preparation for collective bargaining negotiations does not remove the working papers used in preparing an agency budget from disclosure. *Warden v. Bennett*, *supra*. See also AGO 92-56 (budget of a public hospital would not, in and of itself, appear to constitute either a trade secret or marketing plan for purposes of a statutory exemption for documents revealing a hospital's marketing plan or trade secrets).

d. Economic development records

(1) Business location or expansion plans

If a private entity requests in writing before an economic incentive agreement is signed that an economic development agency maintain the confidentiality of information concerning the entity's interest in or plans to locate or expand its business activities in Florida, the information is confidential and exempt from disclosure for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first. Section 288.075(2)(a)1., F.S. Confidentiality may be extended for up to an additional 12 months upon the written request of the private entity if the agency finds that the private entity is still actively considering locating or expanding its business activities in Florida. Section 288.075(2)(a)2., F.S. If a final project order for a signed economic development agreement is issued, then the information remains confidential for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such period of confidentiality may not extend beyond the period of confidentiality specified in s. 288.075(2)(a)1. or s. 288.075(2)(a)2., F.S. *And see* s. 288.075(2)(b), F.S., restricting public officials from entering into binding agreements with the private entity requesting confidentiality until 90 days after the information has been made public, unless certain conditions are met.

The term "economic development agency" means the state Department of Economic Opportunity, an industrial development authority, Space Florida, the public economic development agency of a county or municipality, or a research and development authority. Also included are the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the related responsibilities, if the county or municipality does not have a public economic development agency. The term also includes private persons or agencies authorized by the state, a county or a municipality to promote the general business interests of the state or that municipality or county. Section 288.075(1)(a), F.S.

The Legislature's designation of those entities which are considered economic development agencies for purposes of s. 288.075, F.S., precludes any other entities from falling under the definition. See AGO 12-36 (St. Augustine-St. Johns County Airport Authority is not an "economic development agency" as defined in s. 288.075, F.S.). Cf. Inf. to Rooney, June 8, 2011 (if by amendment of the county charter, the voters made the county commission a part of the county economic development agency by placing the executive director of the agency under the direct supervision of the county commission, then the provisions of s. 288.075, F.S., would apply to the county commission).

A written request for confidentiality under s. 288.075(2), F.S., may constitute or contain information required to be held confidential under that statute; however, such a determination must be made by the custodian on a case-by-case basis as to whether a particular record or portion of a record falls within the scope of the exemption. AGO 07-15. The section, however, may be cited by the records custodian as statutory authority for withholding information from public disclosure without violating the required confidentiality provisions of the statute. *Id.* Cf. AGO 80-78 (county industrial development authority permitted to withhold access only to those records "clearly falling" within the exemption provided in s. 288.075; "policy considerations" do not justify nondisclosure of public records).

Development plans, financial records, financial commitment letters and draft memoranda of understanding between the city and a developer considering expansion or relocation within the city appear to come within the scope of the exemption. AGO 04-19. However, the burden is on the economic development agency "to carefully and in good faith distinguish between those documents clearly covered by the exemption and those not covered." *Id.*

Trade secrets (as defined in the exemption) held by an economic development agency are confidential and exempt from disclosure. Section 288.075(3), F.S. Proprietary confidential business information held by an economic development agency is confidential and exempt until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information. Section 288.075(4), F.S. Federal employer identification numbers, reemployment assistance account numbers, or Florida sales tax registration numbers held by an economic development agency are confidential and exempt. Section 288.075(5), F.S. In addition, certain information held pursuant to the administration of an economic incentive program is confidential and exempt for limited periods as specified in the exemption. Section 288.075(6), F.S. And see s. 288.075(7), F.S. (tax returns, financial information, and credit history information held by a state or federally funded small business loan program).

(2) Convention center booking business records

Booking business records of a public convention center, sports facility, or auditorium are exempt from public disclosure. Section 255.047(2), F.S. The statute defines "booking business records" to include "client calendars, client lists, exhibitor lists, and marketing files." Section 255.047(1)(a), F.S. The term does not include "contract negotiation documents, lease agreements, rental rates, event invoices, event work orders, ticket sales information, box office records, attendance figures, payment schedules, certificates of insurance, accident reports, incident reports, or correspondence specific to a confirmed event." *Id.* And see s. 125.0104(9)(d)1., F.S. (providing an exemption for information given to a county tourism promotion agency, which, if released, would reveal the identity of those who provide information in response to a sales promotion, advertisement, or research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data).

e. Ownership records for registered public obligations

Records regarding ownership of, or security interests in, registered public obligations are not open to inspection. Section 279.11, F.S.

f. Personal financial records

In the absence of a statutory exemption, financial information prepared or received by an agency is subject to Ch. 119, F.S. *See Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns and financial statements submitted by housing finance authority members as part of the authority's application to organize a bank are subject to disclosure). *See also* Inf. Op. to Lovelace, April 3, 1992 (records identifying mortgage recipients held by a bank acting as agent of a housing finance authority in granting mortgages funded by the authority are public records).

(1) Bank account, debit and credit card numbers

Bank account numbers, and debit, charge, and credit card numbers held by an agency are exempt from public disclosure. Section 119.071(5)(b), F.S. *See also* s. 119.0714(1)(j), (2)(e) and 3(b), F.S., regarding confidentiality of bank account numbers and debit, charge, and credit card numbers contained in court and official records.

(2) Consumer financial information

There are statutes which exempt consumer financial information received by certain agencies. For example, s. 624.23, F.S., provides confidentiality for personal financial information held by the Department of Financial Services or the Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code. *See State, Department of Financial Services v. Danahy & Murray*, 246 So. 3d 466 (Fla. 1st DCA 2018), upholding the constitutionality of the statute. *See also* s. 717.117(8), F.S. (property identifiers contained in unclaimed property reports held by the Department of Financial Services are confidential); s. 627.351(6)(x)1., F.S. (claims and underwriting files of the Citizens Property Insurance Corporation, except as provided in the exemption); s. 119.071(5)(f), F.S. (health or property insurance information provided by applicants or participants in government housing assistance programs); and s. 655.057(1)(c), F.S. (personal financial information contained in investigation records of the Office of Financial Regulation).

(3) Financial information submitted by state licensure applicants

In the absence of statutory exemption, financial information in a licensing file is subject to disclosure. *See* AGO 04-16. However, the Legislature has enacted exemptions for financial information held by certain licensing agencies. For example, credit history information and credit scores held by the Office of Financial Regulation for purposes of licensing loan originators, mortgage brokers and mortgage lenders are confidential. Section 494.00125(3) F.S. Financial information submitted by license applicants to the Department of Business and Professional Regulation is also confidential. Section 455.229(1), F.S. *And see* s. 456.014(1), F.S. (Department of Health license applicants). *Cf. Surterra Florida, LLC v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017) (affirming trial court finding that identities of investors and partners listed in applications to dispense medical cannabis were not confidential trade secrets). For more information on disclosure issues relating to trade secrets, please refer to the discussion of that topic in pages 160-161.

(4) Temporary cash assistance program participant

Except as provided in the exemption, personal identifying information of a temporary cash assistance program participant is confidential. Section 414.295(1), F.S.

(5) Toll payment personal identifying information

Section 338.155(6), F.S. provides an exemption for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated charges due for the use of toll facilities.

(6) Utility payment records

Agency records of payments for utility services are subject to disclosure. See AGOs 88-57 (county records of payments made by individuals for waste collection services are public records), and 92-09 (customer delinquency information held by a utilities commission is subject to disclosure). Cf. s. 119.0713(5)(a), F.S., providing an exemption for customer meter-derived data and billing information in increments less than one billing cycle.

g. Taxpayer records

There are a number of statutes providing for confidentiality of taxpayer records held by the Department of Revenue. See, e.g., s. 213.053(2)(a), F.S. (all information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports and information and letters of technical advice, is confidential except for official purposes and exempt from s. 119.07[1], F.S.); s. 213.21(3), F.S. (records of compromises of taxpayer liability not subject to disclosure); and s. 213.27(6), F.S. (confidential information shared by the Department of Revenue with debt collection or auditing agencies under contract with the department is exempt from public disclosure and such debt collection or auditing agencies are bound by the same confidentiality requirements as the department). Cf. *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns submitted by housing finance authority members to state banking agency as part of the authority's application to organize a bank are subject to disclosure).

In addition, s. 193.074, F.S., provides for confidentiality of certain taxpayer information. In light of the position taken by the Department of Revenue that its form entitled "Original Application for Ad Valorem Tax Exemption" constitutes a "return," such form should be treated as a "return" that is confidential pursuant to s. 193.074, F.S. AGO 05-04. Accord AGO 95-07. And see *NYT Management Services, Inc. v. Florida Department of Revenue*, No. 2006-CA-0896 (Fla. 2d Cir. Ct. April 25, 2006), available online in the Cases database at the open government site at myfloridalegal.com (declarations or written statements filed with the Department of Revenue pursuant to the state's revenue laws would be a return and thus confidential under s. 193.074, F.S.).

A taxpayer's e-mail address held by a tax collector for purpose of sending certain tax notices or obtaining the consent of a taxpayer for electronic transmission of certain tax notices, as provided in cited statutes, is exempt from public disclosure requirements. Section 197.3225, F.S. Cf. s. 288.075(7), F.S. (tax returns held by an economic development agency pursuant to its administration of a state or federally funded small business loan program is exempt from public disclosure).

However, taxpayer information that is confidential in the hands of certain specified officers under s. 193.074, F.S., is subject to disclosure under the Public Records Act when it has been submitted by a taxpayer to a value adjustment board as evidence in an assessment dispute. AGO 01-74. Cf. Inf. Op. to Echeverri, April 30, 2010 (while property appraiser may use confidential records submitted to the value adjustment board by the taxpayer, it is not clear whether property appraiser may independently submit confidential material to the board in the absence of a taxpayer's submission although board may order production of confidential records). Similarly, absent a specific statutory exemption for assessment rolls and public information cards, such documents made or received by the property appraiser are public records subject to the Public Records Act, regardless of the confidentiality of a return that may contain information used in their creation. AGO 05-04.

12. Firearms records

Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S., held by the Department of Agriculture and Consumer Services is confidential and exempt from public disclosure

requirements. Section 790.0601(1), F.S. The same information is also confidential when held by a tax collector appointed by the Department. Sections 790.0601(2), and 790.0625(4), F.S.

Information made confidential by s. 790.0601, F.S., shall be disclosed with the express written consent of the applicant or licensee or his or her legally authorized representative, by court order upon a showing of good cause, or upon request by a law enforcement agency in connection with the performance of lawful duties. Section 790.0601(3), F.S. *Cf. Times Publishing Company v. City of Pensacola*, No. 2002-2053 (Fla. 1st Cir. Ct. November 13, 2002), *per curiam affirmed*, 869 So. 2d 546 (Fla. 1st DCA 2004), available online in the Cases database at the open government site at myfloridalegal.com, concluding that police department records of weapons assigned to law enforcement officers and described as “specialty weapons utilized for surveillance and defensive purposes, by surveillance personnel” were exempt from disclosure under s. 119.071(3)(a), F.S., relating to security system plans and terrorist threat assessments, and the exemption for surveillance personnel, techniques, and procedures, now found at s. 119.071(2)(d), F.S.

13. Hospital and medical records

a. Communicable or infectious disease reports

A number of exemptions exist for communicable or infectious disease reports. *See, e.g.*, s. 381.0031(6), F.S. (information submitted in public health reports to Department of Health is confidential and is to be made public only when necessary to public health); s. 384.29, F.S. (sexually transmissible diseases). *See Ocala Star-Banner v. State*, 697 So. 2d 1317 (Fla. 5th DCA 1997) (upholding court order sealing portions of a battery prosecution case file pertaining to transmission of sexually transmissible diseases to victims due to s. 384.29, F.S., confidentiality requirements). However, notwithstanding any other provision of law to the contrary, the Department of Health, the Department of Children and Families, and the Agency for Persons with Disabilities may share confidential information on any individual who is or has been the subject of a program within the jurisdiction of each agency. Section 402.115, F.S. The shared information remains confidential or exempt as provided by law. *Id. See* AGO 98-52.

Results of screenings for sexually transmissible diseases conducted by the Department of Health in accordance with s. 384.287, F.S., may be released only to those persons specified in the exemption. Section 384.287(5), F.S.

Notification to an emergency medical technician, paramedic or other person that a patient they treated or transported has an infectious disease must be done in a manner to protect the confidentiality of patient information and shall not include the patient’s name. Section 395.1025, F.S.

There are strict confidentiality requirements for test results for HIV infection; such information may be released only as expressly prescribed by statute. *See* ss. 381.004, and 384.287(6), F.S. Any person who violates the confidentiality provisions of s. 381.004, F.S., and s. 951.27, F.S., is guilty of a first degree misdemeanor. Section 381.004(5)(b), F.S. *And see* s. 381.004(5)(c), F.S., establishing felony penalties for disclosure in certain circumstances. Thus, information received by the clerk of court indicating that an individual has complied with an order to be tested for HIV and the attendant test results “would appear to be confidential and should be maintained in that status.” AGO 00-54. *Cf. Florida Department of Corrections v. Abril*, 969 So. 2d 201 (Fla. 2007) (an entity that negligently violates a patient’s right of confidentiality in disclosing the results of HIV testing may be held responsible in a negligence action).

Results of HIV and hepatitis tests performed on persons charged with certain offenses may not be disclosed except as authorized in the exemption. Section 960.003, F.S. *See also* s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates as provided in statute).

b. Hospital records**(1) Public hospitals**

Like other governmental agency records, public hospital records are subject to disclosure in the absence of a statutory exemption. For example, the court in *Tribune Company v. Hardee Memorial Hospital*, No. CA 91-370 (Fla. 10th Cir. Ct. August 19, 1991), available online in the Cases database at the open government site at myfloridalegal.com, held that a settlement agreement entered in a lawsuit against the public hospital alleging that the hospital had swapped babies was a public record. The court held that the agreement was subject to disclosure despite a confidentiality provision contained within the agreement and claims by the hospital that it constituted work product. Cf. *Bert Fish Foundation, Inc. v. Southeast Volusia Hospital District*, No. 10-20801-CINS (Fla. 7th Cir. Ct. December 22, 2010), available online in the Cases database at the open government site at myfloridalegal.com (governing boards of hospital district and medical center violated the Sunshine Law when they held numerous closed meetings to discuss an affiliation or merger with a healthcare corporation). For information on exemptions applicable to public hospitals, please refer to Appendix D and the Index. Cf. AGO 14-10, noting that an exemption in s. 395.3035(5), F.S., for certain records and meetings relating to a “strategic plan” for operation of a hospital must be narrowly construed and would not apply to an evaluation conducted pursuant to s. 155.40(5), F.S., for purposes of the sale or lease of a public hospital.

(2) Private hospitals/private organizations operating public hospitals

A private organization leasing the facilities of a public hospital is acting on behalf of a public agency and thus constitutes an agency subject to open records requirements in the absence of statutory exemption. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373 (Fla. 1999).

Section 395.3036, F.S., however, provides that records of a private entity that leases a public hospital or other public health care facility are confidential and exempt from disclosure when the public lessor complies with the public finance accountability provisions of s. 155.40(18), F.S., with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least three of five criteria set forth in the exemption. See *Indian River County Hospital District v. Indian River Memorial Hospital, Inc.*, 766 So. 2d 233 (Fla. 4th DCA 2000) (nonprofit corporation leasing hospital from hospital district). And see *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), upholding the constitutionality of the exemption. Cf. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 927 So. 2d 961 (Fla. 5th DCA 2006) (private corporation that purchased hospital from public hospital authority not subject to Public Records Act); and s. 155.40(21), F.S., describing and construing the term “complete sale” as applied to a purchase of a public hospital by a private entity.

c. Patient and clinical records**(1) Patient and clinical records generally**

Patient records are generally protected from disclosure. For example, patient records in hospitals and surgical facilities licensed under Ch. 395, F.S., are confidential and may not be disclosed without the consent of the patient, or the patient’s legal representative, except as provided in the statute. Section 395.3025(4), (5), (7) and (8), F.S. And see s. 119.0712(1), F.S. (personal identifying information contained in records relating to an individual’s personal health or eligibility for health-related services held by the Department of Health); and s. 400.022(1) (m), F.S. (nursing home residents’ medical and personal records).

Patient clinical records are also protected. See, e.g., s. 393.13(4)(i)1., F.S. (central client records of persons with developmental disabilities); s. 394.4615(1), F.S. (clinical records of persons subject to “The Baker Act”); and s. 397.501(7), F.S. (individuals receiving services from substance abuse service providers). And see ss. 397.6760(1), F.S. (petitions for involuntary assessment and stabilization and related court records filed with a court under Part V of Ch.

397, F.S.[substance abuse]); and 394.464(1) (petitions for voluntary and involuntary admission for mental health treatment, courts orders and related records filed with or by a court under the Baker Act). *Cf.* s. 381.987, F.S. (patient or caregiver identifying information in the medical marijuana use registry).

(2) Disclosure of patient records

Patient medical records made by health care practitioners may not be furnished to any person other than the patient, his or her legal representative or other health care practitioners and providers involved in the patient's care and treatment without written authorization, except as provided by ss. 440.13(4)(c) and 456.057, F.S. Section 456.057(7)(a), F.S. *See State v. Johnson*, 814 So. 2d 390 (Fla. 2002) (state attorney's subpoena power under s. 27.04, F.S., cannot override notice requirements of s. 395.3025[4](d), F.S., which provides for disclosure of confidential patient records upon issuance of subpoena and upon proper notice to the patient or the patient's legal representative). *Cf.* s. 408.051(4), F.S., permitting a health care provider to release or access an identifiable health record of a patient without the patient's consent for use in the treatment of the patient for an emergency medical condition, as defined in s. 395.002(8), F.S., when the health care provider is unable to obtain the patient's consent or the consent of the patient representative due to the patient's condition or the nature of the situation requiring immediate medical attention.

The recipient of patient records, if other than the patient or the patient's representative, may use such information only for the purpose provided and may not disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient. *See ss.* 395.3025(7) (hospital patient records) and 456.057(11), F.S. (health care practitioner patient records). Thus, predeath medical records in the possession of the medical examiner are not subject to public inspection. *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com.

Similarly, clinical records maintain their confidentiality even when disclosed to another agency such as the clerk of the circuit court. AGO 91-10. *And see Sarasota Herald-Tribune v. Department of Children and Families*, No. 2001-CA-002445 (Fla. 2d Cir. Ct. April 8, 2002), available online in the Cases database at the open government site at myfloridalegal.com (confidentiality of clinical record is maintained even though Department of Children and Families may have filed portions of the records in court proceedings throughout the state; department has no authority to waive confidentiality of clinical records). *Cf.* AGO 01-69 (documents submitted to the statewide provider and managed care organization claim dispute resolution program pursuant to s. 408.7057, F.S., found to be subject to disclosure after redaction of patient-identifying information).

d. Emergency medical services

With limited exceptions, s. 401.30(4), F.S., provides, in relevant part, that "[r]ecords of emergency calls which contain patient examination or treatment information are confidential and exempt from the provisions of s. 119.07(1) and may not be disclosed without the consent of the person to whom they pertain." Such records may be released only in certain circumstances and only to the persons and entities specified in the statute. AGO 86-97. Thus, a city commissioner is not authorized to review records of an emergency call by the city's fire-rescue department when those records contain patient examination and treatment information, except with the consent of the patient. AGO 04-09. *See Lee County v. State Farm Mutual Automobile Insurance Company*, 634 So. 2d 250 (Fla. 2d DCA 1994), upholding the county's right to require the patient's notarized signature on all release forms, to ensure that these confidential records are not improperly released. *And see* AGO 09-30 (entire record of emergency call containing patient examination and treatment information which is maintained as required by s. 401.30[1], F.S., is confidential and exempt; reports containing statistical data, required by the Department

of Health, are public records and must be made available for inspection and copying following redaction of any patient-identifying information).

However, s. 401.30(4), is not violated by the city attorney, or an attorney under contract to the city, and other city officials having access to the city fire-rescue department's records of emergency calls that contain patient information when such access is granted to such individuals in carrying out their official duties to advise and defend, or assess the liability of, the city in a possible or anticipated claim against the city arising out of the provision of such care. AGO 95-75. *And see* AGO 08-20 (s. 401.30[4], F.S., permits emergency medical services transportation licensee to release records of emergency calls including patient's name, address, and pertinent medical information to local law enforcement agency that does not provide regulatory or supervisory responsibility over licensee).

e. Hospital employees

Section 395.3025(10), F.S., establishes that the home addresses, telephone numbers, and photographs of hospital or surgical center employees who provide direct patient care or security services, as well as specified information about the spouses and children of such employees, are confidential and exempt from disclosure requirements. The same information must also be held confidential by the facility upon written request by other employees who have a reasonable belief, based upon specific circumstances that have been reported in accordance with the procedure adopted by the facility, that release of the information may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family. Section 395.3025(11), F.S.

f. Persons with disabilities registry

Section 402.88(1)(a), F.S., authorizes local law enforcement agencies to develop and maintain a database to be known as a "Persons with Disabilities Registry," listing persons who have developmental, psychological, or other disabilities or conditions that may be relevant to their interactions with law enforcement officers. All records and identifying information relating to the enrollment of persons in this registry held by a local law enforcement agency are confidential and exempt. Disclosure is authorized as provided in the exemption. Section 402.88(4), F.S.

14. Investigative records of non-law enforcement agencies

a. Investigative records generally

In the absence of a specific legislative exemption, investigative records made or received by public agencies are open to public inspection pursuant to Ch. 119, F.S. *See State ex rel. Veale v. City of Boca Raton*, 353 So.2d 1194 (Fla. 4th DCA 1977), *cert. denied*, 360 So. 2d 1247 (Fla. 1978) (report prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department is a public record). *See also Caswell v. Manhattan Fire and Marine Insurance Company*, 399 F.2d 417 (5th Cir. 1968) (ordering that certain investigative records of the state insurance agency be produced for inspection under Ch. 119, F.S.). *Accord* AGO 91-75 (documents containing information compiled by school board employees during an investigation of school district departments are open to inspection in the absence of statutory exemption); AGO 85-79 (interoffice memoranda, correspondence, inspection reports of restaurants, grocery stores and other such public premises, nuisance complaint records, and notices of violation of public health laws maintained by county public health units are subject to disclosure in the absence of any statutory exemption); and AGO 71-243 (inspection reports made or received by a school board in connection with its official investigation of the collapse of a school roof constitute public records). *Cf. Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973) (Sunshine Law applies to boards acting in a "quasi-judicial" capacity).

Disclosure of records of investigative proceedings upon completion of a preliminary investigation is not violative of privacy rights arising under the state or federal Constitutions. *See Garner v. Florida Commission on Ethics*, 415 So. 2d 67 (Fla. 1st DCA 1982), *review denied*,

424 So. 2d 761 (Fla. 1983) (public's right to view commission files prepared in connection with investigation of alleged violations of the Code of Ethics outweighs an individual's disclosural privacy rights).

The investigative exemptions now found in paragraphs (2)(c) through (f), (h) and (i) of s. 119.071(2), F.S., limit disclosure of specified *law enforcement* records, and thus do not apply to investigations conducted by agencies outside the criminal justice system. See *Douglas v. Michel*, 410 So. 2d 936, 939 (Fla. 5th DCA 1982), *questions answered and approved*, 464 So. 2d 545 (Fla. 1985) (exemption for "information revealing surveillance techniques or procedures or personnel" [now found at s. 119.071(2)(d)] does not apply to a hospital's personnel files). See also AGO 91-75, stating that the active criminal investigation and intelligence exemption does not apply to information compiled in a school board investigation into the conduct of certain school departments; and AGO 87-51, concluding that complaints from state labor department employees relating to departmental integrity and efficiency do not constitute criminal intelligence information or criminal investigative information.

Thus, the contents of an investigative report compiled by the Inspector General for a state agency in carrying out his or her duty to determine program compliance are not converted into criminal intelligence information merely because the Florida Department of Law Enforcement also conducts an investigation or because such report or a copy thereof has been transferred to the department. Inf. Op. to Slye, August 5, 1993.

b. Statutory exemptions

A number of exemptions exist for investigative records. For a more complete listing, please refer to Appendix D and the Index.

(1) Discrimination investigations

Complaints and other records in the custody of any agency which relate to a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance evaluation, or related activities are exempt from 119.071(1), F.S., until a probable cause finding is made, the investigation becomes inactive, or the complaint or other record is made part of the record of a hearing or court proceeding. Section 119.071(2)(g)1., F.S. See AGO 96-93 (prior to completion of an investigation and a finding of probable cause, records of a county equal opportunity board are exempt from disclosure). Cf. s. 119.071(2)(k), F.S., providing for confidentiality of complaints and investigative records of employee misconduct until the investigation is no longer active or has been concluded as set forth in the exemption.

Section 119.071(2)(g)1., F.S., was found to be inapplicable to a complaint filed against a county commissioner which listed many examples of alleged abusive behavior that would be inappropriate for one in the commissioner's position, because the complaint did not assert any form of discrimination based upon race, color, religion, sex, national origin, handicap or marital status. *Schweickert v. Citrus County Florida Board*, 193 So. 3d 1075, 1080 (Fla. 5th DCA 2016). The appellate court also rejected the county's argument that it could delay producing the complaint until after the investigation was completed because the investigator might have discovered or generated records during her investigation that could have related to discrimination based on race, color, religion, sex, national origin, handicap or marital status which would have qualified for the exemption.

Section 119.071(2)(g)2., F.S., provides that when the alleged victim chooses not to file a complaint and requests that the records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential. But see AGO 09-10, stating that when an agency has reached a settlement with an individual who has filed a discrimination complaint, the claimant is considered to have pursued the claim and may not request confidentiality pursuant to the exemption.

Complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing, are exempt from s. 119.07(1), F.S., until a probable cause finding is made, the investigation becomes inactive, or the complaint or other record is made part of the record of any hearing or court proceeding. Section 119.0713(1), F.S.

Personal identifying information of the alleged victim in an allegation of sexual harassment or the victim of sexual harassment is confidential and exempt if such information identifies that person as an alleged victim or as a victim of sexual harassment. Confidentiality may be waived in writing by the alleged victim or the victim. The information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities. Section 119.071(2)(n), F.S. *Cf.* s. 284.45(2), F.S.

(2) Employee misconduct investigations

For information about the exemption for complaints and active investigations of employee misconduct contained in s. 119.071(2)(k), F.S., please refer to the discussion on page 136.

(3) Ethics investigations

The complaint and records relating to the preliminary investigation conducted by the Commission on Ethics or other specified entities are confidential and exempt until the complaint is dismissed as legally insufficient, the alleged violator requests in writing that the records be made public, or until the Commission or other listed entity determines whether probable cause exists to believe that a violation has occurred. Section 112.324(2)(a) and (e), F.S. *See also* s. 112.3215(8) (b) and (e), F.S. (providing confidentiality for certain records relating to Ethics Commission investigation of alleged violations of lobbying laws).

However, a police report of an investigation of a public employee that has been concluded and is in the possession of the police department is not made confidential by the fact that the same issue and the same individual are the subject of an ethics complaint pursuant to Part III, Ch. 112, F.S., or because a copy of the police report may be included in information obtained by the Ethics Commission pursuant to its powers to investigate ethics complaints. AGO 96-05. *And see Gay v. City of Madeira Beach*, No. 16-004836 (Fla. 6th Cir. Ct. May 26, 2017), available online in the Cases database at the open government site at myfloridalegal.com (city must permit inspection and copying of complaints filed with the Ethics Commission and received by the City Attorney). *Cf.* s. 112.324(2)(b), F.S. (written referrals to the Ethics Commission submitted pursuant to s. 112.324[1][b], F.S., records relating to such referrals held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission, are confidential and exempt except as provided in s. 112.324[2][e], F.S.)

(4) Local government inspector general investigations

The investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the investigation becomes final. Section 119.0713(2) (b), F.S. An investigation becomes final when the investigative report is presented to the unit of local government, as defined in the exemption. *Id.* *Cf. Nicolai v. Baldwin*, 715 So. 2d 1161, 1163 (Fla. 5th DCA 1998), noting that a draft audit report prepared by the clerk of court did not become “final” when it was reviewed by the county administrator; the report became “final” and subject to disclosure when presented to the county commission. Information received, produced, or derived from an investigation is confidential and exempt until the investigation is complete or when the investigation is no longer active, as defined in the exemption. *Id.*

(5) State inspector general investigations

Audit workpapers and reports of state agency inspectors general appointed in accordance

with s. 20.055, F.S., are public records to the extent that they do not include information which has been made confidential and exempt from s. 119.07(1), F.S. Section 20.055(6)(b), F.S. However, when the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), F.S. [whistle-blower], the name or identity of the individual shall not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation. *Id.* And see page 136, discussing the exemption for complaints alleging employee misconduct found in s. 119.071(2)(k), F.S.

Section 112.31901(2), F.S., authorizes the Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under s. 112.3189, F.S., to certify that an investigatory record of the Chief Inspector General or an agency inspector general requires an exemption in order to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. If so certified, the investigatory records are exempt from s. 119.07(1), F.S., until the investigation ceases to be active, or a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received, whichever first occurs. Section 112.31901(1), F.S. The provisions of this section do not apply to whistle-blower investigations conducted pursuant to the whistle-blower act. Section 112.31901(3), F.S.

(6) State licensing investigations

Pursuant to s. 455.225(10), F.S., complaints against a licensed professional filed with the state licensing board or the Department of Business and Professional Regulation are confidential and exempt from disclosure until 10 days after probable cause has been found to exist by the probable cause panel of the licensing board or by the Department of Business and Professional Regulation, or the professional waives his or her privilege of confidentiality, whichever occurs first. A similar exemption applies to complaints and investigations conducted by the Department of Health and licensing boards within that department as provided in s. 456.073(10), F.S. *See Salameh v. Florida Department of Health*, 325 So. 3d 349 (Fla. 1st DCA 2021) (pursuant to s. 456.073[10], records of administrative complaint made public after probable cause panel found probable cause but failed to consider Dr. Salameh's exculpatory materials as required by statute, could not be maintained as confidential even though panel subsequently reconsidered the case, reviewed Salameh's submission, found no probable cause and withdrew the complaint).

Complaints filed by a municipality against a licensed professional are included within the confidentiality provisions. AGO 02-57. However, while the complaint filed by the municipality with the state licensing agency is exempt, the exemption afforded by the statute does not extend to other records held by the city related to the nature of the alleged offense by the licensed professional. *Id.*

(7) Whistle-blower investigations

(a) Whistle-blower identity

The Whistle-blower's Act, ss. 112.3187-112.31895, F.S., "is intended to prevent agencies, or independent contractors of agencies, from taking retaliatory action against an employee who reports violations of law on the part of a public employer or an independent contractor." AGO 12-20. It provides, with limited exceptions, for the confidentiality of the identity of a whistle-blower who discloses in good faith to the Chief Inspector General, an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor has violated or is suspected of having violated any federal, state, or local law, rule or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or has committed or is suspected of having committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty. Section 112.3188(1), F.S. *See also* s. 20.055(6)(b), F.S.

A complainant may waive the right to confidential treatment of his or her name or identity. AGO 95-20. However, an individual may not be required to sign a waiver of confidentiality as a condition of processing a complaint. AGO 96-40.

In order to qualify as a whistle-blower complaint, particular information must be disclosed to an “appropriate local official” or other statutorily designated officials; a general complaint of wrongdoing or a complaint to officials other than those specifically named in s. 112.3188(1), F.S., does not entitle the complainant to whistle-blower protection. AGO 98-37. *And see* AGO 99-07 (county inspector general qualifies as an “appropriate local official” for purposes of the whistle-blower law); and AGO 96-40 (town ethics commission may constitute “appropriate local official” for purposes of processing complaints under the whistle-blower law). *Cf.* AGO 12-20 (while county transportation board may be designated as an “appropriate local official” under s. 112.3188, F.S., such designation “may not be advisable” because board must comply with the Sunshine Law and, “[a]bsent a statutory exemption, the handling of confidential information or records during the course of public meetings does not otherwise allow meetings of the board to be closed”).

(b) Active investigations

Section 112.3188(2)(a), F.S., states that except as specifically authorized in s. 112.3189, F.S., all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Florida Commission on Human Relations or the Department of Law Enforcement is confidential and exempt if the information is being received or derived from allegations as set forth in s. 112.3188(1)(a) or (b), F.S., and an investigation is “active” as defined s. 112.3188(2)(c), F.S. “Thus, the act protects the identity of employees and persons who disclose information that can serve as the basis for a whistle-blower complaint, as well as information received in the course of a whistle-blower investigation.” AGO 10-48.

Information received by an appropriate local official or local chief executive officer or produced or derived from fact-finding or investigations by local government pursuant to s. 112.3187(8)(b), F.S. [authorizing administrative procedures for handling whistle-blower complaints filed by local public employees] is confidential and exempt, provided that the information is being received or derived from allegations set forth in s. 112.3188(1) and an investigation is “active” as defined in the section. Section 112.3188(2)(b), F.S. A complaint initiating an investigation into alleged mismanagement and overpayment of contractors constitutes “information received by” a proper local official and is not subject to disclosure until the investigation is no longer active. *McLendon v. Palm Beach County Office of Inspector General*, 286 So. 3d 375 (Fla. 4th DCA 2019). *See also* s. 119.071(2)(k), F.S., providing that complaints alleging “employee misconduct” are confidential until the investigation is no longer active or has concluded as provided in the exemption.

The exemption applies whether the allegations of wrongdoing were received from an anonymous source or a named individual; in either case information received or generated during the course of the investigation is subject to the exemption. AGO 99-07. *And see* AGO 10-48 (confidential information received by the county’s inspector general pursuant to the county’s whistle-blower act may be shared with the county’s ethics commission only for the purpose of carrying out the commission’s whistle-blower functions).

15. Law enforcement records

a. Arrest and crime reports and the exemption for active criminal investigative and active criminal intelligence information

(1) Arrest and crime reports

Arrest and crime reports are generally considered to be open to public inspection. AGOs 91-74 and 80-96. *And see* AGO 08-23 (officer trip sheets revealing identity of officer, location and

hours of work and locations to which officers have responded for emergency and non-emergency purposes are public records); and AGO 12-07, discussing requirements for recording telephone conversations set forth in Ch. 934, F.S., Florida's Security of Communications law, but noting that "any recordings of telephone conversations made by [a police department] in the usual course of business would be public records," subject to the access and confidentiality provisions of the Public Records Act. *Cf.* s. 901.43(1), F.S., prohibiting a person or entity engaged in publishing or disseminating arrest booking photographs through a publicly accessible print or electronic medium from soliciting or accepting a fee or other payment to remove the photographs.

However, statutory exemptions for active criminal investigative and intelligence information, confessions, juvenile offender records and certain victim information may apply to crime reports and other law enforcement records. A discussion of these and other exemptions pertaining to law enforcement records follows; for additional information regarding exemptions, please refer to Appendix D and the Index, *infra*.

(2) Purpose and scope of exemption

Section 119.071(2)(c)1., F.S., exempts active criminal intelligence information and active criminal investigative information from public inspection. To be exempt, the information must be both "active" and constitute either "criminal investigative" or "criminal intelligence" information. *See Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001).

Thus, if a crime report contains active criminal investigative information, the criminal investigative information may be excised from the report. AGO 91-74. *See also Palm Beach Daily News v. Terlizze*, No. CL-91-3954-AF (Fla. 15th Cir. Ct. April 5, 1991), available online in the Cases database at the open government site at myfloridalegal.com, holding that a newspaper was not entitled under Ch. 119, F.S., to inspect the complete and unredacted incident report (prepared following a reported sexual battery but prior to the arrest of a suspect), including the investigating officer's narrative report of the interview with the victim, since such information was exempt from inspection as active criminal investigative information and as information identifying sexual battery victims. *See* s. 119.071(2)(c) and (h), F.S.

The active criminal investigative and intelligence exemption is limited in scope; its purpose is to prevent premature disclosure of information when such disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. *See Tribune Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987). *And see Palm Beach County Sheriff's Office v. Sun-Sentinel Co., LLC*, 226 So. 3d 969, 973 (Fla. 4th DCA 2017), noting that the exemption furthers "the critical importance" of preserving the confidentiality of police records compiled during an ongoing investigation being conducted in good faith by criminal justice agencies.

Moreover, the active criminal investigative and intelligence information exemption does not *prohibit* the disclosure of the information by the criminal justice agency; the information is exempt from and not subject to the mandatory inspection requirements in s. 119.07(1), F.S., which would otherwise apply. As the court stated in *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991), "[t]here are many situations in which investigators have reasons for displaying information which they have the option not to display." *And see* AGO 90-50. *Cf.* s. 838.21, F.S., providing that it is unlawful for a public servant, with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information or to disclose or use information regarding either the efforts to secure or the issuance of a warrant, subpoena, or other court process or court order relating to a criminal investigation or criminal prosecution when such information is not available to the general public and is gained by reason of the public servant's official position.

The law enforcement agency asserting the exemption has the burden of proving that it is entitled to it. *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365 (Fla. 4th DCA 1997); and *Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985).

(3) Definition of active criminal investigative or intelligence information

"Criminal intelligence information" means information concerning "an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." Section 119.011(3)(a), F.S.

Criminal intelligence information is considered "active" as long "as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal investigative information" is defined as information relating to "an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance." Section 119.011(3)(b), F.S. See *Rose v. D'Alessandro*, 380 So. 2d 419 (Fla. 1980) (complaints and affidavits received by a state attorney in the discharge of his investigatory duties constitute criminal intelligence or criminal investigative information). Similarly, an autopsy report may constitute criminal investigative information. See AGO 78-23.

Such information is considered "active" as long "as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future" or "is directly related to pending prosecutions or appeals." Section 119.011(3)(d), F.S.

"Criminal justice agency" is defined to mean any law enforcement agency, court, prosecutor or any other agency charged by law with criminal law enforcement duties or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections. Section 119.011(4), F.S.

(4) Information that is *not* considered to be criminal investigative or intelligence information and must be released unless some other exemption applies

Section 119.011(3)(c), F.S., states that the following information is not criminal investigative or criminal intelligence information:

1. The time, date, location and nature of a reported crime;
2. The name, sex, age, and address of a person arrested (but see pages 115-117 regarding confidentiality of certain juvenile crime records) or the name, sex, age and address of the victim of a crime, except as provided in s. 119.071(2)(h) or (o). F.S. Section 119.071(2)(h), F.S., provides confidentiality for information revealing the identity of a victim of a sexual offense, child abuse, or a child victim of human trafficking. Section 119.071(2)(o), F.S., provides that the address of a victim of an incident of mass violence is exempt. For more information, please refer to the discussion of exemptions pertaining to certain crime victims found on pages 123-125 (child abuse and sexual offense victims) and pages 125-126 (homicide victims). For information on the constitutional amendment known as Marsy's Law, please see the discussion on page 121;

3. The time, date and location of the incident and of the arrest;
4. The crime charged;
5. Documents given or required to be given to the person arrested, except as provided in s. 119.071(2)(h) or (m), F.S., unless the court finds that release of the information prior to trial would be defamatory to the good name of a victim or witness or jeopardize the safety of such victim or witness; and would impair the ability of the state attorney to locate or prosecute a codefendant;
6. Informations and indictments except as provided in s. 905.26, F.S. [prohibiting disclosure of finding of indictment against a person not in custody, under recognizance or under arrest].

Accordingly, since the above information does not fall within the definition of criminal intelligence or criminal investigative information, it is always subject to disclosure unless some other specific exemption applies. For example, the “time, date, and location of the incident and of the arrest” cannot be withheld from disclosure since such information is expressly exempted from the definitions of criminal intelligence and criminal investigative information. See s. 119.011(3)(c)3., F.S. See also *Barfield v. City of Tallahassee*, 171 So. 3d 239 (Fla. 1st DCA 2015) (while “active criminal investigative information” is exempt from public disclosure requirements, the statute expressly excludes the time, date, location, and nature of a reported crime from the exemption).

(5) Records released to the defendant

Except in limited circumstances, records which have been given or are required to be given to the person arrested cannot be withheld from public inspection as criminal investigative or intelligence information. See s. 119.011(3)(c)5., F.S. In other words, once the material has been made available to the defendant as part of the discovery process in a criminal proceeding, the material is ordinarily no longer considered to be exempt criminal investigative or criminal intelligence information. See, e.g., *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (active criminal investigation exemption does not apply to information for which disclosure was previously required under the rules of discovery). Accord *Tribune Company v. Public Records*, 493 So. 2d 480, 485 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987) and *Times Publishing Company v. State*, 903 So. 2d 322, 325 (Fla. 2d DCA 2005). Cf. *State v. Buenoano*, 707 So. 2d 714 (Fla. 1998) (restricted access documents provided to state attorney by federal government pursuant to a loan agreement retained their confidential status under a Florida law providing an exemption for out-of-state criminal investigative information that is shared with Florida criminal justice agencies on a confidential basis, even though the documents erroneously had been given to the defendant and placed in the court record).

For example, in *Satz v. Blankenship*, 407 So. 2d 396 (Fla. 4th DCA 1981), *review denied*, 413 So. 2d 877 (Fla. 1982), the court ruled that a newspaper reporter was entitled to access to tape recordings concerning a defendant in a criminal prosecution where the recordings had been disclosed to the defendant. The court concluded that a reading of the statute reflected the Legislature’s belief that once the information was released to the defendant, there was no longer any need to exclude the information from the public. Thus, the tape recordings were no longer “criminal investigative information” that could be withheld from public inspection. See also *News-Press Publishing Co. Inc. v. D’Alessandro*, No. 96-2743-CA-RWP (Fla. 20th Cir. Ct. April 24, 1996), available online in the Cases database at the open government site at myfloridalegal.com (once state allowed defense counsel to listen to portions of a surveillance audiotape involving a city councilman accused of soliciting undue compensation, those portions of the audiotape became excluded from the definition of “criminal investigative information,” and were subject to public inspection). Cf. *City of Miami v. Post-Newsweek Stations Florida, Inc.*, 837 So. 2d 1002, 1003 (Fla. 3d DCA 2002), *review dismissed*, 863 So. 2d 1190 (Fla. 2003) (where defendant filed request for discovery, but withdrew request before state attorney provided such materials, requested materials were not “given or required by law . . . to be given to the person arrested” and

thus did not lose their exempt status as active criminal investigative information).

Similarly, in *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986), the court upheld a trial judge's order requiring the state attorney to release to the news media all information furnished to the defense counsel in a criminal investigation. While the state attorney argued that the documents could be withheld because the criminal investigation was still "active" and thus exempt from disclosure, the court rejected this contention by concluding that once the material was given to the defendant pursuant to the rules of criminal procedure, the material was excluded from the statutory definition of criminal investigative information. Therefore, it was no longer relevant whether the investigation was active or not and the documents could not be withheld as active criminal investigative information. *Id.* at 779n.1.

Chapter 119's requirement of public disclosure of records made available to the defendant does not violate the attorney disciplinary rule prohibiting extrajudicial comments about defendants as long as the state attorney does not put an interpretation on the record that prejudices the defendant or exposes witnesses. *Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d at 780.

The only circumstances where criminal intelligence or investigative information can retain that status even though it has been made available to the defendant are:

- 1) If the information would reveal identifying information of a victim of a sexual offense, child abuse, or certain human trafficking crimes pursuant to s. 119.071(2)(h), F.S.; or identifying information of a witness to a homicide for a specified period as provided in s. 119.071(2)(m), F.S.; or the address of a victim of an incident of mass violence as provided in s. 119.071(2)(o), F.S.; or
- 2) If a court order has been issued finding that release of the information prior to trial would:
 - a) be defamatory to the good name of a victim or witness or jeopardize the safety of a victim or witness; and
 - b) impair the ability of a state attorney to locate or prosecute a codefendant.

In all other cases, material which has been made available to the defendant cannot be deemed criminal investigative or intelligence information and must be open to inspection unless some other exemption applies (e.g., s. 119.071[2][e], F.S., exempting all information "revealing the substance of a confession" by a person arrested until there is a final disposition in the case); or the court orders closure of the material in accordance with its constitutional authority to take such measures as are necessary to obtain orderly proceedings and a fair trial or to protect constitutional privacy rights of third parties. See *Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1 (Fla. 1982); *Florida Freedom Newspapers, Inc. v. McCrary*, 520 So. 2d 32 (Fla. 1988); *Post-Newsweek Stations, Florida Inc. v. Doe*, 612 So. 2d 549 (Fla. 1992). And see *Morris Communications Company LLC v. State*, 844 So. 2d 671, 673n.3 (Fla. 1st DCA 2003) (although documents turned over to the defendant during discovery are generally public records subject to disclosure under Ch. 119, the courts have authority to manage pretrial publicity to protect the defendant's constitutional rights as described in *Miami Herald Publishing Company v. Lewis*, *supra*); *Times Publishing Co. v. State*, 903 So. 2d 322 (Fla. 2d DCA 2005) (while the criminal discovery rules authorize a nonparty to file a motion to restrict disclosure of discovery materials based on privacy considerations, where no such motion has been filed, the judge is not authorized to prevent public access on his or her own initiative). Cf. *Rameses, Inc. v. Demings*, 29 So. 3d 418, 423 (Fla. 5th DCA 2010) ("disclosure to criminal defendant during discovery of unredacted versions of undercover police surveillance recordings does not destroy, in a public records context, the exemptions contained in section 119.071 for information relating to the identity of undercover law enforcement personnel"). See also the discussion of Marsy's Law on page 121.

(6) Active versus inactive criminal investigative or intelligence information**(a) Active criminal investigative information**

Criminal investigative information is considered active (and, therefore, exempt from disclosure pursuant to s. 119.071[2][c], F.S.) “as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.” Section 119.011(3)(d)2., F.S. Information in cases barred from prosecution by a statute of limitation is not active. *Id.*

The definition of “active” requires “a showing in each particular case that an arrest or prosecution is reasonably anticipated in the foreseeable future.” *Barfield v. City of Fort Lauderdale Police Department* 639 So. 2d 1012, 1016 (Fla. 4th DCA), *review denied*, 649 So. 2d 869 (Fla. 1994). Thus, “once the investigations are concluded, if no charges are filed, the records would cease to be ‘active’ and thus subject to disclosure.” *Id.* at 1018.

There is no fixed time limit for naming suspects or making arrests other than the applicable statute of limitations. See *Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985). The fact that investigators might not yet have decided upon a suspect does not necessarily imply that the investigation is inactive. *Id.* at 1131. The Legislature did not intend that confidentiality be limited to investigations where the outcome and an arrest or prosecution was a certainty or even a probability. *Barfield v. City of Fort Lauderdale Police Department* at 1016-1017.

Thus, an investigation will be deemed to be “active,” even though there is no immediate anticipation of an arrest, so long as the investigation is proceeding in good faith, and the state attorney or grand jury will reach a determination in the foreseeable future. *Barfield v. City of Fort Lauderdale Police Department, supra*. Accordingly, a police department’s criminal investigation into a shooting incident involving its officers continued to be “active” even though pursuant to department policy, all police shooting cases were sent to the state attorney’s office for review by the grand jury and the department did not know if there would be an arrest in this particular case. *Id.*

Similarly, in *News-Press Publishing Co., Inc. v. Sapp*, 464 So. 2d 1335 (Fla. 2d DCA 1985), the court held that in view of an ongoing investigation by the state attorney and the convening of a grand jury in the very near future to consider a shooting incident by deputy sheriffs during an undercover drug transaction, documents consisting of the sheriff’s completed internal investigation of the incident constituted “active criminal investigative information” and were, therefore, exempt from disclosure. See also *Wells v. Sarasota Herald Tribune Company, Inc.*, 546 So. 2d 1105 (Fla. 2d DCA 1989) (investigative files of the sheriff and state attorney were not inactive where an active prosecution began shortly after the trial judge determined that the investigation was inactive and ordered that the file be produced for public inspection).

Additionally, a circuit court held that a criminal investigative file involving an alleged 1988 sexual battery which had been inactive for three years, due in part to the death of the victim from unrelated causes, could be “reactivated” and removed from public view in 1992 when new developments prompted the police to reopen the case. The court found that it was irrelevant that the 1988 file could have been inspected prior to the current investigation; the important considerations were that the file apparently had not been viewed by the public during its “inactive” status and the file was now part of an active criminal investigation and therefore exempt from disclosure as active criminal investigative information. *News-Press Publishing Co., Inc. v. McDougall*, No. 92-1193CA-WCM (Fla. 20th Cir. Ct. February 26, 1992), available online in the Cases database at the open government site at myfloridalegal.com.

In another case, however, the appellate court upheld a court order unsealing an arrest warrant affidavit upon a showing of good cause by the subject of the affidavit. The affidavit had been quashed and no formal charges were filed against the subject. The court held that the affidavit did

not constitute active criminal investigative information because there was no reasonable, good faith anticipation that the subject would be arrested or prosecuted in the near future. In addition, most of the information was already available to the subject through grand jury transcripts, the subject's perjury trial, or by discovery. *Metropolitan Dade County v. San Pedro*, 632 So. 2d 196 (Fla. 3d DCA 1994). *And see Mobile Press Register, Inc. v. Witt*, No. 95-06324 CACE (13) (Fla. 17th Cir. Ct. May 21, 1996), available online in the Cases database at the open government site at myfloridalegal.com in which the judge ordered that files in a 1981 unsolved murder be opened to the public because, despite recent reactivation of the investigation, the case had been dormant for many years and no arrest or prosecution had been initiated or was imminent.

(b) Active criminal intelligence information

In order to constitute exempt "active" criminal intelligence information, the information must "be of the type that will lead to the 'detection of *ongoing or reasonably anticipated criminal activities*.'" *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997), quoting s. 119.011(3)(d)1., F.S. *See Barfield v. Orange County, Florida*, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992), available online in the Cases database at the open government site at myfloridalegal.com (denying a petition for writ of mandamus seeking access to gang intelligence files compiled by the sheriff's office). *See also* AGO 94-48 (information contained in the statewide integrated violent crime information system established by the Florida Department of Law Enforcement constitutes active criminal intelligence information; even though some of the information may have come from closed investigations, the information is collected to "anticipate, prevent, and monitor criminal activity and to assist in the conduct of ongoing criminal investigations").

By contrast, in *Christy v. Palm Beach County Sheriff's Office*, *supra*, the court ruled that records generated in connection with a criminal investigation conducted 13 years earlier did not constitute "active" criminal intelligence information. The court noted that the exemption "is not intended to prevent disclosure of criminal files forever on the mere possibility that other potential criminal defendants may learn something from the files." *Id.*

(c) Pending prosecutions or appeals

Criminal intelligence and investigative information is also considered to be "active" while such information is directly related to pending prosecutions or direct appeals. Section 119.011(3)(d), F.S. *See News-Press Publishing Co., Inc. v. Sapp*, *supra*; and *Tal-Mason v. Satz*, 614 So. 2d 1134 (Fla. 4th DCA), *review denied*, 624 So. 2d 269 (Fla. 1993) (contents of prosecutorial case file must remain secret until the conclusion of defendant's direct appeal).

Once the conviction and sentence have become final, criminal investigative information can no longer be considered to be "active." *See State v. Kokal*, 562 So. 2d 324, 326 (Fla. 1990) and *Osario v. State*, 34 So. 3d 98 (Fla. 3rd DCA 2010). *Accord Tribune Company v. Public Records*, 493 So. 2d 480, 483-484 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987) (actions for postconviction relief following affirmation of the conviction on direct appeal are not pending appeals for purposes of s. 119.011[3][d]2., F.S. *See also Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997) (the term "pending prosecutions or appeals" in s. 119.011[3][d], F.S., applies only to ongoing prosecutions or appeals which have not yet become final).

Moreover, the determination as to whether investigatory records related to pending prosecutions or appeals are "active" is relevant *only* to those records which constitute criminal intelligence or investigative information. In other words, if records are excluded from the definition of criminal intelligence or investigative information, as in the case of records given or required to be given to the defendant under s. 119.011(3)(c)5., F.S., it is immaterial whether the investigation is active or inactive. *See Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 779n.1 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986) ("Something that

is not criminal intelligence information or criminal investigative information cannot be active criminal intelligence information or active criminal investigative information.”). *Accord Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (active criminal investigation exemption does not apply to information for which disclosure was previously required under discovery rules even though there is a pending direct appeal).

(7) Criminal defendant’s public records request

Section 119.07(8), F.S., states that the public access rights set forth in s. 119.07, F.S., “are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings.” Thus, a criminal defendant’s public records request for nonexempt law enforcement records relating to the defendant’s pending prosecution constitutes an election to participate in discovery and triggers a reciprocal discovery obligation. *Henderson v. State*, 745 So. 2d 319 (Fla. 1999).

(8) Disclosure of active criminal investigative information to the public

It has been held that the criminal investigative exemption does not apply if the information has already been made public. *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992). *See also Downs v. Austin*, 522 So. 2d 931, 935 (Fla. 1st DCA 1988) (once state has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information). *Cf. State v. Buenoano*, 707 So. 2d 714, 717 (Fla. 1998) (confidential documents furnished to a state attorney by the federal government remained exempt from public inspection even though the documents inadvertently had been given to the defendant and placed in the court record in violation of the conditions of the federal loan agreement).

However, the voluntary disclosure of a non-public record does not automatically waive the exempt status of *other* documents. *Arbelaez v. State*, 775 So. 2d 909, 918 (Fla. 2000). *Accord Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (release of the autopsy report and the medical examiner’s public comments about the report did not mean that other records in the possession of the medical examiner relating to an active criminal investigation into the death were public; “[i]t is not unusual for law enforcement and criminal investigatory agencies to selectively release information relating to an ongoing criminal investigation in an effort to enlist public participation in solving a crime”).

(9) Disclosure of active criminal investigative information to another criminal justice agency

Exempt active criminal investigative information may be shared with another criminal justice agency and retain its protected status; in “determining whether or not to compel disclosure of active criminal investigative or intelligence information, the primary focus must be on the statutory classification of the information sought rather than upon in whose hands the information rests.” *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). The *City of Riviera Beach* court held that exempt records of the West Palm Beach police department’s active criminal investigation concerning a shooting incident involving a police officer from Riviera Beach could be furnished to the Riviera Beach police department for use in a simultaneous administrative internal affairs investigation of the officer without losing their exempt status. *Accord Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998) (applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record).

Additionally, a police department may enter into a contract with a private company that compiles raw police data and then provides informational reports to law enforcement. The release

of the exempt information to the corporation for this purpose would not cause such records to lose their exempt status. AGO 96-36.

However, while the courts have recognized that active criminal investigative information may be forwarded from one criminal justice agency to another without jeopardizing its exempt status, “[t]here is no statutory exemption from disclosure of an ‘ongoing federal prosecution.’” *Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001). In *Woolling*, the court held that a state attorney bore the burden of establishing that state attorney files in a *nolle prossed* case which were furnished to the federal government for prosecution of a defendant constituted active criminal investigative information; the fact that the federal government was actively prosecuting the case was not sufficient, standing alone, to justify imposition of the exemption.

Moreover, the exemption for active criminal intelligence and investigative information does not exempt other public records from disclosure simply because they are transferred to a law enforcement agency. *See, e.g., Tribune Company v. Cannella*, 438 So. 2d 516, 523 (Fla. 2d DCA 1983), *reversed on other grounds*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom., Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985) (assistant state attorney could not withdraw public records from public scrutiny by asserting that he “compiled” the records simply because he subpoenaed them; thus, law enforcement personnel records compiled and maintained by the employing agency prior to a criminal investigation did not constitute criminal intelligence or criminal investigative information); and *State Attorney’s Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205 (Fla. 4th DCA 2018) (surveillance video footage created by a school district before a criminal investigation began did not constitute “criminal investigative information” within the meaning of s. 119.011[3]b) because it was not compiled by a criminal justice agency in the course of conducting a criminal investigation). *And see New Times, Inc. v. Ross*, No. 92-5795 CIV 25 (Fla. 11th Cir. Ct. March 17, 1992), available online in the Cases database at the open government site at myfloridalegal.com (papers in a closed civil forfeiture file which subsequently became part of a criminal investigation were open to inspection as the materials could not be considered criminal investigative information because the file was closed prior to the commencement of the criminal investigation).

Thus, public records maintained and compiled by the Office of the Capital Collateral Representative cannot be transformed into active criminal investigative information by merely transferring the records to the Florida Department of Law Enforcement (FDLE). AGO 88-25. *Accord* Inf. Op. to Slye, August 5, 1993, concluding that the contents of an investigative report compiled by a state agency inspector general in carrying out his or her duty to determine program compliance are not converted into criminal intelligence information merely because FDLE also conducts an investigation or because such report or a copy thereof has been transferred to that department. *And see Sun-Sentinel, Inc. v. Florida Department of Children and Families*, 815 So. 2d 793 (Fla. 3d DCA 2002).

Similarly, in AGO 92-78, the Attorney General’s Office concluded that otherwise disclosable public records of a housing authority are not removed from public scrutiny merely because the records have been subpoenaed by and transferred to the state attorney’s office. Inf. Op. to Theobald, November 16, 2006, stating that while an individual would be prohibited from obtaining records from the internal investigation file pursuant to s. 112.533(2), F.S., while the investigation is active, public records such as overtime slips created prior to the investigation and maintained in the law enforcement officer’s personnel file would not become confidential simply because copies of such records are being used in the investigation.

However, the exemption for active criminal investigative information may not be subverted by making a public records request for all public records gathered by a law enforcement agency in the course of an ongoing investigation; to permit such requests would negate the purpose of the exemption. AGO 01-75.

In addition, a request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from disclosure requirements, during the period in which the information constitutes active criminal investigative or intelligence information. Section 119.071(2)(c)2.a., F.S. The law enforcement agency that made the request must give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active, so that the custodian's response to the request and information that would identify the public record requested are available to the public. Section 119.071(2)(c)2.b., F.S.

Thus, while agency records are not exempt merely because they have been submitted to FDLE, s. 119.071(2)(c)2.a., F.S., exempts FDLE's request to inspect or copy records, as well as the agency's response, or any information that would identify the public record that was requested by FDLE or provided by the agency during the period in which the information constitutes criminal intelligence or criminal investigative information that is active. AGO 06-04. Although a request may be made for the agency's records, such a request may not be phrased, or responded to, in terms of a request for the specific documents asked for and received by FDLE during the course of any active criminal investigation. *Id.* Cf. Inf. Op. to Theobald, November 16, 2006, stating that while the records in a personnel department were subject to disclosure, the personnel department was precluded from identifying which of its records had been gathered by a law enforcement agency in the course of its active internal investigation.

(10) Records containing both active criminal investigative information and non-exempt information

The fact that a crime or incident report may contain some active criminal investigative or intelligence information does not mean that the entire report is exempt from disclosure. Section 119.071(1)(d), F.S., requires the custodian of the document to redact only that portion of the record for which an exemption is asserted and to provide the remainder of the record for inspection and copying. *See, e.g., City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995), in which the court held that a city was authorized to withhold exempt active criminal investigative records but "must comply with the disclosure requirements of sections 119.07(2) [now s. 119.07(1)(d)] and 119.011(3)(c) by making partial disclosure of certain non-exempt information contained in the records including, *inter alia*, the date, time and location of the incident."

(11) Criminal investigative or intelligence information received from other states or the federal government

Pursuant to s. 119.071(2)(b), F.S., criminal intelligence or investigative information received by a Florida criminal justice agency from a non-Florida criminal justice agency on a confidential or similarly restricted basis is exempt from disclosure. *See State v. Wright*, 803 So. 2d 793 (Fla. 4th DCA 2001), *review denied*, 823 So. 2d 125 (Fla. 2002) (state not required to disclose criminal histories of civilian witnesses which it obtained from the Federal Bureau of Investigation). The purpose of this statute is to "encourage cooperation between non-state and state criminal justice agencies." *State v. Buenoano*, 707 So. 2d 714, 717 (Fla. 1998). Thus, confidential documents furnished to a state attorney by the federal government remained exempt from public inspection even though the documents inadvertently had been given to the defendant and placed in the court record in violation of the conditions of the federal loan agreement. *Id.*

(12) Criminal investigative or intelligence information received prior to January 25, 1979

Criminal intelligence or investigative information obtained by a criminal justice agency prior to January 25, 1979, is exempt from disclosure. Section 119.071(2)(a), F.S. *See Satz v. Gore Newspapers Company*, 395 So. 2d 1274, 1275 (Fla. 4th DCA 1981) ("All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is specifically exempt from the requirements of public disclosure.").

b. “Baker Act” reports prepared by law enforcement officers

Part I, Ch. 394, F.S., is the “Baker Act,” Florida’s mental health act. The Baker Act provides for the voluntary or involuntary examination and treatment of mentally ill persons. Pursuant to s. 394.463(2)(a)2., F.S., a law enforcement officer must take a person who appears to meet the statutory criteria for involuntary examination into custody and deliver that person, or have that person delivered, to the nearest receiving facility for examination.

Section 394.463(2)(a)2., F.S., requires the officer to “execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient’s clinical record.” A patient’s clinical record is confidential. Section 394.4615(1), F.S. Thus, the report prepared by the officer pursuant to this statute is part of the patient’s clinical record and is confidential. *Cf. Lake v. State*, 193 So. 3d 932 (Fla. 4th DCA 2016) (Legislature has not made records of a sexually violent predator confidential in the same way as the clinical records of a Baker Act patient).

However, in AGO 93-51, the Attorney General’s Office advised that a *separate* written incident or event report prepared after a specific crime has been committed which contains information given during the initial reporting of the crime, is filed with the law enforcement agency as a record of that event, and is not made a part of the patient’s clinical record, is not confidential pursuant to Ch. 394, F.S. The opinion noted that the incident report in question was not the confidential law enforcement report required by s. 394.463(2)(a)2., but was a separate written incident or event report prepared by a deputy sheriff for filing with the sheriff’s office as an independent record of the deputy’s actions. *Cf. s. 394.464(1), F.S.*, providing confidentiality for petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under the Baker Act and authorizing disclosure to specified persons and entities.

c. Body camera recordings

A body camera recording is confidential and exempt from public disclosure when taken inside a private residence, inside a health care, mental health care, or social services facility, or in a place that a reasonable person would expect to be private. Section 119.071(2)(l)2., F.S. The term “body camera” is defined to mean a “portable electronic recording device that is worn on a law enforcement officer’s body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.” Section 119.071(2)(l)1.a., F.S.

A law enforcement agency may disclose the recording in furtherance of its official duties and responsibilities or to another governmental agency in furtherance of that agency’s duties and responsibilities. Section 119.071(2)(l)3., F.S.

The recording must be disclosed to certain individuals as set forth in the statute, including the person recorded, or pursuant to court order. Section 119.071(2)(l)4., F.S. *And see s. 943.1718(2)(d), F.S.* However, the exemption does not supersede any other public records exemption that existed before or is created after the effective date of the exemption. Those portions of a recording which are protected from disclosure by another public records exemption shall continue to be exempt or confidential and exempt. Section 119.071(2)(l)7., F.S.

A law enforcement agency must retain a body camera recording for at least 90 days. Section 119.071(2)(l)5., F.S. The exemption applies retroactively. Section 119.071(2)(l)6., F.S.

d. Confessions

Section 119.071(2)(e), F.S., exempts from disclosure any information revealing the substance of a confession by a person arrested until such time as the case is finally determined by adjudication, dismissal, or other final disposition. *See Times Publishing Co. v. Patterson*, 451 So. 2d 888 (Fla. 2d DCA 1984) (trial court order permitting state attorney or defendant to designate

affidavits, depositions or other papers which contained “statements or substance of statements” to be sealed was overbroad because the order was not limited to those statements revealing the substance of a “confession”).

In AGO 84-33, the Attorney General’s Office advised that only such portions of the complaint and arrest report in a criminal case file which reveal the “substance of a confession,” *i.e.*, the material parts of a statement made by a person charged with the commission of a crime in which that person acknowledges guilt of the essential elements of the act or acts constituting the entire criminal offense, are exempt from public disclosure. *And see Times Publishing Company v. State*, 827 So. 2d 1040, 1042 (Fla. 2d DCA 2002), (portions of police interview transcript and tape which did not “directly relate to [the defendant’s] participation in the crimes” did not contain the substance of a confession pursuant to s. 119.071(2)(e), F.S.).

e. Confidential informants

Section 119.071(2)(f), F.S., exempts information disclosing the identity of confidential informants or sources. This exemption applies regardless of whether the informants or sources are still active or may have, through other sources, been identified as such. *Christy v. Palm Beach County Sheriff’s Office*, 698 So. 2d 1365, 1368 (Fla. 4th DCA 1997); *Salcines v. Tampa Television*, 454 So. 2d 639 (Fla. 2d DCA 1984); and *Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010). *And see State v. Natson*, 661 So. 2d 926 (Fla. 4th DCA 1995) (private citizen who provided police with tip information which led to defendant’s arrest may be afforded confidential informant status). *Cf. Doe v. State*, 901 So. 2d 881 (Fla. 4th DCA 2005) (where citizen provided information to state attorney’s office which led to a criminal investigation and was justified in inferring or had a reasonable expectation that he would be treated as a confidential source, the citizen is entitled to have his identifying information redacted from the closed file, even though there was no express assurance of confidentiality by the state attorney’s office); *State v. Bartholomew*, No. 08-5656CF10A (Fla. 17th Cir. Ct., August 7, 2009), available online in the Cases database at the open government site at myfloridalegal.com (even if Crimestoppers Council of Broward County were an agency for purposes of Ch. 119, F.S., information relating to the identity of informants and persons from whom they received information would be confidential under s. 119.071[2][f], F.S.).

However, in *Ocala Star Banner Corporation v. McGhee*, 643 So. 2d 1196 (Fla. 5th DCA 1994), the court held that a police department should not have refused to release an entire police report on the ground that the report contained some information identifying a confidential informant. According to the court, “[w]ithout much difficulty the name of the informant, [and] the sex of the informant (which might assist in determining the identity) . . . can be taken out of the report and the remainder turned over to [the newspaper].” *Id.* at 1197. *Accord Christy v. Palm Beach County Sheriff’s Office*, 698 So. 2d at 1368. *And see Holley v. Bradford County Sheriff’s Department*, 171 So. 3d 805 (Fla. 1st DCA 2015) (trial court must conduct an in camera inspection of the records to determine whether they could be redacted to remove information identifying confidential informants). *Cf. Althouse v. Palm Beach County Sheriff’s Office*, 92 So. 3d 899 (Fla. 4th DCA 2012), *disapproved on other grounds, Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120 (Fla. 2016) (agency conceded that its initial response denying public records request for “rules, regulations, operating procedures and policies regarding the recruitment and use of confidential informants” was “incorrect”; records were subsequently produced after portions were redacted pursuant to s. 119.071[2][d], F.S.).

Moreover, in *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), the court ruled that information regarding payments to a confidential informant (who had been previously identified as a confidential informant during a criminal trial) is subject to disclosure as long as the records are sufficiently redacted to conceal the specific cases on which the informant worked. The court acknowledged that the Public Records Act may not be used in such a way as to obtain information that the Legislature has declared must be exempt

from disclosure, but said that “this is not a situation where someone has alleged that they know or suspect the identity of a confidential informant and the production of records involving that informant would confirm the person’s information or suspicion.” *Id.*

Section 943.082(1), F.S., authorizes the Florida Department of Law Enforcement, in collaboration with the Department of Legal Affairs, to competitively procure a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials. The identity of the reporting party received through the reporting tool and held by the Department of Law Enforcement, Department of Education, law enforcement agencies, or school officials is confidential. Section 943.082(6), F.S.

f. Conviction integrity unit reinvestigation information

Section 119.071(2)(q), F.S., establishes an exemption for conviction integrity unit reinvestigation information, as defined in the exemption, for a reasonable period of time during an active, ongoing, and good faith investigation of a claim of actual innocence in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation.

g. Criminal history information

(1) Criminal history information generally

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lymn, June 1, 1990. *And see* AGO 97-09 (a law enforcement agency may, without a request, release nonexempt information contained in its public records relating to sexual offenders; the agency’s authority to release such information is not limited to those offenders who are designated as “sexual predators”).

Section 943.046, F.S., states:

(1) Any state or local law enforcement agency may release to the public any criminal history information and other information regarding a criminal offender, including, but not limited to, public notification by the agency of the information, unless the information is confidential and exempt [from disclosure]. However, this section does not contravene any provision of s. 943.053 which relates to the method by which an agency or individual may obtain a copy of an offender’s criminal history record.

(2) A state or local law enforcement agency and its personnel are immune from civil liability for the release of criminal history information or other information regarding a criminal offender, as provided by this section.

Section 943.053(2), F.S., referenced in the above statute, provides restrictions on the dissemination of criminal justice information obtained from *federal* criminal justice information systems and other states by stating that such information shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency. Thus, criminal history record information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection. AGO 99-01.

Section 943.053(3)(a), F.S., states that criminal history information compiled by the Criminal Justice Information Program of the Florida Department of Law Enforcement from *intrastate* sources shall be provided to law enforcement agencies free of charge and to persons in the private sector upon payment of fees as provided in the subsection. *And see* pages 116-117 relating to dissemination of criminal history information relating to juveniles.

(2) Sealed and expunged records

Access to criminal history records sealed or expunged by court order in accordance with s. 943.059 or s. 943.0585, F.S., is strictly limited. *See, e.g., Alvarez v. Reno*, 587 So. 2d 664 (Fla. 3d DCA 1991) (Goderich, J., specially concurring) (state attorney report and any other information revealing the existence or contents of sealed records is not a public record and cannot, under any circumstances, be disclosed to the public). *And see* s. 943.0595, F.S., providing for automatic sealing of certain criminal history records.

A law enforcement agency that has been ordered to expunge criminal history information or records should physically destroy or obliterate information consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations, or other formal criminal charges and the disposition of those charges. AGO 02-68. However, criminal intelligence information and criminal investigative information do not fall within the purview of s. 943.0585, F.S. *Id.* *And see* AGO 00-16 (only those records maintained to formalize the petitioner's arrest, detention, indictment, information, or other formal criminal charge and the disposition thereof would be subject to expungement under s. 943.0585). *Cf.* s. 943.0582(5), F.S. (nonjudicial records held by the Florida Department of Law Enforcement pertaining to the arrest of juveniles for certain crimes who have had the records sealed or expunged pursuant to s. 943.0582, are confidential).

There are exceptions allowing disclosure of information relating to the existence of an expunged criminal history record to specified entities for their respective licensing and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. Section 943.0585(6), F.S. Similar provisions exist relative to disclosure of sealed criminal history records. Section 943.059(6), F.S. *And see* s. 943.0583(10)(a) and (12), F.S. (petition for expunction and expunged criminal history record of human trafficking victim). A records custodian who has received information relating to the existence of an expunged or sealed criminal history record is prohibited from disclosing the existence of such record. AGO 94-49.

h. Fingerprint and genetic genealogy records

Biometric identification information is exempt from s. 119.07(1), F.S. Section 119.071(5)(g), F.S. The term "biometric identification information" means any record of friction ridge detail, fingerprints, palm prints, and footprints. *Id.*

Except as provided in the exemption, investigative genetic genealogy information and materials as defined in the exemption are confidential and exempt from disclosure requirements. Section 119.071(2)(r), F.S. *And see* s. 943.325(14), F.S., providing that the results of a DNA analysis and the comparison of analytic results shall be released only to criminal justice agencies as defined in s. 943.045, F.S., at the request of the agency. Otherwise, such information is confidential and exempt.

i. Forensic behavioral health evaluations

A forensic behavioral health evaluation filed with the court pursuant to Ch. 916, F.S. (mentally deficient and mentally ill defendants) is confidential and exempt. Section 916.1065(1), F.S.

j. Geolocation information

Law enforcement geolocation information of a law enforcement officer or a law enforcement vehicle that is held by a law enforcement agency is exempt from disclosure requirements. The exemption does not apply to traffic citations, crash reports, homicide reports, arrest reports, incident reports, or any other official reports issued by an agency which contain law enforcement geolocation information. Disclosure is required under specified circumstances. Section 119.071(4)(e), F.S.

k. Juvenile offender records**(1) Confidentiality and authorized disclosure**

Juvenile offender records traditionally have been considered confidential and treated differently from other records in the criminal justice system. With limited exceptions, s. 985.04(1)(a), F.S., provides, in relevant part, that:

Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, *all information obtained under this chapter* in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department [of Juvenile Justice], the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile *is confidential and exempt [from public disclosure]*. This exemption applies to information obtained before, on, or after the effective date of this exemption. (e.s).

Section 985.04(1)(b), F.S., states that the confidential and exempt information may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon court order. *Cf.* AGO 96-65 (subject of juvenile offense records may authorize access to such records to others [such as a potential employer] by means of a release).

Similarly, s. 985.04(7)(a), F.S., limits access to records in the custody of the Department of Juvenile Justice. With the exception of specified persons and agencies, juvenile records in the custody of that agency “may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper.” If a juvenile prosecuted as an adult is transferred to serve his or her sentence in the custody of the Department of Juvenile Justice, the department’s records relating to that juvenile are not open to public inspection. *New York Times Company v. Florida Department of Juvenile Justice*, No. 03-46-CA (Fla. 2d Cir. Ct. March 20, 2003), available online in the Cases database at the open government site at myfloridalegal.com.

Thus, as a general rule, access to records of juvenile offenders is limited. *See, e.g.*, Inf. Op. to Galbraith, April 8, 1992 (city’s risk manager and attorney representing city in unrelated civil lawsuit not among those authorized to have access); and Inf. Op. to Wierzbicki, April 7, 1992 (domestic violence center not among those authorized to receive juvenile information). *And see* AGO 07-19 (confidentiality provisions preclude public release of the names and addresses of the parents of juvenile arrested for a misdemeanor). *And see* s. 985.045(2), F.S., providing, with limited exceptions, for confidentiality of juvenile court records. *Cf.* AGO 97-28 (juvenile confidentiality requirements do not apply to court records of a case in which a juvenile is prosecuted as an adult, regardless of the sanctions ultimately imposed in the case).

Confidential photographs of juveniles taken in accordance with s. 985.11, F.S., “may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.” Section 985.11(1)(b), F.S. This statute authorizes a law enforcement officer to use photographs of juvenile offenders in a photographic lineup for the purpose of identifying the perpetrator of a crime, regardless of whether those juvenile offenders are suspects in the crime under investigation. AGO 96-80. *Cf. Barfield v.*

Orange County, Florida, No. CI92-5913 (Fla. 9th Cir. Ct. August 4, 1992), available online in the Cases database at the open government site at myfloridalegal.com (denying petitioner's request to inspect gang intelligence files compiled by the sheriff's office).

(2) Exceptions to confidentiality

(a) Child traffic violators

All records of child traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations. Section 985.11(3), F.S.

(b) Felony arrests and adult system transfers

Until October 1, 1994, law enforcement agencies generally could release only the name and address of juveniles 16 and older who had been charged with or convicted of certain crimes. In 1994, the juvenile confidentiality laws were modified to eliminate the age restriction and provide enhanced disclosure. Section 985.04(2), F.S., was amended again in 2016 and now provides:

Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

- (a) Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- (b) Charged with a violation of law which, if committed by an adult, would be a felony;
- (c) Found to have committed an offense which, if committed by an adult, would be a felony; or
- (d) Transferred to adult court pursuant to part X of Chapter 985, are not considered confidential and exempt from s. 119.07(1) solely because of the child's age.

The Attorney General's Office has stated that the expanded disclosure provisions originally enacted in 1994 apply only to juvenile records created after October 1, 1994, the effective date of the 1994 amendments to the juvenile confidentiality laws. AGO 95-19. Confidential information on juveniles arrested prior to October 1, 1994, is available by court order upon a showing of good cause. *Id.* See *G.G. v. Florida Department of Law Enforcement*, 97 So. 3d 268, 274 (Fla. 1st DCA 2012) ("it is clear that only the arrest records of those juveniles who the legislature has designated in section 985.04[2] have lost their confidential status and are available to the public . . ."). See also the discussion below regarding the dissemination of criminal history information relating to juveniles. *Cf.* s. 943.0582(5), F.S. (nonjudicial records held by the Florida Department of Law Enforcement pertaining to the arrest of juveniles for certain crimes who have had the records sealed or expunged pursuant to s. 943.0582, are confidential).

A public records custodian may choose not to electronically publish on the custodian's website the arrest or booking photographs of a child which are not confidential and exempt under this section or otherwise restricted from publication by law; however, this paragraph does not restrict public access to records as provided by s. 119.07, F.S. Section 985.04(2)(b), F.S.

(c) Mandatory notification to schools

Section 985.04(4)(b), F.S., provides that when the state attorney charges a juvenile with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile's school that the juvenile has been charged with such felony or delinquent act. A similar directive applies to a law enforcement agency that takes a juvenile into custody for an offense that would have been a felony if committed by an adult, or a crime of violence. Section 985.04(4)(a), F.S. And see s. 1006.08(2), F.S. (notification by court to school superintendent); and s. 985.04(4)(c), F.S. (notification by school superintendent

to certain school personnel). *Cf.* s. 985.04(4)(d), F.S. (notification by Department of Juvenile Justice of the presence of a juvenile sex offender in the care and custody or under the jurisdiction or supervision of the department).

(d) Criminal history information relating to juveniles

Section 943.053(3)(c)1., F.S., provides that criminal history information relating to juveniles, including information that is confidential pursuant to s. 943.053(3)(b), F.S., shall be available to:

- (a) A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- (b) The person to whom the record relates, or his or her attorney;
- (c) The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- (d) An agency or entity specified in s. 943.0585(6) or s. 943.059(6), F.S., for the purpose specified therein, and any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

(e) Victim access

Section 985.036(1), F.S., allows the victim, the victim's parent or guardian, their lawful representatives, and, in a homicide case, the next of kin, to have access to information and proceedings in a juvenile case. Those entitled to access "may not reveal to any outside party any confidential information obtained under this subsection regarding a case involving a juvenile offense, except as is reasonably necessary to pursue legal remedies." *Id.* And see s. 960.001(8), F.S., authorizing similar disclosures to victims.

In addition, s. 985.04(3), F.S., states that a "law enforcement agency may release a copy of the juvenile offense report to the victim of the offense." *Cf. Harvard v. Village of Palm Springs*, 98 So. 3d 645 (Fla. 4th DCA 2012), noting that the authorization in s. 985.04(3), F.S., is permissive not mandatory; thus, a local government was not *required* to produce a juvenile offense report to the victim's mother.

I. Motor vehicle records

(1) Automated license plate recognition system records

Images and data containing or providing personal identifying information obtained through use of an automated license plate recognition system are confidential and exempt. Section 316.0777, F.S.

(2) Crash reports

Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by an agency, as defined in s. 119.011, F.S., are confidential and exempt for a period of 60 days after the report is filed. Section 316.066(2)(a), F.S.

Crash reports held by an agency may be made immediately available to the parties involved in the crash, their legal representatives, insurers, law enforcement agencies and their contract service providers, victim services programs, and any federal, state, or local governmental agency or any private person or entity acting on behalf of these agencies, but not for redistribution to any person or entity not listed in this subsection. Section 366.066(2)(b), F.S. *Cf.* AGO 01-59 (owner of vehicle involved in a crash authorized to receive access to crash report).

Section 316.066(2)(b), F.S., also provides that crash reports which do *not* contain the home or employment street addresses, driver license or identification card numbers, dates of birth and home and employment telephone numbers of the parties involved in the crash shall be made immediately available to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S. Section 316.066(2)(b), F.S.

“As a condition precedent to accessing a crash report, a person must present a valid driver’s license or other photographic identification, proof of status or identification that demonstrates his or her qualifications to access that information, and file a written sworn statement with the state or local agency in possession of the information stating that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation.” Section 316.066(2)(d), F.S.

The written statement must be completed and sworn to by the requesting party for each individual crash report. *Id.* Reports may be released without the sworn statement to third-party vendors under contract with one or more insurers, but only if the conditions set forth in the statute are stated in the contract. *Id.* Third-degree felony penalties are established for knowing unauthorized disclosure or use of confidential information in violation of this statute. *See* s. 316.066(3)(b), (c), and (d), F.S., for more information. *See also* s. 316.066(3)(e), F.S., providing a civil remedy.

Crash reports may be made available 60 days after the report is filed to any person or entity authorized in 316.066(2)(b) or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Section 316.066(2)(f), F.S.

If crash reports are created by or submitted to an agency electronically as data elements within a computerized database or if personal information from a crash report is entered into a computerized database, such crash data held by an agency is confidential. Sixty days after the crash report is filed, an agency may provide crash data derived from the crash report which includes personal information to entities eligible to access the crash report under s. 316.066(2)(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Such data shall be provided pursuant to a memorandum of understanding. Section 316.066(2)(g), F.S.

(3) Traffic citations

“Driver information” contained in a uniform traffic citation held by an agency is exempt from disclosure requirements. Section 316.650(11)(b)1., F.S. The term “driver information” is defined to mean “a driver’s date of birth, driver license or identification card number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number.” Section 316.650(11)(a), F.S. The term does not include the driver’s name. *Id.* Driver information may be released in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b), F.S., and in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and disclosure requirements in 18 U.S.C. s. 2721(c). Section 316.650(11)(b)2., F.S.

(4) Department of Highway Safety and Motor Vehicles motor vehicle records

Section 119.0712(2)(b), F.S., provides that personal information, including highly restricted personal information as defined in 18 U.S.C. s. 2725, contained in a motor vehicle record is confidential pursuant to the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 *et seq* (DPPA). Such information may be released only as authorized by that act. The term “motor vehicle record” is defined to mean any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles (DHSMV). Section 119.0712(2)(a),

F.S. *Cf.* AGO 10-10 (while DHSMV motor vehicle records are confidential in the hands of a law enforcement agency, to the extent information is taken from DHSMV records and used in preparing other records of a law enforcement agency or its agent, the confidentiality requirements of s. 119.0712(2)(b), F.S., do not reach those records created by subsequent users).

E-mail addresses collected by DHSMV pursuant to cited statutes [motor vehicle record and driver license transactions] are exempt from public disclosure requirements. Section 119.0712(2)(c), F.S. *And see* s. 119.0712(2)(d)1. and 2., F.S., providing that emergency contact information contained in a motor vehicle record is confidential, and may be released only as provided in the exemption.

Secure login credentials held by DHSMV are exempt, as are Internet protocol addresses, geolocation data, and other information from which a user accesses a public-facing portal. Section 119.0712(2)(f), F.S.

m. Pawnbroker records

All records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant s. 539.001, F.S., the Florida Pawnbroking Act, are confidential and exempt from disclosure and may be used only for official law enforcement purposes. Section 539.003, F.S. However, law enforcement officials are not prohibited from disclosing the name and address of the pawnbroker, the name and address of the conveying customer, or a description of the pawned property to the alleged owner of pawned property. *Id.* *And see* AGO 01-51.

n. Polygraph records

The Attorney General's Office is not aware of any statutory provision barring access to otherwise public records, simply because the records are in the form of polygraph charts. *See, e.g., Wisner v. City of Tampa Police Department*, 601 So. 2d 296 (Fla. 2d DCA 1992) (polygraph materials resulting from polygraph examination that citizen took in connection with a closed internal affairs investigation were public records); and *Downs v. Austin*, 522 So. 2d 931 (Fla. 1st DCA 1988) (because state had already publicly disclosed the results of polygraph tests administered to defendant's accomplice, the tests were not exempt criminal investigative or intelligence information and were subject to disclosure to the defendant).

However, the s. 119.071(1)(a), F.S., exemption for questions and answers used in employment examinations applies to questions and answers contained in pre-employment polygraph examinations. *Rush v. High Springs*, 82 So. 3d 1108 (Fla. 1st DCA 2012). This exemption applies to examination questions and answers but does not include the "impressions and grading of the responses" by the examiners. *See Dickerson v. Hayes*, 543 So. 2d 836, 837 (Fla. 1st DCA 1989).

o. Prison and inmate records

In the absence of statutory exemption, prison and inmate records are subject to disclosure under the Public Records Act. *Cf. Williams v. State*, 741 So. 2d 1248 (Fla. 2d DCA 1999) (order imposing offender's habitual offender sentence and documents showing his qualifying convictions, subject to disclosure under Ch. 119). *And see Cruz v. State*, 279 So. 3d 154 (Fla. 4th DCA 2019), finding that county jail visitation logs are public records, and rejecting the defendant's argument that the names of jail visitors should be protected from disclosure. *Cf.* s. 951.27, F.S. (limited disclosure of infectious disease test results, including HIV testing pursuant to s. 775.0877, F.S., of inmates in county and municipal detention facilities).

Subject to limited exceptions, s. 945.10, F.S., states that the following records and information held by the Department of Corrections are confidential and exempt from public inspection: mental health, medical (including HIV tests) or substance abuse records of inmates or offenders; preplea, pretrial intervention, presentence or postsentence investigative records;

information regarding a person in the federal witness protection program; confidential or exempt Florida Commission on Offender Review records; information which if released would jeopardize someone's safety; information concerning a victim's statement and identity; information which identifies an executioner or that identifies or could lead to the identification of any person or entity that participates in an execution; and records that are otherwise confidential or exempt by law. See *Correll v. State*, 184 So. 3d 478 (Fla. 2015), in which the Court summarized prior precedent upholding the constitutionality of s. 945.10, F.S., and again rejected claims that an inmate has the right to know the identity of execution team members.

The Public Records Act applies to a private corporation which has contracted to operate and maintain the county jail. *Times Publishing Company v. Corrections Corporation of America*, No. 91-429 CA 01 (Fla. 5th Cir. Ct. December 4, 1991), *per curiam affirmed*, 611 So. 2d 532 (Fla. 5th DCA 1993), available in the Cases database at the open government site at myfloridalegal.com. See also *Prison Health Services, Inc. v. Lakeland Ledger Publishing Company*, 718 So. 2d 204 (Fla. 2d DCA 1998), *review denied*, 727 So. 2d 909 (Fla. 1999) (records of private company under contract with sheriff to provide health care to jail inmates are subject to Ch. 119 just as if they were maintained by a public agency).

p. Resource inventories and emergency response plans

Section 119.071(2)(d), F.S., exempts “[a]ny comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, as defined in s. 252.34” See *Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885 (Fla. 3d DCA 2005), in which the court held that a city police department’s Operational Plan prepared in response to intelligence reports warning of possible violence surrounding an economic summit remained exempt from disclosure after the summit ended. The court found that the city planned to use portions of the Plan for future events and the “language of [the exemption] leads us to believe that the legislature intended to keep such security information exempt after an immediate emergency passes.” *Id.* at 887. And see s. 119.071(3)(a)1., F.S., which includes “emergency evacuation plans” and “sheltering arrangements” within the definition of a “security or firesafety system plan” that is confidential and exempt from public disclosure.

q. Surveillance techniques, procedures or personnel

Information revealing surveillance techniques, procedures or personnel is exempt from public inspection pursuant to s. 119.071(2)(d), F.S. See *Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010) (disclosure to criminal defendant of unredacted undercover police surveillance recordings does not destroy exemption in s. 119.071[2][d], F.S.; therefore, sheriff is only required to provide redacted recording in response to a public records request). See also *Althouse v. Palm Beach County Sheriff’s Office*, 92 So. 3d 899 (Fla. 4th DCA 2012), *disapproved on other grounds*, *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120 (Fla. 2016) noting that the agency had conceded that its initial response denying Althouse’s request for “rules, regulations, operating procedures and policies regarding the recruitment and use of confidential informants” was “incorrect” and that the agency had subsequently produced the records after redacting portions pursuant to s. 119.071(2)(d), F.S. Cf. *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018), in which the court noted that surveillance techniques are “*exempt*, not confidential and exempt.” [Emphasis supplied by the Court]

The detailed schedule and travel plans of the Governor, including drive times and the time and location of the Governor’s arrival and departure, were encompassed within the s. 119.071(2)(d), F.S., exemption where the Florida Department of Law Enforcement special agent submitted an undisputed affidavit attesting that premature disclosure of this information would reveal “surveillance techniques, procedures, or personnel,” and would jeopardize the security of the Governor and the officers assigned to protect him. *Executive Office of the Governor v. AHF MCO*

of Florida, Inc., 257 So. 3d 612 (Fla. 1st DCA 2018). See now s. 943.68(10)(a), F.S. (2023) (records held by a law enforcement agency relating to security or transportation services provided by the Department of Law Enforcement under s. 943.68(1)(5) or (6), F.S., are exempt from disclosure requirements).

r. Undercover personnel

Section 119.071(4)(c), F.S., provides that any information revealing undercover personnel of any criminal justice agency is exempt from public disclosure. *But see Ocala Star Banner Corporation v. McGhee*, 643 So. 2d 1196, 1197 (Fla. 5th DCA 1994) (police department should not have refused to release an entire police report containing some information that could lead to an undercover person's identity, when, without much difficulty, the name or initials and identification numbers of the undercover officer and that officer's supervisor could be taken out of the report and the remainder released). *Accord Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365 (Fla. 4th DCA 1997).

Information regarding law enforcement officers who are assigned to undercover duty and whose names appear on personnel rosters or other lists of all law enforcement officers of the city without regard to whether the record reveals the nature of their duties may constitute "[a]ny information revealing undercover personnel of any criminal justice agency[.]" AGO 15-02. The Legislature's determination that such information is exempt from public inspection, rather than confidential, conditions the release of exempt information upon a determination by the custodian that there is a statutory or substantial policy need for disclosure. *Id.*

For information on the identity of safe-school officers appointed pursuant to ss. 1006.12 or 1002.42(18)(c), F.S., please refer to the discussion on page 159.

s. Victim information

(1) Marsy's Law

On November 6, 2018, Florida voters approved a constitutional amendment known as "Marsy's Law." Marsy's Law amends Article. I, s. 16 of the Florida Constitution to add several provisions relating to victim rights. The amendment became effective on January 8, 2019.

Marsy's Law provides that "every victim is entitled to the following rights, beginning at the time of his or her victimization" to include: "The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family or which could disclose confidential or privileged information of the victim." Art. I, s 16(b)(5), Fla. Const. However, this constitutional provision "does not guarantee to a victim the categorical right to withhold his or her name from disclosure." *City of Tallahassee v. Florida Police Benevolent Association, Inc.* 48 F.L.W. S237 (Fla. November 30, 2023). In *City of Tallahassee*, the Florida Supreme Court also recognized the authority of the Legislature in Art. I, s. 24(c), Fla. Const. to enact exemptions from the Public Records Act that apply to certain victim information.

(2) Statutory exemptions relating to victim information

Although s. 119.071(2)(c), F.S., exempts active criminal investigative information from disclosure, the "name, sex, age, and address of . . . the victim of a crime, except as provided in s. 119.071(2)(h) or (o)," are specifically excluded from the definition of criminal investigative or intelligence information. See s. 119.011(3)(c)2., F.S. defining the terms "criminal investigative information" and "criminal intelligence information." In addition to the victim exemptions identified above, there are other exemptions that may apply as follows:

(a) Amount of stolen property

Pursuant to s. 119.071(2)(i), F.S., criminal intelligence or investigative information that reveals the personal assets of a crime victim, which were not involved in the crime, is exempt

from disclosure. However, this exemption does not apply to information relating to the amount of property stolen during the commission of a crime. AGO 82-30. Note, however, that s. 119.071(2)(j)1., F.S., provides that victims of certain crimes may file a written request to exempt information revealing their “personal assets.”

(b) Commercial solicitation of victims

Section 119.105, F.S., provides that police reports are public records except as otherwise made exempt or confidential and that every person is allowed to examine nonexempt or nonconfidential police reports. However, a person who comes into possession of exempt or confidential information in police reports may not use that information for commercial solicitation of the victims or relatives of the victims and may not knowingly disclose such information to a third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. *Id.* The statute “does not prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information.” *Id.* A willful and knowing violation of this statute is a third-degree felony. Section 119.10(2)(b), F.S.

(c) Documents which are received by an agency regarding victims

Section 119.071(2)(j)1., F.S., exempts from disclosure any document that reveals the identity, home or employment telephone number or address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, if that document is *received* by an agency that regularly receives information from or concerning the victims of crime. However, this provision is limited to documents received by agencies which regularly receive information from or concerning victims of crime; it does not apply to records generated or made by these agencies. AGO 90-80. Accordingly, this exemption does not apply to police reports. *Id.*

Section 119.071(2)(j)1., F.S., also provides that “[a]ny state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency’s statutory duties, notwithstanding this section.” *See* Inf. Op. to McCabe, November 27, 1995 (state attorney authorized to release materials received during an investigation of a domestic violence incident to a police department for use in the department’s internal affairs investigation).

(d) Home or employment address, telephone number, assets

Victims of specified crimes listed in s. 119.071(2)(j)1., F.S., are authorized to file a written request for exemption of their addresses, telephone numbers and personal assets as follows:

Any information not otherwise held confidential or exempt [from disclosure] which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of *sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence* is exempt [from disclosure], upon written request by the victim which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. (e.s.)

This exemption is not limited to documents *received* by an agency, but exempts specified information in records—whether generated or received by—an agency. Thus, a victim of the enumerated crimes may file a written request and have his or her home or employment telephone number, home or employment address, or personal assets, exempted from the police report of the crime, provided that the request includes official verification, such as a copy of the incident or offense report for one of the listed crimes, that an applicable crime has occurred. *See* AGO 96-82. The exemption is limited to the victim’s address, telephone number, or personal assets; it

does not apply to the victim's identity. *City of Gainesville v. Gainesville Sun Publishing Company*, No. 96-3425-CA (Fla. 8th Cir. Ct. October 28, 1996). *And see* the discussion of Marsy's Law on page 121.

The exemption applies to records created prior to, as well as after, the agency's receipt of the victim's written request for exemption AGO 96-82. It applies to any records held by an agency and is not limited to those records relating to the offense. *Id.* "[A]n examination of the legislative history surrounding the adoption of this exemption indicates that the Legislature intended that the exemption not be limited to those documents identifying the individual as a victim of crime but rather be applied to any document revealing the personal information held by any agency." *Id.* *And see* AGO 02-50, in which the Attorney General's Office advised that s. 119.071(2)(j)1., F.S., does not contain an exception for copies of the police report that are sent to domestic violence centers pursuant to s. 741.29, F.S., if the victim has made a written request for exempt status of the personal information specified in s. 119.071(2)(j)1., F.S.

In addition, the requirement that the victim make a written request for exemption applies only to information not otherwise held confidential by law; thus, the exemption supplements, but does not replace, other confidentiality provisions, such as s. 119.071(2)(h), F.S., that may be applicable to certain crime victims. AGO 96-82

For more information on exemptions pertaining to domestic violence or stalking victims, please see the discussion on pages 78-79.

(e) Information identifying or depicting victims of sex offenses and of child abuse

(1) Law enforcement and prosecution records

Section 119.071(2)(h)1.a., F.S., provides confidentiality for criminal investigative and intelligence information that reveals the identity of a victim of the crime of child abuse, as defined by Ch. 827, F.S., or that reveals the identity of a person under the age of 18 who is a victim of the crime of human trafficking proscribed in s. 787.06(3)(a), F.S. Information which may reveal the identity of a victim of a sexual offense, including a sexual offense prohibited in s. 787.06(3)(b), (d), (f), or (g), or Chs. 794, 796, 800, 827, or 847, F.S., is also confidential. Section 119.071(2)(h)1.b., F.S.

In addition, the photograph, videotape, or image of any part of the body of a victim of a sexual offense prohibited under ss. 787.06(3)(b), (d), (f), or (g) or 810.145, or Chs. 794, 796, 800, 827, or 847, F.S., is confidential and exempt, regardless of whether the photograph, videotape, or image identifies the victim. Section 119.071(2)(h)1.c., F.S. *See Harvard v. Village of Palm Springs*, 98 So. 3d 645, 647 (Fla. 4th DCA 2012), rejecting a mother's assertion that there is "no law prohibiting her" from obtaining a copy of her son's videotaped interview, because s. 119.071(2)(h)1.a-c, F.S., "provides that a video of a victim is exempt from a public records request if it is taken during the course of one of several enumerated types of criminal investigations."

Thus, the Attorney General's Office advised that information revealing the identity of victims of child abuse or sexual battery must be deleted from the copy of the report of domestic violence which is sent by a law enforcement agency to the nearest domestic violence center pursuant to s. 741.29(2), F.S. AGO 92-14. *And see Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001), applying exemption to information identifying a child abuse victim which was contained in files prepared as part of an internal investigation conducted in accordance with s. 112.533, F.S.

Section 119.071(2)(h)2.a-c, F.S., sets forth circumstances which permit a law enforcement agency to disclose the confidential information. Moreover, the Attorney General's Office has advised that the confidentiality provisions in that exemption do not apply to the identity of a child abuse victim who *died* from suspected abuse. AGO 90-103. *Cf.* s. 406.135, F.S. (autopsy

report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt, except as provided in the exemption) and s. 119.071(2)(p), F.S. (photographs and video and audio recordings of the killing of a minor are confidential and exempt, except as provided in the exemption).

Section 119.071(2)(j)2a., F.S., provides that identifying information in a videotaped statement of a minor who is alleged to be or who is a victim of a sexual offense prohibited in the cited laws which reveals the minor's identity, including, but not limited to, the minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies the minor as a victim, held by a law enforcement agency, is confidential. Access shall be provided, however, to authorized governmental agencies when necessary to the furtherance of the agency's duties. *Id.* A public employee may not willfully and knowingly disclose videotaped information that reveals the minor's identity to anyone other than the designated individuals, including the defendant. Section 119.071(2)(j)2b., F.S. *Cf. State v. Ingram*, 170 So. 3d 727 (Fla. 2015) (J. Pariente concurring) (s. 119.071[2][j]2.b. does not authorize disclosure to a convicted incarcerated inmate of videotaped information that reveals the minor victim's identity).

A public employee or officer having access to the photograph, name, or address of a person alleged to be a victim of an offense described in Ch. 794 (sexual battery); Ch. 800 (lewdness, indecent exposure); s. 827.03 (abuse, aggravated abuse, and neglect of a child); s. 827.04 (contributing to delinquency or dependency of a child); or s. 827.071 (sexual performance by a child) may not willfully and knowingly disclose it to a person not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in a court order entered by the court having jurisdiction over the alleged offense, to organizations authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim. Section 794.024(1), F.S. A violation of this section constitutes a second degree misdemeanor. Section 794.024(2), F.S. *Cf. State v. Globe Communications Corporation*, 648 So. 2d 110, 111 (Fla. 1994) (statute mandating criminal sanctions for printing, publishing or broadcasting "in any instrument of mass communication" information identifying a victim of a sexual offense, ruled unconstitutional).

An entity or individual who communicates to others, prior to open judicial proceedings, the name, address, or other specific identifying information concerning the victim of any sexual offense under Ch. 794 or Ch. 800 shall be liable to the victim for all damages reasonably necessary to compensate the victim for any injuries suffered as a result of such communication. Section 794.026(1), F.S. The victim, however, may not maintain a cause of action unless he or she is able to show that such communication was intentional and was done with reckless disregard for the highly offensive nature of the publication. Section 794.026(2), F.S. *Cf. Cox Broadcasting Corp. v. Cohn*, 95 S.Ct. 1029 (1975); and *Cape Publications, Inc. v. Hitchner*, 549 So. 2d 1374 (Fla. 1989), *appeal dismissed*, 110 S.Ct. 296 (1989).

The Crime Victims' Services Office in the Attorney General's Office is authorized to receive confidential records from law enforcement and prosecutorial agencies. Section 960.05(2)(k), F.S. *And see* AGO 92-51 (city victim services division, as a governmental agency which is part of the city's criminal justice system, may receive identifying information about victims of sex offenses, for the purpose of advising the victim of available services pursuant to s. 960.001, F.S., requiring distribution of victim support information).

(2) Court records

Section 92.56, F.S., provides that criminal intelligence information or criminal investigative information made confidential pursuant to s. 119.071(2)(h), F.S., must be maintained in court records and in court proceedings, including witnesses' testimony. If a petition for access to these

records is filed with the trial court with jurisdiction over an alleged offense, the status of the information must be maintained by the court if the state or the victim demonstrates certain factors as set forth in the statute. Section 92.56(1), F.S. A person who willfully and knowingly violates section 92.56, F.S., or any court order issued under this section is subject to contempt proceedings. Section 92.56(6), F.S. *See also* AGO 03-56 and s. 119.0714(1)(h), F.S.

(3) Department of Children and Families abuse records

As discussed on pages 75-77, there are statutory exemptions set forth in Ch. 415, F.S., which relate to records of abuse of vulnerable adults. Similar provisions relating to child abuse records are found in Ch. 39, F.S. The Attorney General's Office has concluded that the confidentiality provisions in these laws, *i.e.*, ss. 415.107 and 39.202, F.S., apply to records of the Department of Children and Families [DCF] and do not encompass a law enforcement agency's arrest report of persons charged with criminal child abuse, after the agency has deleted all information which would reveal the identity of the victim. *See* AGO 93-54. *Accord* Inf. Op. to O'Brien, January 18, 1994. *Cf. Times Publishing Company v. A.J.*, 626 So. 2d 1314 (Fla. 1993), holding that a sheriff's incident report of alleged child abuse that was forwarded to the state child welfare department for investigation pursuant to Ch. 415, F.S. 1990 [see now Part II, Ch. 39, F.S., entitled "Reporting Child Abuse"], should not be released. The Court noted that the department had found no probable cause and that child protection statutes accommodate privacy rights of those involved in these cases "by providing that the supposed victims, their families, and the accused should not be subjected to public scrutiny at least during the initial stages of an investigation, before probable cause has been found." *Id.* at 1315.

Section 39.202(1) and (2)(b), F.S., authorizes criminal justice agencies to have access to confidential abuse, abandonment, or neglect records held by DCF and provides that the exemption from disclosure for DCF abuse records also applies to DCF records and information in the possession of the agencies granted access. *See* Inf. Op. to Russell, October 24, 2001.

(f) Homicide victims and witnesses

(1) Photographs and video or audio recordings of killing of law enforcement officer, killing of a minor, or killing of victim of mass violence

Section 119.071(2)(p)2., F.S., provides confidentiality for a photograph, video or audio recording that depicts or records the killing of a law enforcement officer acting in accordance with his or her official duties, the killing of a minor, or the killing of a victim of mass violence. Disclosure may be made to certain persons and entities as authorized in the exemption. Section 119.071(2)(p)2., F.S. *And see* page 74, discussing the confidentiality of autopsy photographs.

The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean "all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." Section 119.071(2)(p)1.a., F.S.

"Killing of a minor" means all acts or events that cause or otherwise relate to the death of a victim who has not yet reached the age of 18 at the time of the death, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of the death, events that depict a victim under the age of 18 being killed, or events that depict the body of a victim under the age of 18 who has been killed. Section 119.071(2)(p)1.b., F.S.

"Killing of a victim of mass violence" means events that depict either a victim being killed or the body of a victim killed in an incident in which 3 or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence. Section 119.071(2)(p)1.c., F.S.

Section 119.071(2)(p)7., F.S., provides that the exemption shall be given retroactive application and shall apply to all photographs and recordings of persons covered by the exemption regardless of whether the killing occurred before, on, or after the effective date of the act, May 23, 2019. *And see State v. Schenecker*, No. 11 CF 001376A (Fla. 13th Cir. Ct. August 3, 2011), *cert.denied sub nom., Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), in which the court concluded that a prior version of this statute applied to crime scene photographs of the victims.

(2) Address of victim of an incident of mass violence

The address of a victim of an incident of mass violence is exempt from disclosure requirements. Section 119.071(2)(o), F.S. The term “incident of mass violence” means an incident in which 4 or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. The term “victim” means a person killed or injured during an incident of mass violence, not including the perpetrator. *Id.* *And see* the discussion about Marsy’s Law on page 121.

(3) Autopsy report of death of minor due to domestic violence

An autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt. Section 406.135(2)(b), F.S.

(4) Homicide witness

Criminal investigative or intelligence information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S., is confidential for 2 years after the date on which the murder is observed by the witness. Section 119.071(2)(m), F.S. A criminal justice agency may disclose this information in the furtherance of its official duties and responsibilities; to assist in locating or identifying the witness if the agency believes the witness to be missing or endangered; to another governmental agency for use in the performance of its official duties and responsibilities; to the parties in a pending criminal prosecution as required by law. *Id.* *And see Palm Beach County Sheriff’s Office v. Sun-Sentinel Company, LLC*, 226 So. 3d 969 (Fla. 4th DCA 2017) (applying exemption to shield the identity of witnesses who observed a homicide on the highway and whose vehicle was hit by bullets fired by the perpetrator as the witnesses attempted to follow the suspect’s car).

(g) Human trafficking victims

Criminal intelligence information or criminal investigative information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been expunged pursuant to s. 943.0583, F.S., is confidential. Section 943.0583(11)(a), F.S. Disclosure is authorized under certain circumstances. Section 943.0583(11)(b), F.S. *And see* s. 119.071(2)(h), F.S., relating to victims of the crime of human trafficking proscribed in s. 787.06, F.S., discussed on page 123.

Information about the location of a safe house, safe foster home, or other residential facility serving child victims of commercial sexual exploitation, as defined in s. 409.016, F.S., is confidential and exempt from public disclosure requirements. Section 409.1678(6)(a), F.S. Information may be provided to an agency as necessary to maintain health and safety standards and to address emergency situations in the house or facility. Section 409.1678(6)(b), F.S.

(h) Relocated victim or witness information

Information held by a law enforcement agency, prosecutorial agency or the Victim and Witness Protection Review Committee which discloses the identity or location of a victim or witness (or their immediate family) who has been identified or certified for protective or relocation services is confidential and exempt from disclosure. Section 914.27, F.S.

16. Litigation records

a. Attorney-client communications

The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege which exempts these documents from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979) (only the Legislature and not the judiciary can exempt attorney-client communications from Ch. 119, F.S.). *See also City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985) (although s. 90.502, F.S., of the Evidence Code establishes an attorney-client privilege for public and private entities, this evidentiary statute does not remove communications between an agency and its attorney from the open inspection requirements of Ch. 119, F.S.).

Moreover, public disclosure of these documents does not violate the public agency's constitutional rights of due process, effective assistance of counsel, freedom of speech, or the Supreme Court's exclusive jurisdiction over The Florida Bar. *City of North Miami v. Miami Herald Publishing Company*, *supra*. *And see Seminole County, Florida v. Wood*, 512 So. 2d 1000, 1001 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988) (the rules of ethics provide that an attorney may divulge a communication when required by law; the Legislature has plenary authority over political subdivisions and can require disclosure of otherwise confidential materials); and AGO 98-59 (records in the files of the former city attorney, who served as a contract attorney for the city, which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor). *Cf City of St. Petersburg v. Dorchester Holdings, LLC.*, 331 So. 3d 799 (Fla. 2d DCA 2021), discussing the application of R. Regulating Fla. Bar 4-42 and Fla. Bar Ethics Opinion 09-1.

On the other hand, the Florida Supreme Court has ruled that files in the possession of the Capital Collateral Representative (CCR) in furtherance of its representation of an indigent client are not subject to public disclosure under Ch. 119, F.S. The Court noted that the files are not governmental records for purposes of the public records law but are the "private records" of the CCR client. *Kight v. Dugger*, 574 So. 2d 1066 (Fla. 1990). *And see Times Publishing Company v. Acton*, No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999), available online in the Cases database at the open government site at myfloridalegal.com (private attorneys retained by individual county commissioners in a criminal case were not "acting on behalf" of a public agency so as to become subject to the Public Records Act, even though the board of county commissioners subsequently voted to pay the commissioners' legal expenses in accordance with a county policy providing for reimbursement of legal expenses to individual county officers who successfully defend criminal charges filed against them arising out of the performance of their official duties).

b. Attorney work product

The Supreme Court has ruled that the Legislature and not the judiciary has exclusive authority to exempt litigation records from the scope of Ch. 119, F.S. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). *See also Edelstein v. Donner*, 450 So. 2d 562 (Fla. 3d DCA 1984), *approved*, 471 So. 2d 26 (Fla. 1985), noting that in the absence of legislation, a work product exemption is "non-existent;" and *Hillsborough County Aviation Authority v. Azzarelli Construction Company*, 436 So. 2d 153, 154 (Fla. 2d DCA 1983), stating that the Supreme Court's decision in *Wait* "constituted a tacit recognition that work product can be a public record."

With the enactment of s. 119.071(1)(d), F.S., the Legislature created a narrow statutory exemption for certain litigation work product of agency attorneys. *See City of Orlando v. Desjardins*, 493 So. 2d 1027, 1029 (Fla. 1986), in which the Court noted that the exemption was enacted because of "developing case law affording public entities no protection under either the work product doctrine or the attorney-client privilege . . ." *See also City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218, 219 (Fla. 1985) (noting application of exemption to "government agency, attorney-prepared litigation files during the pendency of litigation"); and *City*

of *Miami Beach v. DeLapp*, 472 So. 2d 543 (Fla. 3d DCA 1985) (opposing counsel not entitled to city's legal memoranda as such material is exempt work product). Cf. *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 682 (Fla. 1st DCA 2018), noting that "it was important" that an agency attorney's memorandum which was prepared exclusively to assess the strength of the agency's evidence in a licensing case remain exempt from disclosure during the pendency of the adversarial administrative proceedings.

Section 119.071(1)(d)1., F.S., states, in relevant part:

A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt [from disclosure] until the conclusion of the litigation or adversarial administrative proceedings.

Note that this statutory exemption applies to attorney work product that has reached the status of becoming a public record; as discussed more extensively on pages 132-133, certain preliminary trial preparation materials, such as handwritten notes for the personal use of the attorney, are not considered to be within the definitional scope of the term "public records" and, therefore, are outside the scope of Ch. 119, F.S. See *Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998).

Under the terms of the statute, the work product exemption "is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney." Section 119.071(1)(d)2., F.S. See also AGO 94-77 (work product exemption continues to apply to records prepared by the county attorney when these records are transferred to the city attorney pursuant to a transfer agreement whereby the city is substituted for the county as a party to the litigation).

An agency asserting the work product exemption must identify the potential parties to the litigation or proceedings. Section 119.071(1)(d)2., F.S. However, the agency is not required to identify each *document* in a record that it asserts to be exempt under the work product exemption. *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 683 (Fla. 1st DCA 2018). Whether to impose such a requirement "is a matter properly addressed to the legislature rather than this court." *Id.*

In the event of litigation disputing the claimed work product exemption, the court must conduct an in camera inspection of the records. *Environmental Turf, Inc. v. University of Florida Board of Trustees*, 83 So. 3d 1012 (Fla. 1st DCA 2012).

If a court finds that the record was improperly withheld, the party seeking the record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court. Section 119.071(1)(d)2., F.S. As one court has noted, the inclusion of an attorney's fee sanction "was prompted by the legislature's concern that government entities might claim the work product privilege whenever public access to their records is demanded." *Smith & Williams, P.A. v. West Coast Regional Water Supply Authority*, 640 So. 2d 216, 218 (Fla. 2d DCA 1994).

(1) Scope of exemption

(a) Attorney bills and payments

Only those records which reflect a "mental impression, conclusion, litigation strategy, or

legal theory” are included within the parameters of the work product exemption. Accordingly, in AGO 85-89, the Attorney General’s Office concluded that a contract between a county and a private law firm for legal counsel and documentation for invoices submitted by such firm to the county do not fall within the work product exemption. *Accord* AGO 00-07 (records of outside attorney fee bills for the defense of the county, as well as its employees who are sued individually, for alleged civil rights violations are public records subject to disclosure).

If the bills and invoices contain some exempt work product—*i.e.*, “mental impression[s], conclusion[s], litigation strategies[ies], or legal theor[ies],”—the exempt material may be deleted and the remainder disclosed. AGO 85-89. However, information such as the hours worked or the hourly wage clearly would not fall within the scope of the exemption. *Id.* And see *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com (“Obviously, an entry on a [billing] statement which identifies a specific legal strategy to be considered or puts a specific amount of settlement authority received from the client, would fall within the exemption. On the other hand, a notation that the file was opened, or that a letter was sent to opposing counsel, would not.”).

Thus, an agency which “blocked out” most notations on invoices prepared in connection with services rendered by and fees paid to attorneys representing the agency, “improperly withheld” nonexempt material when it failed to limit its redactions to those items “genuinely reflecting its ‘mental impression, conclusion, litigation strategy, or legal theory.’” *Smith & Williams, P.A. v. West Coast Regional Water Supply Authority*, 640 So. 2d at 218. And see *Davis v. Sarasota County Public Hospital Board*, 480 So. 2d 203 (Fla. 2d DCA 1985), *review denied*, 488 So. 2d 829 (Fla. 1986), holding in part that a citizen seeking to examine records of a public hospital board concerning the payment of legal fees was entitled to examine actual records, not merely excerpts taken from information stored in the hospital’s computer.

(b) Records prepared prior to litigation or for other purposes

Unlike the open meetings exemption in s. 286.011(8), F.S., for certain attorney-client discussions between a governmental board and its attorney, s. 119.071(1)(d), F.S., is not limited to records created for *pending* litigation before a court or administrative agency, but may also apply to records prepared “in *anticipation of imminent* civil or criminal litigation or imminent adversarial administrative proceedings” (e.s.) See AGO 98-21, discussing the differences between the public records work product exemption in s. 119.071(1)(d) and the Sunshine Law exemption in s. 286.011(8), F.S.

However, s. 119.071(1)(d), F.S., does not create a blanket exception to the Public Records Act for all attorney work product. AGO 91-75. The exemption is narrower than the work product privilege recognized by the courts for private litigants. AGO 85-89. In order to qualify for the work product exemption, the records must have been prepared exclusively for litigation or adversarial administrative proceedings, or prepared in anticipation of imminent litigation or adversarial administrative proceedings; records prepared for other purposes may not be converted into exempt material simply because they are also used in or related to the litigation. See, e.g., *Lightbourne v. McCollum*, 969 So. 2d 326, 333 (Fla. 2007), *cert. denied*, 553 U.S. 1059 (2008) (memoranda prepared by corrections department attorney regarding lethal injection procedures do not constitute exempt attorney work product because memoranda do not relate to any pending litigation nor appear to have been prepared exclusively for litigation); *MHM Correctional Services, Inc. v. State, Department of Corrections*, No. 2009 CA 2105 (Fla. 2d Cir. Ct. June 10, 2009), available online in the Cases database at the open government site at myfloridalegal.com (department wrongfully withheld portions of an e-mail stream regarding the bid process as protected work product or privileged communications as none of the emails were prepared in contemplation of litigation as required by the statute).

Moreover, only those records which are prepared by or at the express direction of the agency attorney and reflect “a mental impression, conclusion, litigation strategy, or legal

theory of the attorney or the agency” are exempt from disclosure until the conclusion of the proceedings. See *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986) (trial court must examine city’s litigation file in accident case and prohibit disclosure only of those records reflecting mental impression, conclusion, litigation strategy or legal theory of attorney or city); *Jordan v. School Board of Broward County*, 531 So. 2d 976, 977 (Fla. 4th DCA 1988) (record did not constitute exempt work product because it “was not prepared at an attorney’s express direction nor did it reflect a conclusion and mental impression of appellee”); and *Lightbourne v. McCollum*, *supra* (exemption inapplicable to records that conveyed specific factual information rather than mental impressions or litigation strategies). Cf. *Tober v. Sanchez*, 417 So. 2d 1053, 1055 (Fla. 3d DCA 1982), *review denied sub nom.*, *Metropolitan Dade County Transit Agency v. Sanchez*, 426 So. 2d 27 (Fla. 1983) (documents which are given by a client to an attorney in the course of seeking legal advice are privileged in the attorney’s hands only if the documents were privileged in the client’s hands; thus, otherwise public records made or received by agency personnel do not become privileged merely by transferring them to the agency attorney).

Thus, a circuit judge refused to apply the exemption to tapes, witness statements and interview notes taken by police as part of an investigation of a drowning accident at a city summer camp. See *Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995), available online in the Cases database at the open government site at myfloridalegal.com. Similarly, in AGO 05-23, the Attorney General’s Office advised that notes taken by the assistant city attorney during interviews with co-workers of certain city employees in order to ascertain if employee discipline was warranted are not exempt from disclosure. See also AGO 91-75 (work product exemption not applicable to documents generated or received by school district investigators, acting at the direction of the school board to conduct an investigation of certain school district departments). Cf. *City of Avon Park v. State*, 117 So. 3d 470 (Fla. 2d DCA 2013) (recognizing that where no charges were filed against any of the parties mentioned in a state attorney investigator’s report, the report was a public record and the s. 119.071(1)(d), F.S., exemption was inapplicable).

(c) Settlement records

If the state settles a claim against one company accused of conspiracy to fix prices, the state has concluded the litigation against that company. Thus, the records prepared in anticipation of litigation against that company are no longer exempt from disclosure even though the state has commenced litigation against the alleged co-conspirator. *State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990). And see *Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991), available online in the Cases database at the open government site at myfloridalegal.com (settlement agreement not exempt as attorney work product even though another related case was pending, and agency attorneys feared disclosure of their assessment of the merits of the settled case and their litigation strategy would have a detrimental effect upon the agency’s position in the related case). See also Inf. Op. to Gastesi, August, 27, 2015 (settlement demand furnished by plaintiff to agency); and *Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation*, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (technical documents or data which were not prepared for the purpose of carrying litigation forward but rather were jointly authored among adversaries to promote settlement are not exempted as attorney work product). Cf. *Prison Health Services, Inc. v. Lakeland Ledger Publishing Company*, 718 So. 2d 204, 205 (Fla. 2d DCA 1998), *review denied*, 727 So. 2d 909 (Fla. 1999) (private company under contract with sheriff to provide medical services for inmates at county jail must release records relating to a settlement agreement with an inmate because all of its records that would normally be subject to the Public Records Act if in the possession of the public agency, are likewise covered by that law, even though in the possession of the private corporation).

(2) Duration of exemption

The exemption from disclosure provided by s. 119.071(1)(d), F.S., is temporary and limited

in duration. *City of North Miami v. Miami Herald Publishing Co.*, *supra*. The exemption exists only until the “conclusion of the litigation or adversarial administrative proceedings” even if disclosure of the information in the concluded case could negatively impact the agency’s position in related cases or claims. See *State v. Coca-Cola Bottling Company of Miami, Inc.*, 582 So. 2d 1 (Fla. 4th DCA 1990); *Seminole County v. Wood*, 512 So. 2d 1000 (Fla. 5th DCA 1987), *review denied*, 520 So. 2d 586 (Fla. 1988); and *Lightbourne v. McCollum*, *supra* (rejecting a “continuing exemption” claim by the state). And see AGO 13-13 (Sunshine Law exemption for certain attorney-client meetings found in s. 286.011[8], F.S., “does not recognize a continuation of the exemption for ‘derivative claims’ made in separate, subsequent litigation”). Cf. *State v. Coca-Cola Bottling Company of Miami, Inc.*, *supra* (although state cannot claim work product exemption for litigation records after conclusion of litigation, Ch. 119 does not cover oral testimony; thus, opposing counsel not entitled to take *depositions* of state representatives regarding the concluded litigation).

Thus, a school board failed to meet its burden of showing that items contained in a school board litigation report were exempt from disclosure where there was no evidence that the cases in question were pending and open when the board received the public records request. *Barfield v. School Board of Manatee County*, 135 So. 3d 560 (Fla. 2d DCA 2014).

However, the phrase “conclusion of the litigation or adversarial administrative proceedings” encompasses post-judgment collection efforts such as a legislative claims bill. *Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007). And see AGO 94-33, concluding that for purposes of the attorney-client exemption from the Sunshine Law in s. 286.011(8), F.S., a pending lawsuit is concluded when the suit is dismissed with prejudice or the applicable statute of limitations has run; “[t]o allow a plaintiff who has voluntarily dismissed a suit to gain access to transcripts of strategy or settlement meetings in order to obtain an advantage in the refile of a lawsuit would subvert the purpose of the statute.” Cf. *Chmielewski v. City of St. Pete Beach*, 161 So. 3d 521 (Fla. 2d DCA 2014) (rejecting city’s argument that because an agreement settling a quiet title action provided for further mediation should a dispute arise regarding the meaning of the agreement, the case was still pending for purposes of the Sunshine Law exemption in s. 286.011[8], F.S.).

In addition, the exemption extends “through prosecution of appeals.” Inf. Op. to Boutsis, December 13, 2012. Cf. s. 119.071(1)(d)1., F.S. (“For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General’s office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.”).

c. Other statutory exemptions relating to litigation records

Section 768.28(16)(b), F.S., provides an exemption for claims files maintained by agencies pursuant to a risk management program for tort liability until the termination of all litigation and settlement of all claims arising out of the same incident.

The “plain language of the statute” indicates that the “*entire* claims file is exempt from disclosure until resolution of the claim or claims.” *City of Homestead v. McDonough*, 232 So. 3d 1069, 1071 (Fla. 3d DCA 2017). [emphasis supplied by the court]. Accordingly, the trial court erred by ordering production of certain records in the file on the theory that production would not harm the city. *Id.* See also *Wagner v. Orange County*, 960 So. 2d 785 (Fla. 5th DCA 2007), stating that the phrase “settlement of all claims arising out of the same incident” included a legislative claims bill.

The exemption afforded by s. 768.28(16), F.S., is limited to tort claims for which the agency may be liable under s. 768.28, F.S., and does not apply to federal civil rights actions under 42 U.S.C. s. 1983. AGOs 00-20 and 00-07. And see *Sun-Sentinel Company v. City of Hallandale*, No. 95-13528(05) (Fla. 17th Cir. Ct. October 11, 1995), available online in the Cases database at the open government site at myfloridalegal.com (exemption now found at s. 768.28[16][b], F.S., for risk management files did not apply to tapes, witness statements and interview notes

taken by police as part of an investigation of a drowning accident at a city summer camp). Moreover, the exemption does not include outside attorney invoices indicating hours worked and amount to be paid by the public agency, even though the records may be maintained by the agency's risk management office pursuant to a risk management program. AGO 00-07. *And see* AGO 92-82 (open meetings exemption provided by s. 768.28, F.S., applies only to meetings held *after* a tort claim is filed with the risk management program).

Section 624.311(2), F.S., provides that the "records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt [from disclosure] until termination of all litigation and settlement of all claims arising out of the same incident." A county's self-insured workers compensation program is the legal equivalent of "insurance" for purposes of this exemption. *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com. *And see* AGO 85-102 (s. 624.311, F.S., exemption includes correspondence regarding insurance claims negotiations between a county's retained counsel and its insurance carriers until termination of litigation and settlement of claims arising out of the same incident). *Compare* s. 284.40(2), F.S. (claim files maintained by the risk management division of the Department of Financial Services are confidential, shall be only for the use of the department, and are exempt from disclosure); and s. 1004.24(4), F.S. (claims files of self-insurance program adopted by Board of Governors, or the board's designee, are confidential and exempt).

d. Attorney notes

Relying on its conclusion in *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980), the Florida Supreme Court has recognized that "not all trial preparation materials are public records." *State v. Koka*, 562 So. 2d 324, 327 (Fla. 1990). In *Koka*, the Court approved the decision of the Fifth District in *Orange County v. Florida Land Co.*, 450 So. 2d 341, 344 (Fla. 5th DCA 1984), *review denied*, 458 So. 2d 273 (Fla. 1984), which described certain documents as not within the term "public records" because they were not used to perpetuate, formalize, or communicate knowledge:

Document No. 2 is a list in rough outline form of items of evidence which may be needed for trial. Document No. 9 is a list of questions the county attorney planned to ask a witness. Document No. 10 is a proposed trial outline. Document No. 11 contains handwritten notes regarding the county's sewage system and a meeting with Florida Land's attorneys. Document No. 15 contains notes (in rough form) regarding the deposition of an anticipated witness. These documents are merely notes from the attorneys to themselves designed for their own personal use in remembering certain things. They seem to be simply *preliminary* guides intended to aid the attorneys when they later formalized the knowledge. We cannot imagine that the Legislature, in enacting the Public Records Act, intended to include within the term 'public records' this type of material. [Emphasis supplied by Court]

Similarly, in *Johnson v. Butterworth*, 713 So. 2d 985, 987 (Fla. 1998), the Court ruled that "outlines, time lines, page notations regarding information in the record, and other similar items" in the case file, do not fall within the definition of public record, and thus are not subject to disclosure. *See also Braddy v. State*, 219 So. 3d 803, 821 (Fla. 2017) ("handwritten attorney notes, draft documents, and annotated copies of decisional law . . . do not constitute public records"); *Ragsdale v. State*, 720 So. 2d 203, 205 (Fla. 1998) ("attorney's notes and other such preliminary documents are not public records and are never subject to public records disclosure"); *Valle v. State*, 705 So. 2d 1331, 1335 (Fla. 1997) (prosecutors' notes to themselves for their own personal use, including outlines of opening and closing arguments and notes of witness depositions are not public records); *Lopez v. State*, 696 So. 2d 725, 727 (Fla. 1997) (handwritten

notes dealing with trial strategy and cross-examination of witnesses are not public records); and *Atkins v. State*, 663 So. 2d 624, 626 (Fla. 1995) (notes of state attorney's investigations and annotated photocopies of decisional case law are not public records).

By contrast, documents prepared to communicate, perpetuate, or formalize knowledge constitute public records and are, therefore, subject to disclosure in the absence of statutory exemption. See *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), stating that “[i]nter-office memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency’s later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business.”

Thus, in *Coleman v. Austin*, 521 So. 2d 247, 248 (Fla. 1st DCA 1988), the court observed that “although notes from attorneys to themselves might not be public records when intended for their own personal use, inter-office and intra-office memoranda may constitute public records even though encompassing trial preparation materials.” And see *Orange County v. Florida Land Company*, *supra*, in which the court concluded that trial preparation materials consisting of interoffice and intraoffice memoranda communicating information from one public employee to another or merely prepared for filing, even though not part of the agency’s formal work product, were public records although such circulated trial preparation materials might be exempt from disclosure pursuant to s. 119.071(1)(d), F.S., while the litigation is ongoing. See also AGO 05-23 (handwritten notes prepared by city’s assistant labor attorney during her interviews with city employees are public records “when those notes are made to perpetuate and formalize knowledge and to communicate that information to the city’s labor attorney”).

17. Personal records not made or received in the course of official business

As noted in AGO 04-33, the broad definition of “public record” makes it clear that the “form of the record is irrelevant; the material issue is whether the record is made or received by the public agency in connection with the transaction of official business.” See s. 119.011(12), F.S., defining the term “public records” to mean materials “made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” See also *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980), stating that in order to constitute “public records” for purposes of Ch. 119 disclosure requirements, the records must have been prepared “in connection with official agency business” and be intended to “perpetuate, communicate, or formalize knowledge of some type.”

Accordingly, records which are *not* made or received in connection with the transaction of official business do not constitute public records for purposes of Ch. 119 disclosure requirements. See e.g. *Butler v. City of Hallandale Beach*, 68 So. 3d 278 (Fla. 4th DCA 2011) (e-mail sent by mayor from her personal account using her personal computer and blind copied to friends and supporters did not constitute a public record because the e-mail was not made pursuant to law or ordinance or in connection with the transaction of official business). Similarly, text messages from a city commissioner to her husband during a city commission meeting which were ‘uniformly personal and private’ and were not made in connection with any business transacted by the city, “did not possess the attributes of official business and, therefore, did not become subject to public records inspection.” *City of Sunny Isles Beach v. Gatto*, 338 So. 3d 1045 (Fla. 3d DCA 2022). The court noted that the commissioner was not acting in her official capacity when she texted with her husband; “[n]or did her husband step out of his role as husband and adopt the role of a citizen either seeking to enter a City process or to transact City business.” *Id.*

In evaluating whether a record is made or received in connection with the official business of an agency, “the determining factor is the nature of the record, not its physical location.” *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003). In *Clearwater*, the Court held that personal e-mails between government employees on government-owned computers which were not made

or received in the course of official business did not constitute public records. *See also Bent v. State*, 46 So. 3d 1047, 1050 (Fla. 4th DCA 2010) (recordings made by sheriff's office of personal telephone calls between minors in jail awaiting trial and third parties are not public records when contents of the phone calls do not involve criminal activity or a security breach); and *Media General Operations, Inc. v. Feeney*, 849 So. 2d 3 (Fla. 1st DCA 2003) (records of personal or private calls of legislative employees using cellular phone service provided by a political party do not constitute official business of the Legislature and are not subject to public disclosure).

However, in concluding that the location of e-mails on a government computer does not control the application of Public Records Act, the *Clearwater* court also cautioned that the case before it did not involve e-mails "that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers." *State v. City of Clearwater*, at 151n.2. *And see Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (personal flight log of pilots paid by county which are required as part of pilots' administrative duties are distinguishable from personal e-mails in *City of Clearwater* case and are subject to disclosure). *See also* AGO 09-19 (because the creation of a city Facebook page must be for a municipal, not private purpose, the "placement of material on the city's page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes"),

Thus, in *Bill of Rights, Inc. v. City of New Smyrna Beach*, No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010), available online in the Cases database at the open government site at myfloridalegal.com, the court concluded that billing documents regarding personal calls made and received by city employees on city-owned or city-leased cellular telephones are public records, when those documents are received and maintained in connection with the transaction of official business; "and, the 'official business' of a city includes paying for telephone service and obtaining reimbursement from employees for personal calls." *See also* AGO 77-141 (copies of letters or other documents received by the mayor in his official capacity constitute records received "in connection with the transaction of official business" and therefore are public records). *Compare* Inf. Op. to Burke, April 14, 2010 (while the licensing board, and not Attorney General's Office, must determine whether a letter, allegedly sent to the board by mistake, had been received by the board in connection with the transaction of official business, the board "may wish to consider whether circumstances characterize how the document was received, such as does the letter relate to a past, existing, or potential investigation by the board").

Similarly, the mere fact that an e-mail is sent from a private e-mail account using a personal computer is not the determining factor as to whether it is a public record; it is whether the e-mail was prepared or received in connection with official agency business. *See Butler v. City of Hallandale Beach*, *supra*. For example, if a public employee sends a proposed agency budget to his or her supervisor for review, the report is a public record, regardless of whether the report was sent from the employee's agency e-mail account using a government computer, or from his or her home computer using a personal e-mail account. *And see* AGO 08-07 (individual council members who post comments and emails relating to transaction of city business on a privately-owned and operated website "would be responsible for ensuring that the information is maintained in accordance with the Public Records Law").

"An elected official's use of a private cell phone to conduct public business via text messaging can create an electronic written public record subject to disclosure." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018). However, in order for the communication to constitute a public record, "an official or employee must have prepared, owned, used, or retained it within the scope of his or her employment or agency." *Id.* at 1040-1041. According to the *O'Boyle* court, an official or employee's communication "falls 'within the scope of employment or agency' only when their job requires it, the employer or principal directs it, or it furthers the employer's or principal's interests." *Id.* at 1041. *Cf.* AGO 16-16 (hospital

district not authorized to reimburse a board member for attorney fees incurred in responding to a public records request for records relating to her board service which were stored in her private computer and telephone when no suit, claim, charge, or action was instituted against the commissioner when the fees were incurred).

18. Personnel records

The general rule with regard to personnel records is the same as for other public records; unless the Legislature has expressly exempted certain personnel records from disclosure or authorized the agency to adopt rules limiting access to such records, personnel records are subject to public inspection and copying under s. 119.07(1), F.S. See *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985).

a. Annuity or custodial account activities

Records identifying individual participants in any annuity contract or custodial account under s. 112.21, F.S. (relating to tax-sheltered annuities or custodial accounts for employees of governmental agencies) and their personal account activities are confidential and exempt from s. 119.07(1), F.S. Section 112.21(1), F.S.

b. Applications for employment, references, and resumes

Applications and resumes are subject to disclosure, after redaction of statutorily exempt information such as social security numbers. See *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980); and AGOs 15-10 and 77-48. Similarly, communications from third parties are subject to disclosure. See *Douglas v. Michel*, 410 So. 2d 936 (Fla. 5th DCA 1982), *questions answered and approved*, 464 So. 2d 545 (Fla. 1985). A written employment contract is a public record. AGO 13-14.

Section 1004.098(1)(a), F.S., establishes confidentiality for personal identifying information of applicants for president of a state university or Florida College System institution. The age, race, and gender of applicants who met the minimum qualifications for the position who were considered and the personal identifying information of applicants included in the final group of applicants are no longer confidential beginning at the earlier of the date the final group of applicants is established or 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of employment of an applicant. Section 1004.098(1)(b), F.S. Cf. AGO 23-04, advising that the Sunshine Law does not permit members of a university presidential search committee to use a search firm to anonymously rank candidates to affect which candidates the committee will consider at a future meeting, and that the exemption from the Sunshine Law in s. 1004.098(2)(b), F.S., “applies only when the committee fulfills all criteria of the exemption, such as recording the entire portion of the exempt meeting.”

c. Collective bargaining

(1) Relationship of collective bargaining agreement to personnel records

A collective bargaining agreement between a public employer and its employees may not validly make the personnel records of public employees confidential or exempt the same from the Public Records Act. AGO 77-48. Thus, employee grievance records are disclosable even though classified as confidential in a collective bargaining contract because “to allow the elimination of public records from the mandate of Chapter 119 by private contract would sound the death knell of the Act.” *Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981). Cf. *Palm Beach County Classroom Teacher’s Association v. School Board of Palm Beach County*, 411 So. 2d 1375, 1376 (Fla. 4th DCA 1982) (collective bargaining agreement cannot be used “to circumvent the requirements of public meetings” in s. 286.011, F.S.).

Similarly, a city may not remove and destroy disciplinary notices, with or without the

employee's consent, during the course of resolving collective bargaining grievances, except in accordance with retention schedules established by the Division of Library and Information Services of the Department of State. AGO 94-75. *Accord* AGO 94-54.

(2) Collective bargaining work product exemption

Section 447.605(3), F.S., provides:

All work products developed by the public employer in preparation for negotiations, and during negotiations, shall be confidential and exempt from the provisions of s. 119.07(1), F.S.

The exemption is limited and does not remove budgetary or fiscal information from the purview of Ch. 119, F.S. See *Bay County School Board v. Public Employees Relations Commission*, 382 So. 2d 747, 749 (Fla. 1st DCA 1980), noting that records which are prepared for other purposes do not, as a result of being used in negotiations, come within the s. 447.605(3) exemption; and *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976), ordering that working papers used in preparing a college budget be produced for inspection by a labor organizer.

Thus, proposals and counter proposals presented during the course of collective bargaining would appear to be subject to public disclosure. However, written notes taken by the representative of a fire control district during collective bargaining sessions for use in preparing for subsequent bargaining sessions which reflect the impressions, strategies and opinions of the district representative are exempt pursuant to s. 447.605(3), F.S. Inf. Op. to Fulwider, June 14, 1993.

d. Complaints against employees

Section 119.071(2)(k), F.S., provides that a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint is confidential and exempt until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

- a. Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- b. Concluded the investigation with a finding to proceed with disciplinary action or file charges.

Prior to the enactment of this statute in 2013, there was no general exemption from public disclosure for complaints and investigative records based on alleged misconduct by agency employees. See e.g., AGO 04-22 (anonymous letter sent to city officials containing allegations of misconduct by city employees is a public record). Instead, the Legislature enacted exemptions pertaining to specific types of complaints and investigations. See e.g. s. 943.03(2), F.S., providing for confidentiality of Florida Department of Law Enforcement records relating to an active investigation of misconduct, in connection with their official duties, of public officials and employees and of members of public corporations and authorities subject to suspension or removal by the Governor.

For information on the exemptions for whistleblower, discrimination and ethics complaints directed against public officials and employees, please refer to the discussion on pages 98-101. A discussion of exemptions addressing complaints against law enforcement officers and educators follows:

(1) Law enforcement officers and correctional officers

(a) Scope of exemption and duration of confidentiality

In the absence of an express legislative exemption, law enforcement personnel records are open to inspection just like those of other public employees. See *Tribune Company v. Cannella*, 438 So. 2d 516, 524 (Fla. 2d DCA 1983), *quashed on other grounds*, 458 So. 2d 1075 (Fla.

1984), *appeal dismissed sub nom., Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985) (law enforcement personnel records compiled and maintained by the employing agency “can never constitute criminal investigative or intelligence information within the meaning of the Public Records Act even if subpoenaed by another law enforcement agency at some point after their original compilation by the employing agency”).

However, section 112.533(2)(a), F.S., provides that complaints filed against law enforcement officers and correctional officers, and all information obtained pursuant to the agency’s investigation of the complaint, are confidential *until* the investigation is no longer active or until the agency head or his or her designee provides written notice to the officer who is the subject of the complaint that the agency has concluded the investigation with a finding to either proceed or not to proceed with disciplinary action or the filing of charges.

The term “law enforcement officer” is defined as any person, other than a chief of police, who is employed full time or part time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff under s. 30.07, F.S. Section 112.531(3), F.S.

Complaints filed with the employing agency by any person, whether within or outside the agency, are subject to the exemption. AGO 93-61. However, the complaint must be in writing in order for the confidentiality provisions to apply. *City of Delray Beach v. Barfield*, 579 So. 2d 315 (Fla. 4th DCA 1991). *Cf. Fraternal Order of Police v. Rutherford*, 51 So. 3d 485, 488 (Fla. 1st DCA 2010) (written complaint not necessary to trigger confidentiality afforded by s. 112.532[4] [b], F.S., as that statute provides a broader confidentiality for ongoing investigations whenever a law enforcement or correctional officer faces possible dismissal, demotion, or suspension without pay until the investigating agency “completes or abandons its investigation”).

While s. 112.533, F.S., applies to complaints and records obtained pursuant to the law enforcement agency’s investigation of the complaint, it does not transform otherwise public records (such as crime or incident reports) into confidential records simply because the actions which are described in the crime report later form the basis of a complaint filed pursuant to s. 112.533, F.S. AGO 96-27. *And see* AGO 08-33 (list of law enforcement officers who have been placed on administrative duty by their employer is not confidential under s. 112.533[2][a], F.S., but is subject to inspection and copying even if information on the list will identify officers who are the subject of internal investigation).

If the officer resigns prior to the agency’s completion of its investigation, the exemption from disclosure provided by s. 112.533(2), F.S., no longer applies, even if the agency is still actively investigating the complaint. AGO 91-73. However, if the complaint has generated information which qualifies as active criminal investigative information, *i.e.*, information compiled by a criminal justice agency while conducting an ongoing criminal investigation of a specific act, such information would be exempt while the investigation is continuing with a good faith anticipation of securing an arrest or prosecution in the foreseeable future. *Id.* *See* s. 112.533(2)(b), F.S., providing that the disclosure provisions do not apply to any public record [such as active criminal investigative information exempted in s. 119.071(2)(c), F.S.] which is exempt from disclosure pursuant to Ch. 119, F.S.

The exemption is of limited duration. Section 112.533(2), F.S., establishes that the complaint and all information gathered in the investigation of that complaint generally become public records at the conclusion of the investigation or at such time as the investigation becomes inactive. AGO 95-59. Thus, a court ruled that the exemption ended once the sheriff’s office provided the accused deputy with a letter stating that the investigation had been completed, the allegations had been sustained, and that the deputy would be notified of the disciplinary action to be taken. *Neumann v. Palm Beach County Police Benevolent Association*, 763 So. 2d 1181 (Fla. 4th DCA 2000).

However, the mere fact that written notice of intervening actions is provided to the officer under investigation does not signal the end of the investigation nor does such notice make this information public prior to the conclusion of the investigation. AGO 95-59. Similarly, the exemption remains in effect if an agency schedules a pre-disciplinary determination meeting with an officer to hear and evaluate the officer's side of the case because "[d]iscipline is not an accepted fact at this point." *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278, 1280 (Fla. 4th DCA 2001).

A complaint is presumed to be inactive, and hence subject to disclosure, if no finding is made within 45 days after the complaint is filed. Section 112.533(2)(b), F.S. See *City of Delray Beach v. Barfield*, 579 So. 2d at 318 (trial court's finding that complaint was inactive, despite contrary testimony of law enforcement officers conducting the investigation, comes to appellate court "clothed with its own presumption of correctness--especially, as here, where there is other record evidence which sustains it").

(b) Limitations on disclosure

Section 112.533(2)(b), F.S., states that the inspection provisions in that subsection do not apply to any public record which is exempt from public disclosure under Ch. 119, F.S. For example, active criminal investigative or intelligence information which is exempt pursuant to s. 119.071(2)(c), F.S., remains exempt notwithstanding the disclosure provisions set forth in s. 112.533(2)(a), F.S. *Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001). And see AGO 91-73. Thus, in such cases, the information would be subject to disclosure when the criminal investigative information exemption ends, rather than as provided in s. 112.533(2), F.S. Cf. *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995) (exempt active criminal investigative information may be shared with another criminal justice agency for use in a simultaneous internal affairs investigation and retain its protected status).

Similarly, information that would reveal the identity of the victim of child abuse or the victim of a sexual offense is not subject to disclosure since the information is exempt pursuant to s. 119.071(2)(h), F.S. *Palm Beach County Police Benevolent Association v. Neumann*, *supra*.

However, the state attorney's records of a *closed* criminal investigation are not made confidential by s. 112.533, F.S., even though an internal investigation conducted by the police department remains pending concerning the same complaint. AGO 00-66. Cf. AGO 96-05, noting that a police report of an agency's criminal investigation of a police officer is a public record in the hands of the police department after the investigation is over regardless of whether a copy of the report is forwarded to the Criminal Justice Standards and Training Commission or to the Commission on Ethics.

(c) Unauthorized disclosure penalties

Section 112.533(4), F.S., makes it a first degree misdemeanor for any person who is a participant in an internal investigation to willfully disclose any information obtained pursuant to the agency's investigation before such information becomes a public record. However, the subsection "does not limit a law enforcement or correctional officer's ability to gain access to information under paragraph (2)(a)." Section 112.533(4), F.S. In addition, a sheriff, police chief or other head of a law enforcement agency, or his or her designee, may acknowledge the existence of a complaint, and the fact that an investigation is underway. *Id.*

The Attorney General's Office has issued several advisory opinions interpreting this statute. See, e.g., AGO 03-60 (while public disclosure of information obtained pursuant to an internal investigation prior to its becoming a public record is prohibited, s. 112.533[4], F.S., "would not preclude intradepartmental communications among those participating in the investigation). Cf. AGO 97-62 (confidentiality requirements prevent the participation of a citizens' board in resolving a complaint made against a law enforcement officer until the officer's employing

agency has made its initial findings). *But see Cooper v. Dillon*, 403 F. 3d 1208, 1218-1219 (11th Cir. 2005), in which the 11th Circuit Court of Appeals ruled that s. 112.533(4), F.S., was unconstitutional “[b]ecause the curtailment of First Amendment freedoms by Fla. Stat. ch. 112.533(4) is not supported by a compelling state interest, the statute fails to satisfy strict scrutiny and unconstitutionally abridges the rights to speak, publish, and petition government.”

(2) Public school system employees

The complaint and material relating to the investigation of a complaint against a public school system employee are confidential until the preliminary investigation is either concluded or ceases to be active. Section 1012.31(3)(a)1., F.S. *See* AGO 91-75 (while exemption applies when a complaint against a district employee has been filed and an investigation against that employee ensues, it does not provide a basis for withholding documents compiled in a general investigation of school departments). *Cf. Johnson v. Deluz*, 875 So. 2d 1,3 (Fla. 4th DCA 2004) (because “legislature had no intention of permitting confidential student information to be made public,” student-identifying information must be redacted from public report of investigation of school principal); and *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013) (student’s unredacted e-mail complaining about a college instructor’s classroom behavior qualifies as an exempt “education record”).

While s. 1012.31(1)(b), F.S., prohibits placing anonymous letters and material in a school district employee’s personnel file, the statute does not prevent a school board from investigating the allegations contained in an anonymous letter nor does it permit the school board to destroy the anonymous material absent compliance with statutory restrictions on destruction of public records. AGO 87-48. Moreover, the personnel file is open at all times to school board members, the superintendent, or the principal, or their respective designees in the exercise of their duties, and to law enforcement personnel in the conduct of a lawful criminal investigation. Section 1012.31(3)(b) and (c), F.S.

(3) State university and Florida College System institution employees

For information on statutory exemptions for complaints filed against state university or Florida College System institution (formerly community college) employees, please refer to the discussion of employee evaluations on pages 143.

e. Conditions for inspection of personnel records

An agency is not authorized to unilaterally impose special conditions for the inspection of personnel records. An automatic delay in the production of such records is invalid. *Tribune Company v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed sub nom., DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (automatic 48 hour delay unauthorized by Ch. 119, F.S.). *And see Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002) (“only the custodian of such records can assert any applicable exemption; not the employee”).

Thus, while an agency is not precluded from notifying an employee that a request has been made to inspect his or her personnel records, in the absence of express legislative authority, the production of personnel records may not be delayed in order to allow the employee to be notified or present during the inspection of the public records relating to that employee. *Compare* s. 1012.31(3)(a)3., F.S., providing that no material derogatory to a *public school employee* may be inspected until 10 days after the employee has been notified by certified mail or personal delivery as provided in s. 1012.31(2)(c), F.S.

(1) Privacy issues

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure. *See Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985), holding that the state constitution “does not provide a right of privacy in public records” and that a state or federal right of disclosural privacy does not exist.

“Absent an applicable statutory exception, pursuant to Florida’s Public Records Act (embodied in chapter 119, Florida Statutes), public employees (as a general rule) do not have privacy rights in such records.” *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002). See also *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980); and *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981). But see *Fadjo v. Coon*, 633 F.2d 1172, 1175n.3 (5th Cir. 1981), noting that “it is clear that the legislature cannot authorize by statute an unconstitutional invasion of privacy.”

Additionally, the judiciary has refused to deny access to personnel records based on claims that the release of such information could prove embarrassing or unpleasant for the employee. See e.g., *News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980) (absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public’s interest in disclosure and damage to an individual or institution resulting from such disclosure).

Public employers should note, however, that a court has held that an agency must provide a discharged employee with an opportunity for a post-termination name-clearing hearing when stigmatizing information concerning the employee is made a part of the public records or is otherwise published. *Buxton v. City of Plant City, Florida*, 871 F.2d 1037 (11th Cir. 1989). See also *Garcia v. Walder Electronics, Inc.*, 563 So. 2d 723 (Fla. 3d DCA 1990), *review denied*, 576 So. 2d 287 (Fla. 1990) (public employer has an affirmative duty to inform a discharged employee of his right to seek a post-termination name-clearing hearing). Cf. *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1303 (11th Cir. 2001) (failure to provide name-clearing hearing to employee who alleged that he was denied a promotion due to stigmatizing information in his personnel file does not violate the employee’s due process rights, because “in this circuit a ‘discharge or more’ is required”).

(2) Sealed records

An agency is not authorized to “seal” disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. AGO 94-75. Nor may an agency, absent a statutory exemption for such records, agree to remove counseling slips and written reprimands from an employee’s personnel file and maintain such documents in a separate disciplinary file for the purpose of removing such records from public access. AGO 94-54. Accord AGO 11-19 (superintendent’s failure to comply with a statutory requirement to discuss a performance evaluation with the employee before filing it in the employee’s personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed). And see AGO 15-10 (agency may not “seal” job applications or request that they be submitted as “sealed” records to foreclose public access).

f. Criminal history information

Except where specific exemptions apply, criminal history information is a public record. AGO 77-125; Inf. Op. to Lynn, June 1, 1990.

In some cases, criminal or juvenile records information obtained by specific agencies as part of a background check required for certain positions has been made confidential and exempt from s. 119.07(1), F.S., or use of the information is restricted. See, e.g., s. 110.1127(2)(d) and (e), F.S. (agency positions designated or specified as provided in s. 110.1127, F.S.); s. 1002.36(7)(d) and (e), F.S. (School for the Deaf and the Blind); and s. 39.821(1) F.S. (guardian ad litem).

Federal confidentiality provisions also apply to criminal history information received from the U.S. government. For example, criminal history information shared with a public school district by the Federal Bureau of Investigation retains its character as a federal record to which only limited access is provided by federal law and is not subject to public inspection under Florida’s Public Records Act. AGO 99-01. However, information developed by the school district from further inquiry into references in the federal criminal history record information is a

public record which should be included in a school district employee's personnel file. *Id.*

Sections 943.0585 and 943.059, F.S., prohibit a records custodian who has received information relating to the existence of an expunged or sealed criminal history record from disclosing the existence of such record. AGO 94-49.

g. Deferred compensation

All records identifying individual participants in any deferred compensation plan under the Government Employees' Deferred Compensation Plan Act and their personal account activities shall be confidential and exempt. Section 112.215(7), F.S.

h. Direct deposit

Direct deposit records made prior to October 1, 1986, are exempt from s. 119.07(1), F.S. With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries are confidential and exempt. Section 17.076(5), F.S.

i. Drug test results

Drug test results and other information received or produced by a state agency employer as a result of a drug-testing program in accordance with s. 112.0455, F.S., the Drug-Free Workplace Act, are confidential and exempt, and may not be disclosed except as authorized in the statute. Section 112.0455(11), F.S. *See also* s. 112.0455(8)(l) and (t), F.S.

While the provisions of s. 112.0455, F.S., are applicable to state agencies and not to municipalities, ss. 440.101-440.102, F.S., may be used by a municipality or other entity that is an "employer" for purposes of these statutes, to establish a drug-free workplace program. *See* AGO 98-38. Section 440.102(8), F.S., provides for confidentiality of drug test results or other information received as a result of a drug-testing program implemented pursuant to Ch. 440, F.S. AGO 13-19. *Cf.* AGO 94-51 (city not authorized to delete or remove consent forms or records of disciplinary action relating to city employees' drug testing from personnel records when drug testing was not conducted pursuant to s. 440.102, F.S.); and Inf. Op. to McCormack, May 13, 1997 (s. 440.102[8], F.S., applies to public employees and not to drug test results of public assistance applicants). *And see* s. 443.1715(3), F.S., relating to confidentiality of drug test information and limited disclosure in proceedings conducted for purposes of determining compensability under the reemployment assistance law.

In AGO 96-58, the Attorney General's Office advised that the medical director for a city fire and rescue department may submit drug test results to the state health department pursuant to s. 401.265(2), F.S., requiring a medical director to report to the department any emergency medical technician or paramedic who may have acted in a manner constituting grounds for discipline under the licensing law. The tests were conducted during routine pre-employment and annual fitness for duty examinations and not pursuant to ss. 440.101-440.102, F.S.

j. Employee assistance program

An employee's personal identifying information contained in records held by the employing agency relating to that employee's participation in an employee assistance program is confidential and exempt from disclosure. *See* ss. 110.1091 (state employees), 125.585 (county employees), and 166.0444 (municipal employees), F.S.

k. Employment search or consultant records

"[D]ocuments provided to a consultant in relation to his acting on behalf of a public agency are public documents." *Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997). Thus, if an agency uses a recruitment company to conduct an employment search for the agency,

records made or received by the private company in connection with the search are public records. AGO 92-80. *See also Shevin v. Byron, Harless, Schaffer, Reid and Associates*, 379 So. 2d 633 (Fla. 1980) (firm of consultants hired to conduct an employment search for position of managing director of a public agency was “acting on behalf of” a public agency and thus letters, memoranda, resumes, and travel vouchers made or received by consultants as part of search were public records). *Cf.* s. 1004.098(1), F.S., discussed on page 135 establishing an exemption for personal identifying information of applicants for president of a state university or Florida College institution.

I. Evaluations of employee performance

Evaluations of public employee performance are generally subject to disclosure. As the Florida Supreme Court pointed out in *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 648 (Fla. 1977):

No policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.

However, there are statutory restrictions on access to evaluations of employee performance for public school system employees. Section 1012.31(3)(a), F.S. Similarly, there are exemptions for evaluations contained in limited-access records prescribed by a hospital or other facility licensed under Ch. 395, F.S., for employees of the facility, s. 395.3025(9), F.S.; prescribed by the State Board of Education for Florida College System institution employees, s. 1012.81, F.S.; or prescribed by a university board of trustees for its employees, s. 1012.91, F.S.

A discussion of each of these exemptions follows:

(1) Hospital employees

Section 395.3025(9), F.S., authorizes hospitals to prescribe the content of limited-access employee records which are not available for disclosure for 5 years after such designation. Such records are limited to evaluations of employee performance, including records forming the basis for evaluation and subsequent actions. *See Times Publishing Company v. Tampa General Hospital*, No. 93-03362 (Fla. 13th Cir. Ct. May 27, 1993), available online in the Cases database at the open government site at myfloridalegal.com (s. 395.3025[9] exemption does not apply to list of terminated hospital employees; hospital ordered to allow newspaper to inspect list and personnel files of those persons named in list after “limited-access” documents have been removed).

(2) Public school employees

Employee evaluations of public school system employees prepared pursuant to cited statutes are confidential until the end of the school year immediately following the school year during which the evaluation was made; however, no evaluations made prior to July 1, 1983, shall be made public. Section 1012.31(3)(a)2., F.S. However, the exemption applies only to the “employee evaluation.” *See Morris Publishing Group, LLC v. Department of Education*, 133 So. 3d 957, 960 (Fla. 1st DCA 2013), *review denied*, 157 So. 3d 1046 (Fla. 2014) (“While section 1012.31[3][a]2 provides that the evaluation of a public school teacher is not subject to disclosure under the public records law, it does not follow that any information or data used to prepare the evaluation is likewise exempt from disclosure”).

Moreover, information obtained from evaluation forms circulated by the local teacher's union to its members that is provided unsolicited to the superintendent is not exempt under this statute. AGO 94-94. In addition, written comments and performance memoranda prepared by individual school board members regarding an appointed superintendent are not exempt from disclosure. AGO 97-23. *Cf.* AGO 11-19, concluding that a superintendent's failure to comply with a statute requiring that a performance evaluation be discussed with an employee before it is

filed in the employee's personnel file, does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed.

(3) State university and Florida College System institution employees

Limited-access records maintained by a state university on its employees are confidential and exempt from s. 119.07(1), F.S., and may be released only upon authorization in writing from the employee or upon court order. Without such authorization, access to the records is limited to university personnel as specified in the statute. Section 1012.91, F.S.

"Limited-access records" are limited to: information reflecting academic evaluations of employee performance that are open to inspection only by the employee and university officials responsible for supervision of the employee; records relating to an investigation of employee misconduct which records are confidential until the conclusion of the investigation or the investigation ceases to be active as defined in the exemption; and records maintained for the purpose of any disciplinary proceeding against the employee or records maintained for any grievance proceeding brought by an employee for enforcement of a collective bargaining agreement or contract until a final decision is made. Section 1012.91(1), F.S.

For sexual harassment investigations of university personnel, portions of records that identify or reasonably could lead to the identification of the complainant or a witness also constitute limited-access records. Section 1012.91(2), F.S. Records which comprise the common core items contained in the State University System Student Assessment of Instruction instrument may not be prescribed as limited-access records. Section 1012.91(4), F.S.

Regarding Florida College System institution employees, s. 1012.81, F.S., states that rules of the State Board of Education shall prescribe the content and custody of limited-access records maintained by a Florida College System institution on its employees. Such records are limited to information reflecting academic evaluations of employee performance and certain disciplinary and grievance records as described in the exemption. Limited access records are confidential and exempt and may not be released except as authorized in the exemption. *Cf. Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted e-mail complaining about an instructor's classroom behavior qualifies as an exempt "education record").

m. Examination questions and answer sheets

Examination questions and answer sheets of examinations administered by governmental entities for the purpose of licensure, certification, or employment are exempt from mandatory disclosure requirements. Section 119.071(1)(a), F.S. *See Dickerson v. Hayes*, 543 So. 2d 836, 837 (Fla. 1st DCA 1989) (applying exemption to portions of rating sheets used by promotion board which contained summaries of applicants' responses to oral examination questions where the oral questioning "was a formalized procedure with identical questions asked of each applicant [which] 'tested' the applicants' response both as to style and content"). *And see Rush v. High Springs*, 82 So. 3d 1108 (Fla. 1st DCA 2012) (exemption applies to questions and answers contained in pre-employment polygraph examinations).

The exemption from disclosure in s. 119.071(1)(a), F.S., applies to examination questions and answers, and does not include the "impressions and grading of the responses" by the examiners. *See Dickerson v. Hayes*, *supra* at 837. *Compare* s. 455.229(1), F.S., providing confidentiality for "examination questions, answers, papers, grades, and grading keys" used in licensing examinations administered by the Department of Business and Professional Regulation.

A person who has taken an examination has the right to review his or her own completed examination. Section 119.071(1)(a), F.S. *See* AGO 76-210, stating that an examinee has the right to inspect the results of a completed civil service promotional examination, including question and answer sheets, after the examination has been completed. However, the examinee possesses only the right to *review* his or her own completed examination and may not make or

obtain copies of that examination. AGO 81-12.

n. Home addresses, telephone numbers and other personal information

In the absence of statutory exemption, home addresses, telephone numbers, photographs, and dates of birth of public officers and employees are not exempt from disclosure. See AGO 96-88 (home addresses and telephone numbers and business addresses and telephone numbers of members of state and district human rights advocacy committees are public records); *Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of their personnel files). And see *United Teachers of Dade v. School Board of Dade County*, No. 92-17803 (01) (Fla. 11th Cir. Ct. Nov. 30, 1992), available online in the Cases database at the open government site at myfloridalegal.com (home telephone numbers and addresses of school district employees not protected by constitutional right to privacy; only the Legislature can exempt such information). Cf. AGO 85-03 (list containing names and addresses of subscribers to state magazine is a public record).

(1) Listing of public officers and employees covered by exemptions

The home addresses, telephone numbers, and other specified personal information pertaining to certain public officers and employees and their spouses and children have been exempted in ss. 119.071(4)(d) and 119.071(5)(i) F.S. The term “home address” for purposes of s. 119.071(4)(d), F.S., means “the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.” Section 119.071(4)(d)1.a., F.S.

For purposes of s. 119.071(4)(d), F.S., the term “telephone numbers” includes “home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.” Section 119.071(4)(d)1.c., F.S.

(a) Abuse investigators for Department of Children and Families and Department of Health

- a. Scope of exemption: Active or former personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft or other criminal activities; and active or former personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.a., F.S.

(b) Child advocacy personnel and child protection team members

- a. Scope of exemption: Current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(2) and fulfills the screening requirements of s. 39.3035(3) and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team.
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs

- c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.t., F.S.

(c) Code enforcement officers

- a. Scope of exemption: Current or former code enforcement officers
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.i., F.S.

(d) County addiction facility personnel

- a. Scope of exemption: Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility. The term “addiction treatment facility” means a county government, or agency thereof, that is licensed pursuant to s. 397.401, and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26)
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel, and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.s., F.S.

(e) County tax collectors

- a. Scope of exemption: County tax collectors
- b. Information exempted: Home addresses, telephone numbers, and dates of birth
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.n., F.S.

(f) Domestic violence advocates

- a. Scope of exemption: Current or former staff and domestic violence advocates, as defined in s. 90.5036(1)(b), of domestic violence centers certified by the Department of Children and Families under chapter 39
- b. Information exempted: Home addresses, telephone numbers, places of employment, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.u., F.S.

(g) Domestic violence and other specified crime victims

Please refer to the discussion on page 78.

(h) Emergency medical technicians or paramedics

- a. Scope of exemption: Current or former emergency medical technicians or paramedics certified under Ch. 401, F.S.
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.q., F.S.

(i) Firefighters

- a. Scope of exemption: Current or former firefighters certified in compliance with s. 633.408, F.S.
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, photographs, and places of employment of spouses and children of such firefighters; and the names and locations of the schools and day care facilities attended by the children of the firefighters
- d. Statutory reference: Section 119.071(4)(d)2.d., F.S.

(j) Guardians ad litem

- a. Scope of exemption: Current or former guardians ad litem, as defined in s. 39.820, F.S.
- b. Information exempted: Home addresses, telephone numbers, dates of birth, places of employment, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons
- d. Statutory reference: Section 119.071(4)(d)2.j., F.S.

(k) Hospital employees

Please refer to the discussion on page 97.

(l) Human resource managers (local governments)

- a. Scope of exemption: Current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.h., F.S.

(m) Impaired practitioner consultants

- a. Scope of exemption: Current or former impaired practitioner consultants retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession
- b. Information exempted: Home addresses, telephone numbers dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees
- d. Statutory reference: Section 119.071(4)(d)2.p., F.S.

(n) Inspectors general and internal auditors performing specified duties

- a. Scope of exemption: Current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.r., F.S.

(o) Investigators and inspectors of the Department of Agriculture and Consumer Services

- a. Scope of exemption: Current or former investigators or inspectors of the Department of Agriculture and Consumer Services
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.v., F.S.

(p) Investigators and inspectors of the Department of Business and Professional Regulation

- a. Scope of exemption: Current or former investigators or inspectors of the Department of Business and Professional Regulation
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.m., F.S.

- (q) **Investigators of the Department of Financial Services and Office of Financial Regulation with specified duties**
- a. Scope of exemption: Current or former nonsworn investigative personnel of the Department of Financial Services and Office of Financial Regulation whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations
 - b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
 - c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel.
 - d. Statutory reference: Section 119.071(4)(d)2.b., and c., F.S.
- (r) **Judges, magistrates, hearing officers, and judicial assistants (state)**
- I. Administrative law judges, magistrates, and child support hearing officers**
- a. Scope of exemption: General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers
 - b. Information exempted: Home addresses, dates of birth, and telephone numbers
 - c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
 - d. Statutory reference: Section 119.071(4)(d)2.g., F.S.
- II. Court justices and judges**
- a. Scope of exemption: Current or former Justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges
 - b. Information exempted: Home addresses, dates of birth, and telephone numbers
 - c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of such justices and judges
 - d. Statutory reference: Section 119.071(4)(d)2.e., F.S.
- III. Judicial assistants**
- a. Scope of exemption: Current judicial assistants, defined in s. 119.071(4)(d)1.b., to mean "a court employee assigned to the following class codes: 8140, 8150, 8310, and 8320"
 - b. Information exempted: Home addresses, dates of birth, and telephone numbers
 - c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
 - d. Statutory reference: Section 119.071(4)(d)2.e., F.S.

(s) Juvenile Justice juvenile probation and detention officers and counselors

- a. Scope of exemption: Current or former juvenile probation officers and supervisors, detention superintendents and assistant superintendents, juvenile justice detention officers and supervisors, juvenile justice residential officers and supervisors, juvenile justice counselors, supervisors, and administrators, human services counselor administrators, rehabilitation therapists and social services counselors of the Department of Juvenile Justice
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.k., F.S.

(t) Law enforcement and correctional personnel

- a. Scope of exemption: Active or former sworn law enforcement personnel or active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.a., F.S.

(u) Personnel of the Department of Health with specified duties

- a. Scope of exemption: Current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health
- b. Information exempted: Homes addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.o., F.S. *See also* s. 119.071(4)(d)2.a., F.S. (child abuse or neglect investigators).

(v) Prosecutors and judges (federal)

- a. Scope of exemption: Current or former United States attorneys, assistant United States attorneys, judges of the United States Courts of Appeal, United States district judges or United States magistrates if the individual submits to the agency having custody of such information a written request to exempt such information from public disclosure as well as a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public

- b. Information exempted: Home address, telephone number and photograph
- c. Family information exempted: Home address, telephone number, photograph, and place of employment of the spouse or child; and the name and location of the school or day care facility attended by the child of such attorney, judge or magistrate
- d. Statutory reference: Section 119.071(5)(i), F.S.

(w) Prosecutors (state)

- a. Scope of exemption: Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.f., F.S.

(x) Public defenders and other specified counsel

- a. Scope of exemption: Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel
- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.l., F.S.

(y) Public guardians

- a. Scope of exemption: Current or former public guardians and employees with fiduciary responsibility, as that term is defined in the exemption, who submit to the custodial agency a written request for maintenance of the exemption. The term “employee with fiduciary responsibility” means an employee of a public guardian who has the ability to direct any transactions of a ward’s funds, assets, or property; who under the supervision of the guardian, manages the care of a ward; or who makes any health care decision, as defined in s. 765.101, on behalf of a ward
- b. Information exempted: Home addresses, telephone numbers, and dates of birth. Photographs of former public guardians and employees with fiduciary responsibility are also exempt.
- c. Family information exempted: Names, home addresses, telephone numbers, and dates of birth of the spouses and children of such persons who are not themselves current or former guardians with fiduciary responsibility, and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 744.21031(2), F.S.

(z) Revenue collection and enforcement or child support enforcement

- a. Scope of exemption: Active or former personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement

- b. Information exempted: Home addresses, telephone numbers, dates of birth, and photographs
- c. Family information exempted: Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel
- d. Statutory reference: Section 119.071(4)(d)2.a., F.S.

Note: In AGO 96-57, the Attorney General's Office concluded that this exemption should be construed as including personnel whose duties include *both* revenue collection and enforcement, as opposed to those personnel whose duties include only revenue collection or only revenue enforcement.

(2) Authority to release protected information

The purpose of the s. 119.071(4)(d), F.S., exemption is to protect the safety of the enumerated individuals and their families by removing certain information relating to such individuals from the mandatory disclosure requirements of Ch. 119, F.S. AGO 10-37. *And see* AGOs 90-50 and 96-57. The statute makes these records exempt from mandatory disclosure requirements, not confidential; thus, an agency is not prohibited from disclosing the information in all circumstances. AGO 10-37.

However, in determining whether to disclose the information, the agency should consider the underlying purpose of the statute, *i.e.*, safety of the listed individuals and their families. AGO 90-50. *See also* AGO 08-24. *Cf.* AGO 90-50, noting that the exemption does not prohibit an agency from “access to, and maintaining information on, its employees, including their names and addresses.”

In other words, a police department, in deciding whether to publicly release photographs of law enforcement personnel, should determine whether there is a statutory or substantial policy need for disclosure. AGO 07-21. In the absence of a statutory or other legal duty to be accomplished by disclosure, the agency should consider whether the release of such information is consistent with the purpose of the exemption afforded by s. 119.071(4)(d)2. *Id.* For example, a posting of the names, I.D. numbers and photographs of police officers in the hallway of the police department for public display would appear to be counter to the purpose of the exemption. AGO 90-50.

Similarly, in AGO 08-24, the Attorney General's Office noted that the home addresses and other protected personal information of the spouses of law enforcement officers who are employed by the school board are exempt from disclosure under s. 119.071(4)(d)2., F.S., and therefore, the school board was not required to report such information to the certified bargaining representative. *And see Henderson v. Perez*, 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce exempt home addresses and photographs of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because “Perez has not shown that the photographs and home addresses of the law enforcement officers are essential to the prosecution of his suit”).

By contrast, information from the city personnel files which reveals the home addresses of former law enforcement personnel may be disclosed to the State Attorney's office for the purpose of serving criminal witness subpoenas by mail pursuant to s. 48.031, F.S. *Inf. Op.* to Reese, April 25, 1989. Similarly, a police and firefighter pension board may release exempt employee information pursuant to a confidentiality agreement for use by a vendor that has contracted with the board to conduct cybersecurity testing of the board's electronic data storage systems. AGO 19-08.

A 2017 Attorney General Opinion advised that a property appraiser may disclose the

address of an alleged violator of the local code when a code inspector or code enforcement board is attempting to provide notice regarding the violation as required by s. 162.06, F.S. AGO 17-05. The code inspector's statutory duty to notify an alleged code violator of a violation warrants use of an otherwise exempt address for the limited purpose of providing such notice and does not authorize further disclosure of the address. *Id. Cf.*, s. 119.071(4)(d)7., F.S.(2021), brought into the statutes by s. 3, Ch. 21-215, Laws of Florida, providing that exempt information "may be disclosed pursuant to s. 28.2221[relating to exempt information in the Official Records] to a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar."

The s. 119.071(4)(d)2., F.S., exemption applies to public agencies, not private entities unless the private entity is acting on behalf of a public agency. *Inf. Op. to Gomez*, Nov. 3, 2008. *Cf.* s. 843.17, F.S., making it a misdemeanor to maliciously publish or disseminate, with intent to obstruct the due execution of the law or with the intent to intimidate, hinder, or interrupt any law enforcement officer in the legal performance of his or her duties, the residence address or telephone number of any law enforcement officer while designating the officer as such, without authorization of the agency which employs the officer. *But see Brayshaw v. City of Tallahassee*, Fla., 709 F. Supp. 2d 1244 (N.D. Fla. 2010), holding that s. 843.17, F.S., was unconstitutional on its face.

(3) Records held by agencies that are not the employer of the designated officers or employees

An agency that is the custodian of personal information specified in s. 119.071(4)(d)2., F.S., but is not the employer of the officer or employee, may maintain the exempt status of that information only if the officer or employee or the employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency. Section 119.071(4)(d)3., F.S. *See* AGOs 97-67 (Official Records maintained by clerk of court), 04-18 (applying exemption when requested to petitions and campaign papers filed with supervisor of elections), and 04-20 (property appraiser). *And see* AGO 05-38 (request made to the property appraiser for an exemption from disclosure of personal information would follow the property appraiser's records when they are relayed to the clerk of courts carrying out duties for the Value Adjustment Board).

The request must be notarized and state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status. Section 119.071(4)(d)3., F.S.

The provisions of s. 119.071(4)(d), F.S., should not be read "to impose a burden on employers to know the past law enforcement employment status of employees who may work for them in other capacities." AGO 10-37. Thus, a former law enforcement officer from one municipality who is currently employed by another municipality in a non-law enforcement capacity must make a written request pursuant to s. 119.071(4)(d)3., F.S., that his or her personal information be maintained as exempt by the current employer. *Id.*

A request made pursuant to s. 119.071(4)(d)3., F.S., for maintenance of exempt information in court records or the official records must specify the document type, identification number, and page number of the court record or official record that contains the exempt information. Section 119.071(2)(f) and (3)(f), F.S.

A covered officer or employee or other specified person may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency must release the specified information to the party authorized to receive such information. Section 119.071(4)

(d)5., F.S. *And see* s. 119.071(4)(d)4., F.S., specifying duties of property appraisers and county tax collectors with respect to a request for maintenance of exempt status; s. 119.071(4)(d)8., F.S., providing that the exempt status of a home address contained in the Official Records is maintained only during the period when a protected party resides at the dwelling location; and s. 119.071(4)(d)9., F.S., providing procedures for a request for release of protected decedent's removed information.

(4) Application of exemption to:

(a) Telephone numbers of cellular telephones issued by agencies

Cellular telephone numbers of telephones provided by the agency to law enforcement officers and used in performing law enforcement duties are not exempt from disclosure. Inf. Op. to Laquidara, July 17, 2003. In 2012, the Legislature amended s. 119.071(4)(d), F.S., to define the term "telephone numbers" as used in the exemption to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices." *See* s. 119.071(4)(d)1.c., F.S. As originally introduced, the 2012 legislation would have also included "telephone numbers associated with agency cellular telephones" within the definition of "telephone numbers." *See* HB 629, filed November 10, 2011. However, this proposed language was removed from the original bill during the legislative process.

(b) List of names of designated officers and employees

While s. 119.071(4)(d)2., F.S., exempts home addresses and other personal information of the designated public officers and employees, it does not exempt the *names* of these officers and employees from public disclosure (although typically the names of the *spouses and children* are exempt). *See, e.g.,* s. 119.071(4)(d)2.g., F.S. (names of spouses and children of code enforcement officers are exempt).

Accordingly, the Attorney General's Office advised that if the property appraiser maintains a list of the names of officers and employees who have requested the exemption of their home addresses as authorized by s. 119.071(4)(d)3., F.S., this list is not exempt. AGO 08-29. *Cf.* s. 119.071(4)(d)4.a., F.S. (2021), relating to removal of the name of the individual who has requested exempt status and the instrument number or Official Records information identifying the property from publicly available records maintained by the tax collector or property appraiser.

However, as noted elsewhere in this manual, an agency is not required to *create* or reformat records in order to comply with a request under Ch. 119; the duty of the public records custodian is to provide access to existing records. *See* the discussion in pages 169-170.

(c) Prior home addresses

Section 119.071(4)(d)2., F.S., applies only to the current home address or addresses (including a current vacation home address) of the designated individuals. AGO 10-37.

(d) Maps showing physical location of homes

A property appraiser is precluded from making technology available to the public that would enable a user to view a map on the Internet showing the physical location of a law enforcement officer's home, even though the map does not contain the actual home address of the officer, if the property appraiser has received a written exemption request from the officer. AGO 04-20. *See also* the definition of the term "home address" as defined in s. 119.071(4)(d)1.a., F.S.

(e) Home addresses of persons who are not the owner of the property

The exemption applies to the home addresses, telephone numbers, and other personal information relating to the specified individuals "without regard to whether or not they own the real property at which they reside." AGO 14-07.

(f) Booking photographs

Section 119.071(4)(d), F.S., exempts the photograph of a current or former law enforcement officer, whether held by the employing agency or by a nonemploying agency which has received a written request to maintain the exempt status of the record pursuant to s. 119.071(4)(d)3., F.S. Inf. Op. to Amunds, June 8, 2012. Thus, the agency should determine whether there is a statutory or substantial policy need for disclosure before releasing the booking photograph. *Id.* In the absence of a statutory or other legal duty to be accomplished by disclosure, an agency should consider whether the release of such information is consistent with the purpose of the exemption, *i.e.*, the safety of law enforcement officers and their families. *Id.* See also AGOs 90-50 and 07-21. *Cf.* AGO 94-90 (statute did not preclude release of booking photograph of deputy who was not an undercover officer whose identity would otherwise be protected by s. 119.071(4)(c), F.S.).

o. Medical information and health insurance participant information**(1) Medical information and medical claims records**

Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1), F.S. Section 119.071(4)(b)1., F.S. Such information may be disclosed if the person or the person's legal representative provides written permission or pursuant to court order. *Id.* See AGO 98-17 (exemption "appears to extend to governmental employees the protection for personal medical records that is generally enjoyed by private sector employees"). *Cf. Delaurentos v. Peguero*, 47 So. 3d 879, 881 (Fla. 3d DCA 2010) (s. 119.071(4)[b]1. F.S., "simply provides an exemption in the event that a citizen makes a public records request for medical records;" but does not "create a privilege which would insulate such records from discovery in litigation").

Public school system employee medical records, including psychiatric and psychological records, are confidential and exempt from s. 119.07(1), F.S. Section 1012.31(3)(a)5., F.S.

Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information is exempt from s. 119.07(1), F.S. Section 760.50(5), F.S.

Patient medical records and medical claims records of current or former employees and eligible dependents enrolled in group insurance plans of specified governmental entities are confidential and exempt from s. 119.07(1), F.S.; such records shall not be furnished to any person other than the employee or the employee's legal representative, except as authorized in the subsection. Sections 110.123(10) (state employees), 112.08(7) (county or municipal employees), and 112.08(8) (water management district employees), F.S. See AGO 91-88, citing to *News-Press Company, Inc. v. Kaune*, 511 So. 2d 1023 (Fla. 2d DCA 1987), stating that the exemption applies broadly and is not limited solely to medical records filed in conjunction with an employee's participation in a group insurance plan; rather, the exemption applies to all medical records relating to employees enrolled in a group insurance plan. *And see* AGOs 01-33 (confidentiality of patient records at medical clinic owned and operated by city for the use and benefit of its employees); 94-78 (monthly printout of medical claims paid under city group health insurance plan that identifies the public employees who obtained medical services and the amounts of the claims, together with some account information, is exempt from public inspection), and 94-51 (agency "should be vigilant in its protection of the confidentiality provided by statute for medical records of [its] employees").

(2) Health insurance participant information

While "information relating to an insurance program participant's medical condition is protected from disclosure . . . there is no clear statement that such protection extends to the name, address, age, or other non-medical information of such participants." Inf. Op. to Dockery, November 10, 2008.

Subsequent to the issuance of this opinion, the Legislature enacted an exemption for personal identifying information *of a dependent child* of a current or former officer or employee of an agency, whose dependent child (as defined in s. 409.2554, F.S.) is insured by the agency's group insurance plan. Section 119.071(4)(b)2., F.S. However, while personal identifying information relating to the dependent child's participation in an agency's group insurance plan is now confidential, personal identifying information relating to the current or former officer's or employee's participation in such plan is subject to disclosure. *Cf.* s. 110.12301(3), F.S., providing confidentiality for records collected for purposes of dependent eligibility verification services conducted for the state group insurance program and held by the Department of Management Services.

p. Payroll deduction records

There is no general exemption from disclosure that applies to agency payroll deduction records. However, *public school system employee* payroll deduction records are confidential. Section 1012.31(3)(a)4., F.S. *See* AGO 09-11 (tax information [such as Federal Withholding Tax Deduction, FICA Tax Deduction and the Medicare Tax Deduction] of a public school system employee would appear to constitute payroll deduction records and would be confidential and exempt from disclosure pursuant to s. 1012.31[3][a]4., F.S.).

q. Retiree lists

The names and addresses of retirees are confidential and exempt from s. 119.07(1), F.S., to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled or list form except to public agencies engaged in official business, to collective bargaining agents or to retiree organizations for official business use. Section 121.031(5), F.S. "Any person may view or copy any individual's retirement records at the Department of Management Services, one record at a time, or may obtain information by a separate written request for a named individual for which information is desired." *Id.* *Cf.* s. 121.4501(19), F.S. (personal identifying information of members in the investment plan contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services is exempt).

Section 121.021(60), F.S., defines the term "retiree" to mean "a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member." Accordingly, the s. 121.031(5) exemption does not apply to employees who are participants in the Deferred Retirement Option Program (DROP); DROP participants "are not retirees since they have not terminated their employment." *Palm Beach Newspapers, Inc. v. School Board of Palm Beach County*, No. 502007CA020000XXXXMB (Fla. 15th Cir. Ct. November 28, 2007), available online in the Cases database at the open government site at myfloridalegal.com.

r. Salary records

Salary and other information relating to compensation is subject to disclosure. *Lewis v. Schreiber*, No. 92-8005(03) (Fla. 17th Cir. Ct. June 12, 1992), *per curiam affirmed*, 611 So. 2d 531 (Fla. 4th DCA 1992), available online in the Cases database at the open government site at myfloridalegal.com. *Accord* AGOs 80-92 and 73-30.

s. Travel records

Travel vouchers are open to public inspection, after redaction of exempt material such as credit card account numbers (s. 119.071[5][b], F.S.) or social security numbers (ss. 119.071[4] a) and [5][a]F.S.). *See Shevin v. Byron, Harless, Schaffer, Reid and Associates*, 379 So. 2d 633 (Fla. 1980). *See also* AGO 72-356 (travel itineraries and plane reservations for use of state aircraft are public records). *Cf. Executive Office of the Governor v. AHF MCO of Florida, Inc.*, 257 So. 3d 612

(Fla. 1st DCA 2019), finding that premature disclosure of prospective information relating to the Governor's detailed schedule and travel plans would reveal surveillance techniques, procedures, or personnel which are exempt pursuant to s. 119.071(2)(d), F.S. *See now* s. 943.68(10)(a), F.S. (records held by a law enforcement agency relating to security or transportation services provided to the Governor or other specified persons by the Department of Law Enforcement as provided in ss. 943.68(1)(5) or (6), F.S., are exempt from disclosure requirements).

t. Undercover personnel of criminal justice agencies

Please refer to the discussion of this topic on page 121.

19. Security system information and blueprints

a. Blueprints

Section 119.071(3)(b)1., F.S., exempts building plans, blueprints, schematic drawings, and diagrams which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency. Exempt information may be disclosed to another governmental entity, to a licensed professional performing work on the structure, or upon a showing of good cause to a court. Section 119.071(3)(b)3., F.S. Exempt documents may also be released in order to comply with competitive bidding requirements. AGO 02-74. However, the entities or persons receiving such information must maintain its exempt status. *Id.* And *see* 119.071(3)(e), F.S. (exemption for records which depict structural elements of 911, E911 or public safety radio communications system infrastructure, structures, or facilities owned and operated by an agency; and geographical maps indicating actual or proposed locations of such infrastructure, structures, or facilities).

Section 119.071(3)(c)1., F.S., exempts building plans, blueprints, schematic drawings and diagrams which depict the internal layout or structural elements of various attractions, retail, resort, office, health care facilities, and industrial complexes and developments when the records are held by an agency. The exemption afforded by this statute, however, does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development of regional impact review. Section 119.071(3)(c)3., F.S. *And see* s. 119.071(3)(d) (information relating to the National Public Safety Broadband Network deemed confidential if disclosure would reveal information set forth in the exemption)

b. Security system records

Section 119.071(3)(a), F.S., provides confidentiality for a security or firesafety plan for property owned or leased to the state or any of its political subdivisions. The term "security or firesafety plan" includes records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems. The term also includes threat assessments, threat response plans, emergency evacuation plans, sheltering arrangements, and security or firesafety manuals. *Cf. Marino v. University of Florida*, 107 So. 3d 1231 (Fla. 1st DCA 2013), in which the court rejected a university's contention that it could withhold the location of animal research facilities based on a determination that the nature of the public activities occurring at the facility subjects them to physical threats.

The exemption extends to such information concerning privately owned or leased property which is in the possession of an agency. *See* AGOs 01-75 and 93-86, and Inf. Op. to Sherman, July 2, 2018. *See also* ss. 331.22, F.S. (airport security plans); s. 311.13, F.S. (seaport security plans); and 1004.0962(2), F.S. (campus emergency response of postsecondary education institution). *Cf.* s. 943.68(10)(a), F.S. (records held by a law enforcement agency relating to security or transportation services provided by the Florida Department of Law Enforcement to certain persons under ss. 943.68(1), (5), or (6), F.S., are exempt from disclosure requirements).

Confidential information may be disclosed to the property owner or leaseholder; in furtherance of the official duties and responsibilities of the agency holding the information; to another local, state or federal agency in furtherance of that agency's official duties and responsibilities; or upon a showing of good cause before a court. Section 119.071(3)(a)3., F.S.

(1) Security system (alarm) permits and applications

Section 119.071(3)(a), F.S., prohibits public disclosure of the name and address of applicants for security system permits, of persons cited for violations of alarm ordinances, and of individuals who are the subject of law enforcement dispatch reports for verified or false alarms “because disclosure would imperil the safety of persons and property.” *Critical Intervention Services, Inc. v. City of Clearwater*, 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005). *Accord* AGO 04-28.

(2) Surveillance video recordings

The term “security or firesafety system plan” as used in s. 119.071(3)(a)1., F.S., includes “audio and visual presentations . . . relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems.” Video footage captured by city bus cameras “directly relates to and reveals information about a security system” and thus was determined to be confidential and exempt from disclosure by ss. 281.301 and 119.071(3)(a), F.S. *Central Florida Regional Transportation Authority v. Post-Newsweek Stations, Orlando, Inc.*, 157 So. 3d 401 (Fla. 5th DCA 2015). The videos “reveal the capabilities—and as a corollary, the vulnerabilities” of the security system. *Id.* at 405. *And see* AGO 15-06, relying on *Central Florida Regional Transportation Authority*, and applying the exemption to surveillance tapes from a security system for a public transit authority building. *Cf. Gonzalez v. State*, 240 So. 3d 99 (Fla. 2d DCA 2018) (in the absence of an in camera inspection of the requested records [CDs] the circuit court could not conclude that the contents were exempt from disclosure nor could it determine whether redaction was possible); and *City of Miami v. Blanco*, 336 So. 3d 1268 (Fla. 3d DCA 2022) (trial court departed from essential requirements of law by failing to conduct in camera review before granting defendant’s motion to compel and/or for a subpoena for video camera recordings taken at police station following his arrest; without an in camera inspection, the judge could not determine whether the video recordings fell within the security plan exemption).

Video footage from surveillance cameras at a high school “relates directly” to the security system at the school, including both its capabilities and its vulnerabilities, and thus is confidential and exempt from disclosure unless one of the exceptions to the exemption applies. *State Attorney’s Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205 (Fla. 4th DCA 2018). As previously discussed on page 157, there are several exceptions to this confidentiality provision, including a court order issued upon a showing of good cause. In *State Attorney’s Office*, the appellate court affirmed the trial judge’s order mandating release of surveillance video from a school shooting where 17 students and staff were killed. The court found that the media had established good cause because the footage revealed the conduct of public servants in the discharge of their duties and also provided “insight” into the high school’s security “net” that failed to protect the students and staff. *Id.* at 215.

By contrast, the First District overturned the trial court’s determination that a news organization had shown good cause to obtain security footage from two correctional institutions. *Florida Department of Corrections v. Miami Herald Media Company*, 278 So. 3d 786 (Fla. 1st DCA 2019). At the hearing, the Miami Herald advised that it no longer needed the video recordings as they were no longer newsworthy. Nevertheless the court still found that the Herald had satisfied the statutory exception to confidentiality, noting the awards the journalist received for her reporting on prison issues, and that this fact, combined with the “extremely important right of freedom of the press” constituted good cause. The appellate court reversed, finding that the Herald “extinguished any claim to good cause when it unambiguously renounced its need for the video footage.” 278 So. 3d at 790.

c. Cybersecurity

Section 119.01(2)(a), F.S., states that agencies “must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.” *Cf.* AGO 19-08 (pension board authorized to release nonpublic personnel information pursuant to a confidentiality agreement with a vendor conducting cybersecurity testing of the board’s electronic data storage systems).

Accordingly, an agency is not required to provide direct access to the agency’s electronic records through a hard drive provided by a requester, but must otherwise allow inspection and copying of such records in a manner which will accommodate the request, but protect exempt or confidential materials from disclosure. AGO 13-07. *And see* *Rea v. Sansbury*, 504 So. 2d 1315, 1317-1318 (Fla. 4th DCA 1987), *review denied*, 513 So. 2d 1063 (Fla. 1987) (while county possesses statutory authority to facilitate inspection of public records by electronic means, this “does not mean that every means adopted by the county to facilitate the work of county employees *ipso facto* requires that the public be allowed to participate therein”).

Section 119.0725(2), F.S., provides that the following information held by an agency is confidential: coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of an agency; information relating to critical infrastructure; cybersecurity incident information reported pursuant to s. 282.318 or 282.3185, F.S.; network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information or information technology resources. Key terms used in this exemption such as “information technology” and “incident” are defined in s. 119.0725(1), F.S. Section 119.0725(5)(a), F.S., specifies agencies authorized to receive confidential information.

There are other exemptions which address cybersecurity issues. For example, s. 282.318(4), F.S., requires state agencies, as defined in the statute, to conduct risk assessments, and internal audits, as well as to develop policies and procedures to address cybersecurity issues. This section also contains exemptions for records relating to these functions. *See* s. 282.318(4)(d), (e), and (g), and (5), F.S. *And see* s. 119.0713(5)(a), F.S. (records relating to security of information technology systems of local government owned or operated utilities); s. 627.352 (Citizens Property Insurance Corporation) and s. 1004.055(1), F.S. (state postsecondary education institutions). Secure login credentials held by the Department of Highway Safety and Motor Vehicles are exempt, as are Internet protocol addresses, geolocation data, and other information from which a user accesses a public facing portal. Section 119.0712(2)(f), F.S. *And see* the discussion of the exemptions from the Sunshine Law for cybersecurity meetings found on pages 36-37.

d. School system security

Section 943.082(1), F.S., requires the Florida Department of Law Enforcement to acquire a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities to appropriate public safety agencies and school officials. The identity of the reporting party received through the reporting tool and held by the Department of Law Enforcement, Department of Education, law enforcement agencies, or school officials is confidential and exempt. Section 943.082(6), F.S. Any other information received through the reporting tool and held by the above agencies is exempt. *Id.* *And see* ss. 1004.0962(2), F.S. (campus emergency response held by a public postsecondary institution or specified agencies is exempt from disclosure); and 1004.055(1) (certain security incident information records held by state postsecondary education institution). *Cf.* s. 119.071(3)(a), F.S., providing an exemption for agency security system plans, discussed on pages 156-158.

Any information that would identify whether an individual has been appointed as a safe-school officer pursuant to s. 1006.12, F.S., held by a law enforcement agency, school district, or charter school is exempt. Section 1006.12(8), F.S. *See also* s. 1002.42(18)(c), F.S. (individuals assigned as a safe-school officer at a private school).

20. Social security numbers

Section 119.071(5)(a)5., F.S., states that social security numbers held by an agency are confidential and exempt from public disclosure requirements. *See Department of Health v. Rehabilitation Center at Hollywood Hills*, 259 So. 3d 979, 981 (Fla. 1st DCA 2018), noting the confidential status of social security numbers.

The exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemptions for such numbers. Section 119.071(5)(a)5., F.S. *See, e.g.*, s. 193.114(5), F.S. (social security number submitted on an application for a tax exemption is confidential); and s. 119.071(4)(a), F.S. (social security numbers of current and former employees held by the employing agency are confidential and exempt from disclosure). *And see* s. 119.0714, F.S., regarding confidentiality of social security numbers in court records and in the official records.

Section 119.071(5)(a)6., F.S., authorizes disclosure of social security numbers under certain conditions. In addition, s. 119.071(5)(a)7.b., F.S., states that an agency may not deny a commercial entity engaged in “commercial activity,” as defined in the exemption, access to social security numbers, “provided the social security numbers will be used only in the performance of a commercial activity and provided the commercial entity makes a written request for the social security numbers.” “Commercial activity” does not include the display or bulk sale of social security numbers to the public or the distribution of such numbers to any customer not identifiable by the commercial entity. Section 119.071(5)(a)7.a.(I), F.S. *See* Inf. Op. to Carland, January 12, 2012 (teacher union’s access to social security numbers maintained by school district limited to those social security numbers which will be used to verify the accuracy of numbers which the union has already received in the normal course of business) and AGO 19-08 (pension board authorized to release social security numbers pursuant to a confidentiality agreement to a vendor conducting cybersecurity testing on the board’s electronic data storage systems).

The written request must be verified as provided in Florida law and meet the other requirements specified in the exemption. *See Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005). *See also* AGO 10-06 (agency authorized to request additional information that is reasonably necessary to verify the identity of the commercial entity and the specific purposes for which the social security numbers will be used).

21. Telephone records

Records of telephone calls made from agency telephones are subject to disclosure in the absence of statutory exemption. *See Gillum v. Times Publishing Company*, No. 91-2689-CA (Fla. 6th Cir. Ct. July 10, 1991). *See also Media General Operation, Inc. v. Feeney*, 849 So. 2d 3, 6 (Fla. 1st DCA 2003), rejecting the argument that redaction of telephone numbers for calls made in the course of official business could be justified because disclosure could result in “unreasonable consequences” to the persons called. *Cf.* s. 119.071(5)(d), F.S. (all records supplied by a telecommunications company, as defined by s. 364.02, F.S., to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt). *And see* Inf. to Michelson, January 27, 1992 (cellular telephone company which provided city with statements reflecting amount of usage of cell phones by city staff rather than listing individual calls, did not appear to be an “agency” for purposes of Ch. 119, F.S., making company’s records of individual calls subject to disclosure).

In *Bill of Rights, Inc. v. City of New Smyrna Beach*, No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010), available online in the Cases database at the open government site at myfloridalegal.com,

the court stated that “as a matter of law, . . . billing documents regarding personal calls made and received by city employees on city-owned or city-leased cellular telephones are public records, when those documents are received and maintained in connection with the transaction of official business; and, the ‘official business’ of a city includes paying for telephone service and obtaining reimbursement from employees for personal calls.” *Compare Media General Operation, Inc. v. Feeney, supra*, in which the court held that under the circumstances of that case (involving access to records of cellular phone service provided by a political party for legislative employees), records of personal or private calls of the employees fell outside the definition of public records.

Additionally, in responding to a question from a police department regarding the provisions of Ch. 934, F.S., (interception of wire and oral communications), the Attorney General’s Office advised that recordings of telephone conversations made by the police department in the usual course of business would be public records subject to the inspection, copying, and retention requirements of Ch. 119, F.S. AGO 12-07. “Any such public records would likewise be subject to the exemption and confidentiality provisions of the Public Records Law.” *Id. And see Morris Publishing Group, LLC v. State*, 154 So. 3d 528, 532 (Fla. 1st DCA 2015), *review denied*, 163 So. 3d 512 (Fla. 2015) (“No one disputes” that phone recordings of telephone calls made by the defendant while incarcerated and provided in criminal discovery were public records). *Compare Bent v. State*, 46 So. 3d 1047 (Fla. 4th DCA 2010) (recordings of personal telephone calls between minors in jail awaiting trial and third parties made by sheriff’s office are not public records when contents of the phone calls do not involve criminal activity or a security breach).

22. Trade secrets and proprietary confidential business information

a. Trade secrets

Prior to the adoption of s. 119.0715, F.S., “documents submitted by a private party which constitute trade secrets as defined in s. 812.081,” F.S., and which were stamped as confidential at the time of submission to an agency by a private party, were found to be not subject to public access. *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781, 784 (Fla. 1st DCA 2003), *review denied sub nom.*, *Crist v. Florida Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005). *And see Seta Corporation of Boca, Inc. v. Office of the Attorney General*, 756 So. 2d 1093 (Fla. 4th DCA 2000).

Section 119.0715(2), F.S., now expressly provides that a “trade secret held by an agency” is confidential and exempt from disclosure. An agency may disclose a trade secret to an officer or employee of another agency or government entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities. Section 119.0715(3), F.S.

The term “trade secret” has the same meaning as in s. 688.002, F.S. Section 119.0715(1), F.S. Section 688.002(4), F.S., defines “trade secret” to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The trial court’s conclusion as to whether specific information constitutes a trade secret “rests on factual determinations that are assailable on appeal only if unsupported by competent, substantial evidence.” *Sepro*, 839 So. 2d at 785. *Cf. Managed Care of North America, Inc. v. Florida Healthy Kids Corporation*, at 286 So. 3d at 859 (appellate court’s role is to strictly construe the statutory definition of trade secret, and determine if competent, substantial evidence exists to support the factual findings of the trial court; the trial court’s interpretation of a statute and its application of the law to facts are subject to de novo review); *Office of Insurance Regulation v. State Farm Florida Insurance Company*, 213 So. 3d 1104 (Fla. 1st DCA 2017) (trial court’s conclusion that insurance policy statistics submitted to the Office of Insurance Regulation had “independent economic value” within the meaning of the statutory definition of trade secret in

s. 688.002(4), F.S., was supported by competent, substantial evidence). *Cf. Surterra Florida, LLC v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017) (affirming trial court's finding that identities of investors and partners listed in applications to dispense medical cannabis were not trade secrets because the applicants "did not prove" that this information constituted a trade secret). *And see Barfield v. Florida Department of Health*, No. 2015 CA 003014 (Fla. 2d Cir. Ct. October 27, 2017), available online in the Cases database at the open government site at myfloridalegal.com (identity of consultants and related information contained in application to dispense medical cannabis qualified as a trade secret).

Similarly, the Fourth District upheld the trial court's determination, after an in camera inspection, that the aggregate number of airport pick-ups by a transportation service company and the sums of money paid to the county pursuant to a license agreement between the company and the county did not constitute trade secret information. *Rasier-DC, LLC v. B & L Service, Inc.*, 237 So. 3d 374 (Fla. 4th DCA 2018). The court also found that a provision in the agreement requiring that the county maintain the confidentiality of the company's trade secret information and assert the exempt status in response to a public records request could not transform the information into a confidential record, citing to *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1208 (Fla. 1st DCA 2009). *And see James, Hoyer, Neucomer, Smiljanich, & Yanchunis, P.A., v. Rodale, Inc.*, 41 So. 3d 386, 389 (Fla. 1st DCA 2010), rejecting a company's claim that information in customer complaints and company responses were trade secrets; noting that such information "is not secret and is not [the company's] to control;" *Allstate Floridian Ins. Co. v. Office of Ins. Regulation*, 981 So. 2d 617 (Fla. 1st DCA 2008), *review denied*, 987 So. 2d 79 (Fla. 2008) (to the extent Allstate believed any documents sought by the Office of Insurance Regulation were privileged as trade secrets, Allstate was required to timely seek a protective order in circuit court). *Cf. Inf. Op. to Brown*, March 11, 2016 (if an agency has received material that the sender has identified as "trade secret" and the material does not appear to meet the statutory definition of trade secret, the agency should advise the sender "that it has a received a public request and will release the records and allow the sender to seek a protective order for those materials")

In addition to the general trade secret exemption in s. 119.0715, there are also specific trade secret exemptions. *See, e.g., s. 570.544(8)*, F.S. (records of the Division of Consumer Services of the Department of Agriculture and Consumer Services are public records; however, customer lists, customer names, and trade secrets are confidential and exempt). *Cf. AGO 09-02* (s. 581.199, F.S., prohibits authorized representatives of Division of Plant Industry in Department of Agriculture and Consumer Services from disclosing trade secrets obtained in carrying out their duties under Ch. 581 to any unauthorized person, provided such trade secrets fall within the statutory definition in s. 812.081, F.S., and owner of the trade secrets has taken measures to maintain the information's secrecy). More information about these exemptions may be found in the summaries located in Appendix D.

b. Proprietary confidential business information

While there is no generic exemption for information claimed to be "proprietary confidential business information," the Legislature has created a number of exemptions from Ch. 119, F.S., for proprietary confidential business information held by certain agencies. The term is generally defined by the statute creating the exemption and frequently includes trade secrets. *See, e.g., s. 288.075*, F.S. (economic development agency); *s. 288.9626*, F.S. (Florida Opportunity Fund); and *ss. 364.183, 366.093, 367.156, and 368.108*, F.S. (Public Service Commission). *Cf. Florida Power & Light Company v. Public Service Commission*, 31 So. 3d 860 (Fla. 1st DCA 2010) (listed categories of proprietary confidential business information in s. 366.093, F.S., as exempt are not exhaustive; information relating to employees' compensation warranted confidential classification as it would have impaired utility's competitive interests). *Compare Southern Bell Telephone and Telegraph Company v. Beard*, 597 So. 2d 873, 876 (Fla. 1st DCA 1992) (Public Service Commission's determination that statutory exemption for proprietary confidential

business information should be narrowly construed and did not apply to company's internal self-analysis was "consistent with the liberal construction afforded the Public Records Act in favor of open government"). *And see* AGO 08-14 (lease payment amount made by a private company to the city does not constitute "proprietary confidential business information").

D. PROVIDING PUBLIC RECORDS

1. Validity of agency conditions on access

Section 119.07(1)(a), F.S., establishes a right of access to public records in plain and unequivocal terms:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

The term "reasonable conditions" as used in s. 119.07(1)(a), F.S., "refers not to conditions which must be fulfilled before review is permitted but to reasonable regulations that would permit the custodian of records to protect them from alteration, damage, or destruction and also to ensure that the person reviewing the records is not subjected to physical constraints designed to preclude review." *Wait v. Florida Power & Light Company*, 372 So. 2d 420, 425 (Fla. 1979). *See also Chandler v. City of Greenacres*, 140 So. 3d 1080, 1084 (Fla. 4th DCA 2014) (noting the narrow interpretation of the phrase "reasonable conditions"); and *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom.*, *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985) (the sole purpose of custodial supervision is to protect the records from alteration, damage, or destruction).

Accordingly, the "reasonable conditions" do not include a rule or condition of inspection which operates to restrict or circumvent a person's right of access. AGO 75-50. "The courts of this state have invalidated measures which seek to impose any additional burden on those seeking to exercise their rights to obtain records" under Ch. 119, F.S. Inf. Op. to Cook, May 27, 2011. *And see State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001) (requirement that persons with custody of public records allow records to be examined "at any reasonable time, under reasonable conditions" is not unconstitutional as applied to public records custodian who was dilatory in responding to public records requests).

The Public Records Act "embodies important public policy" and "is designed to provide citizens with a simple and expeditious method of accessing public records." *Orange County v. Hewlings*, 152 So. 3d 812, 817 (Fla. 5th DCA 2014). Thus, an agency violated the Act when instead of complying with Hewlings' "simple request" for records, it "chose to interpose the additional bureaucratic hurdles of forcing her to come to its offices, comb through the records, mark the records in a certain manner, wait for a written estimate of costs, then, after paying the costs, wait again for the records to be mailed to her." *Id.*

The custodian "is at all times responsible for the custody of the [public] records but when a citizen applies to inspect or make copies of them it is his duty to make provision for this to be done in such a manner as will accommodate the applicant and at the same time safeguard the records." *Fuller v. State ex rel. O'Donnell*, 17 So. 2d 607 (Fla. 1944). Thus, the right of inspection may not be frustrated or circumvented through indirect means such as the use of a code book. *State ex rel. Davidson v. Couch*, 158 So. 103, 105 (Fla. 1934) (right of inspection was "hindered and obstructed" by city "imposing conditions to the right of examination which were not reasonable nor permissible under the law"). *Accord* AGO 05-12 (city may not require the use of a code to review e-mail correspondence of city's police department and human resources department). *And see* Inf. Op. to Cook, May 27, 2011, noting that "[a] policy requiring a physical address for mailing copies of requested public records or the personal appearance of the requestor would not appear to relate to the custodian's duty to protect public records

from alteration or destruction, but to impose additional constraints on the requestor.” *Compare Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018) (state attorney did not violate the Public Records Act by making requested records available for inspection and copying at the main office of the state attorney, rather than at a branch office closer to the requester’s home, because the Public Records Act “does not require government officials to move records from where they are being maintained to a different place convenient to the requester”).

Moreover, any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of dubious validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject. *Tribune Company v. Cannella*, *supra* at 1077. A policy of a governmental agency cannot exempt it from the application of Ch. 119, F.S., a general law. *Douglas v. Michel*, 410 So. 2d 936, 938 (Fla. 5th DCA 1982), *questions answered and approved*, 464 So. 2d 545 (Fla. 1985). *And see* AGO 90-04 (county official not authorized to assign county’s rights to a public record as part of a settlement agreement compromising a lawsuit against the county). *Cf. Herbits v. City of Miami*, 207 So. 3d 274, 275 (Fla. 3d DCA 2016) (claim based on alleged concealment of information in violation of transparency mandates established in local enactments is preempted by the Florida Public Records Act, because the “Florida Legislature has so pervasively legislated regarding this subject area that a local government is precluded from legislating in the same area.”).

2. Individuals authorized to inspect and receive copies of public records

Section 119.01, F.S., provides that “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by *any person*.” (e.s.) A state citizenship requirement was deleted from the law in 1975. A public employee is a person within the meaning of Ch. 119, F.S. and, as such, possesses the same right of inspection as any other person. AGO 75-175. Likewise, a county is “any person” who is allowed to seek public records under Ch. 119, F.S. *Hillsborough County, Florida v. Buccaneers Stadium Limited Partnership*, No. 99-0321 (Fla. 13th Cir. Ct. February 5, 1999), *affirmed per curiam*, 758 So. 2d 676 (Fla. 2d DCA 2000), available online in the Cases database at the open government site at myfloridalegal.com.

Thus, “the law provides any member of the public access to public records, whether he or she be the most outstanding civic citizen or the most heinous criminal.” *Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com. “[A]s long as the citizens of this state desire and insist upon ‘open government’ and liberal public records disclosure, as a cost of that freedom public officials have to put up with demanding citizens even when they are obnoxious as long as they violate no laws.” *State v. Colby*, No. MM96-317A-XX (Fla. Highlands Co. Ct. May 23, 1996), available online in the Cases database at the open government site at myfloridalegal.com.

“Even though a public agency may believe that a person or group are fanatics, harassers or are extremely annoying, the public records are available to all of the citizens of the State of Florida.” *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991), available online in the Cases database at the open government site at myfloridalegal.com. *And see* *Curry v. State*, 811 So. 2d 736, 741 (Fla. 4th DCA 2002) (defendant’s conduct in making over 40 public records requests concerning victim constituted a “legitimate purpose,” and thus cannot violate the stalking law “because the right to obtain the records is established by statute and acknowledged in the state constitution”). *Cf. James v. Loxahatchee Groves Water Control District*, 820 So. 2d 988 (Fla. 4th DCA 2002), concluding that a trial court erred when it failed to hold a hearing before denying a request to require a district to permit inspection at the district offices, rather than at an off-premises location. The agency argued that it would be “disruptive” to require that the records inspection be conducted at its offices. *Id.* However, the appeals court ruled that a hearing should have been held to determine whether the requester, who was in litigation with the district, should be allowed to view the records at the district offices, and if so, under what conditions. *Id.*

3. Purpose of request

The requester is not required to explain the purpose or reason for a public records request. “The motivation of the person seeking the records does not impact the person’s right to see them under the Public Records Act.” *Curry v. State*, 811 So. 2d 736, 742 (Fla. 4th DCA 2002). See also *Barfield v. School Board of Manatee County*, 135 So. 3d 560, 562 (Fla. 2d DCA 2014) (“An individual’s reason for requesting a public record is irrelevant”); *Timoney v. City of Miami Civilian Investigative Panel*, 917 So. 2d 885, 886n.3 (Fla. 3d DCA 2005) (“generally, a person’s motive in seeking access to public records is irrelevant”); *Staton v. McMillan*, 597 So. 2d 940, 941 (Fla. 1st DCA 1992), *review dismissed sub nom.*, *Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992) (petitioner’s reasons for seeking access to public records “are immaterial”); *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985) (legislative objective underlying the creation of Ch. 119 was to insure to the people of Florida the right freely to gain access to governmental records; the purpose of such inquiry is immaterial); and *News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980) (“the newspaper’s motives [for seeking the documents], as well as the hospital’s financial harm and public harm defenses, are irrelevant in an action to compel compliance with the Public Records Act”). Cf. *Town of Gulf Stream v. O’Boyle*, 654 F. App’x 439 (11th Cir. 2016) (alleged filing of large numbers of frivolous public records requests which are then followed by lawsuits when the requests are not addressed does not constitute a predicate act under the Racketeer Influenced Corrupt Organizations Act), and *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1289 (11th Cir. 2019) (“In short, a citizen’s public records requests and lawsuits against the government can clearly constitute protected First Amendment activity”).

Thus, an agency is not authorized to impose conditions or limit access to public records based on a suspicion that the request may be for an improper purpose. *Inf. Op. to Cook*, May 27, 2011. However, as noted in that opinion, Florida Statutes impose criminal penalties for the unauthorized use of personal identification information for fraudulent or harassment purposes and for the criminal use of a public record or public records information. See ss. 817.568 and 817.569, F.S.

Similarly, “the fact that a person seeking access to public records wishes to use them in a commercial enterprise does not alter his or her rights under Florida’s public records law.” *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 875 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005), *cert. denied*, 126 S.Ct. 746 (2005). See also *State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905) (abstract companies may copy documents from the clerk’s office for their own use and sell copies to the public for a profit); *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 228n.2 (Fla. 3d DCA 1998), *review denied*, 729 So. 2d 389 (Fla. 1999) (“Booksmart’s reason for wanting to view and copy the documents is irrelevant to the issue of whether the documents are public records”).

4. Role of the records custodian

Section 119.011(5), F.S., defines the term “custodian of public records” to mean “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.”

The custodian of public records, or a person having custody of public records, may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records. Section 119.07(1)(b), F.S. And see s. 119.0701(2), F.S. (discussed more fully on pages 65-66) requiring that certain agency contracts for public services must contain contact information pertaining to the agency’s custodian of public records.

However, the courts have concluded that the statutory reference to the records custodian does not alter the “duty of disclosure” imposed by s. 119.07(1), F.S., upon “[e]very person who has custody of a public record.” *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA 1996).

[Emphasis supplied by the court]. Thus, the term “custodian” for purposes of the Public Records Act refers to all agency personnel who have it within their power to release or communicate public records. *Mintus v. City of West Palm Beach*, 711 So. 2d 1359 (Fla. 4th DCA 1998) (citing *Williams v. City of Minneola*, 575 So. 2d 683, 687 [Fla. 5th DCA 1991]). But, “the mere fact that an employee of a public agency temporarily possesses a document does not necessarily mean that the person has custody as defined by section 119.07.” *Id.* at 1361. In order to have custody, one must have supervision and control over the document or have legal responsibility for its care, keeping or guardianship. *Id.*

In *Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018), the court rejected the requester’s claim that he was entitled to view the records at the office of an assistant state attorney in Lake City when office policy required that the records be sent to the state attorney’s main office in Live Oak to be reviewed for exemptions. The court reasoned that the assistant state attorney “couldn’t have, for instance simply handed over the records on the spot” when the requester asked for them in Lake City because both the “[Public Records] Act and office policy” required that the records “be reviewed for exempt information by the public records custodian (who was also responsible for supervising the record inspection and copying process)” as provided in s. 119.07(1)(a), F.S. *Id.* at 74

The custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. Section 119.07(1)(c), F.S. See *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 128 (Fla. 2016), noting that the “good faith language” was intended “to strengthen the responsibilities of records custodians by imposing an explicit requirement on public agencies that they act in good faith in responding to public records requests.”

A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed. *Id.* Cf. *SDE Media LLC v. City of Doral*, 25 F.L.W. Supp 243a (Fla. 11th Cir. Ct. May 5, 2017) in which the circuit judge found that the city had violated the Public Records Law by “misrepresenting to SDE Media LLC that all responsive records had been located and produced when, in fact, [the city] knew that a good faith search had not been made and that additional responsive records may not have been produced”. And see *Raydient LLC v. Nassau County, Florida*, No. 2019-CA-000054 (Fla. 4th Cir. Ct. August 24, 2021), available online in the Cases database at the open government site at myfloridalegal.com (“If public agency employees and officials transact public business on their privately-owned accounts or devices, then the agency has an affirmative duty in response to public records requests to do what is reasonably necessary to promptly retrieve any public documents from those employees or officials”).

The duty of “good faith” imposed on public officers who are charged with the responsibility of complying with the law is “subjective.” *Consumer Rights, LLC v. Union County*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015), review denied, 177 So. 3d 1264 (Fla. 2015). “Whether a governmental entity acted in ‘good faith’ in the manner in which it responded to a request for disclosure of public records is necessarily a question for the court to decide based on the circumstances of a case.” *Id.* Cf. *Jackson v. City of South Bay*, 358 So. 3d 18 (Fla. 4th DCA 2023), noting that the Sunshine Law, “unlike the Public Records Act, does not have a good faith exception.”

Sections 119.12(1)(b) and (2), F.S mandate that the complainant in a public records lawsuit must provide written notice identifying the public records request to the custodian of public records at least 5 business days prior to filing a civil action. However, the notice is not required if the agency fails to prominently post the contact information for the custodian in the manner prescribed in the statute. Cf. *City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So. 3d 799, n.2 (Fla. 2d DCA 2021), in which the court noted that “[a]lthough there appears to be

no prohibition against using the [Public Records] Act as a discovery device, thereby circumventing the rules of procedure regarding discovery, this does not provide an attorney who represents a party in pending litigation with *carte blanche* to directly contact a represented opposing party. See R. Regulating Fla. Bar 4-42; Fla. Bar Ethics Opinion 09-1 (concluding that a lawyer may not communicate with government officers, directors, or employees who are directly involved or whose acts can be imputed to the government entity in a represented matter).” Questions relating to the application of the Rules of Professional Conduct should be addressed to The Florida Bar.

5. Requests for copies versus requests to inspect public records

“It is the policy of this state that all state, county, and municipal records are open for personal inspection and *copying* by any person.” (e.s.) Section 119.01(1), F.S. In addition, s. 119.07(1)(a), F.S., provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so” Finally, s. 119.07(4), F.S., requires the custodian to “furnish a copy or a certified copy of the record upon payment of the fee prescribed by law” And see *Fuller v. State ex rel. O'Donnell*, 17 So. 2d 607 (Fla. 1944) (“The best-reasoned authority in this country holds that the right to inspect public records carries with it the right to make copies”); and *Schwartzman v. Merritt Island Volunteer Fire Department*, 352 So. 2d 1230, 1232n.2 (Fla. 4th DCA 1977) (Public Records Act requires custodian to furnish copies). Cf. *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (if the requestor identifies a record with sufficient specificity to permit the agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

6. Records maintained by more than one agency

The fact that a particular record is also maintained by another agency does not relieve the custodian of the obligation to permit inspection and copying in the absence of an applicable statutory exemption. AGO 86-69. If information contained in the public record is available from other sources, a person seeking access to the record is not required to make an unsuccessful attempt to obtain the information from those sources as a condition precedent to gaining access to the public records. *Warden v. Bennett*, 340 So. 2d 977, 979 (Fla. 2d DCA 1976).

7. Records not in physical possession of agency

An agency is not authorized to refuse to allow inspection of public records it made or received in the course of official business on the grounds that the documents are in the actual possession of another agency or official other than the records custodian. See *Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (public records cannot be hidden from the public by transferring physical custody of the records to the agency's attorneys); *Tober v. Sanchez*, 417 So. 2d 1053 (Fla. 3d DCA 1982), *review denied sub nom., Metropolitan Dade County Transit Agency v. Sanchez*, 426 So. 2d 27 (Fla. 1983) (official charged with maintenance of records may not transfer actual physical custody of records to county attorney and thereby avoid compliance with request for inspection under Ch. 119, F.S.); and AGO 92-78 (public housing authority not authorized to withhold its records from disclosure on the grounds that the records have been subpoenaed by the state attorney and transferred to that office). “Given the aggressive nature of the public's right to inspect and duplicate public records, a governmental agency may not avoid a public records request by transferring custody of its records to another agency.” *Chandler v. City of Sanford*, 121 So. 3d 657, 660 (Fla. 5th DCA 2013).

Thus, in *Barfield v. Florida Department of Law Enforcement*, No. 93-1701 (Fla. 2d Cir. Ct. May 19, 1994), available online in the Cases database at the open government site at myfloridalegal.com, the court held that an agency that received records from a private entity in the course of official business and did not make copies of the documents could not “return” them to the entity following receipt of a public records request. The court ordered the agency to demand the return of the records from the private entity so they could be copied for the requestor.

Similarly, in *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487, 492-493 (Fla. 2d DCA 1990), the court found that both the city and a private entity violated the Public

Records Act when, pursuant to a plan to circumvent Ch. 119, F.S., the city avoided taking possession of negotiation documents reviewed and discussed by both parties and instead left them with the private entity's attorney. The court determined that although city officials may have intended merely to "avoid" the law, the effect of their actions was to "evade the broad policy of open government." *And see Wisner v. City of Tampa Police Department*, 601 So. 2d 296, 298 (Fla. 2d DCA 1992) (city may not allow a private entity to maintain physical custody of public records [polygraph chart used in internal investigation] "to circumvent the public records chapter"); and *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010) (records on private entity's secure website that were viewed and used by a state university in carrying out its official duties were public records even though the university did not take physical possession); and AGO 98-54 (registration and disciplinary records stored in a computer database maintained by a national securities association which are used by a state agency in licensing and regulating securities dealers doing business in Florida are public records).

8. "Overbroad" public records requests

In *Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985), the court recognized that the "breadth of such right [to gain access to public records] is virtually unfettered, save for the statutory exemptions" Accordingly, in the absence of a statutory exemption, a custodian must produce the records requested regardless of the number of records involved or possible inconvenience. Note, however, s. 119.07(4)(d), F.S., authorizes a custodian to charge, in addition to the cost of duplication, a reasonable service charge for the cost of the extensive use of information technology resources or of personnel, if such extensive use is required because of the nature or volume of public records to be inspected or copied. *See* AGO 92-38.

Thus, a person seeking to inspect "all" financial records of a municipality may not be required to specify a particular book or record he or she wishes to inspect. *State ex rel. Davidson v. Couch*, 156 So. 297, 300 (Fla. 1934). In *Davidson*, the Florida Supreme Court explained that if this were the case, "one person may be required to specify the book, while another and more favored one, because of his pretended ignorance of the name of the record might be permitted examination of all of them." *Id.* Such a result would be inconsistent with the mandate in the Public Records Act that public records are open to all who wish to inspect them. *Id. Cf. Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991), available online in the Cases database at the open government site at myfloridalegal.com, stating that if a public records request is insufficient to identify the records sought, the city has an affirmative duty to promptly notify the requester that more information is needed in order to produce the records; it is the responsibility of the city and not the requestor to follow up on any requests for public records. *Compare Woodward v. State*, 885 So. 2d 444, 446 (Fla. 4th DCA 2004) (records custodian must furnish copies of records when the person requesting them identifies the portions of the record with sufficient specificity to permit the custodian to identify the record and forwards the statutory fee).

9. Written request or form requirements

Chapter 119, F.S., does not authorize an agency to require that requests for records be in writing. *See Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, 305n.1 (Fla. 3d DCA 2001) ("There is no requirement in the Public Records Act that requests for records must be in writing"). As noted in AGO 80-57, a custodian must honor a request for copies of records which is sufficient to identify the records desired, whether the request is in writing, over the telephone, or in person, provided that the required fees are paid. "In sum, the city could not properly condition disclosure of the public records, to the then-anonymous requester on filling out the city's form" *Chandler v. City of Greenacres*, 140 So. 3d 1080, 1085 (Fla. 4th DCA 2014).

If a public agency believes that it is necessary to provide written documentation of a request for public records, the agency may require that the *custodian* complete an appropriate

form or document; however, the person requesting the records cannot be required to provide such documentation as a precondition to the granting of the request to inspect or copy public records. See *Sullivan v. City of New Port Richey*, No. 86-1129CA (Fla. 6th Cir. Ct. May 22, 1987), *per curiam affirmed*, 529 So. 2d 1124 (Fla. 2d DCA 1988), noting that a requester's failure to complete a city form required for access to documents did not authorize the custodian to refuse to honor the request to inspect or copy public records.

However, a request for records of the judicial branch (which is not subject to Ch. 119, F.S., see *Times Publishing Company v. Ake*, 660 So. 2d 255 [Fla. 1995]), must be in writing. Rule 2.420(m)(1), Fla. R. Gen. Prac. & Jud. Admin. In its commentary accompanying the rule change that incorporated this requirement, the Court said that the "writing requirement is not intended to disadvantage any person who may have difficulty writing a request; if any difficulty exists, the custodian should aid the requestor in reducing the request to writing." *In re Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002).

10. Identification of requester

A person requesting access to or copies of public records may not be required to disclose his or her name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records. AGOs 92-38 and 91-76. *Accord* Inf. Op. to Cook, May 27, 2011. See also *Bevan v. Wanicka*, 505 So. 2d 1116 (Fla. 2d DCA 1987) (production of public records may not be conditioned upon a requirement that the person seeking inspection disclose background information about himself or herself). *Cf. s. 1012.31(2)(f)*, F.S., providing that the custodian of *public school employee* personnel files shall maintain a record in the file of those persons reviewing an employee personnel file each time it is reviewed.

Thus, a city may not require an anonymous requester who made a public records request via e-mail to provide an "address or other identifiable source for payment of the associated costs." *Chandler v. City of Greenacres*, 140 So. 3d 1080, 1085 (Fla. 4th DCA 2014). Instead, "the city could have sent an estimate of costs through e-mail to the requester just as it could through regular mail, had the request been made via paper by an anonymous requester." *Id. Cf. Consumer Rights, LLC v. Union County, Florida*, 159 So. 3d 882, 886 (Fla. 1st DCA 2015), *review denied*, 177 So. 3d 1264 (Fla. 2015) ("We know of no law that requires a governmental entity to provide public records to a generic email address, at least not until such time as it is made clear that the address belongs to a person"); and *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.*, 195 So. 3d 396, 402 (Fla. 4th DCA 2016) ("There is a difference between allowing anonymous public records requests and evaluating an agency's response when such requests are justifiably handled with caution").

11. Remote access

Section 119.07(2)(a), F.S., states that "[a]n additional means of inspecting or copying public records, a custodian may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed." *And see s. 119.01(2)(e)*, F.S. Thus, an agency is authorized but not required to permit remote electronic access to public records.

Similarly, access to public records by remote electronic means is merely an additional means of inspecting or copying public records; this "additional means of access, however, is insufficient where the person requesting the records specifies the traditional method of access via paper copies." *Lake Shore Hospital Authority v. Lilker*, 168 So. 3d 332, 333 (Fla. 1st DCA 2015).

Section 119.07(2)(b), F.S., requires the custodian to provide safeguards to protect the contents of the public records from unauthorized electronic access or alteration and to prevent the disclosure or modification of those portions of the records which are exempt from disclosure.

Unless otherwise required by law, the custodian may charge a fee for remote electronic

access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. However, fees for remote electronic access provided to the general public must be in accordance with the provisions of s. 119.07, F.S. Section 119.07(2)(c), F.S.

12. Requests to create new records, answer questions about the records, or reformat existing records

The statutory obligation of the custodian of public records is to provide access to, or copies of, public records “at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records” provided that the required fees are paid. Section 119.07(1)(a) and (4), F.S. However, agencies are not required to “pore through their own records to answer specific questions.” *Bivens v. Tony*, 368 So. 3d 16 (Fla. 4th DCA 2023).

Thus, the Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town. AGO 92-38. *And see* AGO 80-57. *Cf. In re Report of the Supreme Court Workgroup on Public Records*, 825 So. 2d 889, 898 (Fla. 2002) (the custodian of judicial records “is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request”).

In other words, Ch. 119, F.S., provides a right of access to inspect and copy an agency’s existing public records; it does not mandate that an agency create new records in order to accommodate a request for information from the agency. Thus, the clerk of court is not required to provide an inmate with a list of documents from a case file which may be responsive to some forthcoming request. *Wootton v. Cook*, 590 So. 2d 1039 (Fla. 1st DCA 1991). *See also* AGO 08-29. *Cf. s. 120.53, F.S.*, relating to maintenance of final orders by agencies subject to Ch. 120, F.S.

However, in order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests by mail for information as to copying costs. *Wootton v. Cook*, *supra*. *See also Woodard v. State*, 885 So. 2d 444, 445n.1 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total copying cost of the requested records. *Cf. Gilliam v. State*, 996 So. 2d 956 (Fla. 2d DCA 2008) (clerk, as custodian of judicial records, had a legal duty to respond to Gilliam’s request for information regarding costs) and *Blackshear v. State*, 115 So. 3d 1093 (Fla. 1st DCA 2013) (clerk is “duty-bound to respond to a request about copying costs for the records sought”).

Similarly, as stated in *Seigle v. Barry*, 422 So. 2d 63, 66 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983), the intent of Ch. 119, F.S., is “to make available to the public information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers.” Accordingly, an agency is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor. AGO 08-29. As explained in *Seigle*:

If the health department maintains a chronological list of dog-bite incidents with rabies implications [a] plaintiff, bitten by a suspect dog, may not require the health department to reorder that list and furnish a record of incidents segregated by geographical areas. Nothing in the statute, case law or public policy imposes such a burden upon our public officials. 422 So. 2d at 65.

Thus, in AGO 97-39, the Attorney General’s Office concluded that a school district was not required to furnish electronic public records in an electronic format other than the standard format routinely maintained by the district.

Despite the general rule, however, the *Seigle* court recognized that an agency may be

required to provide access through a specially designed program, prepared by or at the expense of the requestor, where:

- 1) available programs do not access all of the public records stored in the computer's data banks; or
- 2) the information in the computer accessible by the use of available programs would include exempt information necessitating a special program to delete such exempt items; or
- 3) for any reason the form in which the information is proffered does not fairly and meaningfully represent the records; or
- 4) the court determines other exceptional circumstances exist warranting this special remedy. 422 So. 2d at 66-67.

For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium that is not routinely used by the agency, or if it elects to compile information that is not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4), F.S. (authorizing imposition of a special service charge if extensive information technology resources or labor are required). Section 119.01(2)(f), F.S.

13. Records available in more than one medium

An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee which shall be in accordance with Ch. 119, F.S. Section 119.01(2)(f), F.S. *See* AGO 13-07. Accordingly, an agency violated the Public Records Act when it referred the requester to a website instead of providing paper copies as the requester asked. *Lake Shore Hospital Authority v. Lilker*, 168 So. 3d 332 (Fla. 1st DCA 2015). *See also* AGO 91-61 (custodian must provide a copy of computer disk in its original format; a typed transcript does not satisfy the requirements of this statute).

Similarly, an agency violated s. 119.01(2)(f), F.S., when it refused to provide electronic records (emails and calendar entries) in a pst. or similar electronic medium, and instead provided all the requested records in PDF format. The court ordered the agency to provide the records in pst. or other electronic medium that allowed the requester to view them in Outlook in the same manner that the agency could view such records in its own system, except for specific emails or calendar entries that required redactions, which could be provided in PDF format. *Bracci v. School Board of Lee County*, No. 20-CA-5205 (Fla. 20th Cir. Ct. January 12, 2021), available online in the Cases database at the open government site at myfloridalegal.com. *See also* *Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (fact that pertinent information may exist in more than one format is not a basis for exemption or denial of the request). *Cf.* AGO 06-30, stating that an agency may respond to a public records request requiring the production of thousands of documents by composing a static web page where the responsive public documents are posted for viewing if the requesting party agrees to the procedure and agrees to pay the administrative costs, in lieu of copying the documents at a much greater cost.

14. Amount of time allowed for response to public records requests

a. Duty to acknowledge requests promptly

The custodian of public records or his or her designee is required to acknowledge requests to inspect or copy records promptly and to respond to such requests in good faith. Section 119.07(1)(c), F.S. *Cf. Hewlings v. Orange County*, 87 So. 3d 839 (Fla. 5th DCA 2012) (mere fact that county quickly responded to public records request by voicemail and fax is not dispositive of whether county's 45-day delay in *complying* with the request was unjustified for purposes of s. 119.12, F.S., authorizing an award of attorney's fees to a party who succeeds in a civil action

resulting from an unlawful refusal to provide public records).

b. Automatic delay impermissible

A policy which provides for an automatic delay in the production of public records is impermissible. *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078-1079 (Fla. 1984), *appeal dismissed sub nom.*, *Deperte v. Tribune Company*, 105 S.Ct. 2315 (1985). *And see Lake Shore Hospital Authority v. Lilker*, 168 So. 3d 332, 333-334 (Fla. 1st DCA 2015) (agency not authorized to automatically delay production by imposing a 24-hour notice requirement).

Thus, an agency is not authorized to delay inspection of personnel records in order to allow the employee to be present during the inspection of his or her records. *Tribune Company v. Cannella*, 458 So. 2d at 1078. *Compare* s. 1012.31(3)(a)3., F.S., in which the Legislature has expressly provided that no material derogatory to a public school employee may be inspected until 10 days after the employee has been notified as prescribed by statute.

Similarly, the Attorney General's Office has advised that a board of trustees of a police pension fund may not delay release of its records until such time as the request is submitted to the board for a vote. AGO 96-55. *And see Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (city may not delay public access to board meeting minutes until after the city commission has approved the minutes).

c. Unjustified delay

The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. However, "delay in making public records available is permissible under very limited circumstances." *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 983 (Fla. 1st DCA, 2014). In *Promenade*, the court noted that a records custodian could delay production to determine whether the records exist, s. 119.07[1][c], F.S.; if the custodian believes the some or all of the record is exempt, s. 119.07[1][d]-[e]; or if the requesting party fails to forward the appropriate fees, s. 119.07[4], F.S. Otherwise, the only delay in producing records permitted under Ch. 119, F.S., "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt." *Id.* at 983, citing *Tribune Company v. Cannella*, 458 So. 2d 1075, 1078 (Fla. 1984), *appeal dismissed sub nom.*, *DePerte v. Tribune Company*, 105 S.Ct. 2315 (1985). Where the delays aren't justified, "the Public Records Act holds officials accountable." *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018).

Thus, an agency's unjustified delay in producing public records constitutes an unlawful refusal to provide access to public records. *See Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655 (Fla. 1st DCA 2014) ("Unlawful refusal under section 119.12 includes not only affirmative refusal to produce records, but also unjustified delay in producing them"). *See also State v. Webb*, 786 So. 2d 602, 604 (Fla. 1st DCA 2001) (error for a lower court judge to vacate a misdemeanor conviction of a records custodian [Webb] who had been found guilty of willfully violating s. 119.07(1)(a), F.S., based on her "dilatory" response to public records requests).

For example, in *Promenade D'Iberville, LLC v. Sundy*, *supra*, the appellate court determined that an agency violated the Public Records Act by refusing to provide non-exempt public records until a court denied its motion for a protective order to block the requestor (an adversary in out-of-state litigation) from using the Act. Similarly, a trial judge erred by granting the agency's motion to dismiss on the grounds that the agency ultimately provided the record three months after the request was made and two weeks after the request for mandamus relief had been filed. *Consumer Rights, LLC v. Bradford County, Florida*, 153 So. 3d 394, 398 (Fla. 1st DCA 2014). Instead, the judge should have conducted a hearing to determine whether the delay was justified. *Id.*

By contrast, a trial court judgment finding no violation of the Public Records Act when a canvassing board failed to produce minutes of a March 13, 2020 canvassing board meeting until

several months after an agreed upon deadline was upheld in *Jackson v. City of South Bay*, 358 So. 3d 18 (Fla. 4th DCA 2023). The court found that the board provided several meeting minutes but one meeting was overlooked. Upon discovery, the minutes were immediately provided to the petitioner. Additionally, the judge cited a “busy election” and the ongoing pandemic, as well as the board’s good faith response. Accordingly, the delay in production “did not amount to an ‘unlawful refusal’; rather the delay was justified under the circumstances of this particular case.” See also *Lang v. Reedy Creek Improvement District*, No. CJ-5546 (Fla. 9th Cir. Ct. October 2, 1995), *affirmed per curiam*, 675 So. 2d 947 (Fla. 5th DCA 1996), available online in the Cases database at the open government site at myfloridalegal.com, the circuit court rejected the petitioner’s claim that the agency should have produced requested records within 10, 20 and 60-day periods. The court determined that the agency’s response to numerous (19) public records requests for 135 categories of information and records filed by the opposing party in litigation was reasonable in light of the cumulative impact of the requests and the fact that the requested records contained exempt as well as nonexempt information and thus required a considerable amount of review and redaction.

Stated another way, the Public Records Act “demands prompt attention and a reasonable response time, not the quickest-possible response.” *Siegmeister v. Johnson*, 240 So. 3d 70, 74 (Fla. 1st DCA 2018). In *Siegmeister*, the court noted that the agency had not “intentionally or unjustifiably delayed responding” to a public records request because it took two weeks for the response to be delivered to the requester. *Id.* at 74. Cf. *Florida Agency for Health Care Administration v. Zuckerman, Spaeder, LLP*, 221 So. 3d 1260, 1264 (Fla. 1st DCA 2017) (trial court abused its discretion by issuing a writ of mandamus requiring health care agency to produce a large number of public records within 48 hours when the records could not be reviewed for redaction of exempt information within this “compressed time period;” trial court also erred by requiring the agency to produce the records prior to the requester’s payment of the agency’s invoices associated with production of the records).

Moreover, recent cases have emphasized that in order for a delay to constitute an “unlawful refusal” for purposes of the award of attorney’s fees under s. 119.12, F.S., the delay must be “unjustified.” See e.g., *Consumer Rights, LLC v. Union County*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015), *review denied*, 177 So. 3d 1264 (Fla. 2015) and *Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.*, 195 So. 3d 396, 401 (Fla. 4th DCA 2016). See also the discussion on pages 198-201 relating to attorney’s fees awarded under s. 119.12, F.S., for an “unlawful refusal” to provide access to public records.

d. Arbitrary time for inspection

The Public Records Act authorizes inspection and copying of public records “at any reasonable time.” Section 119.07(1)(a), F.S. While the custodian may reasonably restrict inspection to those hours during which his or her office is open to the public, an agency policy that restricts inspection of public records to the hours of 8:30 a.m. to 9:30 a.m., Monday through Friday with 24-hour advance notice violates the Public Records Act. *Lake Shore Hospital Authority v. Lilker*, 168 So. 3d 332 (Fla. 1st DCA 2015). *Accord* AGO 81-12 (custodian not authorized to establish an arbitrary time period during which records may or may not be inspected).

There may be instances where, due to the nature or volume of the records requested, a delay based upon the physical problems in retrieving the records and protecting them is necessary; however, the adoption of a schedule in which public records may be viewed only during certain hours is impermissible. Inf. Op. to Riotte, May 21, 1990, concluding that an agency policy which permits inspection of its public records only from 1:00 p.m. to 4:30 p.m., Monday through Friday, violates the Public Records Act.

e. Standing requests for production of future records

The Attorney General’s Office has stated that upon receipt of a public records request, the

agency must comply by producing all non-exempt documents in the custody of the agency that are responsive to the request, upon payment of the charges authorized in Chapter 119, F.S. However, this mandate applies only to those documents in the custody of the agency at the time of the request; nothing in the Public Records Act appears to require that an agency respond to a so-called “standing” request for production of public records that it may receive in the future. *See* Inf. Op. to Worch, June 15, 1995.

15. Confidentiality agreements

An agency “cannot bargain away its Public Records Act duties with promises of confidentiality in settlement agreements.” *The Tribune Company v. Hardee Memorial Hospital*, No. CA-91-370 (Fla. 10th Cir. Ct. August 19, 1991), available online in the Cases database at the open government site at myfloridalegal.com, (confidentiality provision in a settlement agreement which resolved litigation against a public hospital did not remove the document from the Public Records Act).

Thus, in *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010), the court held that a confidentiality agreement entered into by a private law firm on behalf of a state university with the NCAA that allowed access to records contained on the NCAA’s secure custodial website that were used by the university in preparing a response to possible NCAA sanctions, had no impact on whether such records were public records, stating that “[a] public record cannot be transformed into a private record merely because an agent of the government has promised that it will be kept private.” *And see Rasier-DC, LLC v. B & L Service, Inc.*, 237 So. 3d 374 (Fla. 4th DCA 2018) (provision in license agreement between company and county which required county to maintain the confidentiality of company’s trade secret information and assert its exempt status in response to a public records request could not transform information found to be a public record into a private record); *City of Pinellas Park, Florida v. Times Publishing Company*, No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001), available online in the Cases database at the open government site at myfloridalegal.com (“there is absolutely no doubt that promises of confidentiality [given to employees who were asked to respond to a survey] do not empower the Court to depart from the public records law”); and *Gadd v. News-Press Publishing Company*, 412 So. 2d 894 (Fla. 2d DCA 1982) (records of a county hospital’s utilization review committee were not exempt from Ch. 119, F.S., even though the information may have come from sources who expected or were promised confidentiality).

Similarly, in *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487, 494 (Fla. 2d DCA 1990), the court determined that a baseball organization and a city improperly attempted to circumvent the Public Records Act by agreeing to keep negotiation documents relating to use of a municipal stadium confidential and in the exclusive custody of the organization. Noting the dangers that exist if private entities “are allowed to demand that they retain custody [and prevent inspection] of documents as a condition of doing business with a governmental body,” the court ruled that both the organization and the city violated the Public Records Act. *Cf. WPTV-TV v. State*, 61 So. 3d 1191 (Fla. 5th DCA 2011) (trial court may not require media to enter into confidentiality agreement in order to receive advance notice of information relating to jury selection in criminal case).

Additionally, s. 69.081(8), F.S., part of the Sunshine in Litigation Act, provides, subject to limited exceptions, that any portion of an agreement which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy, and may not be enforced. Settlement records must be maintained in compliance with Ch. 119, F.S. *See* Inf. Op. to Barry, June 24, 1998 (agency not authorized to enter into a settlement agreement authorizing the concealment of information relating to an adverse personnel decision from the remainder of a personnel file). *Cf. s. 215.425(5)*, F.S. (any agreement or contract, executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract).

Moreover, to allow the maker or sender of records to dictate the circumstances under which the records are to be deemed confidential would permit private parties as opposed to the Legislature to determine which public records are subject to disclosure and which are not. Such a result would contravene the purpose and terms of Ch. 119, F.S. *Browning v. Walton*, 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who filled out forms requesting that city maintain the confidentiality of all material in their personnel files); AGO 97-84 (architectural and engineering plans under seal pursuant to s. 481.221 or s. 471.025, F.S., that are held by a public agency in connection with the transaction of official business are subject to public inspection); and Inf. Op. to Echeverri, April 30, 2010 (taxpayer may not request that records submitted to value adjustment board be kept confidential).

Accordingly, it is clear that the determination as to when public records are to be deemed confidential rests exclusively with the Legislature. See *Sepro Corporation v. Florida Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003), *review denied sub nom.*, *Crist v. Department of Environmental Protection*, 911 So. 2d 792 (Fla. 2005) (private party cannot render public records exempt from disclosure merely by designating as confidential the material it furnishes to a state agency). See also AGO 90-104 (desire of data processing company to maintain “privacy” of certain materials filed with Department of State is of no consequence unless such materials fall within a legislatively created exemption to Ch. 119, F.S.). And see *Hill v. Prudential Insurance Company of America*, 701 So. 2d 1218 (Fla. 1st DCA 1997), *review denied*, 717 So. 2d 536 (Fla. 1998) (materials obtained by state agency from anonymous sources during its investigation of an insurance company were public records subject to disclosure in the absence of statutory exemption, notwithstanding the company’s contention that the records were “stolen” or “misappropriated” privileged documents that were delivered to the state without the company’s permission).

Therefore, unless the Legislature has expressly authorized the maker of records received by an agency to keep the material confidential, the wishes of the sender or the agency in this regard cannot supersede the requirements of Ch. 119, F.S. Compare, e.g., s. 377.2409(1), F.S. (information on geophysical activities conducted on state-owned mineral lands received by Department of Environmental Protection shall, on the request of the person conducting the activities, be held confidential and exempt from Ch. 119, F.S., for 10 years). And see *Morris v. Whitehead*, 588 So. 2d 1023, 1024 (Fla. 2d DCA 1991) (upholding the nondisclosure of confidential records received by housing authority from the federal government pursuant to agreement authorized by state housing law). Cf. *Doe v. State*, 901 So. 2d 881 (Fla. 4th DCA 2005) (where citizen provided information to state attorney’s office which led to a criminal investigation was justified in inferring or had a reasonable expectation that he would be treated as a confidential source in accordance with statutory exemption now found at s. 119.071[2][f], F.S., the citizen was entitled to have his identifying information redacted from the closed file, even though there was no express assurance of confidentiality by the state attorney’s office).

16. Redaction of confidential or exempt information

If the custodian asserts that an exemption applies to part of the record, the custodian “shall redact that portion . . . and shall produce the remainder of such record for inspection and copying.” Section 119.07(1)(d), F.S. *Ocala Star Banner Corp. v. McGhee*, 643 So. 2d 1196 (Fla. 5th DCA 1994) (city may redact information identifying confidential informant from police report but must produce the rest for inspection); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995) (police department authorized to withhold statutorily exempt criminal investigative information but must allow inspection of nonexempt portions of the records); and AGO 95-42 (statute providing for confidentiality of certain audit information did not make the entire report confidential and exempt from disclosure; the portions of the report which do not contain exempt information must be released).

The fact that an agency believes that it would be impractical or burdensome to redact confidential information from its records does not excuse noncompliance with the mandates of the Public Records Act. AGO 99-52. *See also* AGO 02-73 (agency must redact confidential and exempt information and release the remainder of the record; agency not authorized to release records containing confidential information, albeit anonymously). *Compare Florida Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (trial court order mandating that agency produce a large number of public records within 48 hours “effectively requires AHCA to ignore its statutory duty to redact exempted information”); and *Department of Health v. Rehabilitation Center at Hollywood Hills* 259 So. 3d 979, 982 (Fla. 1st DCA 2018), reversing a lower court order that ordered production of death certificates without addressing the Department’s “statutory duty to safeguard confidential and exempt information contained in the requested certificates.”

A custodian of records containing both exempt and nonexempt material may comply with s. 119.07(1)(d), F.S., by any reasonable method which maintains and does not destroy the exempted portion while allowing public inspection of the nonexempt portion. AGO 84-81. *And see* AGOs 97-67 and 05-37 (Official Records).

Section 119.011(13), F.S., defines the term “redact” to mean “to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.” *See* AGO 02-69 (statute providing for redaction of certain information in court records available for public inspection does not authorize clerk of court to permanently remove or obliterate such information from the original court records).

Section 119.07(1)(e), F.S., states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential. Section 119.07(1)(f), F.S. *See Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000) (agency’s response that it had provided all records “with the exception of certain information relating to the victim” deemed inadequate because the response “failed to identify with specificity either the reasons why records were believed to be exempt, or the statutory basis for any exemption”); and *Langlois v. City of Deerfield Beach, Florida*, 370 F. Supp. 2d 1233 (S.D. Fla. 2005) (city fire chief’s summary rejection of request for employee personnel file violated the Public Records Act because the chief gave no statutory reason for failing to produce the records).

However, in *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), the court cautioned that the Public Records Act “may not be used in such a way to obtain information that the legislature has declared must be exempt from disclosure.” Thus, a request for agency records may not be phrased or responded to in terms of a request for the specific documents asked for and received by a law enforcement agency during the course of an active criminal investigation. AGO 06-04. *Compare* AGO 08-33 (list of law enforcement officers who have been placed on administrative duty is a public record; the list is not confidential pursuant to section 112.533[2][a], F.S., providing for confidentiality of complaints filed against a law enforcement officer); and AGO 07-15 (statutory exemption authorizing certain corporations to request confidentiality of information relating to the company’s interest or plans to relocate to the state may be cited by a records custodian as statutory authority for withholding information from public disclosure without violating the confidentiality provisions of the exemption).

However, s. 119.07(1)(e), F.S., “requires only record-by-record—not redaction-by-redaction—identification of the exemptions authorizing the redactions in each record.” *Jones v. Miami Herald Media Company*, 198 So. 3d 1143 (Fla. 1st DCA 2016). The court upheld the agency’s use of a form with checkboxes identifying the various statutory exemptions relied upon for the redactions in the records and rejected the petitioner’s contention that the agency should

have specified which exemption applied to which redaction. *And see Lopez v. State*, 696 So. 2d 725 (Fla. 1997) (state attorney's contention that requested records were work product and not subject to public records disclosure was sufficient to identify asserted statutory exemptions). "The merit of imposing a duty on the Department to identify each document in a record that it asserts to be exempt under the [Public Records] Act—similar to the generation of a privilege log in response to a civil discovery request—is a matter properly addressed to the legislature rather than this court." *Dettelbach v. Department of Business and Professional Regulation*, 261 So. 3d 676, 683 (Fla. 1st DCA 2018).

It has been held that a *federal* agency subject to the federal Freedom of Information Act, 5 U.S.C. s. 552, must, in addition to providing a detailed justification of the basis for claimed exemptions under the Act, specifically itemize and index the documents involved so as to show which are disclosable and which are exempt. *See Vaughn v. Rosen*, 484 F.2d 820, 827-828 (D.C. Cir. 1973), *cert. denied*, 94 S.Ct. 1564 (1974). However, a Florida court refused to apply the *Vaughn* requirements to the state Public Records Act. *See Lorei v. Smith*, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985).

17. Privacy rights

It is well established in Florida that "neither a custodian of records nor a person who is the subject of a record can claim a constitutional right of privacy as a bar to requested inspection of a public record which is in the hands of a government agency." *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

In reaching the conclusion that public records must be open to public inspection unless the Legislature provides otherwise, the courts have rejected claims that the constitutional right of privacy bars disclosure. Article I, s. 23, Fla. Const., provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. *This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.* (e.s.)

Accordingly, the Florida Constitution "does not provide a right of privacy in public records" and a state or federal right of disclosural privacy does not exist. *Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985). *See also Forsberg v. Housing Authority of City of Miami Beach*, 455 So. 2d 373 (Fla. 1984); and AGO 09-19 (to extent that information on an agency's Facebook page constitutes a public record within the meaning of Ch. 119, F.S., Art. I, s. 23, Fla. Const., "is not implicated"). "[I]n Florida the right to privacy is expressly subservient to the Public Records Act." *Board of County Commissioners of Palm Beach County v. D.B.*, 784 So. 2d 585, 591 (Fla. 4th DCA 2001). *But see Post-Newsweek Stations, Florida Inc. v. Doe*, 612 So. 2d 549 (Fla. 1992) (public's right of access to pretrial criminal discovery materials must be balanced against a nonparty's constitutional right to privacy).

In *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018), the court recognized that a public official's use of a private cell phone to conduct public business via text messaging could create a written public record subject to disclosure. "The purpose of both Article I, section 24 and Chapter 119 is to ensure that citizens may review (and criticize) government actions. That purpose would be defeated if a public official could shield the disclosure of public records by conducting business on a private phone." 257 So. 3d at 1042. The court acknowledged that the public's right to public records "does not extinguish an individual's constitutional and statutory rights in private information." However, the court found that a judicial review of the records could safeguard "all legitimate privacy concerns." *Id.*

18. Liability for disclosure

Nothing in Ch. 119, F.S., indicates an intent to give private citizens a right to recovery

for an agency negligently maintaining and providing information from public records. *City of Tarpon Springs v. Garrigan*, 510 So. 2d 1198 (Fla. 2d DCA 1987); *Friedberg v. Town of Longboat Key*, 504 So. 2d 52 (Fla. 2d DCA 1987). *Cf. Layton v. Florida Department of Highway Safety and Motor Vehicles*, 676 So. 2d 1038 (Fla. 1st DCA 1996) (agency has no common law or statutory duty to citizen to maintain accurate records). *Accord Hillsborough County v. Morris*, 730 So. 2d 367 (Fla. 2d DCA 1999).

However, a custodian is not protected against tort liability resulting from that person *intentionally* communicating public records or their contents to someone outside the agency which is responsible for the records unless the person inspecting the records has made a bona fide request to inspect the records or the communication is necessary to the agency's transaction of its official business. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991). On appeal, after remand, the Fifth District held the claim against the city was barred on the basis of sovereign immunity. *Williams v. City of Minneola*, 619 So. 2d 983 (Fla. 5th DCA 1993). *Cf. AGO 97-09* (law enforcement agency's release of sexual offender records for purposes of public notification is consistent with its duties and responsibilities).

E. STATUTORY EXEMPTIONS

1. Creation of exemptions

"Courts cannot judicially create any exceptions, or exclusions to Florida's Public Records Act." *Board of County Commissioners of Palm Beach County v. D.B.*, 784 So. 2d 585, 591 (Fla. 4th DCA 2001). *Wait v. Florida Power and Light Company*, 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure). *Accord Wait v. Florida Power and Light Company*, 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure). *See s. 119.011(8), F.S.*, defining the term "exemption" to mean "a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution."

Article I, s. 24(c), Fla. Const., authorizes the *Legislature* to enact general laws creating exemptions provided that such laws "shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." "The Constitution allows for the legislature, not the courts to provide for exceptions to the public records act." *Cruz v. State*, 297 So. 3d 154 (Fla. 4th DCA 2019). *See Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999) (statute providing an exemption from the Sunshine Law for portions of hospital board meetings is unconstitutional because it does not meet the constitutional standard of specificity as to stated public necessity and it is broader than necessary to achieve its purpose). *Compare Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999), in which the Court refused to "imply" an exemption from open records requirements, stating "we believe that an exemption from public records access is available only after the legislature has followed the express procedure provided in article I, section 24(c) of the Florida Constitution." *And see Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 395 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003) (statutory exemption for autopsy photographs serves identifiable public purpose and is no broader than necessary to meet that public purpose); *Bryan v. State*, 753 So. 2d 1244 (Fla. 2000) (statute exempting from public disclosure certain prison records satisfies the constitutional standard because the Legislature set forth the requisite public necessity [personal safety of prison officials and inmates] for the exemption); and *State, Department of Financial Services v. Danahy & Murray, P.A.*, 246 So. 3d 466 (Fla. 1st DCA 2018) (distinguishing *Halifax* and finding that a statute exempting certain information held by the Department of Financial Services under the

Florida Insurance Code met the constitutional standard in Article I s. 24[c], Fla. Const.).

Laws enacted pursuant to Art. I, s. 24, Fla. Const., shall relate to one subject and must contain only exemptions or provisions governing enforcement. *Cf. State v. Knight*, 661 So. 2d 344 (Fla. 4th DCA 1995) (while exemptions when enacted must contain a public necessity statement, exceptions to an exemption are not required to contain such a statement; thus, a trial judge erred in overturning a statute providing a limited exception to the public records exemption for grand jury materials).

Article I, s. 24(c) also requires that laws providing exemptions from public records or public meetings requirements must be passed by a two-thirds vote of each house. The two-thirds vote requirement applies when an exemption is readopted in accordance with the Open Government Sunset Review Act, s. 119.15, F.S., as well as to the initial creation of an exemption. AGO 03-18.

In accordance with s. 24(d), all statutory exemptions in effect on July 1, 1993, are grandfathered into the statutes and remain in effect until they are repealed. Rules of court in effect on November 3, 1992, that limit access to records remain in effect until repealed. *See* Rule 2.420, Fla. R. Gen. Prac & Jud. Admin. (originally adopted by the Florida Supreme Court on October 29, 1992, as Rule 2.051, and subsequently renumbered in 2006 as Rule 2.420). Rule 2.420 may be accessed online at www.floridabar.org.

The Open Government Sunset Review Act, codified at s. 119.15, F.S., provides for the review and repeal or reenactment of an exemption from s. 24, Art. I, Fla. Const., and s. 119.07(1), or s. 286.011, F.S. The act does not apply to an exemption that is required by federal law or applies solely to the Legislature or the State Court System. Section 119.15(2)(a) and (b), F.S. Pursuant to the Act, in the fifth year after enactment of a new exemption or expansion of an existing exemption, the exemption shall be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption. Section 119.15(3), F.S. *And see* s. 286.0111, F.S. (provisions of s. 119.15 apply to exemptions to s. 286.011, F.S.).

2. Strict construction

The general purpose of Ch. 119, F.S., “is to open public records to allow Florida’s citizens to discover the actions of their government.” *Christy v. Palm Beach County Sheriff’s Office*, 698 So. 2d 1365, 1366 (Fla. 4th DCA 1997). “Because Florida’s public policy favors disclosure, “the Public Records Act is construed liberally in favor of openness, and exemptions from disclosure are construed narrowly and limited to their designated purpose.” *City of Miami Beach v. Miami New Times, LLC*, 314 So. 3d 562, 565 (Fla. 3d DCA 2020), quoting from *Rameses, Inc. v. Demings*, 29 So. 3d 418, 421 (Fla. 5th DCA 2010). *See also National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1206 (Fla. 1st DCA 2009), *review denied*, 37 So. 3d 848 (Fla. 2010); *Krischer v. D’Amato*, 674 So. 2d 909, 911 (Fla. 4th DCA 1996); *Tribune Company v. Public Records*, 493 So. 2d 480, 483 (Fla. 2d DCA 1986), *review denied sub nom.*, *Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987).

An agency claiming an exemption from disclosure bears the burden of proving the right to an exemption. *See Barfield v. School Board of Manatee County*, 135 So. 3d 560, 562 (Fla. 2d DCA 2014); *Woolling v. Lamar*, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001); *Barfield v. City of Fort Lauderdale Police Department*, 639 So. 2d 1012, 1015 (Fla. 4th DCA), *review denied*, 649 So. 2d 869 (Fla. 1994); and *Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128, 1130 (Fla. 1st DCA 1985). *See also Bludworth v. Palm Beach Newspapers, Inc.*, 476 So. 2d 775, 780n.1 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986); *Tribune Company v. Public Records*, *supra*, stating that doubt as to the applicability of an exemption should be resolved in favor of disclosure rather than secrecy. *And see Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487, 492, noting that the judiciary cannot create a privilege of confidentiality to accommodate the desires of government and that “[a]n open government is crucial to the citizens’ ability to adequately evaluate the decisions of elected and

appointed officials”; rather the “right to access public documents is virtually unfettered, save only the statutory exemptions designed to achieve a balance between an informed public and the ability of the government to maintain secrecy in the public interest.” *Accord* AGO 80-78 (“policy considerations” do not, standing alone, justify nondisclosure of public records).

3. Retroactive application of new exemptions

Access to public records is a substantive right. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001). Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *Id.* Generally, the critical date in determining whether a document is subject to disclosure is the date the public records request is made; the law in effect on that date applies. *Baker County Press, Inc. v. Baker County Medical Services*, 870 So. 2d 189, 192-193 (Fla. 1st DCA 2004).

However, if the Legislature is “clear in its intent,” an exemption may be applied retroactively. *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 396 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003) (statute exempting autopsy photographs from disclosure is remedial and may be retroactively applied). *See also Palm Beach County Sheriff’s Office v. Sun-Sentinel Company, LLC*, 226 So. 3d 969 (Fla. 4th DCA 2017); *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986); and *Roberts v. Butterworth*, 668 So. 2d 580 (Fla. 1996). *Cf. Cebrian By and Through Cebrian v. Klein*, 614 So.2d 1209 (Fla. 4th DCA 1993) (amendment to child abuse statute limiting access to unfounded reports was remedial in nature and therefore applied retroactively); AGO 11-16 (applying exemption to a public records request received before the statute’s effective date because the legislation creating the exemption states that it “applies to information held by an agency, before, on, or after the effective date of this exemption”); and AGO 94-70 (amendment to expungement statute appears to be remedial and, therefore, should be retroactively applied to those records ordered expunged prior to the effective date of the amendment).

4. Retroactive application of statutes eliminating confidentiality

In *Baker v. Eckerd Corporation*, 697 So. 2d 970 (Fla. 2d DCA 1997), the court held that an amendment eliminating protection against disclosure of certain records applies prospectively from the effective date of the amendment. *See also* AGO 95-19 (expanded disclosure provisions for juvenile records apply only to records created after the effective date of the amendment); and *Coventry First, LLC v. Office of Insurance Regulation*, 30 So. 3d 552 (Fla. 1st DCA 2010) (although intended to apply retroactively, statutory amendment imposing a time limitation on the exempt status of certain records submitted to an agency applied prospectively since retroactive application improperly deprived company of its vested property rights in records already submitted to the agency).

Records made before the date of a repeal of an exemption under s. 119.15, F.S., the Open Government Sunset Review Act, “may not be made public unless otherwise provided by law.” Section 119.15(7), F.S.

5. Difference between exempt and confidential records

a. Confidential records

There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Act *and* confidential. *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004). *And see State v. Wooten*, 260 So. 3d 1060, 1069-1070 (Fla. 4th DCA 2018) (Ch. 119, F.S., refers to both “exempt” records and records which are “confidential and exempt”).

If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute. *Id.* *And see* AGOs 08-24, 04-09 and 86-97. Thus, where a statute provided confidentiality

for all records in the city's risk management claims file, the trial judge lacked authority to order the city to produce certain records based on a determination that their production would not harm the city. *City of Homestead v. McDonough*, 232 So. 3d 1069 (Fla. 4th DCA 2017). *And see City of Miami Beach v. Miami New Times*, 314 So. 3d 562 (Fla. 3d DCA 2020), concluding that confidential draft audit reports relating to towing companies did not become subject to disclosure when the companies (without the knowledge of the agency) disclosed them to a third party.

However, a statute restricting release of confidential emergency call information does not prevent the city's attorneys or other city officials who are responsible for advising the city regarding the provision of emergency medical services or for defending the city against a possible claim arising from such services, from reviewing the records related to such emergency calls that contain patient examination or treatment information. AGO 95-75.

An agency is authorized to take reasonable steps to ensure that confidential records are not improperly released. *Lee County v. State Farm Mutual Automobile Insurance Company*, 634 So. 2d 250, 251 (Fla. 2d DCA 1994) (county policy requiring the patient's notarized signature on all release forms for emergency services medical records "not unreasonable or onerous;" requirement was a valid means of protecting records made confidential by s. 401.30[4], F.S.). *Accord* AGO 94-51 (agency "should be vigilant in its protection of the confidentiality provided by statute for medical records of [its] employees"). *Cf. Florida Department of Revenue v. WHI Limited Partnership*, 754 So. 2d 205 (Fla. 1st DCA 2000) (administrative law judge [ALJ] not authorized to mandate that agency disclose confidential records because ALJ is not a judge of a court of competent jurisdiction for purposes of statute permitting disclosure of confidential records in response "to an order of a judge of a court of competent jurisdiction"); and AGO 94-86 (if custodian of confidential library circulation records believes that such records should not be disclosed in response to a subpoena because the subpoena is not a "proper judicial order" as provided in s. 257.261, F.S., custodian may assert the confidentiality provisions in a motion to quash the subpoena but should not ignore the subpoena for production of such records). *And see State Attorney's Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205, 214 (Fla. 4th DCA 2018) (when statute authorizes release of confidential security system records upon a showing of "good cause," the Legislature "intended the courts to apply a common law approach to 'good cause,' where meaning emerges over time, on a case-by-case basis, and courts arrive at a desirable equilibrium between the competing needs of disclosure and secrecy of government records"). *Cf. Florida Department of Corrections v. Miami Herald Media Company*, (Fla. 1st DCA 2019) (trial court erred when it found "good cause" for release of confidential prison video footage even though newspaper had admitted at the hearing that it no longer needed the recordings).

b. Exempt records

If records are not made confidential but are simply exempt from the mandatory disclosure requirements in s. 119.07(1), F.S., the agency is not prohibited from disclosing the documents in all circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3) (d), F.S. [now s. 119.071(2)(c), F.S.], "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not *prohibit* the showing of such information. There are many situations in which investigators have reasons for displaying information which they have the option not to display." [Emphasis supplied by the Court] *See also* AGO 07-21 (while statute makes photographs of law enforcement personnel exempt rather than confidential, custodian, in deciding whether such information should be disclosed, must determine whether there is a statutory or substantial policy need for disclosure and in the absence of a statutory or other legal duty to be accomplished by disclosure, whether release of such information is consistent with the exemption's purpose). *Accord* AGO 08-24. *And see* AGO 17-05 (property appraiser authorized to disclose addresses that are exempt from public inspection, but not confidential, to the code inspector for the limited purpose of providing alleged code violators with the statutory notice

required by s. 162.06, F.S.).

Once an agency has gone public with information which could have been previously protected from disclosure under Public Records Act exemptions, no further purpose is served by preventing full access to the desired information. *Downs v. Austin*, 522 So. 2d 931, 935 (Fla. 1st DCA 1988). Cf. AGO 01-74 (taxpayer information that is confidential in the hands of certain specified officers under s. 193.074, F.S., is subject to disclosure under the Public Records Act when it has been submitted by a taxpayer to a value adjustment board as evidence in an assessment dispute).

However, in *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995), the court held that when a criminal justice agency transfers exempt criminal investigative information to another criminal justice agency, the information retains its exempt status. *And see Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998) (“the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands”); *Alice P. v. Miami Daily News, Inc.*, 440 So. 2d 1300 (Fla. 3d DCA 1983), *review denied*, 467 So. 2d 697 (Fla. 1985) (confidential birth information contained in license application submitted to state health agency not subject to disclosure); AGO 04-44 (if the prison industry agency sends exempt proprietary confidential business information to the Secretary of the Department of Corrections in his capacity as a member of the board of directors of the prison industry agency, that information does not lose its exempt status by virtue of the fact that it was sent to the Secretary’s office in the department); and AGO 94-77 (work product exception authorized in former s. 119.07[3][l], F.S. [now s. 119.071(1)(d), F.S.], will be retained if the work product is transferred from the county attorney to the city attorney pursuant to a substitution of parties to the litigation).

6. Discovery of exempt or confidential records

An exemption from disclosure under the Public Records Act does not render the document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure or in administrative proceedings. *See Department of Health v. Poss*, 45 So. 3d 510 (Fla. 1st DCA 2010); *Department of Professional Regulation v. Spiva*, 478 So. 2d 382 (Fla. 1st DCA 1985). “Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.” *Department of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069n.1 (Fla. 3d DCA 1984). *See also Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So. 2d 1322 (Fla. 2d DCA 1990), *review denied*, 576 So. 2d 286 (Fla. 1991) (records which are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records). Cf. *League of Women Voters v. Florida House of Representatives*, 132 So. 3d 135, 153 (Fla. 2013) (“if the circuit court concludes, after undertaking an in camera review of any disputed documents, that draft [apportionment] plans are exempt from public records disclosure, the circuit court should still require the Legislature to produce the draft apportionment maps and supporting documents under appropriate litigation discovery rules, to the extent these documents do not contain information regarding individual legislators’ or legislative staff members’ thoughts or impressions”).

For example, in *B.B. v. Department of Children and Family Services*, 731 So. 2d 30 (Fla. 4th DCA 1999), the court ruled that as a party to a dependency proceeding involving her daughters, a mother was entitled to discovery of the criminal investigative records relating to the death of her infant. The court found that the statutory exemption for active criminal investigative information did not “override the discovery authorized by the Rules of Juvenile Procedure.” *Id.* at 34. *Compare Henderson v. Perez*, 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce exempt home addresses and photographs of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because “Perez has not shown that the photographs and home addresses of the law enforcement officers

are essential to the prosecution of his suit”). *And see Delaurentos v. Peguero*, 47 So. 3d 879 (Fla. 3d DCA 2010 (while the exemption for employee medical information in s. 119.071[4][b] did not preclude the discovery of a police officer’s pre-employment psychological evaluation, the estate’s request for the evaluation in a wrongful death case filed against the officer and county was, under the circumstances of the case, outside the scope of permissible discovery).

F. FEDERAL LAW AND THE FLORIDA PUBLIC RECORDS LAW

1. Application of federal confidentiality requirements to Florida public records

Generally, records that would otherwise be public under state law are unavailable for public inspection only when there is an absolute conflict between federal and state law relating to confidentiality of records. If a federal statute requires particular records to be withheld from a public records request, and the state is clearly subject to the provisions of such statute, then pursuant to the Supremacy Clause of the United States Constitution, Art. VI, U.S. Const., the state must keep the records confidential. *See Florida Department of Education v. NYT Management Services, Inc.*, 895 So. 2d 1151 (Fla. 1st DCA 2005) (federal law prohibits public disclosure of social security numbers in state teacher certification database); AGOs 90-102 and 74-372. *Compare State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935); AGOs 85-03, 81-101, and 80-31. *See also Wallace v. Guzman*, 687 So. 2d 1351, 1353 (Fla. 3d DCA 1997) (exemptions from disclosure set forth in federal Freedom of Information Act apply to federal agencies but not to state agencies).

Federal confidentiality requirements may be a concern if the Florida governmental entity or officer is acting as an instrumentality or agent of the federal government. In such a case, a federal agency may assert ownership of records and assert federal jurisdiction and protection of such records. *See, e.g., U.S. v. Story County, Iowa*, 28 F. Supp. 3d 861, 872 (S.D. Iowa 2014) (emails of sheriff from his county email account were sent in his capacity of an appointed board member of an independent authority within an agency of the United States Department of Commerce, and were federal records subject to federal jurisdiction since “the subject emails were not ‘produced by or originated from’ [the sheriff’s] role as ... Sheriff nor were they held by [the sheriff] in his official capacity as ... sheriff.”). *Compare Housing Authority of the City of Daytona Beach v. Gomillion*, 639 So. 2d 117 (Fla. 5th DCA 1994) (tenant records of a state public housing authority were not protected under federal law because the federal agency was not involved in the day-to-day operations of the authority).

Records received from a federal agency may have a statutory or regulatory basis for protection. *Morris v. Whitehead*, 588 So. 2d 1023 (Fla. 2d DCA 1991) (holding confidential records received by a state run housing authority from the federal government may not be disclosed where there was a statutorily-authorized agreement between agencies that the state housing authority will maintain the confidentiality of the materials received); *Miami Herald Media Company v. Florida Department of Transportation*, 345 F. Supp. 3d 1349, 1356 (N.D. Fla. 2018) (state agency could not disclose records when federal safety board investigating bridge collapse took control over dissemination of records relating to the investigation, designated the Florida Department of Transportation (FDOT) as a party to assist NTSB in the investigation, and directed the state agency to not disclose the information contained in those records by agreement and as authorized by federal regulation); *but see Lakeland Ledger Publishing Co. v. Sch. Bd. of Polk Co.*, GV-G-91-3803 (Fla. 10th Cir. Ct. Nov. 21, 1991), available online in the Cases database at the open government site at myfloridalegal.com (relying on *Morris v. Whitehead*, *supra*, to determine a map prepared by the U.S. Justice Department concerning desegregation of Lakeland schools and given to school district employees was a public record and open to inspection).

If litigation ensues with respect to whether the disclosure of a record is subject to federal law, under some circumstances the federal agency may be considered a real party in interest, and

the matter may be removed to federal court. *See e.g., Miami Herald Media Company v. Florida Department of Transportation*, *supra*, 345 F. Supp. 3d at 1356 (denying a motion to remand case to state court after the United States removed matter to federal district court because the federal agency in the suit was a real party in interest); *compare In re Motion to Compel Compliance to Minnesota Department of Health v. All Temporaries Midwest, Inc.*, 423 F. Supp. 3d 670, 678 (D. Minn. 2019) (remanding matter to state court despite assertion of federal agency that it was a real party in interest; subpoenaed records were collected pursuant to state law and a state investigation, and thus subject to state law, notwithstanding a joint investigation by the federal agency.).

Records do not become subject to disclosure merely because they are *not* entitled to federal protection. *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683 (S.D. Fla. 1990) (records provided by the United States Attorney's Office to a criminal defendant were active criminal investigative records in the hands of the Florida governmental entities).

2. Copyrighted records

a. Copyrights held by agencies

In the absence of statutory authorization, a public official is not empowered to obtain a copyright for material produced by his or her office in connection with the transaction of official business. *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005), *cert. denied*, 126 S.Ct. 746 (2005) (property appraiser not authorized to assert copyright protection for the Geographic Information System maps created by his office). *Accord* AGOs 03-42, 88-23, and 86-94. *Cf.* AGO 00-13 (in the absence of express statutory authority, state agency not authorized to secure a trademark).

Section 119.084(2), F.S., however, specifically authorizes agencies to hold a copyright for data processing software created by the agency. The agency may sell the copyrighted software to public or private entities or may establish a license fee for its use. *See also* s. 24.105(10), F.S., authorizing the Department of the Lottery to hold patents, copyrights, trademarks and service marks; and see ss. 286.021 and 286.031, F.S., prescribing duties of the Department of State with respect to authorized copyrights obtained by state agencies.

b. Copyrighted material obtained by agencies

The federal copyright law vests in the owner of a copyright, subject to certain limitations, the exclusive right to do or to authorize, among other things, the reproduction of the copyrighted work and the distribution of the copyrighted work to the public by sale or other transfer of ownership. *See* AGO 97-84, citing to pertinent federal law and interpretive cases. However, the Attorney General's Office has concluded that the fact that material received by a state agency may be copyrighted does not preclude the material from constituting a public record. For example, AGO 90-102 advised that copyrighted data processing software which was not specifically designed or created for the county but was being used by the county in its official capacity for official county business fell within the definition of "public record."

Moreover, in *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382-1383 (Fla. 1st DCA 1994), the court rejected a state agency's argument that a transcript of a hearing that had been copyrighted by the court reporter and filed with the agency should not be copied without the copyright holder's permission. The court stated that the agency was under a statutory obligation to preserve all testimony in the proceeding and make a transcript available in accordance with the fees set forth in Ch. 119, F.S. *And see* AGO 75-304 (agency may not enter into agreement with court reporter to refer all requests for copies of agency proceedings to court reporter who originally transcribed proceedings; agency must provide copies of transcripts in accordance with charges set forth in Public Records Act).

The federal copyright law, when read together with Ch. 119, F.S., authorizes and requires the custodian of records of the Department of State to make maintenance manuals supplied to

that agency pursuant to law, available for examination and inspection purposes. AGO 03-26. “With regard to reproducing, copying, and distributing copies of these maintenance manuals which are protected under the federal copyright law, state law must yield to the federal law on the subject.” *Id.* The custodian should advise individuals seeking to copy such records of the limitations of the federal copyright law and the consequences of violating its provisions; such notice may take the form of a posted notice that the making of a copy may be subject to the copyright law. AGOs 03-26 and 97-84. However, it is advisable for the custodian to refrain from copying such records himself or herself. AGO 03-26. *But see State v. Allen*, 14 F.L.W. Supp. 172a (Fla. 7th Cir. Ct. November 2, 2006), in which the court found that the defendant was entitled to inspect and copy copyrighted operating manual for the radar unit used by the police “pursuant to Florida Constitution, Article I section 24 and/or Defendant’s fundamental right to due process of law.” The court noted that if the police department declined to make copies, the defendant or his representative should be allowed reasonable access to the documents and a copy machine to make copies.

Moreover, as noted by the court in *State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, *supra*, once a transcript of an administrative hearing conducted by or on behalf of an agency has been filed with the agency, the transcript becomes a public record, without regard to who ordered the transcription or bore its expense. The agency which is under a statutory obligation to preserve all testimony can charge neither the parties nor the public more than the charges authorized by Ch. 119, F.S., regardless of the fact that the court reporter may have copyrighted the transcript.

G. FEES FOR INSPECTING AND COPYING PUBLIC RECORDS

1. Inspection of public records

Providing access to public records is a statutory duty imposed by the Legislature upon all record custodians and should not be considered a profit-making or revenue-generating operation. AGO 85-03. Thus, public information must be open for inspection without charge unless otherwise expressly provided by law. *See State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905). *See also* AGOs 84-03 and 76-34 (only those fees or charges which are authorized by statute may be imposed upon an individual seeking access to public records). *Cf.* AGO 75-50 (the fact that the record sought to be inspected is a tape recording as opposed to a written document is of no import insofar as the imposition of a fee for inspection is concerned).

Section 119.07(4)(d), F.S., however, authorizes the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require *extensive* use of information technology resources, or *extensive* clerical or supervisory assistance, or both. The charge must be reasonable and based on the labor or computer costs actually incurred by the agency. *See Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008) (special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required).

In addition, an agency may adopt a policy imposing a reasonable special service charge based on the actual labor cost for clerical personnel who are required, due to the nature or volume of a public records request, to safeguard such records from loss or destruction during their inspection. AGO 00-11. For example, in AGO 00-11, the requested records were described as “original documents that have no recorded or maintained counterparts, such that, by their nature, they would need a heightened degree of protection from alteration or destruction.” A determination of whether the nature or volume of the public records requires such extensive assistance must be made on a case-by-case basis; the special service charge may not be routinely imposed. *Id.*

Moreover, it would be difficult to justify the imposition of a fee for extensive clerical or supervisory assistance if the personnel providing such assistance were simultaneously performing regular duties. *Id.* And see *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120 (Fla. 2016) (affirming trial court finding that two conditions—an hourly photocopying fee and an hourly supervisory fee—were imposed in violation of s. 119.07, F.S.).

2. Copies of public records

If no fee is prescribed elsewhere in the statutes, s. 119.07(4)(a)1., F.S., authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. Section 119.07(4)(a)2., F.S. And see s. 119.011(7), F.S., defining the term “duplicated copies” to mean “new copies produced by duplicating, as defined in s. 283.30,” F.S. “Duplicating” means “the process of reproducing an image or images from an original to a final substrate through the electrophotographic, xerographic, laser, or offset process or any combination of these processes, by which an operator can make more than one copy without rehandling the original.” Section 283.30(3), F.S.

A charge of up to \$1.00 per copy may be assessed for a certified copy of a public record. Section 119.07(4)(c), F.S.

For other copies, the charge is limited to the actual cost of duplication of the record. Section 119.07(4)(a)3., F.S. The phrase “actual cost of duplication” is defined to mean “the cost of the material and supplies used to duplicate the public record, but does not include the labor cost and overhead cost associated with such duplication.” Section 119.011(1), F.S. An exception, however, exists for copies of county maps or aerial photographs supplied by county constitutional officers which may include a reasonable charge for the labor and overhead associated with their duplication. Section 119.07(4)(b), F.S. *Cf.* AGO 13-03 (while agency may charge “actual cost of duplication” if it sends public records via e-mail, agency did not identify any actual costs of duplication involved in forwarding copies of electronic mail in lieu of photocopying and “the definition [of actual cost of duplication] does not allow for the imposition of labor costs or associated overhead costs”).

3. Special service charge for *extensive* use of clerical or supervisory labor or *extensive* information technology resources

Section 119.07(4)(d), F.S. provides that if the nature or volume of public records to be inspected or copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost actually incurred by the agency for such extensive use of information technology resources or personnel. When warranted, the special service charge applies to requests for both inspection and copies of public records. *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

Thus, while an agency may not refuse to allow inspection or copying of public records based upon the amount of records requested or the span of time which is covered by the public records request, if extensive use of information technology resources or clerical or supervisory personnel is needed in order to produce the requested records, the agency may impose a reasonable special service charge that reflects the actual costs incurred for the extensive use of such resources or personnel. See AGOs 92-38 and 90-07. *Cf. Trout v. Bucher*, 205 So. 3d 876 (Fla. 4th DCA 2016) (supervisor of elections authorized to charge a reasonable fee based on the labor costs “actually incurred” to comply with Trout’s request to inspect ballots in accordance with s. 119.07[5], F.S.).

a. Meaning of the term “extensive”

Section 119.07(4)(d), F.S., “does not identify the Legislature’s intent as to what may constitute ‘extensive use’ and provides no definition of that term.” AGO 13-03. In 1991, a divided First District Court of Appeal upheld a hearing officer’s order rejecting an inmate

challenge to a Department of Corrections rule that defined “extensive” for purposes of the special service charge to mean that it would take more than 15 minutes to locate, review for confidential information, copy and refile the requested material. *Florida Institutional Legal Services, Inc. v. Florida Department of Corrections*, 579 So. 2d 267 (Fla. 1st DCA 1991), *review denied*, 592 So. 2d 680 (Fla. 1991). The court agreed with the hearing officer that the burden was on the challenger to show that the administrative rule was invalid under Ch. 120, F.S., and the record did not indicate that the officer’s ruling was “clearly erroneous” in this case.

In light of the lack of clear direction in the statute as to the meaning of the term “extensive,” the Attorney General’s Office has suggested that agencies implement the service charge authorization “in a manner that reflects the purpose and intent of the Public Records Act and that does not constitute an unreasonable infringement upon the public’s statutory and constitutional right of access to public records.” AGO 13-03. In addition, the Attorney General’s Office also strongly encourages agencies to adopt a public records procedure that addresses imposition of special service charge. *Id.*

Moreover, the statute mandates that the special service charge be “reasonable.” *See Carden v. Chief of Police*, 696 So. 2d 772, 773 (Fla. 2d DCA 1996), in which the court reviewed a challenge to a service charge that exceeded \$4,000 for staff time involved in responding to a public records request, and said that an “excessive charge could well serve to inhibit the pursuit of rights conferred by the Public Records Act.” Accordingly, the court remanded the case and required the agency to “explain in more detail the reason for the magnitude of the assessment.” *Id.* And see *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 129 (Fla. 2016), noting that “excessive, unwarranted special service charges deter individuals seeking public records from gaining access to the records to which they are entitled.”

b. Meaning of the term “information technology resources”

“Information technology resources” is defined as data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance and training. Section 119.011(9), F.S. The term does not include a videotape or a machine to view a videotape. AGO 88-23. The fact that the request involves the use of information technology resources is not sufficient to incur the imposition of the special service charge; rather, *extensive* use of such resources is required. AGOs 13-03 and 99-41.

c. Cost to review records for exempt information

An agency is not ordinarily authorized to charge for the cost to review records for statutorily exempt material. AGO 84-81. However, the special service charge may be imposed for this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task. *See Florida Institutional Legal Services v. Florida Department of Corrections*, 579 So. 2d at 269. And see *Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (prior court decisions as well as the language in s. 119.07[4], F.S., dictate that the requester, who had submitted several voluminous public records requests for records which included confidential information “should be required to pay for the cost of searching, review, and redaction of exempted information prior to production”).

Accordingly, because “the Public Records Act requires a records custodian to *determine* whether the requested records exist, *locate* the records, and *review* each record to determine if any of those records are exempt from production,” the agency may charge the special service charge as authorized under s. 119.07(4)(d), F.S., for the cost to review voluminous requested records for exempt material. *City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So. 3d 799 (Fla. 2d DCA 2021). [Emphasis supplied by the court].

d. Calculation of labor cost

In *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d

DCA 2008), the court approved a county's special service charge pursuant to s. 119.07(4), F.S., which included both an employee's salary and benefits in calculating the labor cost for the special service charge, recognizing, however, that the charge must be reasonable and based upon the actual labor costs incurred by or attributable to the county. See *Trout v. Bucher*, 205 So. 3d 876 (Fla. 4th DCA 2016) (supervisor of elections not required to charge the lowest hourly rate of the employee capable of doing the work needed to comply with Trout's request to inspect ballots in accordance with s. 119.07[5], F.S., because s. 119.07[4][d] allows the agency to charge the labor cost of the personnel that is "actually incurred" by the agency where extensive assistance is required).

The term "supervisory assistance" has not been widely interpreted. See *Herskovitz v. Leon County*, No. 98-22 (Fla. 2d Cir. Ct. June 9, 1998), available online in the Cases database at the open government site at myfloridalegal.com, concluding that an appropriate charge for supervisory review is "reasonable" in cases involving a large number of documents that contain some exempt information. In *State v. Gudinas*, No. CR 94-7132 (Fla. 9th Cir. Ct. June 1, 1999), available online in the Cases database at the open government site at myfloridalegal.com, the circuit judge approved a rate based on an agency attorney's salary when the attorney was required to review exempt material in a voluminous criminal case file. The court noted that "only an attorney or paralegal" could responsibly perform this type of review because of the "complexity of the records reviewed, the various public record exemptions and possible prohibitions, and the necessary discretionary decisions to be made with respect to potential exemptions."

e. Reasonable deposit or advance payment

Section 119.07(4)(a)1., F.S., states that the custodian of public records shall furnish a copy or a certified copy of the record "upon payment of the fee prescribed by law" See *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (if a requestor "identifies a record with sufficient specificity to permit [the agency] to identify it and forwards the appropriate fee, [the agency] must furnish by mail a copy of the record.") (e.s.); and *Promenade D'Iberville, LLC v. Sundy* 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (a records custodian may delay production "if the requesting party fails to remit the appropriate fees").

Accordingly, an agency's policy of requiring the payment of a deposit prior to redaction and delivery of hundreds of telephone recordings related to a criminal trial was determined to be "facially reasonable." *Morris Publishing Group, LLC v. State*, 154 So. 3d 528, 534 (Fla. 1st DCA 2015), *review denied*, 163 So. 3d 512 (Fla. 2015). *Accord Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31, 37 (Fla. 2d DCA 2008), noting that a "policy of requiring an advance deposit seems prudent given the legislature's determination that taxpayers should not shoulder the entire expense of responding to an extensive request for public records." "[T]he reasonableness of a policy and its application — based on the facts in a particular case — guides whether an abuse of discretion is shown." *Morris Publishing Group, LLC* at 534. *And see Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (lower court abused its discretion by ordering the agency to produce a large number of responsive public records within 48 hours of the issuance of the order without requiring advance payment of the agency's invoices associated with production of the records); *City of St. Petersburg v. Dorchester Holdings, LLC*, 331 So. 3d 799 (Fla. 2d DCA 2021) (trial court erred in holding that the City's prepayment request constituted an unlawful interference with requester's right of access to public records). *Compare Miami Dade College v. Nader + Museu I, LLLP*, 47 FLW D1814 (Fla. 3d DCA August 31, 2022) (trial court properly denied agency's requested fees after production based on the agency's failure to provide the requester with an estimate of the anticipated costs to fulfill the public records request or an invoice prior to production, as required by agency policy, nor did the parties agree in advance to the charges).

An agency may refuse to produce additional records if the fees for a previous request for records have not been paid by the requestor. See *Lozman v. City of Riviera Beach*, 995 So. 2d 1027 (Fla. 4th DCA 2008) (s. 119.07[4], F.S., "does not require the City to do any more than

what it did in this case,” *i.e.*, require Lozman to pay the bill for the first group of records he requested before the city would make any further documents available). *And see* AGO 05-28 (custodian authorized to bill the requestor for any shortfall between the deposit and the actual cost of copying the public records when the copies have been made and the requesting party subsequently advises the city that the records are not needed). *Compare, Smith v. State*, 335 So. 3d 795 (Fla. 2d DCA 2022) (Smith’s failure to timely pay fees to obtain requested public records does not permit the agency to ban him from ever obtaining records in the future, provided Smith pays the amount owing for the first request).

4. Requests for information regarding costs to obtain public records

In order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests for information as to copying costs. *Wootton v. Cook, supra*. *See also Woodard v. State*, 885 So. 2d 444 (Fla. 4th DCA 2004), remanding a case for further proceedings where the custodian forwarded only information relating to the statutory fee schedule rather than the total cost to copy the requested records.

In *Miami Dade College v. Nader + Museu I, LLLP*, 47 F.L.W. D1814 (Fla. 3d DCA August 31, 2022), the court affirmed the trial court’s refusal to grant an agency’s motion to collect fees under s. 119.07(4)(d), F.S., because the agency failed to provide the requester with an estimate or invoice prior to production thereby violating both its own policies and procedures and the language of s. 119.07(4), F.S. *And see* AGO 13-03, in which the Attorney General’s Office strongly encouraged agencies to adopt a public records procedure that addresses imposition of special service charge.

5. Requests for free copies of public records

An agency is not precluded from choosing to provide informational copies of public records without charge. AGO 90-81.

However, chapter 119, F.S., does not contain a provision that prohibits agencies from charging indigent persons or inmates the applicable statutory fee to obtain copies of public records. *See Roesch v. State*, 633 So. 2d 1, 3 (Fla. 1993) (indigent inmate not entitled to receive copies of public records free of charge nor to have original state attorney files mailed to him in prison; prisoners are “in the same position as anyone else seeking public records who cannot pay” the required costs); *Potts v. State*, 869 So. 2d 1223 (Fla. 2d DCA 2004) (no merit to inmate’s contention that Ch. 119, F.S., entitles him to free copies of all records generated in his case); *Bennett v. Clerk of Circuit Court Citrus County*, 150 So. 3d 277 (Fla. 5th DCA 2014) (authority providing indigent criminal defendants with free copies does not extend beyond the direct appeal of judgment and sentence and transcripts of evidentiary hearings held on postconviction claims); *Milner v. State*, 196 So. 3d 569 (Fla. 4th DCA 2016) (indigent prisoners are not entitled to free copies of records under the Public Records Act); and *Yanke v. State*, 588 So. 2d 4 (Fla. 2d DCA 1991), *review denied*, 595 So. 2d 559 (Fla. 1992), *cert. denied*, 112 S.Ct. 1592 (1992) (prisoner must pay copying and postage charges to have copies of public records mailed to him). *And see State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382n.7 (Fla. 1st DCA 1994) (indigent person “is not relieved by his indigency” from paying statutory costs to obtain public records). *Cf. Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018) (Public Records Act does not require government officials to move records from where they are being maintained to a different place convenient to the requester, citing to *Roesch v. State*).

Similarly, a labor union must pay the costs stipulated in Ch. 119, F.S., for copies of documents it has requested from a public employer for collective bargaining purposes because “[a] labor union seeking information from the employer with whom it is locked in collective bargaining negotiations is not exempt from the Florida Public Records Act.” *City of Miami Beach v. Public Employees Relations Commission*, 937 So. 2d 226 (Fla. 3d DCA 2006). *And see* Inf. Op. to Garganese, April 14, 1998 (authority to charge city council member for copies of public records).

A school district is under no statutory obligation to provide copies of public records free of charge to individual members of a school advisory council, but a school district may formulate a policy for the distribution of such records. AGO 99-46. If it is found that the *advisory council* needs certain school records in order to carry out its statutory functions, such records should be provided to the *council* in the same manner that records related to agenda items are provided to school board members. *Id.* Cf. Inf. Op. to Martin, November 20, 2006 (school board policy requiring that a request for information by an individual board member requiring more than sixty minutes of staff time to prepare must be presented to the school board for approval would be invalid if the school board member is asking under public records law; however, the school board member would be subject to any charges allowed by Chapter 119, F.S.).

6. Authority to charge for development, travel or overhead costs

An agency should not consider the furnishing of public records to be a “revenue-generating operation.” AGO 85-03. *See also* AGO 89-93 (city not authorized to sell copies of its growth management book for \$35.00 each when the actual cost to reproduce the book is \$15.10 per copy; city is limited to charging only the costs authorized by Ch. 119, F.S.).

The Public Records Act does not authorize the addition of overhead costs such as utilities or other office expenses to the charge for public records. AGO 99-41. Similarly, an agency may not charge for travel time to obtain public records stored off-premises. AGO 90-07. For example, if municipal pension records are stored in a records storage facility outside city limits, the city may not pass along to the public records requester the costs to retrieve the records. Inf. Op. to Sugarman, September 5, 1997. Cf. *Cone & Graham, Inc. v. State*, No. 97-4047 (Fla. 2d Cir. Ct. October 7, 1997), available online in the Cases database at the open government site at myfloridalegal.com (an agency’s decision to “archive” older e-mail messages on tapes so that they could not be retrieved or printed without a systems programmer was analogous to an agency’s decision to store records off-premises in that the agency rather than the requester must bear the costs for retrieving the records).

An agency may not assess fees designed to recoup the original cost of developing or producing the records. AGO 88-23 (state attorney not authorized to impose a charge to recover part of costs incurred in production of a training program; the fee to obtain a copy of the videotape of such program is limited to the actual cost of duplication of the tape). *And see State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377, 1382 (Fla. 1st DCA 1994) (once a transcript of an administrative hearing is filed with the agency, the transcript becomes a public record regardless of who ordered the transcript or paid for the transcription; the agency can charge neither the parties nor the public a fee that exceeds the charges authorized in the Public Records Act). Cf. s. 119.07(4)(b), F.S., providing that the charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.

Therefore, unless a specific request for copies requires extensive clerical or supervisory assistance or extensive use of information technology resources so as to trigger the special service charge authorized by s. 119.07(4)(d), F.S., an agency may charge only the actual cost of duplication for copies of computerized public records. AGO 99-41. The imposition of the service charge, however, is dependent upon the nature or volume of records requested, not on the cost to either develop or maintain the records or the database system. *Id.*

7. Fees to obtain agency records held by private companies

Although an agency may contract with private companies to provide information also obtainable through the agency, it may not abdicate its duty to produce such records for inspection and copying by requiring those seeking public records to do so only through its designee and then paying whatever fee that company may establish for its services. AGO 02-

37. The agency is the custodian of its public records and, upon request, must produce such records for inspection and copy such records at the statutorily prescribed fee. *Id.* *Accord* AGO 13-03. *And see* AGO 05-34 (while the property appraiser may provide public records, excluding exempt or confidential information, to a private company, the property appraiser may receive only those fees that are authorized by statute and may not, in the absence of statutory authority, enter into an agreement with the private company where the property appraiser provides such records in exchange for either in-kind services or a share of the profits or proceeds from the sale of the information by the private company). *Cf.* s. 119.0701(2)(b)2., F.S., requiring that certain contracts contain a provision stipulating that upon request from the public agency's custodian of public records, the contractor must provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in ch. 119 or as otherwise provided by law.

8. Sales tax

In AGO 86-83, the Attorney General's Office advised that the sales tax imposed pursuant to s. 212.05, F.S., is not applicable to the fee charged for providing copies of records under s. 119.07, F.S. *See* s. 5(a) of Department of Revenue Rule 12A-1.041, F.A.C., stating that "[t]he fee prescribed by law, or the actual cost of duplication, for providing copies of public records . . . under Chapter 119, F.S., is exempt from sales tax."

9. Confidential records

Unless another fee to obtain a particular record is prescribed by law, an agency may not charge fees that exceed those in Ch. 119, F.S., when providing copies of confidential records to persons who are authorized to obtain them. For example, in AGO 03-57, the Attorney General's Office advised that persons who are authorized by statute to obtain otherwise confidential autopsy photographs should be provided copies in accordance with the provisions of the Public Records Act, *i.e.*, s. 119.07(4), F.S. The medical examiner is not authorized to charge a fee that exceeds those charges. *Id.*

10. Requester makes his/her own copies

Section 119.07(3)(a), F.S., provides a "right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records." This subsection "applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court" if the clerk can provide a copy of the microfilm. Section 119.07(3)(b), F.S.

The photographing is to be done in the room where the public records are kept. Section 119.07(3)(d), F.S. However, if in the custodian's judgment, this is impossible or impracticable, the copying shall be done in another room or place, as close as possible to the room where the public records are kept. *Id.* Where provision of another room or place is necessary, the expense of providing the same shall be paid by the person who wants to copy the records. *Id.* The custodian may charge the person making the copies for supervision services. Section 119.07(4)(e)2., F.S. In such cases the custodian may not charge the copy charges authorized in s. 119.07(4)(a), F.S., but may charge only the supervision service charge authorized in s. 119.07(4)(e)2., F.S. *See* AGO 82-23. *Cf. Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 122 (Fla. 2016) (affirming trial court finding that two conditions—"an hourly photocopying fee and an hourly supervisory fee"—were imposed in violation of s. 119.07, F.S.).

11. Fee issues relating to specific records

a. Clerk of court records

(1) County records

Pursuant to s. 125.17, F.S., the clerk of the circuit court serves as the ex officio clerk to the board of county commissioners. Records maintained by the clerk which relate to this

function (e.g., county resolutions, budgets, minutes, etc.) are public records which are subject to the copying fees set forth in Ch. 119, F.S., and not the service charges set forth in Ch. 28, F.S. AGO 85-80. *Accord* AGO 94-60 (documents such as minutes of public meetings, which are in the custody of the clerk as ex officio clerk of the board of county commissioners, are not subject to the \$1.00 per page charge prescribed in Ch. 28). *See also* AGO 82-23 (when members of the public use their own photographic equipment to make their own copies, the clerk is not entitled to the fees prescribed in s. 28.24, F.S., but is entitled only to the supervisory service charge now found in s. 119.07[4][e]2., F.S.).

(2) Judicial records

When the clerk is exercising his or her duties derived from Article V of the Constitution, the clerk is not subject to legislative control. *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995). Thus, when the clerk is acting in his or her capacity as part of the judicial branch of government, access to the judicial records under the clerk's control is governed exclusively by Fla. R. Gen. Prac. & Jud. Admin. 2.420, Public Access to and Protection of Judicial Records. *Id.* *See* Fla. R. Gen. Prac. & Jud. Admin. 2.420(b)(2), defining the term "judicial branch" for purposes of the rule, to include "the clerk of court when acting as an arm of the court."

Florida Rule of General Practice and Judicial Administration 2.420(m)(3) states that "[f]ees for copies of records in all entities in the judicial branch of government, *except for copies of court records*, shall be the same as those provided in section 119.07, Florida Statutes." (e.s.). The fees to obtain copies of court records are set forth in s. 28.24, F.S. This statute establishes fees that are generally higher than those in Ch. 119, F.S. For example, the charge to obtain copies of court records is \$1.00 per page, rather than 15 cents per page as established in s. 119.07(4)(a)1., F.S. *And see* s. 28.222(7), F.S., providing that the Official Records are open to the public, but the clerk is not required to perform any service in connection with the making of copies without payment of service charges as provided in s. 28.24, F.S. *Cf. WFTV, Inc. v. Wilken*, 675 So. 2d 674 (Fla. 4th DCA 1996).

b. Department of Highway Safety and Motor Vehicles crash reports

In the absence of statutory provision, the charges authorized in s. 119.07(4), F.S., govern the fees to obtain copies of crash reports from law enforcement agencies. However, there are specific statutes which apply to fees to obtain copies of reports from the Department of Highway Safety and Motor Vehicles. Section 321.23(2)(a), F.S., provides that the fee to obtain a copy of a crash report from the department is \$10.00 per copy. A copy of a homicide report is \$25 per copy. Section 321.23(2)(b), F.S. Separate charges are provided for photographs. Section 321.23(2)(d), F.S.

H. REMEDIES AND PENALTIES

1. Voluntary mediation program

Section 16.60, F.S., establishes an informal mediation program within the Office of the Attorney General as an alternative for resolution of open government disputes. For more information about the voluntary mediation program, please contact the Office of the Attorney General at the following address: The Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; telephone (850)245-0140; or you may visit the Office of the Attorney General website: www.myfloridalegal.com.

2. Civil action

a. Remedies

A person denied the right to inspect and/or copy public records under the Public Records

Act may bring a civil action against the agency to enforce the terms of Ch. 119, F.S. *Cf.* s. 119.07(8), F.S. (s. 119.07, F.S., may not be used by an inmate as the basis for failing to timely litigate any postconviction action).

Before filing a lawsuit, the petitioner must have furnished a public records request to the agency. *Villarreal v. State*, 687 So. 2d 256 (Fla. 1st DCA 1996), *review denied*, 694 So. 2d 741 (Fla. 1997), *cert. denied*, 118 S.Ct. 316 (1997) (improper to order agency to produce records before it has had an opportunity to comply); and *Maraia v. State*, 685 So. 2d 851 (Fla. 2d DCA 1995) (public records action dismissed where petitioner failed to file a request for public records with the records custodian before filing suit). *Cf. Coconut Grove Playhouse, Inc. v. Knight-Ridder, Inc.*, 935 So. 2d 597 (Fla. 3d DCA 2006) (trial court order departed from essential requirements of law by requiring defendant in a public records action to produce its records as a sanction for failure to respond to a discovery subpoena).

Where a multi-agency law enforcement task force had been created by a mutual aid agreement and the agreement did not indicate an intent to create a separate legal entity capable of being sued in its own name, a requestor could not sue the task force for production of records; however, as the agreement did not specify which agency would be responsible for responding to public records requests, an action could be brought against any of the member agencies to produce records in the possession of the task force. *Ramese's, Inc. v. Metropolitan Bureau of Investigation*, 954 So. 2d 703 (Fla. 5th DCA 2007).

The service of process requirements in s. 48.111, F.S., apply to civil actions to enforce the public records law. *See Department of Children and Families v. Panno*, 312 So. 3d 1275 (Fla. 2d DCA 2021), interpreting the service of process requirements found in a prior version of s. 48.111.

(1) **Mandamus**

Mandamus is an appropriate remedy to enforce compliance with the Public Records Act. *See Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014); *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000); *Smith v. State*, 696 So. 2d 814 (Fla. 2d DCA 1997); *Donner v. Edelstein*, 415 So. 2d 830 (Fla. 3d DCA 1982). *See also Farmer v. State*, 927 So. 2d 1075 (Fla. 2d DCA 2006) (trial court should treat motion to compel production of public records as petition for writ of mandamus); *Major v. Hallandale Beach Police Department*, 219 So. 3d 856 (Fla. 4th DCA 2017) (petition for writ of mandamus filed against a governmental agency must attach a copy of any record that supports the petition). *Cf. Wilkinson v. State Attorney's Office*, 345 So. 3d 925 (Fla. 3d DCA 2022) (mandamus is an extraordinary remedy that appellate court will not entertain since petitioner has an adequate alternative remedy to enforce Ch. 119); and *City of Pembroke Pines v. Town of Southwest Ranches*, 362 So. 3d 223 (Fla. 4th DCA 2023) (trial court properly dismissed city's public records lawsuit against another municipality because the city had not exhausted the dispute resolution procedures in Ch. 164, F.S.).

A petition for writ of mandamus is an appropriate vehicle to challenge the denial of a public records request, even where an exemption has been asserted. *Deeson Media, LLC v. City of Tampa*, 291 So. 3d 974 (Fla. 2d DCA 2019). *Cf. Agency for Health Care Administration v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017) (mandamus relief ordering agency to produce records within 48 hours and prior to requester's payment of invoices or agency's opportunity to review and redact exempt material was improper because agency's duty was not "ministerial" and requester's right to the records was not "indisputable").

If the requester's petition presents a prima facie claim for relief, an order to show cause should be issued so that the claim may receive further consideration on the merits. *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA 1992). *Accord Gay v. State*, 697 So. 2d 179 (Fla. 1st DCA 1997). *See Radford v. Brock*, 914 So. 2d 1066 (Fla. 2d DCA 2005) (trial judge dismissal of a writ of mandamus directed to clerk of court and court reporter who were alleged to be records

custodians was erroneous because trial judge did not issue an alternative writ of mandamus requiring the clerk and court reporter to show cause why the writ should not be issued, and because there was no sworn evidence refuting the petitioner's allegations). *Compare Scott v. Lee County School Board*, 310 So. 3d 163 (Fla. 2d DCA 2021) (trial court properly dismissed facially insufficient petition that did not attach the requester's public records request); and *Stern v. City of Miami Beach*, 359 So. 3d 1209 (Fla. 3d DCA 2023) (trial court did not err by dismissing Stern's public records complaint without first issuing an alternative writ of mandamus; Stern repeatedly refused to proceed in several prior scheduled hearings and the issuance of an alternative writ "would have been an exercise in futility").

Thus, a petition for writ of mandamus should not have been dismissed based on the agency's response that the requested records "would have been destroyed" in accordance with agency policy. *Brown v. State*, 152 So. 3d 739, 741 (Fla. 4th DCA 2014). Similarly, the trial judge erred in dismissing a petition seeking records relating to the chain of custody for a weapon without issuing an alternative writ of mandamus. *Tracy v. State*, 219 So. 3d 958 (Fla. 1st DCA 2017). The agency had produced an evidence card showing that the weapon in question had been destroyed; accordingly, the trial court concluded that dismissal was appropriate as there were no records to produce. However, because the petitioner contended that additional records were available, the appellate court found that "factual disputes remain." On remand, "if the [agency] fails to provide sworn evidence that all available information has been provided, the trial court must conduct an evidentiary hearing on the issue prior to denying the claim." *Compare Miller v. State*, 363 So. 3d 1171 (Fla. 6th DCA 2023) (trial court did not abuse its discretion in denying Miller's 'Motion for Postconviction Relief to Enforce Provisions of Florida's Public Records Law' because Miller "did not sufficiently allege the bases for his dispute with the State's assertion that no records existed").

Mandamus is a "one time order by the court to force public officials to perform their legally designated employment duties." *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996), *review denied*, 684 So. 2d 1353 (Fla. 1996). Thus, a trial court erred when it retained continuing jurisdiction to oversee enforcement of a writ of mandamus granted in a public records case. *Id.* See also *Stone v. Ward*, 752 So. 2d 100, 101 (Fla. 2d DCA 2000) ("It is well-settled that mandamus is not appropriate to control or regulate a general course of conduct for an unspecified period of time"). Cf. *Areizaga v. Board of County Commissioners of Hillsborough County*, 935 So. 2d 640 (Fla. 2d DCA 2006), *review denied*, 958 So. 2d 918 (Fla. 2007) (circuit courts may not refer extraordinary writs to mediation; thus, trial judge should not have ordered mediation of petition for writ of mandamus seeking production of public records).

(2) Injunction

Injunctive relief may be available upon an appropriate showing for a violation of Ch. 119, F.S. See *Daniels v. Bryson*, 548 So. 2d 679 (Fla. 3d DCA 1989) (injunctive relief appropriate where there is a demonstrated pattern of noncompliance with the Public Records Act, together with a showing of likelihood of future violations; mandamus would not be an adequate remedy since mandamus would not prevent future harm). However, an injunction is not appropriate if the acts complained of have already been committed and there is not a well-grounded probability of similar future conduct. *Id.* See *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980, 984 (Fla. 1st DCA 2014).

(3) Declaratory relief sought by agencies

Historically, some agencies would seek guidance from the court by filing an action for declaratory relief rather than comply with a pending public records request or asserting an exemption. See, e.g., *Butler v. City of Hallandale Beach*, 68 So. 3d 278, 279 (Fla. 4th DCA 2011) ("Michael Butler appeals from a final judgment in a declaratory action filed by The City of Hallandale Beach [the City] . . . which sought a declaration that a list of recipients of a personal email . . . was not sent in connection with the discharge of any municipal duty and therefore, is not a public record under Florida's Public Records Law"). Cf. *Askew v. City of Ocala*, 348 So. 2d

308 (Fla. 1977) (trial court properly dismissed complaint for declaratory relief for failure to state a cause of action where public officials disagreed with Attorney General's advisory opinion and sought different judicial opinion).

However, s. 119.07(9), F.S., now reads: "After receiving a request to inspect or copy a record, an agency may not respond to that request by filing an action for declaratory relief against the requester to determine whether the record is a public record as defined by s. 119.011, or the status of the record as confidential or exempt from the provisions of s. 119.07(1)," F.S.

(4) Damages

Section 119.12, F.S. does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of Ch. 119, F.S. Section 119.12(4), F.S. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of Ch. 119, F.S. *Id.*

b. Procedural issues

(1) Discovery

In the absence of an evident abuse of power, the trial court's exercise of discretion in matters associated with pretrial discovery in a public records action will not be disturbed. *Lorei v. Smith*, 464 So. 2d 1330, 1333 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985). In *Lorei*, the appellate court upheld the trial judge's denial of a request to permit discovery pertaining to the agency's procedures for maintaining public records. *Id.* The court noted that the interrogatories related to "the mechanics associated with the department's record maintenance, the internal policies or actions which lead to the development of files," and other matters which were not relevant to the question of whether the requested records were exempt from disclosure. *Id.*

The court cautioned, however, that "discovery in a context such as the one at hand may well be appropriate in the circumstance where a good faith belief exists that the public agency may be playing 'fast and loose' with the requesting party or the court, once its statutorily delegated authority is activated." *Id.* Cf. *Lopez v. State*, 696 So. 2d 725, 727 (Fla. 1997) (trial court's denial of motion to depose custodian affirmed because there were "no allegations that any documents had been removed"); and *Johnson v. State*, 769 So. 2d 990, 995 (Fla. 2000) (discovery not warranted based on "bare allegations" that additional records "should" exist).

(2) Hearing

Section 119.11(1), F.S., mandates that actions brought under Ch. 119 are entitled to an immediate hearing and take priority over other pending cases. See *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 124 (Fla. 2016), in which the Court observed that "an accelerated civil action plays a critical role in the enforcement of the Public Records Act as is reflected in the title of section 119.11— 'Accelerated hearing; immediate compliance.'" See also *Matos v. Office of the State Attorney for the 17th Judicial Circuit*, 80 So. 3d 1149 (Fla. 4th DCA 2012) (an "immediate hearing does not mean one scheduled within a reasonable time, but means what the statute says: immediate"); and *Woodfaulk v. State*, 935 So. 2d 1225 (Fla. 5th DCA 2006) (s. 119.11, F.S., does not place specific requirements on a party requesting public records to obtain an accelerated hearing except the filing of an action to enforce the public records law).

The purpose of the hearing "is to allow the court to hear argument from the parties and resolve any dispute as to whether there are public records responsive to the request and whether an exemption from disclosure applies in whole or in part to the requested records." *Kline v. University of Florida*, 200 So. 3d 271 (Fla. 1st DCA 2016). For example, an order dismissing a public records complaint filed against a sheriff was overturned on appeal because the judge failed to hold a hearing before entering the order. "Although the sheriff may ultimately not be able to retrieve these records, because of their age or another reason, the order in this case, entered without

an evidentiary hearing, was premature.” *Grace v. Jenne*, 855 So. 2d 262, 263 (Fla. 4th DCA 2003). *And see Rogers v. State*, 271 So. 3d 79, 80 (Fla. 3d DCA 2019) (hearing required where “there remains a disputed factual issue as to whether the State possesses the requested records”); *Ferrier v. Public Defender’s Office, Second Judicial Circuit of Florida*, 171 So. 3d 744 (Fla. 1st DCA 2015) (circuit court erred in not conducting an evidentiary hearing “on the contested issue of whether [the agency] had the requested materials in its possession”); and *Holley v. Bradford County Sheriff’s Department*, 171 So. 3d 805 (Fla. 1st DCA 2015) (because petitioner disputed the agency’s “unsworn claim that it did not possess the requested records, the trial court could not deny [the] petition without conducting an evidentiary hearing on this issue”). The failure to hold a hearing may be remedied by a petition for writ of certiorari. *See Martinez v. State*, 969 So. 2d 1174, 1174-75 (Fla. 5th DCA 2007). *Cf. Paylan v. Office of the State Attorney*, 310 So. 3d 459 (Fla. 2d DCA 2020) (petitioner was denied due process when the judge issued an order scheduling a case management conference and then conducted an evidentiary hearing on the petition; the order did not give the petitioner notice that the judge would actually conduct a final evidentiary hearing and decide the petition on the merits.)

“A motion to dismiss tests the legal sufficiency of a complaint and does not resolve factual issues.” *Clay County Education Association v. Clay County School Board*, 144 So. 3d 708, 709 (Fla. 1st DCA 2014). Therefore, the trial judge erred when he granted the agency’s motion to dismiss based on the agency’s “unsworn response . . . that it either had already provided the documents, did not have the information in the format requested, or could not produce the documents because they did not exist.” *Id.* The appellate court remanded the case “for an immediate hearing under section 119.11[1] and, if necessary, further proceedings to resolve any factual disputes that remain between the parties’ complaint and answer.” *Id.*

Thus, “resolution of such disputed issues as notice and compliance must be litigated in an evidentiary setting.” *Human Rights Defense Center v. Armor Correctional Health Services, Inc.*, 336 So. 3d 769 (Fla. 3d DCA 2021). *See also McDonough v. City of Homestead*, 305 So. 3d 316 (Fla. 3d DCA 2020) (absent waiver, an order denying mandamus relief without a hearing is premature); *Williams v. State*, 163 So. 3d 618 (Fla. 4th DCA 2015) (where petitioner asserted that the record produced by the agency was not the record he requested, trial judge erred by denying prison inmate’s petition for writ of mandamus without issuing an alternative writ to show cause and failing to hold an evidentiary hearing to resolve disputed issues of fact). *Cf. Morgan v. Wagner*, 73 So. 3d 815 (Fla. 4th DCA 2011), in which the Fourth District said it was “compelled to affirm” the lower court order dismissing the petitioner’s public records action because there was no transcript or documentation in the appendix to show that petitioner had preserved “what may have been a valid procedural argument.”

(3) In camera inspection

Section 119.07(1)(g), F.S., provides that in any case in which an exemption is alleged to exist pursuant to s. 119.071(1)(d) or (f), (2)(d), (e), or (f), or (4)(c), F.S., the public record or part of the record in question shall be submitted to the trial court for an in camera examination. *See City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19 (Fla. 2d DCA 1998) (in camera review mandated when confidential informant exemption now found at s. 119.071[2][f], F.S., is asserted); *Walton v. Dugger*, 634 So. 2d 1059 (Fla. 1993); *Lopez v. Singletary*, 634 So. 2d 1054 (Fla. 1993) (records claimed by state attorney to constitute exempted work product must be produced for an in camera inspection); and *Environmental Turf, Inc. v. University of Florida Board of Trustees*, 83 So. 3d 1012 (Fla. 1st DCA 2012) (in camera inspection required where university claimed that records were exempt pursuant to s. 119.071[1][d], F.S. [attorney work product] and s. 1004.22, F.S. [proprietary research records]). *And see Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2009) (“We fail to see how the trial court can [determine whether an agency is entitled to a claimed exemption] without examining the records”). *Cf. Agrosource, Inc. v. Florida Department of Citrus*, 148 So. 3d 138 (Fla. 2d DCA 2014) (trial court finding after in camera review that certain prelitigation emails were exempt attorney work product was supported by competent substantial evidence).

An in camera inspection is also required so that the trial judge can determine whether the records can be redacted to remove exempt information. See *Holley v. Bradford County Sheriff's Department*, 171 So. 3d 805 (Fla. 1st DCA 2015) (trial court must conduct an in camera inspection of the records to determine whether they could be redacted to remove information identifying confidential informants); and *Gonzalez v. State*, 240 So. 3d 99 (Fla. 2d DCA 2018) (in the absence of an in camera inspection of the requested CDs, the circuit court could not conclude that their contents are exempt from disclosure under s. 119.071[3][a][2] or former s. 281.301; nor could it determine whether redaction was possible). Cf. *Executive Office of the Governor v. AHF MCO of Florida, Inc.*, 257 So. 3d 612 (Fla. 1st DCA 2018) (reversing trial judge order which found prospective information relating to Governor's detailed schedule and travel plans to be public even though the judge did not inspect the records and despite special agent's undisputed affidavit that premature disclosure of such information would reveal state law enforcement agency's "surveillance techniques, procedures, and personnel" made exempt under s. 119.071(2)(d), F.S., and jeopardize the security of the Governor and the agents who protect him). And see *City of Miami v. Blanco*, 336 So. 3d 1268 (Fla. 3d DCA 2022) (trial court departed from essential requirements of law by failing to conduct in camera review before granting defendant's motion to compel and/or for a subpoena for video camera recordings taken at police station following his arrest; without an in camera inspection, the judge could not determine whether the video recordings fell within the security plan exemptions in s. 119.071(3)(a) and former s. 281.301, F.S.)

Similarly, the Fourth District held that "it is fundamental error" for a trial court to decide whether a statutory exemption from disclosure for mediation communications required that such communications be redacted from the otherwise public transcript of a closed attorney client session without conducting an in camera hearing to assess whether the redactions were appropriately applied. *Everglades Law Center v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019). The appellate court also observed that the trial court was "led astray by the parties' agreement that an in camera review of the transcript was not needed." *Id.*

While s. 119.07(1)(g), F.S., states that an in camera inspection is "discretionary" in cases where an exemption is alleged under s. 119.071(2)(c), F.S. (the exemption for active criminal investigative or intelligence information), it has been held that an in camera inspection is necessary in order for the court to determine whether the exemption applies to the records at issue. For example, in *Woollong v. Lamar*, 764 So. 2d 765, 768-769 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001), the Fifth District noted that the state attorney had not presented "evidence to meet its burden that the records are exempt" under s. 119.071(2)(c), F.S.; therefore, an "in camera inspection by the lower court is . . . required so that the trial judge will have a factual basis to decide if the records are exempt. . . ." See also *Garrison v. Bailey*, 4 So. 3d 683 (Fla. 1st DCA 2009). Compare *Althouse v. Palm Beach County Sheriff's Office*, 89 So. 3d 288, 289 (Fla. 4th DCA 2012) (while trial court's failure to conduct an in camera inspection usually constitutes reversible error, in this case petitioner objected to an inspection and thereby precluded judge from conducting "an intelligent review of the documents;" accordingly, appellate court was "compelled to affirm" trial court's denial of a petition seeking documents relating to a pending criminal investigation).

Similarly, if a public records request involves electronic information stored on privately-owned devices, an agency's reasons for its lack of disclosure, "whether for reasons related to relevancy, the application of possible privileges, or otherwise, necessitates a judicial review of the available communications to identify those which are subject to disclosure and any defenses to allegations of noncompliance." *O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1042 (Fla. 4th DCA 2018).

(4) Mootness

In *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA 1996), the court, noting that "[p]roduction of the records after the [public records] lawsuit was filed did not moot the

issues raised in the complaint,” remanded the case for an evidentiary hearing on whether there was an unlawful refusal of access to public records. *See also Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487, 491 (Fla. 2d DCA 1990) (while courts do not ordinarily resolve disputes unless a case or controversy exists, “since the instant situation is capable of repetition while evading review, we find it appropriate to address the issues before us concerning applicability of the Public Records Act for future reference”); *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002) (“the fact that the requested documents were produced in the instant case after the action was commenced, but prior to final adjudication of the issue by the trial court, does not render the case moot or preclude consideration of [the petitioner’s] entitlement to fees under the statute”); *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (because damage occurred when city refused to produce canvassing board minutes until approved by city commission, production after the fact did nothing to mollify appellants’ injury and therefore issue was not moot as city’s refusal “denied any realistic access for the only purpose appellants sought to achieve—review of the Minutes before the Commission meeting.”); and *Schweickert v. Citrus County, Florida Board*, 193 So. 3d 1075, 1079 (Fla. 5th DCA 2016) (“We agree that Appellant’s case was not rendered moot simply because the Board produced the requested documents after the filing of the initial complaint but prior to filing the amended complaint”). *Accord O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1043 (Fla. 4th DCA 2018) (public records case did not become moot after the town provided unredacted records prior to the hearing, because there were collateral issues “yet to be decided by the trial court—specifically a determination whether the Town’s initial redactions . . . were proper and whether any reasonable attorney’s fees, costs, and expenses, should be awarded”). *Compare, State v. Ingram*, 170 So. 3d 727 (Fla. 2015) (opinion of district court of appeal holding that prison inmate was entitled to unredacted version of videotaped statement of minor victim vacated following State’s uncontested representation at oral argument before the Supreme Court that the videotape does not exist).

Similarly, in *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005), *cert. denied*, 126 S.Ct. 746 (2005), the court found that a public records lawsuit over a custodian’s requirement that a commercial company obtain a licensing agreement before using the records did not become moot when the custodian provided the company with the requested data after the lawsuit was filed. Because the data was delivered subject to a condition that it was for personal use only, a controversy remained concerning the validity of the custodian restriction on the use of the data. *And see Southern Coatings, Inc. v. City of Tamarac*, 916 So. 2d 19 (Fla. 4th DCA 2005) (federal court’s dismissal of pendent claims based on state public records law is not a judgment on the merits and, therefore, not *res judicata* in a subsequent lawsuit in state court).

(5) Stay

If the person seeking public records prevails in the trial court, the public agency must comply with the court’s judgment within 48 hours unless otherwise provided by the trial court or such determination is stayed within that period by the appellate court. Section 119.11(2), F.S. An automatic stay shall exist for 48 hours after the filing of a notice of appeal for public records and public meeting cases, which stay may be extended by the lower tribunal or the court on motion. Fla. R. App. P. 9.310(b)(2). *Cf. City of Sunny Isles Beach v. Gatto*, 338 So. 3d 1045 (Fla. 3d DCA 2022) (party seeking disclosure in public records litigation in which a stay has been granted ordinarily does not have possession of the challenged documents unless and until it has been determined, with finality, that the documents are subject to disclosure).

(6) Venue

The general rule is that a lawsuit against the state or an agency of the state is proper only in the county in which the defendant maintains its principal headquarters. *Florida Department of Children and Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1286 (Fla. 2004). However, there is an exemption to the “home venue privilege” for Ch. 119 actions that involve access to confidential

records and a good cause petition is filed to access those records. *Id.* Cf. *Scott v. Thompson*, 326 So. 3d 123 (Fla. 1st DCA, 2021), finding that elections supervisors in eight Florida counties were entitled to exercise the home venue privilege in litigation filed against them seeking to order the supervisors to retain digital copies of paper ballots, and distinguishing *Florida Department of Children and Families v. Sun-Sentinel Inc.*, because the lawsuit against the Department of Children and Families involved access to confidential records that could not be made public without a determination of good cause, whereas the suit against the supervisors did not.

c. Attorney fees and costs

Section 119.12, F.S., provides authority for an award of reasonable costs of enforcement, including reasonable attorney fees, in civil actions filed to enforce the provisions of the Public Records Act, provided that certain conditions are met. Cf. *Managed Care of North America, Inc. v. Florida Healthy Kids Corporation*, 268 So. 3d 856, 862 (Fla. 1st DCA 2019) (s. 119.12 does not provide authority to award attorney's fees to a third party intervenor in a case where the litigation involved a request for a declaratory judgment to determine whether portions of bid documents constituted trade secrets); *Department of Health and Rehabilitative Services v. Martin*, 574 So. 2d 1223 (Fla. 3d DCA 1991) (error to award attorney's fees where order requiring production of records was entered pursuant to Adult Protective Services Act, rather than the Public Records Act). See also *O'Boyle v. Town of Gulf Stream*, 341 So. 3d 335 (Fla. 4th DCA 2022) and *Downs v. Austin*, 559 So. 2d 246 (Fla. 1st DCA 1990), *review denied*, 574 So. 2d 140 (Fla. 1990) (s. 119.12, F.S. does not constitute authority for attorney's fees for litigating the amount of fee provided by that statute). Cf. AGO 16-16 (hospital district not authorized to reimburse an individual *board member's* attorney fees incurred by her in responding to a public records request pertaining to her board service when no suit, claim, charge, or action has been instituted against the commissioner during the time the attorney fees were incurred).

A successful pro se litigant may recover reasonable costs under this section. *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000); *Wisner v. City of Tampa Police Department*, 601 So. 2d 296 (Fla. 2d DCA 1992). And see *Weeks v. Golden*, 846 So. 2d 1247 (Fla. 1st DCA 2003) (awarding costs associated with postage, envelopes and copying, as well as filing and service of process fees, incurred by inmate who prevailed in public records lawsuit). *Accord Yasir v. Forman*, 149 So. 3d 107 (Fla. 4th DCA 2014).

Section 119.12(1), F.S., provides that, if a civil action is filed against an agency to enforce the provisions of this chapter the court shall assess and award the reasonable costs of enforcement including reasonable attorney fees against the responsible agency if the court determines that the agency unlawfully refused to permit a public record to be inspected or copied and the complainant provided written notice of the public records request to the agency's custodian of public records at least 5 business days before filing the civil action. See *Roldan v. City of Hallandale Beach*, 331 So. 3d 348 (Fla. 4th DCA 2023) (s. 119.12(1) requires a separate written notice identifying the public record request before filing a public records lawsuit; a written public records request to the agency custodian is not sufficient).

However, notice is not required if the agency fails to prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website. Section 119.12(2), F.S.

The court must also determine whether the complainant made the public records request or participated in the civil action for an improper purpose. Section 119.12(3), F.S. If the court determines that there was an improper purpose, the court may not award attorney fees or the costs of enforcement, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. *Id.* The term "improper purpose" means "a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this

chapter or for a frivolous purpose.” *Id.*

Section 119.12, F.S., is designed to encourage voluntarily compliance with the requirements of Ch. 119, F.S. “If public agencies are required to pay attorney’s fees and costs to parties who are wrongfully denied access to the records of such agencies, then the agencies are less likely to deny proper requests for documents.” *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993). Stated another way, the statute “has the dual role of both deterring agencies from wrongfully denying access to public records and encouraging individuals to continue pursuing their right to access public records.” *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 125 (Fla. 2016). There is no additional requirement that the court find that the “public agency did not act in good faith, acted in bad faith or acted unreasonably.” *Lee*, 189 So. 3d at 122.

However, as noted previously, s. 119.12, F.S., specifies other conditions which must be met prior to an award of fees and costs under this statute. *And see State, Department of Economic Opportunity v. Consumer Rights, LLC*, 181 So. 3d 1239 (Fla. 1st DCA 2015), rejecting appellee’s argument that the requirements in s. 284.30, F.S. (establishing procedures to be followed by those seeking to have attorney’s fees paid by the state or any of its agencies) are inapplicable to public records cases. *Cf. Woliner v. State*, 320 So. 3d 774 (Fla. 4th DCA 2021) (notice requirement in s. 284.30, F.S., does not preclude the prevailing party in a public records action from obtaining costs).

An “unlawful refusal” for purposes of s. 119.12 may include unlawful conditions or requirements imposed by an agency for obtaining public records. As the Supreme Court explained in *Lee*: “Unlawful conditions or excessive, unwarranted special service charges deter individuals seeking public records from gaining access to the records to which they are entitled . . . Even if not malicious or done in bad faith, the Pension Fund’s actions—which were found be unlawful—had the effect of frustrating Lee’s constitutional right to access public records and required him to turn to the courts to vindicate that right.” *Lee*, 189 So. 3d at 129-130. *Cf. B & L Service, Inc. v. Broward County*, 300 So. 3d 1205 (Fla. 4th DCA 2020) (trial court did not err in refusing to award attorney’s fees, because petitioner waived issue of whether county unlawfully refused its public records request by failing to cross-appeal the trial court’s initial ruling that the county had not violated the public records law, even though the trial court subsequently modified its prior order by granting the petitioner’s motion for rehearing in part).

An “unjustified failure to respond to a public records request until after an action has been commenced to compel compliance amounts to an unlawful refusal” for purposes of s. 119.12, F.S. *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000). *See also Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002) (“[T]he fact that the requested documents were produced in the instant case after the action was commenced, but prior to final adjudication of the issue by the trial court, does not render the case moot or preclude consideration of [the petitioner’s] entitlement to fees under the statute.”); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (appellant entitled to attorney’s fees because “[t]he evidence clearly establishes that it was only after the appellant filed a lawsuit that the documents he had previously sought by written request to the Town were finally turned over to him”); *Promenade D’Iberville, LLC v. Sundy*, 145 So. 3d 980, 984 (Fla. 1st DCA 2014) (“(an agency’s “production of the records on the eve of the enforcement hearing did not cure its unjustified delay”); and *Schweickert v. Citrus County, Florida Board*, 193 So. 3d 1075, 1080 (Fla. 5th DCA 2016) (county’s failure to produce a complaint alleging inappropriate conduct by a county commissioner until litigation was filed was an unlawful refusal because the exemption for records relating to an investigation of alleged discrimination did not apply to the complaint; court rejected the county’s argument that the delay was justified because the investigation into the complaint might have ultimately produced records which related to discriminatory behavior).

Stated another way, a delay in disclosing records can rise to the level of a refusal if “there was no good reason for the delay.” *Consumer Rights, LLC v. Union County*, 159 So. 3d 882, 885

(Fla. 1st DCA 2015), *review denied*, 177 So. 3d 1264 (Fla. 2015). For example, in *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996), the court held that a town was liable for attorney's fees even if the delay in providing records was due to either the intentional wrongdoing or ineptitude of its clerk. *And see Office of the State Attorney for the Thirteenth Judicial Circuit of Florida v. Gonzalez*, 953 So. 2d 759 (Fla. 2d DCA 2007) (attorney's fees authorized even if failure to turn over the records was due to a mistake or ineptitude). *Cf. Hewlings v. Orange County, Florida*, 87 So. 3d 839 (Fla. 5th DCA 2012) (the mere fact that a county quickly responded to public records request via voicemail and fax is not dispositive of whether the county's 45-day delay in complying with the request was justified).

"However, it is equally clear that a delay does not in and of itself create liability under s. 119.12, F.S." *Consumer Rights, LLC v. Union County*, 159 So. 3d at 885. *See also Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655 (Fla. 1st DCA 2014) (where delay is the issue, the court must determine whether the delay was justified under the facts of the particular case) and *McLendon v. Palm Beach County Office of Inspector General*, 286 So. 3d 375 (Fla. 4th DCA 2019) (trial court correctly denied attorney's fees because the requested record was exempt at the time that the request was made and did not become public until the investigation conducted pursuant to s. 112.3188 (2)(b), F.S., was concluded). *Cf. Citizens Awareness Foundation, Inc. v. Wantman Group, Inc.*, 195 So. 3d 396, 401 (Fla. 4th DCA 2016) ("The public records law should not be applied in a way that encourages the manufacture of public records requests designed to obtain no response, for the purpose of generating attorney's fees.").

A lawyer may recover fees for his or her assistance of a pro se litigant before entering a notice of appearance provided that the complaint requested attorney's fees and disclosed that it was prepared with the assistance of counsel. *O'Boyle v. Town of Gulf Stream*, 341 So. 3d 343 (Fla. 4th DCA 2022). However, s. 119.12, F.S., "does not provide for (1) an award of attorney's fees for litigating the amount of the fees or (2) an award of fees attributable to the non-testifying associates of an attorney fee expert." *O'Boyle v. Town of Gulf Stream*, 341 So. 3d 335 (Fla. 4th DCA 2022). [Emphasis supplied by the court].

As to calculation of the reasonable costs of enforcement including reasonable attorney fees to which the prevailing party is entitled, "the trial judge is in a better position than the appellate court to make "a factual determination regarding the objectives sought by the [prevailing party], the extent of statutory enforcement obtained, and the time expended in achieving those results." *Daniels v. Bryson*, 548 So. 2d 679, 682 (Fla. 3d DCA 1989). *And see Grapski v. City of Alachua*, 134 So. 3d 987 (Fla. 1st DCA 2012), *review denied*, 118 So. 3d 220 (Fla. 2012) (the trial court's findings of fact on the issue of attorney's fees are presumed correct; the standard of review is abuse of discretion). However, where the contract between the client and attorney provided that the attorney would be compensated on a flat hourly basis regardless of the outcome at trial, the trial court erred in awarding an enhanced fee based upon a contingency risk multiplier. *Id.*

A different rule has been applied when it is unclear whether a *private* corporation is an "agency" for purposes of the Public Records Act. Section 119.12, F.S., "was not intended to force private entities to comply with the inspection requirements of chapter 119 by threatening to award attorney's fees against them." *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993). *Accord Fox v. News-Press Publishing Company, Inc.*, 545 So. 2d 941 (Fla. 2d DCA 1989).

Thus, attorney fees "are not warranted when the [private] entity in charge of the public records at issue was reasonably and understandably unsure of its status as an agency." *Lee v. Board of Trustees, Jacksonville Police & Fire Pension Fund*, 113 So. 3d 1010 (Fla. 1st DCA 2013), *approved*, 189 So. 3d 120 (Fla. 2016). *And see Economic Development Commission v. Ellis*, 178 So. 3d 118, 123 (Fla. 5th DCA 2016) ("attorney's fees should not be awarded in those cases where the party refusing to provide documents acted on the good-faith belief that it was not an agent, subject to compliance with the [Public Records] Act"). *Cf. s. 119.0701(4), F.S.*, providing for

an award of attorney fees against a “contractor” as defined in s. 119.0701(a), F.S., found to have unlawfully refused to comply with a public records request within a reasonable time, provided that the plaintiff has complied with the conditions set forth in the statute.

Attorney fees may also be awarded for a successful appeal of a denial of access, provided that at the time of appeal a motion is filed in accordance with the appellate rules. *Downs v. Austin*, *supra*. And see *Office of the State Attorney v. Gonzalez*, *supra* (where motion seeking appellate attorney fees is granted by appellate court and remanded only for calculation of such fees, lower court required to follow court’s mandate without further consideration); and *Cf. Johnson v. Jarvis*, 107 So. 3d 428 (Fla. 1st DCA 2012) (trial court erred in denying motion for costs based on appellant’s failure to comply with the notice requirement in s. 284.30, F.S.; “[f]or purposes of appellate costs, the appellant was the prevailing party . . . and is entitled to an award of his costs incurred therein”).

Appellate attorney fees were also considered in *State Attorney’s Office of the Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 254 So.3d 461 (Fla. 4th DCA 2018). In that case, the court denied the media’s request for appellate attorney’s fees from the state attorney’s office and school board. The agencies had appealed the lower court’s order allowing the media to access certain video footage taken by security cameras at a high school where a gunman killed students and staff. Although the media prevailed in the appeal, the court observed that the video footage was confidential security information under s. 119.071(3)(a), F.S. The media obtained access because a judge found “good cause” to release the video footage as authorized by a statutory exception to the confidentiality provision. Thus, the school board’s conduct was not ‘unlawful’ for purposes of s. 119.12(1)(a), F.S. Additionally, the court refused to award fees against the state attorney because the state attorney was not the custodian of the records at issue; the state attorney was only an intervenor in the lawsuit below.

3. Criminal and noncriminal infraction penalties

Section 119.10(1)(b), F.S., states that a public officer who knowingly violates the provisions of s. 119.07(1), F.S., is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both. See *State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001) (s. 119.10[1][b] authorizes a conviction for violating s. 119.07 only if a defendant is found to have committed such violation “knowingly”; statute cannot be interpreted as allowing a conviction based on mere negligence).

Section 119.10(1)(a), F.S., provides that a violation of any provision of Ch. 119, F.S., by a public officer is a noncriminal infraction, punishable by fine not exceeding \$500. *Cf.* s. 838.022(1)(b), F.S. (unlawful for a public servant or public contractor, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, by concealing, covering up, destroying, mutilating, or altering any official record or official document, except as authorized by law or contract, or causing another person to perform such an act).

A state attorney may prosecute suits charging public officials with violations of the Public Records Act, including those violations which may result in a finding of guilt for a noncriminal infraction. AGO 91-38.

I. MAINTENANCE, STORAGE AND RETENTION REQUIREMENTS

1. Maintenance and storage of records

All public records should be kept in the buildings in which they are ordinarily used. Section 119.021(1)(a), F.S. Moreover, insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible

for convenient use. Section 119.021(1)(b), F.S. Records that are in need of repair, restoration, or rebinding may be authorized by the head of the governmental entity to be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them. Section 119.021(1)(c), F.S.

Thus, public records may not routinely be removed from the building or office in which such records are ordinarily kept except for official purposes. AGO 93-16. The retention of such records in the home of a public official would appear to circumvent the public access requirements of the Public Records Act and compromise the rights of the public to inspect and copy such records. *Id.* And see AGO 04-43 (mail addressed to city officials at City Hall and received at City Hall should not be forwarded unopened to the private residences of the officials, but rather the original or a copy of the mail that constitutes a public record should be maintained at city offices); and AGO 07-14 (“Although the Public Records Law does not prescribe a location at which public records must be maintained, it does suggest that such records be kept where they are ordinarily used”). *Cf.* Inf. Op. to Sola, March 9, 2010 (municipal election records are municipal records which should be maintained by city even though election conducted by county supervisor of elections) and AGO 88-26 (while Ch. 119, F.S., does not require a county to transport microfilmed copies of public records maintained in a storage facility outside the county to the county courthouse when the originals are available at the courthouse, the microfilmed copies must be available for copying at their location outside the county).

2. Delivery of records to successor

Section 119.021(4)(a), F.S., provides that whoever has custody of public records shall deliver such records to his or her successor at the expiration of his or her term of office or, if there is no successor, to the records and information management program of the Division of Library and Information Services of the Department of State. See *Maxwell v. Pine Gas Corporation*, 195 So. 2d 602 (Fla. 4th DCA 1967) (state, county, and municipal records are not the personal property of a public officer); AGO 98-59 (records in the files of the former city attorney which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor); and AGO 75-282 (public records regardless of usefulness or relevancy must be turned over to the custodian’s successor in office or to the Department of State). And see s. 119.021(4)(b), F.S., providing that “[w]hoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her.”

In the absence of contrary direction in the legislation dissolving a special taxing district, the district’s records should be delivered to the Department of State. AGO 95-03. Compare AGO 09-39, stating that in light of a court order holding that an independent special district is the successor-in-interest to the powers and duties of a municipal services benefit unit [MSBU], the records of the MSBU should be delivered to the special district. *Cf.* s. 257.36(2)(b), F.S., specifying procedures for disposition of agency records stored in the state records center in the event that the agency is dissolved or its functions are transferred to another agency.

3. Transition records of certain officers-elect

Section 119.035(4), F.S., states that “upon taking the oath of office, the officer-elect shall, as soon as practicable deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office.” The term “officer-elect” for purposes of this section means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. Section 119.035(5), F.S.

4. Retention and disposal of records

a. Retention schedules

Section 119.021(2)(a), F.S. requires the Division of Library and Information Services

(division) of the Department of State to adopt rules establishing retention schedules and a disposal process for public records. Each agency must comply with these rules. Section 119.021(2)(b), F.S. See generally Chs. 1B-24 and 1B-26, Florida Administrative Code. The approved records retention schedule for state and local governmental entities is located online at dlis.dos.state.fl.us/barm/genschedules/GS1-SL.pdf. Cf. *L.R. v. Department of State, Division of Archives, History and Records Management*, 488 So. 2d 122 (Fla. 3d DCA 1986) (an affected party seeking to challenge an agency's approved records retention schedule may be entitled to a hearing pursuant to Ch. 120, F.S.).

Retention schedules for judicial branch records are established by court rule. See Fla. R. Gen. Prac. & Jud. Admin. 2.430 (court records) and Fla. R. Gen. Prac. & Jud. Admin. 2.440 (judicial branch administrative records). Similarly, procedures for maintenance and destruction of legislative records are established in legislative rules. Legislative rules may be accessed online at www.flsenate.gov (Florida Senate) and www.myfloridahouse.gov (Florida House of Representatives).

b. Disposal of records

Section 257.36(6), F.S., states that a “public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division.” Section 119.021(2)(c), F.S., provides that public officials must “systematically dispose” of records no longer needed, subject to the consent of the division in accordance with s. 257.36, F.S. Compare s. 119.021(3), F.S., stating that notwithstanding the provisions of Chs. 119 or 257, F.S., certain orders that comprise final agency action must be permanently maintained.

Thus, for example, a municipality may not remove and destroy disciplinary notices, with or without the employee's consent, during the course of resolving collective bargaining grievances, except in accordance with the statutory restrictions on disposal of records. AGO 94-75. See also AGOs 09-19 (city must follow public records retention schedules established by law for information on its Facebook page which constitutes a public record); 96-34 (e-mail messages are subject to statutory limitations on destruction of public records); and 75-45 (tape recordings of proceedings before a public body must be preserved in compliance with statutory record retention and disposal restrictions). And see *Raydient LLC v. Nassau County, Florida*, No. 2019-CA-000054 (Fla. 4th Cir. Ct. August 24, 2021), available in the Cases database at the open government site at myfloridalegal.com, finding that the “routine and indiscriminate destruction of text messages by [county commission] members and certain county employees, regardless of the content of each message, violated s. 119.021, F.S.,” requiring that public records be kept in accordance with a retention schedule adopted by the Florida Department of State.

Similarly, registration and disciplinary records stored in a national association securities dealers database and used by state banking department for regulatory purposes are public records and may not be destroyed merely because an arbitration panel of the national association has ordered that they be expunged; such records are subject to statutory mandates governing destruction of records. AGO 98-54. *Accord* Inf. Op. to Hernandez, July 1, 2003 (agency not authorized to purge or expunge documents it created while carrying out what it perceived to be its official duty based upon an accusation that the agency may have been mistaken in such an assessment). Cf. AGO 91-23 (clerk of court not authorized to expunge a court order from the Official Records, in the absence of a court order directing such action).

c. Exempt records

The statutory restrictions on destruction of public records apply even if the record is exempt from disclosure. For example, in AGO 81-12, the Attorney General's Office concluded that the City of Hollywood could not destroy or dispose of licensure, certification, or employment examination question and answer sheets except as authorized by statute. And see AGO 87-48 (statutory prohibition against placing anonymous materials in the personnel file of a school

district employee did not permit the destruction of such materials received in the course of official school business, absent compliance with statutory restrictions on destruction of records). An exemption only removes the records from public access requirements, it does not exempt the records from the other provisions of Ch. 119, F.S., such as those requiring that public records be kept in a safe place or those regulating the destruction of public records. AGO 93-86. *See s. 119.021, F.S.*

Moreover, if an assertion is made by the custodian that a requested record is not a public record subject to public inspection or copying, the requested record may not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was made to the custodian; if a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties. Section 119.07(1)(h), F.S.

d. Evidence obtained by law enforcement agencies

Documentary evidence obtained by a police department is a public record subject to retention schedules approved by the division. AGO 04-51. *Accord* Inf. Op. to Blair, August 24, 2011 (evidence that constitutes a public record may be destroyed only in accordance with retention schedules established by the division and noting that the division has adopted a General Records Schedule GS2 for law enforcement agencies).

However, “the disposition of evidence *not* constituting a public record within the meaning of Chapter 119, Florida Statutes, would appear to be dependent upon an agency’s determination that it is no longer needed.” Inf. Op. to Blair, August 24, 2011. (e.s.) *Cf. Church of Scientology Flag Service Org., Inc. v. Wood*, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997), available online in the Cases database at the open government site at myfloridalegal.com (physical specimens relating to an autopsy are not public records because in order to constitute a “public record” for purposes of Ch. 119, “the record itself must be susceptible of some form of copying”).

e. Duplicate records

Section 257.36(6), F.S., requires the division to adopt rules which, among other things, establish “[s]tandards for the reproduction of records for security or with a view to the disposal of the original record.” *See* AGO 18-04 (according to a division rule, “an agency that designates an electronic or microfilmed copy as the record (master) copy may then designate the paper original as a duplicate and dispose of it in accordance with the retention requirement for duplicates in the applicable retention schedule unless another law, rule, or ordinance specifically requires its retention”).

Accordingly, the division is responsible for determining whether an agency may dispose of an audiotape of a witness statement without regard to the retention schedule, if there is also a transcript of the statement. Inf. Op. to Mathews, July 12, 2004. *Cf.* AGO 91-09 (if a facsimile document is subsequently copied by the receiving agency, the facsimile document is considered an intermediate document which may be destroyed; the copy of the facsimile then is retained as a public record). *See also* AGO 92-85, stating that individual school board members are not required to retain copies of public records which are regularly maintained in the course of business by the clerk of the school board in the school board administrative offices.

APPENDICES**A. PUBLIC RECORDS AND MEETINGS CONSTITUTIONAL AMENDMENT****Article I, Section 24, Florida Constitution****Section 24. Access to public records and meetings.**

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.
- (b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.
- (c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.
- (d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

B. GOVERNMENT IN THE SUNSHINE LAW AND RELATED STATUTES**286.011 Public meetings and records; public inspection; criminal and civil penalties.—**

- (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.
- (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

- (3) (a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.
- (b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
- (c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
- (4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.
- (5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.
- (6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.
- (7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.
- (8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:
 - (a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.
 - (b) The subject matter of the meeting shall be confined to settlement negotiations or strategy

sessions related to litigation expenditures.

- (c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
- (d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.
- (e) The transcript shall be made part of the public record upon conclusion of the litigation.

Related sections read as follows:

286.0105 Notices of meetings and hearings must advise that a record is required to appeal.—

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

286.0111 Legislative review of certain exemptions from requirements for public meetings and recordkeeping by governmental entities.—

The provisions of s. 119.15, the Open Government Sunset Review Act, apply to the provisions of law which provide exemptions to s. 286.011, as provided in s. 119.15.

286.0113 General exemptions from public meetings.—

- (1) That portion of a meeting that would reveal a security or firesafety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.
- (2) (a) For purposes of this subsection:
 - 1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.
 - 2. "Team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.
- (b)1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.
- 2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.
- (c)1. A complete recording shall be made of any portion of an exempt meeting. No portion of

the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.
 3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.
- (3)(a) That portion of a meeting held by a utility owned or operated by a unit of local government which would reveal information that is exempt under s. 119.0713(5) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting are exempt from disclosure under s. 119.07(1) and s. 24(a) of the State Constitution unless a court of competent jurisdiction, following an in-camera review, determines that the meeting was not restricted to the discussion of data and information made exempt by this section. In the event of such a judicial determination, only the portion of the recording or transcript which reveals nonexempt data and information may be disclosed to a third party.
- (b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.
- (4)(a) Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(c)1.a. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.
- (b) Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911, E911, or public safety radio communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911, E911, or public safety radio communication structures or facilities made exempt by s. 119.071(3)(c)1.b. is exempt from s. 286.011 and s. 24, Art. I of the State Constitution.
- (c) No portion of an exempt meeting under paragraphs (a) or (b) may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the information made exempt by s. 119.071(3)(c)1.a. or b. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.
- (d) For purposes of this subsection, the term “public safety radio” is defined as the means of communication between and among 911 public safety answering points, dispatchers, and first responder agencies using those portions of the radio frequency spectrum designated by the Federal Communications Commission under 47 C.F.R. 90 for public safety purposes.
- (e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from

repeal through reenactment by the Legislature.

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

- (1) For purposes of this section, “board or commission” means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.
- (2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).
- (3) The requirements in subsection (2) do not apply to:
 - (a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
 - (b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations.
 - (c) A meeting that is exempt from s. 286.011; or
 - (d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.
- (4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:
 - (a) Provide guidelines regarding the amount of time an individual has to address the board or commission;
 - (b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
 - (c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
 - (d) Designate a specified period of time for public comment.
- (5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.
- (6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.
- (7)(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with

enforcing this section.

- (b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.
- (8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

286.01141 Criminal justice commissions; public meetings exemption.—

- (1) As used in this section, the term:
 - (a) “Duly constituted criminal justice commission” means an advisory commission created by municipal or county ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues.
 - (b) “Active” has the same meaning as provided in s. 119.011.
 - (c) “Criminal intelligence information” has the same meaning as provided in s. 119.011.
 - (d) “Criminal investigative information” has the same meaning as provided in s. 119.011.
- (2) That portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, provided that at any public meeting of the criminal justice commission at which such matter is being considered, the commission members publicly disclose the fact that the matter has been discussed.

286.012 Voting requirement at meetings of governmental bodies.—

A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

286.26 Accessibility of public meetings to the physically handicapped.—

- (1) Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person.
- (2) If an affected handicapped person objects in the written request, nothing contained in the

provisions of this section shall be construed or interpreted to permit the use of human physical assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this section.

C. THE PUBLIC RECORDS ACT (SELECTED PORTIONS ONLY)

CHAPTER 119, FLORIDA STATUTES

119.01 General state policy on public records.—

- (1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.
- (2)(a) Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.
- (b) When designing or acquiring an electronic recordkeeping system, an agency must consider whether such system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange.
- (c) An agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records that are online or stored in an electronic recordkeeping system used by the agency.
- (d) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.
- (e) Providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.
- (f) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4).
- (3) If public funds are expended by an agency in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of s. 119.07.

119.011 Definitions.—As used in this chapter, the term:

- (1) “Actual cost of duplication” means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication.

- (2) “Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
- (3)(a) “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.
- (b) “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.
- (c) “Criminal intelligence information” and “criminal investigative information” shall not include:
1. The time, date, location, and nature of a reported crime.
 2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h) or (o).
 3. The time, date, and location of the incident and of the arrest.
 4. The crime charged.
 5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h) or (m), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:
 - a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - b. Impair the ability of a state attorney to locate or prosecute a codefendant.
 6. Informations and indictments except as provided in s. 905.26.
- (d) The word “active” shall have the following meaning:
1. Criminal intelligence information shall be considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
 2. Criminal investigative information shall be considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
- In addition, criminal intelligence and criminal investigative information shall be considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.
- (4) “Criminal justice agency” means:
- (a) Any law enforcement agency, court, or prosecutor;
 - (b) Any other agency charged by law with criminal law enforcement duties;
 - (c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such

agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or

- (d) The Department of Corrections.
- (5) “Custodian of public records” means the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.
- (6) “Data processing software” means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.
- (7) “Duplicated copies” means new copies produced by duplicating, as defined in s. 283.30.
- (8) “Exemption” means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), s. 286.011, or s. 24, Art. I of the State Constitution.
- (9) “Information technology resources” means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training.
- (10) “Paratransit” has the same meaning as provided in s. 427.011.
- (11) “Proprietary software” means data processing software that is protected by copyright or trade secret laws.
- (12) “Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.
- (13) “Redact” means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.
- (14) “Sensitive,” for purposes of defining agency-produced software that is sensitive, means only those portions of data processing software, including the specifications and documentation, which are used to:
 - (a) Collect, process, store, and retrieve information that is exempt from s. 119.07(1);
 - (b) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or
 - (c) Control and direct access authorizations and security measures for automated systems.
- (15) “Utility” means a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

119.021 Custodial requirements; maintenance, preservation, and retention of public records.—

- (1) Public records shall be maintained and preserved as follows:
 - (a) All public records should be kept in the buildings in which they are ordinarily used.
 - (b) Insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use.
- (c)1. Record books should be copied or repaired, renovated, or rebound if worn, mutilated,

damaged, or difficult to read.

2. Whenever any state, county, or municipal records are in need of repair, restoration, or rebinding, the head of the concerned state agency, department, board, or commission; the board of county commissioners of such county; or the governing body of such municipality may authorize that such records be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them.
 3. Any public official who causes a record book to be copied shall attest and certify under oath that the copy is an accurate copy of the original book. The copy shall then have the force and effect of the original.
- (2)(a) The Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process for public records.
 - (b) Each agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division.
 - (c) Each public official shall systematically dispose of records no longer needed, subject to the consent of the records and information management program of the division in accordance with s. 257.36.
 - (d) The division may ascertain the condition of public records and shall give advice and assistance to public officials to solve problems related to the preservation, creation, filing, and public accessibility of public records in their custody. Public officials shall assist the division by preparing an inclusive inventory of categories of public records in their custody. The division shall establish a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall, subject to the availability of necessary space, staff, and other facilities for such purposes, make space available in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.
- (3) Agency final orders rendered before July 1, 2015, that were indexed or listed pursuant to s. 120.53, and agency final orders rendered on or after July 1, 2015, that must be listed or copies of which must be transmitted to the Division of Administrative Hearings pursuant to s. 120.53, have continuing legal significance; therefore, notwithstanding any other provision of this chapter or any provision of chapter 257, each agency shall permanently maintain records of such orders pursuant to the applicable rules of the Department of State.
 - (4)(a) Whoever has custody of any public records shall deliver, at the expiration of his or her term of office, to his or her successor or, if there be none, to the records and information management program of the Division of Library and Information Services of the Department of State, all public records kept or received by him or her in the transaction of official business.
 - (b) Whoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her. Any person unlawfully possessing public records must within 10 days deliver such records to the lawful custodian of public records unless just cause exists for failing to deliver such records.

119.035 Officers-elect.—

- (1) It is the policy of this state that the provisions of this chapter apply to officers-elect upon their election to public office. Such officers-elect shall adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in this chapter.
- (2) Public records of an officer-elect shall be maintained in accordance with the policies and

procedures of the public office to which the officer has been elected.

- (3) If an officer-elect, individually or as part of a transition process, creates or uses an online or electronic communication or recordkeeping system, all public records maintained on such system shall be preserved so as not to impair the ability of the public to inspect or copy such public records.
- (4) Upon taking the oath of office, the officer-elect shall, as soon as practicable, deliver to the person or persons responsible for records and information management in such office all public records kept or received in the transaction of official business during the period following election to public office.
- (5) As used in this section, the term "officer-elect" means the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

- (1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.
- (b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.
- (c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.
- (d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.
- (e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.
- (f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.
- (g) In any civil action in which an exemption to this section is asserted, if the exemption is alleged to exist under or by virtue of s. 119.071(1)(d) or (f), (2)(d),(e), or (f), or (4)(c), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of s. 119.071(2)(c), an inspection in camera is discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection or copying as requested by the person seeking such access.
- (h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the

custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

- (i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.
- (2)(a) As an additional means of inspecting or copying public records, a custodian of public records may provide access to public records by remote electronic means, provided exempt or confidential information is not disclosed.
- (b) The custodian of public records shall provide safeguards to protect the contents of public records from unauthorized remote electronic access or alteration and to prevent the disclosure or modification of those portions of public records which are exempt or confidential from subsection (1) or s. 24, Art. I of the State Constitution.
- (c) Unless otherwise required by law, the custodian of public records may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public shall be in accordance with the provisions of this section.
- (3)(a) Any person shall have the right of access to public records for the purpose of making photographs of the record while such record is in the possession, custody, and control of the custodian of public records.
- (b) This subsection applies to the making of photographs in the conventional sense by use of a camera device to capture images of public records but excludes the duplication of microfilm in the possession of the clerk of the circuit court where a copy of the microfilm may be made available by the clerk.
- (c) Photographing public records shall be done under the supervision of the custodian of public records, who may adopt and enforce reasonable rules governing the photographing of such records.
- (d) Photographing of public records shall be done in the room where the public records are kept. If, in the judgment of the custodian of public records, this is impossible or impracticable, photographing shall be done in another room or place, as nearly adjacent as possible to the room where the public records are kept, to be determined by the custodian of public records. Where provision of another room or place for photographing is required, the expense of providing the same shall be paid by the person desiring to photograph the public record pursuant to paragraph (4)(e).
- (4) The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized:
 - (a)1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8½ inches;
 - 2. No more than an additional 5 cents for each two-sided copy; and
 - 3. For all other copies, the actual cost of duplication of the public record.
- (b) The charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication.
- (c) An agency may charge up to \$1 per copy for a certified copy of a public record.

- (d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.
- (e) 1. Where provision of another room or place is necessary to photograph public records, the expense of providing the same shall be paid by the person desiring to photograph the public records.
- 2. The custodian of public records may charge the person making the photographs for supervision services at a rate of compensation to be agreed upon by the person desiring to make the photographs and the custodian of public records. If they fail to agree as to the appropriate charge, the charge shall be determined by the custodian of public records.
- (5) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.
- (6) An exemption contained in this chapter or in any other general or special law shall not limit the access of the Auditor General, the Office of Program Policy Analysis and Government Accountability, or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such person states in writing that such records are needed for a properly authorized audit, examination, or investigation. Such person shall maintain the exempt or confidential status of that public record and shall be subject to the same penalties as the custodian of that record for public disclosure of such record.
- (7) An exemption from this section does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided.
- (8) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.
- (9) After receiving a request to inspect or copy a record, an agency may not respond to that request by filing an action for declaratory relief against the requester to determine whether the record is a public record as defined by s. 119.011, or the status of the record as confidential or exempt from the provisions of s. 119.07(1).

119.0701 Contracts; public records.—

- (1) For purposes of this section, the term:
 - (a) “Contractor” means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).
 - (b) “Public agency” means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.
- (2) **CONTRACT REQUIREMENTS—** In addition to other contract requirements provided by law, each public agency contract for services entered into or amended on or after July 1, 2016, must include:

- (a) The following statement, in substantially the following form, identifying the contact information of the public agency's custodian or public records in at least 14-point boldfaced type:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (telephone number, e-mail address, and mailing address).

- (b) A provision that requires the contractor to comply with public records laws, specifically to:
1. Keep and maintain public records required by the public agency to perform the service.
 2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records, or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
 4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

(3) REQUEST FOR RECORDS; NONCOMPLIANCE. —

- (a) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- (b) If a contractor does not comply with a public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- (c) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

(4) CIVIL ACTION. —

- (a) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
 2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.
- (b) A notice complies with subparagraph (a)2., if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with

the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery services or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which must be in an electronic format.

- (c) A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

NOTE: Due to space limitations, the exemptions from disclosure found in ss. 119.071, 119.0711, 119.0712, 119.0713, 119.0715, and 119.0725, F.S. are summarized in pages 239-241 of Appendix D. To review the complete text of these exemptions, please access the Florida Statutes at leg.state.fl.us

119.0714 Court files; court records; official records.—

- (1) **COURT FILES.**—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:
- (a) A public record that was prepared by an agency attorney or prepared at the attorney's express direction as provided in s. 119.071(1)(d).
 - (b) Data processing software as provided in s. 119.071(1)(f).
 - (c) Any information revealing surveillance techniques or procedures or personnel as provided in s. 119.071(2)(d).
 - (d) Any comprehensive inventory of state and local law enforcement resources, and any comprehensive policies or plans compiled by a criminal justice agency, as provided in s. 119.071(2)(d).
 - (e) Any information revealing the substance of a confession of a person arrested as provided in s. 119.071(2)(e).
 - (f) Any information revealing the identity of a confidential informant or confidential source as provided in s. 119.071(2)(f).
 - (g) Any information revealing undercover personnel of any criminal justice agency as provided in s. 119.071(4)(c).
 - (h) Criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h) or (m).
 - (i) Social security numbers as provided in s. 119.071(5)(a).
 - (j) Bank account numbers and debit, charge, and credit card numbers as provided in s. 119.071(5)(b).
- (k) 1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document hearing, and page

number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of court. A fee may not be charged for such request.

3. Any information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.
- (l) Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2) and the names of family members, dependents, and beneficiaries of such payee contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights under s. 626.99296. Such information shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution during the pendency of the transfer proceeding and for 6 months after the final court order approving, or not approving, the transferee's application. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) COURT RECORDS.—

- (a) Until January 1, 2012, if a social security number or a bank account, debit, charge, or credit card number is included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.
- (b) A request for redaction must be a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk of the court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.
- (c) A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.
- (d) The clerk of the court has no liability for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, unknown to the clerk of the court in court records filed on or before January 1, 2012.
- (e)1. The clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.
2. Section 119.071(5)(a)7. and 8. does not apply to the clerks of the court with respect to court records.
- (f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the court record that contains the exempt information.
- (g) The clerk of the court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk of the court.

(3) OFFICIAL RECORDS.—

A person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.

- (a) If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.
 - 1. If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (d), to keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.
 - 2. Section 119.071(5)(a)7. and 8. does not apply to the county recorder with respect to official records.
- (b) The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.
 - 1. A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the record that contains the number to be redacted.
 - 2. The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.
 - 3. A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.
- (c) A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:
 - 1. On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or a bank account, debit, charge, or credit card number in such document unless required by law.
 - 2. Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.
- (d) If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction is deemed to be the best effort in performing the redaction and is deemed in compliance with the requirements of this subsection.
- (e) The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

- (f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

119.084 Copyright of data processing software created by governmental agencies; sale price and licensing fee.—

- (1) As used in this section, “agency” has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.
- (2) An agency is authorized to acquire and hold a copyright for data processing software created by the agency and to enforce its rights pertaining to such copyright, provided that the agency complies with the requirements of this subsection.
- (a) An agency that has acquired a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any public agency or private person. The agency may establish a price for the sale and a licensing fee for the use of such data processing software that may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(4).
- (b) Proceeds from the sale or licensing of copyrighted data processing software shall be deposited by the agency into a trust fund for the agency’s appropriate use for authorized purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds are to be used.
- (c) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to acquire and hold copyrights.

119.092 Registration by federal employer’s registration number.—

Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978, within its numbering system, the federal employer’s identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer’s identification number or the state agency’s own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer’s identification number. The Department of State shall keep a registry of federal employer’s identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

119.10 Violation of chapter; penalties.—

- (1) Any public officer who:
- (a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.
- (b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (2) Any person who willfully and knowingly violates:
- (a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

- (b) Section 119.105 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

119.105 Protection of victims of crimes or accidents.—

Police reports are public records except as otherwise made exempt or confidential. Every person is allowed to examine nonexempt or nonconfidential police reports. A person who comes into possession of exempt or confidential information contained in police reports may not use that information for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for the purpose of such solicitation during the period of time that information remains exempt or confidential. This section does not prohibit the publication of such information to the general public by any news media legally entitled to possess that information or the use of such information for any other data collection or analysis purposes by those entitled to possess that information.

119.11 Accelerated hearing; immediate compliance.—

- (1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.
- (2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period.
- (3) A stay order shall not be issued unless the court determines that there is a substantial probability that opening the records for inspection will result in significant damage.
- (4) Upon service of a complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of this chapter, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption or the assertion that the requested record is not a public record subject to inspection and examination under s. 119.07(1), until the court directs otherwise. The person who has custody of such public record may, however, at any time permit inspection of the requested record as provided in s. 119.07(1) and other provisions of law.

119.12 Attorney fees.—

- (1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:
 - (a) The agency unlawfully refused to permit a public record to be inspected or copied; and
 - (b) The complainant provides written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.
- (2) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in paragraph (1)(b) if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.
- (3) The court shall determine whether the complainant requested to inspect or copy a public

record or participated in the civil action for an improper purpose. If the court determines there was an improper purpose, the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. For purposes of this subsection, the term “improper purpose” means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose.

- (4) This section does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of this chapter. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of this chapter.

119.15 Legislative review of exemptions from public meeting and public records requirements.—

- (1) This section may be cited as the “Open Government Sunset Review Act.”
- (2) This section provides for the review and repeal or reenactment of an exemption from s. 24, Art. I of the State Constitution and s. 119.07(1) or s. 286.011. This act does not apply to an exemption that:
 - (a) Is required by federal law; or
 - (b) Applies solely to the Legislature or the State Court System.
- (3) In the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall be repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.
- (4)(a) A law that enacts a new exemption or substantially amends an existing exemption must state that the record or meeting is:
 1. Exempt from s. 24, Art. I of the State Constitution;
 2. Exempt from s. 119.07(1) or s. 286.011; and
 3. Repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.
- (b) For purposes of this section, an exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.
- (c) This section is not intended to repeal an exemption that has been amended following legislative review before the scheduled repeal of the exemption if the exemption is not substantially amended as a result of the review.
- (5)(a) By June 1 in the year before the repeal of an exemption under this section, the Office of Legislative Services shall certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.
- (b) An exemption that is not identified and certified to the President of the Senate and the Speaker of the House of Representatives is not subject to legislative review and repeal under this section. If the office fails to certify an exemption that it subsequently determines should have been certified, it shall include the exemption in the following year’s certification after that determination.
- (6)(a) As part of the review process, the Legislature shall consider the following:
 1. What specific records or meetings are affected by the exemption?

2. Whom does the exemption uniquely affect, as opposed to the general public?
 3. What is the identifiable public purpose or goal of the exemption?
 4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 5. Is the record or meeting protected by another exemption?
 6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?
- (b) An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:
1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
 2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
 3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.
- (7) Records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law. In deciding whether the records shall be made public, the Legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exemption of the type specified in subparagraph (6)(b)2. or subparagraph (6)(b)3. would occur if the records were made public.
- (8) Notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

D. EXEMPT AND CONFIDENTIAL RECORDS AND MEETINGS- EXEMPTION SUMMARIES.

It is recommended that these summaries be used as a reference only—interested parties should refer to the full text in the Florida Statutes before drawing legal conclusions.

Section 11.0431(2), F.S. – The text of s. 11.0431, F.S., relating to exemptions from disclosure for legislative records, is set forth in Appendix E.

Section 11.045(5)(b), F.S. – The legislative committee responsible for ethical conduct of lobbyists shall make sufficient deletions in advisory opinions issued pursuant to this subsection to prevent disclosing the identity of persons in the decisions or opinions.

Section 11.26(1), F.S. – Subject to s. 11.0431, legislative employees may not reveal to anyone outside the area of their direct responsibility the contents or nature of any request for services made by a legislator except with the consent of the member making the request.

Section 11.45(3)(i), F.S. – The identity of a donor or prospective donor to the capital development board who desires to remain anonymous is confidential and exempt from public disclosure requirements and such anonymity shall be maintained in the auditor's report.

Section 11.45(4)(c), F.S. – Audit reports prepared by the Auditor General become public records when final. Audit workpapers and notes are not public records; however, those materials necessary to support the computations in the final audit report may be made available by majority vote of the Legislative Auditing Committee after a public hearing showing proper cause.

Section 11.51(4), F.S. -- Work papers held by the Office of Program Policy Analysis and Government Accountability (OPPAGA) which relate to an authorized project or a research product are exempt.

Section 14.28, F.S. – All records developed or received by a state entity relating to a Board of Executive Clemency investigation are confidential and exempt from disclosure; however, such records may be released upon the approval of the Governor.

Section 15.07, F.S. – The journal of the executive session of the Senate shall be kept free from inspection or disclosure except upon order of the Senate or court of competent jurisdiction.

Section 15.16(3)(c), F.S. – Email addresses and secure login credentials held by the Department of State pursuant to the subsection are exempt from disclosure requirements.

Section 16.716(1)(2), F.S. – Any information obtained by the Florida Gaming Control Commission which is exempt or confidential shall retain its exempt or confidential status. The information may be released by the commission to a governmental entity under the conditions prescribed in the exemption. Any portion of a commission meeting during which exempt or confidential information is discussed is exempt provided certain requirements are met.

Section 17.0401, F.S. – Except as otherwise provided by this section, information relative to an investigation by the Chief Financial Officer pursuant to s. 17.04 is confidential and exempt from disclosure until the investigation is complete or ceases to be active, or if the Chief Financial Officer submits such information to a law enforcement or prosecutorial agency, until that agency's investigation is complete or ceases to be active as that term is defined in the section.

Section 17.076(5), F.S. – All direct deposit records made prior to October 1, 1986, are exempt from s. 119.07(1). With respect to direct deposit records made on or after October 1, 1986, the names of the authorized financial institutions and the account numbers of the beneficiaries, as defined in the section, are confidential and exempt.

Section 17.325(3), F.S. – A caller on the governmental efficiency hotline established by the Chief Financial Officer under this section may remain anonymous, and, if the caller provides his or her name, the name is confidential.

Section 20.055(6)(b), F.S. – Inspector general audit workpapers and reports are public records to the extent that they do not include information which has been made confidential and exempt from s. 119.07(1). However, when the inspector general or a member of the staff receives from an individual a complaint or information that falls within the definition provided in s. 112.3187(5), the name or identity of the individual shall not be disclosed to anyone else without the individual's written consent, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation.

Section 24.1051(1), F.S. – Specified information, including records relating to security, lottery games and tickets, background checks, and nonpublic financial information about an

entity that is provided in connection with financial responsibility review by the Department of the Lottery, is confidential and exempt.

Section 24.1051(2), F.S. – The street address and telephone number of a winner are confidential and exempt from disclosure, unless the winner consents to the release of such information, or as provided in cited statutes.

Section 24.1051(3), F.S. – The name of a winner of a prize valued at \$250,000 or more is confidential and exempt from disclosure for 90 days from the date the prize is claimed unless the winner consents to the release of his or her name or as provided for in cited statutes.

Section 24.108(7)(b), F.S. – The portion of the Lottery Department's security report that contains specific recommendations is confidential and exempt from disclosure and may be released only as authorized in the subsection.

Section 27.151, F.S. – An executive order assigning or exchanging state attorneys pursuant to s. 27.14 or s. 27.15, if designated by the Governor to be confidential, is confidential and exempt from disclosure. The Governor may make public any such executive order by a subsequent executive order and at the expiration of a confidential executive order or any extensions thereof, the executive order and all associated orders and reports shall be open to the public pursuant to Ch. 119 unless the information contained in the executive order is confidential pursuant to cited laws.

Section 28.222(3)(g), F.S. – Certified copies of death certificates authorized for issuance by the Department of Health which exclude information made confidential under s. 382.008 and certified death certificates issued by another state shall be recorded by the clerk of circuit court.

Section 28.2221(5), F.S. – A county recorder may not place on a publicly available Internet website for general public display information made exempt from inspection or copying under s. 119.071 or a military discharge; death certificate; or court records relating to matters or cases governed by Florida rules relating to family law, juvenile procedure, or probate.

Section 39.00145(4), F.S. – Notwithstanding any other provision of law, all state and local agencies and programs that provide services to children or that are responsible for a child's safety, including the listed agencies, and any provider contracting with such agencies, may share with each other confidential records or information if the records or information are reasonably necessary to ensure access to appropriate services for the child. However, records or information made confidential by federal law may not be shared. Also, this subsection does not apply to information concerning clients and records of certified domestic violence centers which are confidential under s. 39.908 and privileged under s. 90.5036.

Section 39.0132(3), F.S. – The clerk shall keep official records required by this chapter separate from other court records. The records may be inspected only upon court order by persons deemed to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents of the child and their attorneys, guardian ad litem, criminal conflict and civil regional counsels, law enforcement agencies, the Department of Children and Families and its designees shall have a right to inspect and copy records pertaining to the child.

Section 39.0132(4)(a)1., F.S. -- All information obtained pursuant to this part in the discharge of official duty by any of the officials specified in the subsection is confidential and may not be disclosed to anyone other than persons entitled to receive such information under Ch. 39 or upon court order.

Section 39.0132(4)(a)2., F.S. – The following information held by a guardian ad litem is confidential and exempt: medical, mental health, substance abuse, child care, education, law

enforcement, court, social services, and financial records; and any other information maintained by a guardian ad litem which is identified as confidential information under Ch. 39, F.S. Such confidential and exempt information may not be disclosed to anyone except as authorized in the exemption.

Section 39.101(3)(b), F.S. – The Department of Children and Families shall maintain the confidentiality of the telephone number, or Internet protocol (IP) address from which the report was received by the central abuse hotline which is included in the abuse report pursuant to this subsection in the same manner as given to the identity of the reporter pursuant to s. 39.202.

Section 39.202(1), F.S. – All records held by the Department of Children and Families concerning reports of child abandonment, abuse or neglect including reports made to the central abuse hotline and all records generated as a result of such reports are confidential and exempt from s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in possession of those entities granted access pursuant to this section.

Section 39.202(2)(o), F.S. – Access to records concerning reports of child abuse, abandonment, or neglect shall be granted to any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect shall not be released, nor shall any information otherwise made confidential or exempt by law.

Section 39.202(5), F.S. – The name of, or other identifying information with respect to, any person reporting child abuse, abandonment, or neglect shall not be released to any person except as authorized in the subsection, without the written consent of the reporter.

Section 39.202(6), F.S. – All records and reports of the Child Protection Team of the Department of Health are confidential and exempt from ss. 119.07(1) and 456.057, and shall not be disclosed, except as provided in the subsection.

Section 39.301(18), F.S. – When the initial interview with the child in a child protective investigation or criminal investigation is conducted at school in the presence of school staff, information received during the interview or from any other source regarding the alleged abuse or neglect of the child shall be confidential and exempt, except as otherwise provided by court order.

Section 39.507(2), F.S. – Dependency adjudicatory hearings are open to the public, unless by special order the court determines that the public interest or welfare of the child is best served by closing the hearing.

Section 39.510(4) and (5), F.S. – The case on appeal in a dependency proceeding and any papers filed in appellate court shall be entitled with child's initials. The papers shall remain sealed and shall not be open to public inspection. The original order of the appellate court with papers filed in an appeal shall be sealed and not open to inspection except by order of the appellate court.

Section 39.702(5)(d), F.S. – An independent not-for-profit agency authorized to administer a citizen review panel established to make recommendations concerning foster care as provided in this section shall ensure that all panel members have read, understood, and signed an oath of confidentiality relating to written or verbal information provided to members for review hearings.

Section 39.809(4), F.S. – All hearings involving termination of parental rights are confidential and closed to the public.

Section 39.814(3) and (4), F.S. – All court records required by this part (termination of parental rights) shall be kept separate from other records. Such records are not open to public

inspection. All information obtained pursuant to this part by officials specified therein shall be confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized officials and agencies, except by court order.

Section 39.815(4) and (5), F.S. – An appeal in a case involving a termination of parental rights must be docketed, and any papers filed in the appellate court must be titled with the initials, but not the name, of the child and the court case number, and the papers must remain sealed in the office of the appellate court clerk when not in use by the court and may not be open to public inspection. The original order of the appellate court, with all papers filed in the case on appeal, must remain in the clerk's office, sealed and not open to inspection except by court order.

Section 39.821(1), F.S. – Information collected pursuant to the security background investigation for a guardian ad litem is confidential and exempt from s. 119.07(1).

Section 39.827(4), F.S. – The hearing for appointment of a guardian advocate is confidential. The court records are confidential and exempt from s. 119.07(1) and may be inspected only upon court order or by the persons and entities identified in the subsection. All information obtained pursuant to this part is confidential and exempt from s. 119.07(1) and shall not be disclosed to anyone other than authorized personnel of the court or the Department of Children and Families and its designees, except upon court order.

Section 39.908, F.S. – Information about clients received by the Department of Children and Families or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection or otherwise is confidential and exempt from s. 119.07(1). Except as provided in the section, information about the location of domestic violence centers and facilities is confidential and exempt from s. 119.07(1).

Section 40.50(2), F.S. – The court should emphasize the confidentiality of notes taken by jurors as provided in this subsection.

Section 44.102(3), F.S. – All written communications in a court-ordered mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of Ch. 119.

Section 44.201(5), F.S. – Any information relating to a dispute which is obtained by any person while performing any duties for a Citizen Dispute Settlement Center is exempt from s. 119.07(1).

Section 44.405(1), F.S. – Except as provided in the section, mediation communications, as defined in the Mediation Confidentiality and Privilege Act, are confidential.

Section 44.407(9), F.S. – Except as provided in the exemption, eldercaring coordination communications, as defined in the exemption, are confidential.

Section 61.1827, F.S. – Any information that reveals the identity of applicants for or recipients of child-support services, including the name, address, and telephone number of such persons, held by a non-Title IV-D county child-support enforcement agency is confidential and exempt from public disclosure requirements.

Section 61.183(3), F.S. – Information concerning mediation proceedings involving contested issues relating to custody parental responsibility, primary residence, access to, visitation with, or support of a child pursuant to this section which is obtained by any person performing mediation duties is exempt from s. 119.07(1).

Section 61.404, F.S. – A guardian ad litem shall maintain as confidential all information and documents received from any source described in s. 61.403(2) and may not disclose such

information or documents except, in the guardian ad litem's discretion, in a report to the court or as directed by the court.

Section 63.022(4)(i), F.S. – The records of all proceedings concerning custody and adoption of a minor are confidential and exempt except as provided in s. 63.162.

Section 63.0541, F.S. – All information contained in the Florida Putative Father Registry is confidential and exempt except as provided in the section.

Section 63.089(8), F.S. – Except as provided in the exemption, all records relating to a petition to terminate parental rights pending adoption are subject to the provisions of s. 63.162, F.S.

Section 63.102(1), F.S. – Except for a joint petition for the adoption of a stepchild, a relative, or an adult, any name by which the minor was previously known may not be disclosed in the petition for adoption, the notice of hearing, or the judgment of adoption, or the court docket as provided in s. 63.162(3).

Section 63.162(1), F.S. – Hearings held in proceedings under the Florida Adoption Act are closed.

Section 63.162(2), F.S. – All papers and records pertaining to an adoption are confidential and subject to inspection only upon court order except as provided in s. 63.162(4), authorizing disclosure without a court order in certain circumstances. Adoption papers and records of the Department of Children and Families, a court, or any other governmental agency are exempt from s. 119.07(1).

Section 63.162(6), F.S. – Except as provided in s. 63.162(4), identifying information regarding birth parents, adoptive parents, and adoptees may not be disclosed unless a birth parent, adoptive parent, or adoptee has authorized in writing the release of such information concerning himself or herself.

Section 63.165(1), F.S. – Except as provided in this section, information in the state registry of adoption information is confidential and exempt.

Section 68.083(8), F.S. – The complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of the False Claims Act is confidential and exempt and may not be disclosed until the investigation is complete, or as otherwise provided in the exemption.

Section 69.081(8), F.S. – Any portion of an agreement which conceals information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy and may not be enforced.

Section 73.0155, F.S. – Except as provided in the exemption, specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages is confidential and exempt from disclosure requirements, if the owner requests in writing that the business information be held confidential and exempt.

Section 90.502(5), F.S. – Communications made by a person who seeks or receives services from the Department of Revenue under the child support enforcement program to the attorney representing the department shall be confidential and privileged and shall not be disclosed to anyone other than the agency except as provided in this section.

Section 92.56, F.S. – The confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s.

119.071(2)(h) must be maintained in court records pursuant to s. 119.0714(1)(h) and in court proceedings, including testimony from witnesses.

Section 97.057(2)(a)4. and 5., F.S. – All declinations to register to vote pursuant to this section (relating to voter registration by the Department of Highway Safety and Motor Vehicles) will remain confidential and may be used only for voter registration purposes. The particular driver license office in which the person applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.

Section 97.0585, F.S. – The following information held by an agency and obtained for the purpose of voter registration is confidential and exempt and may be used only for purposes of voter registration: declinations to register to vote made pursuant to ss. 97.057 and 97.058; information relating to the place where a person registered to vote or where a person updated a voter registration; the social security number, driver license number, and Florida identification number of a voter registration applicant or voter; and all information concerning preregistered voter registration applicants who are 16 or 17 years of age. The signature of a voter registration applicant or a voter is exempt from the copying requirements.

Section 98.045(3), F.S. – Each supervisor shall maintain for at least 2 years and make available for public inspection and copying, all records concerning implementation of registration list maintenance programs and activities conducted pursuant to cited statutes. The records must include lists of the name and address of each person to whom a notice was sent and information as to whether each such person responded to the mailing, but may not include any information that is confidential or exempt from public records requirements under the Election Code.

Section 98.075(2)(c), F.S. – Information received by the Department of State from another state or the District of Columbia upon the department becoming a member of the nongovernmental entity provided in this subsection to share and exchange information in order to verify voter registration information, which is confidential or exempt pursuant to the laws of that state or the District of Columbia, is exempt from disclosure requirements.

Section 101.5607(1)(d), F.S. – Section 119.071(1)(f) which provides an exemption from s. 119.07(1) for data processing software designated as sensitive, applies to all software on file with the Department of State.

Section 101.62(2), F.S. – Information regarding a request for a vote-by-mail ballot that is recorded by the supervisor of elections pursuant to this subsection is confidential and exempt from s. 119.07(1) and shall be made available to or reproduced only for the individuals and entities set forth in the exemption, for political purposes only.

Section 106.0706, F.S. – All user identifications and passwords held by the Department of State pursuant to s. 106.0705 are confidential and exempt from disclosure. Information entered in the electronic filing system for purposes of generating a report pursuant to s. 106.0705 is exempt but is no longer exempt once the report is generated and filed with the Division of Elections.

Section 106.25(7), F.S. – Except as otherwise provided in the subsection, sworn complaints filed pursuant to Ch. 106 with the Florida Elections Commission, investigative reports or other papers of the commission relating to a violation of Chs. 106 or 104, and proceedings of the commission relating to a violation of said chapters are confidential and exempt from s. 119.07(1) and s. 286.011.

Section 110.1091(2), F.S. – A state employee's personal identifying information contained in records held by the employing agency relating to an employee's participation in an employee assistance program is confidential and exempt.

Section 110.1127(2)(d) and (e), F.S. – It is a first degree misdemeanor to willfully use information contained in records obtained pursuant to employment screening required for

certain positions for purposes other than background screening or investigation for employment, or to release such information to other persons for purposes other than preemployment screening or investigation. It is a felony of the third degree for any person willfully, knowingly, or intentionally to use juvenile records information for any purpose other than those specified in this section or to release such information to other persons for purposes other than those specified in the section.

Section 110.123(5)(a), F.S. – A physician's fee schedule used in the health and accident plan is not available for inspection or copying by medical providers or other persons not involved in the administration of the state group insurance program.

Section 110.123(10), F.S. – Patient medical records and medical claims records of state employees, former state employees, and their eligible covered dependents, in the custody or control of the state group insurance program are confidential and exempt.

Section 110.12301(3), F.S. – Records collected for the purpose of dependent eligibility verification services conducted for the state group insurance program and held by the Department of Management Services are confidential and exempt. This subsection does not apply to records that are otherwise open for inspection and copying which are held by the Department for purposes other than for the performance of dependent eligibility verification services.

Section 110.201(4), F.S. – All discussions between the Department of Management Services and the Governor, and between the Department of Management Services and the Administration Commission, or agency heads, or between any of their respective representatives, relative to collective bargaining, are exempt from s. 286.011 and all work products relative to collective bargaining developed in conjunction with such discussions are confidential and exempt.

Section 112.0455(8)(l), F.S. – All documentation relative to a state agency employer's explanation as to why a job applicant or employee's explanation of positive drug test results is unsatisfactory, along with the report of the positive test results, are confidential and exempt.

Section 112.0455(8)(t), F.S. – The documentation prepared by a state agency employer which formed the basis of the employer's determination that reasonable suspicion existed to warrant drug testing under this section is confidential and exempt, except that a copy of this documentation shall be given to the employee upon request.

Section 112.0455(11)(a), F.S. – Except as provided in the subsection, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a state agency's drug testing program are confidential and are exempt from disclosure except as provided in this section.

Section 112.08(7), F.S. -- Medical records and medical claims records in the custody of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan are confidential and are exempt from s. 119.07(1). Such records shall not be furnished to any person other than the employee or the employee's legal representative, except as provided in the subsection.

Section 112.08(8), F.S. – Patient medical records and medical claims records of water management district employees, former employees, and eligible dependents in the custody or control of a water management district under its group insurance plan established pursuant to s. 373.605 are confidential and exempt. Such records shall not be furnished to any person other than the employee or the employee's legal representative except as provided in the subsection.

Section 112.21(1), F.S. – All records identifying individual participants in any contract or account under s. 112.21 (relating to tax-sheltered annuities or custodial accounts for

governmental employees) and their personal account activities are confidential and exempt.

Section 112.215(7), F.S. – All records identifying individual participants in any deferred compensation plan and their personal account activities shall be confidential and exempt from s. 119.07(1).

Section 112.31446(6)(a), F.S. – All secure login credentials held by the Commission on Ethics for the purpose of allowing access to the electronic filing system are exempt from disclosure requirements.

Section 112.31446(6)(b), F.S., – Information entered in the electronic filing system for purposes of financial disclosure is exempt from disclosure requirements. The information is no longer exempt once the disclosure of financial interests or statement of financial interests is submitted to the Commission on Ethics or, in the case of a candidate, filed with a qualifying officer, whichever occurs first.

Section 112.3188(1), F.S. – The identity of an individual who discloses in good faith to the Chief Inspector General, an agency inspector general, a local chief executive officer, or other appropriate local official information that alleges that an employee or agent of an agency or independent contractor has violated certain laws or committed, or is suspected of committing, specified acts may not be disclosed to anyone other than staff of the above officials without the written consent of the individual, unless such official determines that disclosure is authorized for the reasons specified in the subsection.

Section 112.3188(2), F.S. – Except as specifically authorized by s. 112.3189, or this subsection, all information received by the Chief Inspector General or an agency inspector general or information produced or derived from fact-finding or other investigations conducted by the Department of Law Enforcement or the Florida Commission on Human Relations, is confidential and exempt from disclosure if the information is being received or derived from allegations as set forth in subsection (1) and an investigation is active. All information received by a local chief executive officer or appropriate local official or information produced or derived from fact-finding or investigations conducted by a local government pursuant to s. 112.3187(8)(b), is confidential and exempt if the information is received or derived from allegations as set forth in s. 112.3188(1)(a) or (b) and the investigation is active.

Section 112.31901, F.S. – If certified pursuant to the exemption, an investigatory record of the Chief Inspector General within the Office of the Governor or of the employee designated by an agency head as the agency inspector general under s. 112.3189 is exempt from disclosure requirements for the time period specified in the exemption. The provisions of this section do not apply to whistle-blower investigations conducted pursuant to the whistle-blower act.

Section 112.3215(8)(b), F.S. – All proceedings, the complaint, and other records relating to the investigation of a sworn complaint of a violation of this section which relates to executive branch and Constitution Revision Commission lobbyists, and any meeting held pursuant to the investigation, are confidential and exempt from disclosure until the alleged violator requests in writing that such investigation and associated records and meetings be made public, or until the Ethics Commission determines whether probable cause exists to believe that a violation has occurred.

Section 112.3215(8)(c), F.S. – Records relating to an audit of a lobbying firm lobbying the executive branch or the Constitution Revision Commission or an investigation of violations of the lobbying compensation reporting laws and any meetings held pursuant to the investigation or at which such an audit is discussed are exempt from public records and meetings requirements either until the lobbying firm requests in writing that such records and meetings be made public or until the Commission on Ethics determines there is probable cause that the audit reflects a violation of the reporting laws.

Section 112.324(2), F.S. – The complaint and records relating to the complaint or to any preliminary investigation held by the Ethics Commission or other specified entities are confidential and exempt from public disclosure. Written referrals and records relating to such referrals held by the Commission and referring entities, and records relating to any preliminary investigation of such referrals held by the Commission are confidential and exempt. Any portion of a proceeding conducted by the Commission or other specified entities pursuant to a complaint or referral are exempt from open meetings requirements. The above exemptions apply until: the complaint is dismissed as legally insufficient; the alleged violator requests in writing that such records and proceedings be made public; the Commission determines that it will not investigate a referral; or the Commission or other listed entity determines whether probable cause exists to believe that a violation has occurred.

Section 112.532(4)(b), F.S. – The contents of the complaint and investigation shall remain confidential until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal.

Section 112.533(2)(a), F.S. – Except as otherwise provided in this subsection, a complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation of the complaint is confidential until the investigation ceases to be active, or until the agency head or agency head's designee provides written notice to the officer who is the subject of the complaint, that the agency has either concluded the investigation with a finding not to proceed with disciplinary action or to file charges; or concluded the investigation with a finding to proceed with disciplinary action or to file charges.

Section 119.071(1)(a), F.S. – Examination questions and answer sheets of examinations administered for the purpose of licensure, certification, or employment are exempt. A person who has taken the examination has the right to review his or her own completed examination.

Section 119.071(1)(b), F.S. – Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation, as defined in the exemption, are exempt until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

Section 119.071(1)(c), F.S. – Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt.

Section 119.071(1)(d), F.S. – A public record prepared by an agency attorney or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent litigation or proceedings, is exempt until the conclusion of the litigation or proceedings.

Section 119.071(1)(e), F.S. – Any videotape or video signal that, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt.

Section 119.071(1)(f), F.S. – Agency-produced software that is sensitive is exempt.

Section 119.071(1)(g), F.S. – United States Census Bureau address information which is held by an agency pursuant to the Local Update of Census Addresses Program authorized under cited federal law, is confidential and exempt. Disclosure is authorized under the circumstances listed in the exemption.

Section 119.071(1)(h), F.S. – Information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under s. 288.9962, or pursuant to a federal broadband access grant program implemented by the department, is confidential and exempt, if such information is not otherwise publicly available and release would reveal information specified in the exemption.

Section 119.071(2)(a), F.S. – All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt.

Section 119.071(2)(b), F.S. – Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

Section 119.071(2)(c), F.S. – Active criminal intelligence information and active criminal investigative information are exempt. A request by made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt, during the period in which the information constitutes active criminal intelligence information or active criminal investigative information.

Section 119.071(2)(d), F.S. – Any information revealing surveillance techniques or procedures or personnel is exempt. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to cited statute, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency, as defined in cited statute, are exempt, and unavailable for inspection except by cited agencies.

Section 119.071(2)(e), F.S. – Any information revealing the substance of a confession of a person arrested is exempt, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

Section 119.071(2)(f), F.S. – Any information revealing the identity of a confidential informant or source is exempt.

Section 119.071(2)(g)1., F.S. – All complaints or other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with specified employment related activities are exempt until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or proceeding. The exemption does not affect any function or activity of the Florida Commission on Human Relations. Disclosure is authorized to governmental agencies as provided in the exemption.

Section 119.071(2)(g)2., F.S. – If an alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential all records relating to an allegation of employment discrimination are confidential and exempt.

Section 119.071(2)(h), F.S. – The following criminal intelligence information or criminal investigative information is confidential and exempt: any information that reveals the identity of the victim of the crime of child abuse as defined by ch. 827, or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 786.06(3) (a); any information which may reveal the identity of a victim of any sexual offense including a sexual offense proscribed in cited statutes; a photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under cited statutes, regardless of whether the photograph, videotape, or image identifies the victim. Disclosure is authorized under the circumstances cited in the exemption.

Section 119.071(2)(i), F.S. – Any criminal intelligence information or criminal investigative information that reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt.

Section 119.071(2)(j)1., F.S. – Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by an agency that regularly receives information from or concerning the victims of crime, is exempt. Any information not otherwise exempt which reveals specified information of a person who has been a victim of stated crimes is exempt upon written request of the victim which must include official verification that an applicable crime has occurred. The exemption ends 5 years after the receipt of the written request.

Section 119.071(2)(j)2., F.S. – Any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in cited statutes, which reveals specified information about that minor and identifies that minor as the victim of a crime described in cited statutes is confidential and exempt.

Section 119.071(2)(k), F.S. – A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential until the investigation ceases to be active or the agency provides written notice to the employee who is the subject of the complaint in the manner provided in the exemption.

Section 119.071(2)(l), F.S. – A body camera recording, or portion thereof, is confidential and exempt if the recording is taken within the locations specified in the exemption. Disclosure is authorized or required in specified circumstances.

Section 119.071(2)(m), F.S. – Criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in cited statute, is confidential and exempt for 2 years after the date on which the murder is observed by the witness. Criminal justice agencies are authorized to disclose the information under the circumstances set forth in the exemption.

Section 119.071(2)(n), F.S. – Personal identifying information of the alleged victim in an allegation of sexual harassment or the victim of sexual harassment is confidential and exempt if such information identifies that person as an alleged victim or as a victim of sexual harassment. Such information may be disclosed to another governmental entity in the furtherance of its official duties. Confidentiality may be waived in writing by the victim or the alleged victim.

Section 119.071(2)(o), F.S. – The address of a victim of an incident of mass violence is exempt. For purposes of the exemption, the term “victim” means a person killed or injured during an incident of mass violence, not including the perpetrator. The term “incident of mass violence” means an incident in which 4 or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another.

Section 119.071(2)(p), F.S. – Except as provided in the exemption, photographs, videos, or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties, the killing of a victim of mass violence or the killing of a minor, as these terms are defined in the exemption are confidential and exempt from disclosure.

Section 119.071(2)(q), F.S. – Conviction integrity unit reinvestigation information, as defined in the exemption, is exempt from disclosure for a reasonable period of time during an active, ongoing, and good faith investigation of an actual innocence claim in a case that previously resulted in the conviction of the accused person and until the claim is no longer capable of further investigation.

Section 119.071(2)(r), F.S. – Investigative genetic genealogy information and materials as defined in the exemption are confidential and exempt from disclosure requirements. Certain disclosures are authorized.

Section 119.071(3)(a), F.S. – A security or firesafety system plan, as defined in the exemption, or a portion thereof for a property owned by or leased to the state or any of its political subdivisions; or for any privately owned or leased property held by an agency is confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(3)(b), F.S. – Building plans, blueprints, schematic drawings and diagrams which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(3)(c), F.S. – Building plans, blueprints, schematic drawings, and diagrams which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development, as these terms are defined in the exemption, which records are held by an agency, are exempt.

Section 119.071(3)(d), F.S. – Information relating to the National Public Safety Broadband Network established in cited federal law which is held by an agency is confidential and exempt if disclosure would reveal information cited in the exemption

Section 119.071(3)(e), F.S. – Building plans and other specified records that depict the structural elements of 911, E911, or public safety radio communication system infrastructure, structures, or facilities owned and operated by an agency, and geographical maps showing the actual or proposed locations of such communication system infrastructure, structures, or facilities are exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(4)(a), F.S. – The social security number of all current and former agency employees which are held by the employing agency are confidential and exempt. Disclosure is authorized under the circumstances set forth in the section.

Section 119.071(4)(b)1., F.S. – Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt. However, the information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

Section 119.071(4)(b)2., F.S. – Personal identifying information of a dependent child, as defined in cited statute, of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt.

Section 119.071(4)(c), F.S. – Any information revealing undercover personnel of any criminal justice agency is exempt.

Section 119.071(4)(d), F.S. – Home addresses, telephone numbers, and other specified personal information of specified current and former public employees and officers and their families are exempt. For more information, please refer to the text of the Florida Statutes at www.leg.state.fl.us or you may review pages 144-154 of this Manual.

Section 119.071(4)(e), F.S. – Law enforcement geolocation information, as defined in the exemption, that is held by a law enforcement agency is exempt. The exemption does not apply to traffic citations, crash reports, homicide reports, arrest reports, or any other official reports issued by an agency which contain law enforcement geolocation information. Disclosure is authorized under specified circumstances.

Section 119.071(5)(a), F.S. – Social security numbers held by an agency are confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(5)(b), F.S. – Bank account numbers and debit, charge, and credit card numbers held by an agency are exempt.

Section 119.071(5)(c), F.S. – Information that would identify or locate a child, as that term is defined in the exemption, who participates in a government-sponsored recreation program, as that term is defined in the exemption, is exempt. Information that would identify or locate a parent or guardian of the child participant is exempt.

Section 119.071(5)(d), F.S. – All records supplied by a telecommunications company, as defined by cited statute, to an agency which contain the name, address, and telephone number of subscribers are confidential and exempt.

Section 119.071(5)(e), F.S. – Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, as defined in cited statute, is exempt.

Section 119.071(5)(f)1.a., F.S. – Medical history records and information related to health or property insurance provided to the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency by an applicant for or a participant in a federal, state, or local housing assistance program are confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(5)(f)1.b., F.S. – Property photographs and personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program for the purpose of disaster recovery assistance for a presidentially declared disaster that is held by the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency are confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(5)(g), F.S. – Biometric identification information, as defined in the exemption, held by an agency before, on, or after the effective date of this exemption is exempt.

Section 119.071(5)(h), F.S. – Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt. Disclosure is authorized under the circumstances set forth in the exemption.

Section 119.071(5)(i), F.S. – Identification location information, as defined in the exemption, of current or former federal prosecutors, judges, and magistrates and their spouses and children is exempt, provided that certain conditions are met.

Section 119.071(5)(j), F.S. – Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency is exempt.

Section 119.0711, F.S. – When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of eminent domain, all appraisals, other reports relating to value, offers, and counter offers are exempt until execution of a valid option contract, as defined in the exemption, or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption shall expire. An agency of the executive branch may exempt title information, including names and addresses of property owners whose property is subject to acquisition by purchase or through the exercise of the power of eminent domain, from disclosure requirements to the same extent as appraisals, other reports relating to value, offers, and counteroffers.

Section 119.0712(1), F.S. – All personal identifying information contained in records relating to an individual's personal health or eligibility for health-related services held by the Department of Health is confidential and exempt from disclosure requirements. Information made confidential and exempt by this subsection shall be disclosed with the express written consent of the individual or the individual's legal authorized representative; in a medical emergency, but only to the extent necessary to protect the health or life of the individual; by court order upon good cause; or to a health research agency under the conditions set forth in the subsection.

Section 119.0712(2)(b), F.S. – Personal information, including highly restricted personal information as defined in cited federal law, contained in a motor vehicle record, as defined in the exemption, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss 2721 et. seq. Such information may be released only as authorized by that act; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

Section 119.0712(2)(c), F.S. – E-mail addresses collected by the Department of Highway Safety and Motor Vehicles pursuant to cited statutes are exempt from disclosure requirements.

Section 119.0712(2)(d), F.S. – Emergency contact information contained in a motor vehicle record, is confidential and exempt. Without the express consent of the person to whom such emergency contact information applies, the emergency contact information contained in motor vehicle record may be released only to law enforcement agencies for purposes of contacting those listed in an emergency, or to a receiving facility, hospital, or licensed detoxification or admissions receiving facility pursuant to cited statutes for the sole purpose of informing a patient's emergency contacts of the patient's whereabouts.

Section 119.0712(2)(f)1, F.S. – Secure login credentials, as defined in the exemption, that are held by the Department of Highway Safety and Motor Vehicles are exempt.

Section 119.0712(2)(f)2, F.S. – Internet protocol addresses, geolocation data, and other information held by the Department of Highway Safety and Motor Vehicles which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, as defined in the exemption, and the dates and times that a user accesses the portal, are exempt.

Section 119.0712(3), F.S. – The following information held by the Office of Financial Regulation is confidential: Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law; any information received or developed by the Office as part of a joint or multiagency examination or investigation with such agencies.

Section 119.0712(4), F.S. – Information held by the Department of Military Affairs that is stored in a United States Department of Defense system of records, transmitted using a United States Department of Defense network or communications device, or pertaining to the United States Department of Defense, pursuant to cited federal law, is exempt.

Section 119.0713(1), F.S. – All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing are exempt until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision does not affect any function or activity of the Florida Commission on Human Relations. Access by specified agencies is authorized.

Section 119.0713(2) – The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government, as defined in the exemption, becomes a public record when the audit report or investigative report becomes final. An audit or investigation becomes final when it is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

Section 119.0713(3), F.S. – Any data, record, or document used directly or solely by a municipally owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer is exempt. The exemption commences when a municipal utility identifies in writing a specific bid to which it intends to respond, and no longer applies when the conditions occur as set forth in the exemption.

Section 119.0713(4), F.S. – Proprietary confidential information, as defined in the exemption, which is held by an electric utility that is subject to Ch. 119 in conjunction with a due diligence review of an electric project, as defined in cited statute, or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt.

Section 119.0713(5)(a), F.S. – The following information held by a utility owned or operated by a unit of local government is exempt from public disclosure requirements: Specified security technology information and customer meter-derived data and billing information in increments less than one billing cycle.

Section 119.0715, F.S. – A trade secret, as defined in s. 688.002, that is held by an agency is confidential and exempt. Disclosure is authorized to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her responsibilities.

Section 119.0725(2)(3)(5), F.S. – The following information held by an agency is confidential and exempt: Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of an agency; information relating to critical infrastructure; cybersecurity incident information reported pursuant to cited statutes; specified information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information as specified in the exemption. Any portion of a meeting revealing information made confidential under subsection (2) is exempt from open meetings requirements. The exempt portion may not be off the record and must be recorded and transcribed; the recording and transcription are confidential and exempt. Disclosure of confidential information is authorized as provided in the exemption.

Section 121.031(5), F.S. – The names and addresses of retirees are confidential and exempt from s. 119.07(1) to the extent that no state or local governmental agency may provide the names or addresses of such persons in aggregate, compiled, or list form to any person except as authorized in the subsection.

Section 121.4501(19), F.S. – Personal identifying information of a member in the investment plan contained in Florida Retirement System records held by the State Board of Administration or the Department of Management Services is exempt from public disclosure requirements.

Section 125.0104(3)(h), F.S. – Department of Revenue records showing the amount of tourist development taxes collected, including the amount of taxes collected for and from each county in which the tourist development tax is applicable, are open for inspection except as provided in s. 213.053.

Section 125.0104(9)(d)1., F.S. – Information given to a county tourism promotion agency which, if released, would reveal the identity of persons or entities who provide information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from disclosure.

Section 125.0104(9)(d)2., F.S. – When held by a county tourism promotion agency, the following are exempt from disclosure: booking business records, as defined in s. 255.047; trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under 5 U.S.C. s. 552(b)(4).

Section 125.012(26), F.S. – Pursuant to authorization granted by this section concerning certain transportation-related projects defined in s. 125.011, a board of county commissioners is empowered to maintain the confidentiality of trade information and data to the extent that such information is protected under applicable federal and federally-enforced patent and copyright laws.

Section 125.025, F.S. – Pursuant to authorization granted by this section concerning operation of export trading companies, a board of county commissioners is empowered to maintain the confidentiality of trade information to the extent such information is protected under applicable federal export trading company law, and under federal and federally enforced patent and copyright laws.

Section 125.355(1), F.S. – Appraisals, offers, and counteroffers relating to a county's purchase of real property pursuant to this section are not available for public disclosure and are exempt from s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the board of county commissioners. If a contract or agreement for purchase is not submitted to the board for approval, then the exemption from s. 119.07(1) expires 30 days after the negotiations end. A county that does not utilize the exemptions provided in this section may follow any procedure not in conflict with Ch. 119 for the purchase of real property which is authorized in its charter or established by ordinance.

Section 125.585(2), F.S. – A county employee's personal identifying information contained in records held by the employing county relating to that employee's participation in an employee assistance program is confidential and exempt.

Section 125.901(11), F.S. – Personal identifying information of a child or the parent or guardian of the child, held by a council on children's services, juvenile welfare board, or other similar entity created under this section or by special law, or held by a service provider or researcher under contract with such entity, is exempt from disclosure requirements.

Section 163.01(15)(m), F.S. – Material received by a public agency in connection with its joint ownership or right to the services, output, capacity, or energy of an electric project under the Florida Interlocal Cooperation Act, which is designated by the person supplying such material as proprietary confidential business information, as defined in the paragraph, or which a court

of competent jurisdiction has designated as confidential or secret, shall be kept confidential and exempt from s. 119.07(1).

Section 163.64, F.S. – An agency that participates in the creation or administration of a collaborative client information system may share client information, including confidential client information, with other members of the collaborative system as long as the restrictions governing the confidential information are observed by any other agency granted access to the confidential information.

Section 166.0444, F.S. – A municipal employee's personal identifying information contained in records held by the employing municipality relating to that employee's participation in an employee assistance program is confidential and exempt.

Section 166.045(1), F.S. – Appraisals, offers, and counteroffers relating to a municipality's purchase of real property pursuant to this section are not available for public disclosure and are exempt from s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing body of the municipality. If a contract or agreement for purchase is not submitted to the governing body for approval, then the exemption from s. 119.07(1) expires 30 days after the negotiations end. A municipality that does not utilize the exemptions from Ch. 119 provided in this section may follow any procedure not in conflict with Ch. 119 for the purchase of real property which is authorized in its charter or established by ordinance.

Section 192.0105(4), F.S. – Taxpayers have the right to have information kept confidential, including those records set forth in the exemption.

Section 192.105, F.S. – Federal tax information obtained pursuant to 26 U.S.C. s. 6103 is confidential and exempt from s. 119.07(1).

Section 193.074, F.S. – All returns of property and returns required by former s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the clerk of the circuit court, the Department of Revenue, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, and their employees and persons acting under their supervision and control, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters.

Section 193.114(5), F.S. – For the purpose of furnishing copies of the tax roll under 119.07(1), the property appraiser is the custodian of the tax roll. The Department of Revenue or any state or local agency may use copies of the tax roll received by it for official purposes and shall permit inspection and examination thereof pursuant to s. 119.07(1), but is not required to furnish copies of the records. A social security number submitted under s. 196.011(1) (application for tax exemption) is confidential and exempt.

Section 195.027(3), F.S. – Financial records produced by a taxpayer under this section shall be confidential in the hands of the property appraiser, the Department of Revenue, the tax collector, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such records are exempt from s. 119.07(1).

Section 195.027(6), F.S. – The information form disclosing unusual fees, costs and terms of financing of the sale or purchase of property shall be filed with the clerk of the circuit court at the time of recording and shall be confidential and exempt in the hands of all persons after delivery to the clerk, except as provided in the subsection.

Section 195.084(1), F.S. – This section (authorizing the exchange of information among the Department of Revenue, the property appraisers, the tax collector, the Auditor General, and

the Office of Program Policy Analysis and Government Accountability) shall supersede statutes prohibiting disclosure only with respect to those entities, but the Department of Revenue may establish regulations setting reasonable conditions upon access to and custody of such information. The Auditor General, the Office of Program Policy Analysis and Government Accountability, the tax collectors and the property appraisers shall be bound by the same requirements of confidentiality as the department.

Section 195.096(2)(e), F.S. – All data and samples developed or obtained by the Department of Revenue in the conduct of assessment ratio studies are confidential and exempt until a presentation of the study findings is made to the property appraiser.

Section 196.101(4)(c), F.S. – Records of gross income produced by a taxpayer claiming exemption for totally and permanently disabled persons are exempt from s. 119.07(1) and are confidential in the hands of the property appraiser, the Department of Revenue, the tax collector, the Office of Program Policy Analysis and Government Accountability, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters.

Section 197.3225, F.S. – A taxpayer's e-mail address held by a tax collector for sending specified tax notices or for obtaining the taxpayer's consent to send notices is exempt from disclosure requirements.

Section 202.195, F.S. – Proprietary confidential business information, as defined in the exemption, which is obtained from a telecommunications company or franchised cable company for the purposes of imposing fees for occupying the public rights-of-way, assessing the local communications services tax, or regulating the public rights-of-way, held by a local government entity, is confidential and exempt from public disclosure requirements. Maps or other engineering data held by a local governmental entity that relate to the exact location and capacity of facilities for the provision of communications services shall be exempt from disclosure but only for 60 days after completion of construction of the facilities.

Section 206.27(2), F.S. – Any information concerning audits in progress or those records or files of the Department of Revenue described in this section which are currently the subject of pending investigation by the Department of Revenue or the Florida Department of Law Enforcement are exempt from s. 119.07(1) and are considered confidential; and may not be released except as authorized in the subsection.

Section 211.125(10), F.S. – All returns and information filed with the Department of Revenue under this part providing for a tax on production of oil and gas are confidential and exempt from s. 119.07(1), and such returns or information shall be protected from unauthorized disclosures as provided in s. 213.053.

Section 211.33(5), F.S. – The use of information contained in any tax return filed by a producer (i.e., a person severing solid minerals from the soils and waters of the state) or in any books, records or documents of a producer shall be as provided in s. 213.053, and shall be confidential and exempt from s. 119.07(1).

Section 212.0305(3)(d), F.S. – Records of the Department of Revenue showing the amount of taxes collected, including taxes collected from each county in which a resort tax is levied, are subject to the provisions of s. 213.053, and are confidential and exempt from s. 119.07(1).

Section 213.015(9), F.S. – Unless otherwise specified by law, Florida taxpayers have the right to have taxpayer tax information kept confidential.

Section 213.053(2)(a), F.S. – All information contained in returns, reports, accounts,

or declarations received by the Department of Revenue, including investigative reports and information and including letters of technical advice, is confidential except for official purposes and is exempt from s. 119.07(1).

Section 213.0532(8), F.S. – Any financial records obtained pursuant to this section relating to information-sharing arrangements between the Department of Revenue and financial institutions may be disclosed only for the purpose of, and to the extent necessary for, administration and enforcement of the tax laws of this state.

Section 213.0535(5), F.S. – A provision of law imposing confidentiality upon data shared under this section (providing for the Registration Information Sharing and Exchange Program within the Department of Revenue), including, but not limited to, a provision imposing penalties for disclosure, applies to recipients of this data and their employees. Data exchanged under this section may not be provided to a person or entity except as authorized in the exemption.

Section 213.21(3)(a), F.S. – The Department of Revenue shall maintain records of all compromises of a taxpayer's liability; the records of compromises shall not be subject to disclosure pursuant to s. 119.07(1) and shall be considered confidential information governed by s. 213.053.

Section 213.22(2), F.S. – The Department of Revenue may not disclose, pursuant to s. 119.07(1), a technical assistance advisement or request therefor to any person other than the person requesting the advisement or his or her representative, or for official departmental purposes without deleting identifying details of the person to whom the advisement was issued.

Section 213.27(6), F.S. – Confidential information shared by the Department of Revenue with debt collection or auditing agencies under contract with the department is exempt from s. 119.07(1) and such debt collection or auditing agencies are bound by the same requirements of confidentiality as the department.

Section 213.28(6), F.S. – Certified public accountants entering into contracts with the Department of Revenue are bound by the same confidentiality requirements and subject to the same penalties as the department under s. 213.053. Any return, return information, or documentation obtained from the Internal Revenue Service under an information-sharing agreement is confidential and exempt from disclosure and shall not be divulged or disclosed in any manner by any department officer or employee to any certified public accountant under a contract authorized by this section unless the department and the Internal Revenue Service mutually agree to such disclosure.

Section 215.4401(1), F.S. – Records and information of the State Board of Administration relating to acquiring, hypothecating, or disposing of real property or specified related interests are confidential and exempt from s. 119.07(1) in order to achieve certain stated purposes. Records relating to value, offers, counteroffers, or negotiations are confidential and exempt until closing is complete and all funds have been disbursed. Records relating to tenants, leases, and other specified matters are confidential and exempt until the executive director determines that release would not be detrimental to the board's interest or conflict with its fiduciary responsibilities.

Section 215.4401(2), F.S. – Records and other information relating to investments made by the State Board of Administration are confidential and exempt from s. 119.07(1) until 30 days after completion of an investment transaction. However, if in the executive director's opinion, it would be detrimental to the board's financial interests or cause a conflict with its fiduciary responsibilities, information concerning service provider fees may be kept confidential until 6 months after negotiations relating to such fees have been terminated.

Section 215.4401(3)(b), F.S. – "Proprietary confidential business information", as defined in the exemption, that is held by the State Board of Administration regarding alternative investments is confidential and exempt for a period of 10 years after the termination of the alternative investment unless disclosure is permitted under the circumstances set forth in the exemption.

Section 215.555(4)(f), F.S. – Information described in 215.557 which is contained in an examination report conducted on an insurer pursuant to this subsection, is confidential and exempt, as provided in s. 215.557.

Section 215.557, F.S. – The reports of insured values under certain insurance policies by zip code submitted to the State Board of Administration pursuant to s. 215.555 are confidential and exempt.

Section 220.242, F.S. – Estimated tax returns filed under the Florida Income Tax Code are confidential and exempt from s. 119.07(1).

Section 252.355(4), F.S. – Records relating to the registration of persons with special needs for emergency management purposes pursuant to this section are confidential and exempt from s. 119.07(1), except such information is available to other emergency response agencies, as determined by the local emergency management director. Local law enforcement agencies shall be given complete shelter roster information upon request.

Section 252.385(5), F.S. – The address and telephone number of a person provided public emergency shelter during a storm or catastrophic event and held by the agency, as defined in s. 119.011, that provided the emergency shelter are exempt from disclosure.

Section 252.88(1), F.S. – Trade secret information which applicable federal law authorizes an employer to exclude from materials submitted shall be furnished to the State Hazardous Materials Emergency Response Commission upon request. However, such information shall be confidential and exempt from s. 119.07(1) and shall not be disclosed by the Commission except as authorized in the subsection.

Section 252.88(2) and (3), F.S. – When applicable law authorizes the withholding of disclosure of the location of specific hazardous chemicals, such information is confidential and exempt from s. 119.07(1). All information, including, but not limited to, site plans and specific location information on hazardous chemicals furnished to a fire department pursuant to applicable law, shall be confidential and exempt while in the possession of the fire department.

Section 252.905, F.S. – Any information furnished by a person or a business to the Division of Emergency Management for the purpose of being provided assistance with emergency planning is exempt.

Section 252.943, F.S. – In accordance with the federal Clean Air Act, trade secret information provided to the Division of Emergency Management by the owner or operator of a stationary source subject to the Accidental Release Prevention Program is confidential and exempt from disclosure, except as provided in the exemption.

Section 253.025(8)(f), F.S. – Except as provided in the exemption, appraisal reports prepared for the Board of Trustees of the Internal Improvement Trust Fund or an agency are confidential and exempt until an option contract is executed or, if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees.

Section 253.025(9)(d), F.S. – All offers or counteroffers shall be documented in writing and shall be confidential and exempt from s. 119.07(1) until an option contract is executed, or if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the Board of Trustees of the Internal Improvement Trust Fund.

Section 253.0341(8)(a), F.S. – A written valuation of land determined to be surplus and related documents are confidential and exempt. The exemption expires 2 weeks before the contract or agreement regarding the disposition of the surplus land is first considered for approval by the

Board of Trustees of the Internal Improvement Trust Fund. Prior to expiration of the exemption, disclosure of certain information is authorized under the circumstances described in the exemption.

Section 255.047(2), F.S. – The booking business records (as defined in the section) of a publicly owned or operated convention center, sports stadium, coliseum, or auditorium are exempt from disclosure. However, such facility shall furnish its booking business records and related information to the Department of Revenue upon the department's request if necessary for the department to administer its duties.

Section 257.261, F.S. – Registration and circulation records of public libraries, except statistical reports of registration and circulation are confidential and exempt from s. 119.07(1). Except as authorized by court order, a person may not make known in any manner any information contained in such records, except as provided in this section. Violation of this section is a second degree misdemeanor.

Section 257.38(2) and (3), F.S. – Public records transferred to the Division of Library and Information Services of the Department of State are subject to s. 119.07(1), except that any record provided by law to be confidential shall not be made accessible until 50 years after creation of the record. Any nonpublic manuscript or other archival material which is placed in the keeping of the division under special terms and conditions, shall be made accessible only in accordance with such terms and conditions and shall be exempt from s. 119.07(1) to the extent necessary to meet the terms and conditions for a nonpublic manuscript or other archival material.

Section 257.38(4), F.S. – Any nonpublic manuscript or other archival material that is donated to and held by an official archive of a municipality or county contingent upon special terms and conditions that limit the right to inspect or copy such material is confidential and exempt from disclosure requirements except as otherwise authorized in the special conditions. Such nonpublic manuscript or archival material shall be made available for inspection and copying 50 years after the date of the creation of the nonpublic manuscript or material, at an earlier date specified in the special terms and conditions, or upon a showing of good cause before a court of competent jurisdiction.

Section 265.605(2), F.S. – Information which, if released, would identify donors and amounts contributed by donors to the Cultural Endowment Program Trust Fund, or to the local organization's matching fund, is, at the request of the donor, confidential and exempt from s. 119.07(1). Information which, if released, would identify prospective donors is confidential and exempt unless the name has been obtained from another organization or source.

Section 265.7015, F.S. – If a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center, as defined in the exemption, desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt.

Section 267.076, F.S. – Information identifying a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark who desires to remain anonymous is confidential and exempt.

Section 267.135, F.S. – Information identifying the location of an archaeological site held by the Division of Historical Resources of the Department of State is exempt from public disclosure if the division finds that disclosure will create a substantial risk of harm, theft, or destruction at such site.

Section 267.17(3), F.S. – The identity of donors who desire to remain anonymous shall be confidential and exempt from s. 119.07(1), and that anonymity shall be maintained in the auditor's report of a citizen support organization to the Division of Historical Resources of the Department of State.

Section 267.1732(8), F.S. – The identity of a donor or prospective donor of property to a direct-support organization of the University of West Florida which is established to support the historic preservation efforts of the university, who desires to remain anonymous, is confidential and exempt from disclosure; and that anonymity must be maintained in the auditor's report.

Section 267.1736(9), F.S. – Any information identifying a donor or prospective donor to the direct-support organization, authorized by the University of Florida to assist it in the historic preservation of the City of St. Augustine, who desires to remain anonymous, is confidential and exempt, and that anonymity must be maintained in the auditor's report.

Section 279.11(1), F.S. – Records with regard to ownership of, or security interests in, registered public obligations are confidential and exempt from s. 119.07(1).

Section 280.16(3), F.S. – Any information contained in a report of a qualified public depository required under this chapter or any rule adopted under this chapter, together with any information required of a financial institution that is not a qualified public depository, is, if made confidential by any law of the United States or of this state, confidential and exempt from s. 119.07(1) and not subject to dissemination to anyone other than the Chief Financial Officer under this chapter.

Section 282.318(4)(d)(e)(g), F.S. – The following information is confidential and exempt and may not be disclosed except as provided in the subsection: risk assessment information to determine security threats to data, information, and information technology resources of the agency; internal policies and procedures to assure the security of the data and information technology resources that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data, information, or information technology resources; and results of periodic internal audits and evaluations of the information technology security program for an agency's data and information technology resources.

Section 282.318(5), F.S. – Portions of risk assessments and other reports of a state agency's cybersecurity program are confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure or destruction of data or information as described in the exemption. Disclosure is authorized as provided in the exemption. The term "state agency" as used in this section is defined in s. 282.318(2), F.S.

Section 282.318(6), F.S. – Those portions of a public meeting which would reveal records which are confidential under subsection (5) are exempt from s. 286.011. All exempt portions shall be recorded and transcribed. Disclosure is authorized as provided in the exemption.

Section 284.40(2), F.S. – Claims files maintained by the Division of Risk Management of the Department of Financial Services are confidential, and shall be only for the use of the Department of Financial Services in fulfilling its duties and are exempt from s. 119.07(1).

NOTE: DUE TO SPACE LIMITATIONS, THE EXEMPTIONS FROM DISCLOSURE FOUND IN CHAPTER 286 ARE NOT SUMMARIZED IN THIS APPENDIX. THE TEXT OF THESE EXEMPTIONS IS CONTAINED IN APPENDIX B (SUNSHINE LAW AND RELATED STATUTES).

Section 287.0595(3), F.S. – Bids submitted to the Department of Environmental Protection for pollution response action contracts are confidential and exempt from s. 119.07(1), until selection of a bidder on such contract has been made and a contract signed or until the bids are no longer under active consideration.

Section 287.137(8)(a), F.S. – All information received by the Attorney General or a law enforcement agency pursuant to investigations into certain prohibited social media activities is confidential and exempt under such time as the investigation is completed or ceases to be active.

This exemption shall be construed in conformity with s. 119.071(2)(c).

Section 288.002, F.S. – Materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, financial and proprietary information and agreements or proposals to receive funding that are received, generated, ascertained, or discovered by the former Enterprise Florida, Inc., including its affiliates and participants, are confidential and exempt from disclosure, except that a recipient of the former Enterprise Florida, Inc., research funds shall make available, upon request, the title and description of the project, the name of the researcher, and the amount and source of funding provided for the project. Effective July 1, 2023, the Department of Commerce is the custodian of any public records made confidential and exempt under this section.

Section 288.047(5)(e), F.S. – Information relating to wages and performance of participants which is submitted pursuant to a grant agreement prepared by CareerSource Florida, Inc., pursuant to the Quick-Response Training Program which, if released, would disclose the identity of the person to whom the information pertains or the person's employer is confidential and exempt from s. 119.07(1).

Section 288.047(7), F.S. – In providing instruction pursuant to the Quick-Response Training Program, materials relating to methods of manufacture or production, potential trade secrets, business transactions, or proprietary information received or discovered by employees of specified agencies are confidential and exempt from s. 119.07(1).

Section 288.075(2)-(6), F.S. – If a private entity requests in writing before an economic incentive agreement is signed that an economic development agency (EDA) maintain the confidentiality of information concerning the plans, intentions, or interests of the private entity to locate, relocate or expand its business activities in Florida, the information is confidential and exempt from disclosure for 12 months after the EDA receives a request for confidentiality or the information is otherwise disclosed, whichever occurs first. An EDA may extend the period of confidentiality for up to an additional 12 months under certain conditions. If a final project order for a signed economic development agreement is issued, then the information remains confidential and exempt for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first. However, such confidentiality may not extend beyond the period of confidentiality established in the exemption. Trade secrets and the federal employer identification number, reemployment assistance account number, or Florida sales tax registration number held by an EDA are confidential and exempt, as well as other records as described in the exemption. Specified information held by an EDA relating to a specific business participating in an economic incentive program is no longer confidential or exempt 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final project order, or if the information is otherwise disclosed, whichever occurs first.

Section 288.075(7), F.S. – Tax returns, financial information, credit history information, credit reports, and credit scores held by an economic development agency pursuant to its administration of a state or federally funded small business loan program are exempt from disclosure. Disclosure of information in an aggregated and anonymized format is not prohibited.

Section 288.1226(7), F.S. – The identity of a donor or prospective donor to the Florida Tourism Industry Marketing Corporation who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report.

Section 288.776(3)(d), F.S. – Personal financial records, trade secrets or proprietary information of applicants for loans extended by the Florida Export Finance Corporation are confidential and exempt from s. 119.07(1).

Section 288.9607(5), F.S. – Personal financial records, trade secrets or proprietary information of applicants delivered to or obtained by the Florida Development Finance Corporation are confidential and exempt from s. 119.07(1).

Section 288.9626(2) and (3), F.S. – The following records held by the Florida Opportunity Fund are confidential and exempt: materials relating to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research or through research projects and that are provided by a proprietor; information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the Fund; as well as proprietary confidential business information regarding alternative investments for 7 years after the termination of the alternative investment. That portion of the meeting of the board of the Fund at which such confidential information is discussed is confidential and exempt; the exempt portion of the meeting shall be recorded and transcribed as provided therein. The transcript and minutes of the exempt meeting are confidential.

Section 288.9627(2) and (3), F.S. – The following records held by the Institute for Commercialization of Florida Technology are confidential and exempt: materials relating to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered through research by universities and other publicly supported organizations in this state and that are provided to the Institute by a proprietor; information that would identify an investor or potential investor who desires to remain anonymous in projects reviewed by the Institute for assistance; information received from a person in another state or the Federal Government which is otherwise confidential or exempt by law of that entity; and proprietary confidential business information for 7 years after the termination of the Institute's financial commitment to the company. That portion of the meeting of the board of the Institute at which such confidential information is discussed is confidential and exempt; the exempt portion of the meeting shall be recorded and transcribed as provided therein. The transcript and minutes of the exempt meeting are confidential.

Section 288.985, F.S. – Specified information held by the Florida Defense Support Task Force relating to selection criteria for the realignment and closure of military bases and missions is exempt and that portion of Task Force meetings where exempt records are presented and discussed is exempt as well as records generated during the closed meeting.

Section 292.055(9), F.S. – Any information identifying a donor or prospective donor to the Department of Veterans' Affairs direct-support organization who desires to remain anonymous is confidential and exempt; portions of meetings of the direct-support organization during which the identity of such donor or potential donor is discussed are exempt.

Section 296.09(1), F.S. – The health record and annual reevaluation of residents of the Veterans' Domiciliary Home of Florida are confidential and exempt from disclosure and must be preserved for a period of time as determined by the director.

Section 310.102(3)(e) and (5)(a), F.S. – Except as otherwise provided in the section, all information obtained by the probable cause panel of the Board of Pilot Commissioners from the consultant as part of an approved treatment program for impaired licensees is confidential and exempt. Except as otherwise provided in the section, all information obtained by the consultant and the Department of Business and Professional Regulation pursuant to this section is confidential and exempt.

Section 311.13, F.S. – Seaport security plans created pursuant to s. 311.12 are exempt from public disclosure. Materials that depict critical seaport operating facilities are also exempt if the seaport reasonably determines that such items contain information that is not generally known and that could jeopardize seaport security. The exemption does not apply to information relating to real estate leases, layout plans, blueprints, and information related thereto.

Section 315.18, F.S. – Any proposal or counterproposal exchanged between a deepwater port listed in s. 311.09(1) and any nongovernmental entity, relating to the sale, use or lease of land or of port facilities, and any financial records submitted by any nongovernmental entity to such a deepwater port for the purpose of the sale, use or lease of land or of port facilities, are confidential and exempt from disclosure until 30 days before such proposal or counterproposal is considered for approval by the governing body of the deepwater port. If no proposal or counterproposal is submitted to the governing body, the proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations.

Section 316.066(2)(a)(b)(c)(f), F.S. – Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by an agency are confidential for a period of 60 days, except as authorized in the exemption. Reports may be released 60 days after the report is filed to authorized entities and agencies, or in accordance with specified provisions of cited federal law.

Section 316.066(2)(g), F.S. – If crash reports are created by or submitted to an agency electronically as data elements within a computerized database or if personal information from a crash report is entered into a computerized database, such crash data held by an agency is confidential. Sixty days after the date the crash report is filed, an agency may provide crash data derived from the report which includes personal information to authorized entities or in accordance with specified provisions of cited federal law.

Section 316.0777(3)(4), F.S. – Certain images and data obtained through the use of an automated license plate recognition system and personal identifying information of an individual in data generated from such images are confidential and exempt. Disclosure is authorized in specified circumstances.

Section 316.650(11), F.S. – Driver information, as defined in the exemption, contained in a uniform traffic citation is exempt from disclosure requirements. Driver information may be released as provided in s. 119.0712(2)(b) and pursuant to the sale and redisclosure provisions in cited federal law.

Section 319.1414(5), F.S. – Information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to this section (department-authorized private rebuilt inspection providers) is confidential and exempt until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. Release is authorized under the circumstances set forth in the exemption.

Section 319.25(7), F.S. – Information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to this section (title certificates) is confidential and exempt until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. Release is authorized under the circumstances set forth in the exemption.

Section 320.025(3), F.S. – All records relating to the registration application of a law enforcement agency, Attorney General's Medicaid Fraud Control Unit, or public defender's office, or any office of criminal conflict and civil regional counsel, for motor vehicle or vessel registration and license plates or decals issued under fictitious names, are exempt from s. 119.07(1) as long as the information is retained by the Department of Highway Safety and Motor Vehicles.

Section 320.05(2), F.S. – Information on motor vehicle or vessel registration records of the Department of Highway Safety and Motor Vehicles shall not be made available to a person unless the person requesting the information furnishes positive proof of identification.

Section 320.861(5), F.S. – Information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to this section (motor vehicle licenses) is confidential and exempt until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. Release is authorized under the circumstances set forth in the exemption.

Section 322.125(3) and (4), F.S. – When a member of the Medical Advisory Board acts directly as a consultant to the Department of Highway Safety and Motor Vehicles, a board member's individual review of the physical and mental qualifications of a licensed driver or applicant is exempt from s. 286.011. Reports received or made by the board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for confidential use of the board or department and may not be divulged to any person except to the driver or applicant or used as evidence in any trial except proceedings under s. 322.271 or s. 322.31.

Section 322.126(3), F.S. – Disability reports are confidential and exempt from s. 119.07(1) and may be used solely for the purpose of determining the qualifications of any person to operate a motor vehicle.

Section 322.142(4), F.S. – Reproductions of color photographic or digital imaged licenses may be made and issued only for the purposes set forth in the subsection and are exempt from s. 119.07(1).

Section 322.20(3), F.S. – The release by the Department of Highway Safety and Motor Vehicles of the driver history record, with respect to crashes involving a licensee, shall not include any notation or record of the occurrence of a motor vehicle crash unless the licensee received a traffic citation as a direct result of the crash, and to this extent such notation or record is exempt from s. 119.07(1).

Section 322.20(9), F.S. – The Department of Highway Safety and Motor Vehicles shall furnish without charge specified driver license information from its records to the courts for the purpose of jury selection or to any state agency, state attorney, sheriff or chief of police. Such court, state agency, state attorney, or law enforcement agency may not sell, give away, or allow the copying of such information.

Section 322.71(5), F.S. – Information received by the Department of Highway Safety and Motor Vehicles as a result of an investigation or examination conducted pursuant to this section (driver licenses) is confidential and exempt until the investigation or examination ceases to be active or administrative action taken by the department has concluded or been made part of a hearing or court proceeding. Release is authorized under the circumstances set forth in the exemption.

Section 324.242, F.S. – Information as set forth in the exemption that pertains to personal injury protection and property damage liability insurance policies held by the Department of Highway Safety and Motor Vehicles is confidential and exempt. Specified disclosures are authorized as set forth in the exemption.

Section 328.40(3), F.S. – All records kept or made by the Department of Highway Safety and Motor Vehicles under the vessel registration law are public records except for confidential reports.

Section 331.22, F.S. – Airport security plans of an aviation authority or aviation department of a county or municipality which operates an international airport are exempt from disclosure. In addition, except as otherwise provided in the section, specified materials that depict critical airport operating facilities are exempt to the extent that the authority or department

which operates an airport determines that such information is not generally known and could jeopardize the security of the airport.

Section 334.049(4), F.S. – Information obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture which is a trade secret as defined by s. 688.002, is confidential and exempt from s. 119.07(1).

Section 337.14(1), F.S. – Financial information required by the Department of Transportation pursuant to this subsection shall be confidential and exempt.

Section 337.162, F.S. – Complaints submitted to the Department of Business and Professional Regulation and maintained by the Department of Transportation pursuant to this section relating to alleged violations of state professional licensing laws or rules shall be confidential and exempt. Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt.

Section 337.168, F.S. – A document or electronic file revealing the Department of Transportation's official cost estimate for a project is confidential and exempt until the contract for the project has been executed or until the project is no longer under active consideration. The bid analysis and monitoring system is confidential and exempt.

Section 338.155(6), F.S. – Personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated charges due for the use of toll facilities is exempt from s. 119.07(1).

Section 339.0805(1)(c), F.S. – The application and financial information required for certification by the Department of Transportation as a socially and economically disadvantaged business enterprise are confidential and exempt from s. 119.07(1).

Section 339.55(10), F.S. – Financial information, as defined in the exemption, of a private entity applicant required by the Department of Transportation as part of the application process for loans or credit enhancements from the state-funded infrastructure bank is exempt from s. 119.07(1). The exemption does not apply to records of an applicant who is in default of a loan issued under this section.

Section 341.0521, F.S. – Personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of transit fares or the acquisition of a prepaid transit fare card or similar device is exempt from disclosure.

Section 350.01(9), F.S. – Those portions of a hearing conducted by the Public Service Commission wherein proprietary confidential business information that is confidential or exempt from disclosure pursuant to cited statutes, is discussed are exempt from s. 286.011. No exempt portion may be made off the record and all exempt portions shall be recorded and transcribed. The recordings and transcripts are confidential unless a court finds that the hearing was not restricted to the discussion of proprietary confidential information, in which case only that portion which reveals nonexempt information may be disclosed to a third party.

Section 350.121, F.S. – Any records obtained by the Public Service Commission pursuant to an inquiry are confidential and exempt from s. 119.07(1) while such inquiry is pending. If, at the conclusion of an inquiry the commission undertakes a formal proceeding, any matter determined by the commission or by a court or administrative agency to be trade secrets or confidential proprietary business information coming into its possession pursuant to such inquiry shall be confidential and exempt.

Section 364.107, F.S. – Personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan under s. 364.10 held by the Public Service Commission is confidential and exempt except as provided therein.

Section 364.183, F.S. – Records provided by a telecommunications company to the Public Service Commission which are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

Section 365.171(12)(a) and (b), F.S. – Any record, recording, or information, or portions thereof, obtained by a public agency or public safety agency for the purpose of providing emergency services and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications system is confidential and exempt from public disclosure requirements except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number, or personal information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. However, disclosure of the location of a coronary emergency to a private person or entity that owns an automated external defibrillator is authorized in some circumstances, as set forth in the exemption.

Section 365.174, F.S. – Proprietary confidential business information, as defined in the exemption, that is submitted by a provider to the Emergency Communications Board, the Division of Telecommunications within the Department of Management Services, or the Department of Revenue, is confidential and exempt from s. 119.07(1) and may not be disclosed except as provided in the exemption.

Section 366.04(9)(c), F.S. – Upon request by a communications services provider, any records that are received by the Public Service Commission under this paragraph which are proprietary confidential business information under cited statutes shall retain their status as confidential or exempt from s. 119.07(1), F.S.

Section 366.093, F.S. – Records provided by a public utility company to the Public Service Commission which, upon the request of the public utility or any person, are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

Section 367.156, F.S. – Records provided by a water or wastewater utility to the Public Service Commission which, upon the request of the utility or any person, are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

Section 368.108, F.S. – Records provided by a natural gas transmission company to the Public Service Commission which, upon the request of the company or any other person, are found by the commission to constitute proprietary confidential business information as defined in the section shall be confidential and exempt from s. 119.07(1).

Section 373.089(1)(b)(c), F.S. – A written valuation of land determined to be surplus by the governing board of a water management district pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such land are confidential and exempt. The exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered by the district. Before expiration of the exemption, disclosure is authorized as provided in the exemption.

Section 373.139(3)(a), F.S. – Appraisal reports, offers, and counteroffers for the acquisition of real property by water management districts created under Ch. 373 are confidential and exempt from s. 119.07(1) until an option contract is executed, or, if no option contract is

executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board. However, disclosure is authorized under some circumstances as described in the subsection. If negotiations are terminated by the district, the appraisal report, offers and counteroffers shall become available pursuant to s. 119.07(1).

Section 373.4598(4)(b), F.S. – Appraisal reports, offers, and counter offers in relation to this subsection (Everglades Agricultural area reservoir project) are confidential and exempt, as provided in s. 373.139.

Section 373.69ArticleXIII(a)(8) and (9), F.S. – The mediator selected by parties to the Apalachicola-Chattahoochee-Flint River Basin Compact shall not divulge confidential information disclosed to the mediator by the parties or by witnesses in the course of the mediation. All records received by a mediator while serving as mediator shall be considered confidential and each party to the mediation shall maintain the confidentiality of the information.

Section 377.075(4)(f), F.S. – Company data collected by the State Geologist from specified agencies may be maintained as confidential subject to the same requirements as that required by the federal agency of jurisdiction or, if no specific language exists in federal law, the confidential period shall not exceed 10 years.

Section 377.22(2)(h), F.S. – Information required by this paragraph relating to oil and gas resources, at the request of the operator, shall be exempt from s. 119.07(1) and held confidential by the Division of Resource Management of the Department of Environmental Protection for a period of 1 year after the completion of a well.

Section 377.2408(3), F.S. – Any information relating to the location of the geophysical operation and other information relating to leasing plans, exploration budgets, and other proprietary information that could provide an economic advantage to competitors shall be kept confidential by the Department of Environmental Protection for 10 years and exempt from s. 119.07(1), and shall not be released to the public without the consent of the person submitting the application to conduct geophysical operations.

Section 377.2409, F.S. – Information on geophysical activities conducted on state-owned mineral lands received by the Division of Resource Management of the Department of Environmental Protection pursuant to this section shall, upon the request of the person conducting the activities, be held confidential for 10 years and shall be exempt from disclosure.

Section 377.2421(2), F.S. – Geologic data which is maintained by the Division of Resource Management of the Department of Environmental Protection pursuant to this section shall be subject to the same confidentiality requirements that are required by the federal agency and are exempt from s. 119.07(1) to the extent necessary to meet federal requirements.

Section 377.2424(3), F.S. – The Department of Environmental Protection shall share geophysical permit information with a county or municipality upon request and may, on its own initiative, share such information with a county or municipality. However, the county or municipality shall maintain the confidential status of such information, as required by s. 377.2408(3) and such information is exempt from s. 119.07(1).

Section 377.606, F.S. – Proprietary information obtained by the Department of Agriculture and Consumer Services as the result of a required report, investigation, or verification relating to energy resources shall be confidential and exempt from s. 119.07(1) if disclosure would be likely to cause substantial harm to the competitive position of the person providing the information and the provider has requested confidentiality.

Section 377.701(4), F.S. – No state employee may divulge or make known in any manner any proprietary information under the Petroleum Allocation Act, if the disclosure of such

information would be likely to cause substantial harm to the competitive position of the person providing such information and if the person requests that such information be held confidential, except in accordance with a court order, or in the publication of statistical information compiled by methods which would not disclose the identity of individual suppliers or companies. Such proprietary information is confidential and exempt from s. 119.07(1).

Section 378.208(5), F.S. – The Department of Environmental Protection may adopt rules to require mine operators to submit a copy of their most recent annual financial statements. The financial statement, except for a financial statement that is a public record in the custody of another governmental agency, shall be confidential and exempt from s. 119.07, and the department shall ensure the confidentiality of such statements.

Section 378.406(1)(a), F.S. – Any information relating to prospecting, rock grades, or secret processes or methods of operation which may be required, ascertained, or discovered by inspection or investigation shall be exempt from s. 119.07(1) if the applicant requests the Department of Environmental Protection to keep such information confidential and informs the department of the basis for such confidentiality. Should the secretary determine that such information shall not be confidential, the secretary shall provide notice of his or her intent to release the information.

Section 379.1026, F.S. – Site-specific location information held by an agency of animals listed by a federal agency as threatened or endangered is exempt from disclosure. The exemption does not apply to the site-specific location of animals held in captivity.

Section 379.223(3), F.S. – The identity and all information identifying a donor or prospective donor to a citizen support organization established by the Fish and Wildlife Conservation Commission who desires to remain anonymous is confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report of the citizen support organization.

Section 379.362(6), F.S. – Except as provided in the exemption, reports required of wholesale dealers regarding saltwater products are confidential and exempt from s. 119.07(1).

Section 381.0031(6), F.S. – Information submitted in reports of diseases of public health significance to the Department of Health as required by this section is confidential and exempt from s. 119.07(1), and shall be made public only when necessary to public health.

Section 381.00318, F.S. – A complaint alleging a business entity's, a governmental entity's, or an educational institution's violation of statutes prohibiting discrimination based on health care choices, and all information relating to an investigation of such complaint, held by the Department of Legal Affairs or the Department of Health is confidential and exempt until the investigation is completed or ceases to be active, as defined in the exemption. Specified information as described in the exemption remains confidential after the investigation is completed or ceases to be active.

Section 381.004(2), (3), (4), and (5), F.S. – Except as otherwise provided, human immunodeficiency virus test results, and the identity of any person upon whom a test has been performed, are confidential and exempt from s. 119.07(1). No person to whom the results of a test have been disclosed pursuant to this section may disclose the results to another person except as authorized in the section. Such confidential information is exempt from s. 119.07(1).

Section 381.0041(9), F.S. – All blood banks shall be governed by the provisions of s. 381.004(2) relating to confidentiality of HIV test results and the identity of test subjects.

Section 381.0055(1) and (2), F.S. – Information which is confidential by operation of law and which is obtained by the Department of Health and the health agencies specified in this section relating to quality assurance activities shall retain its confidential status and be exempt from s. 119.07(1). Such information which is obtained by a hospital or health care provider from

the department or health agencies pursuant to this section shall retain its confidential status and be exempt from s. 119.07(1).

Section 381.0055(3), F.S. – Portions of meetings, proceedings, reports and records of the Department of Health and the health agencies set forth in this section, which relate solely to patient care quality assurance and where specific persons or incidents are discussed are confidential and exempt from s. 286.011, and are confidential and exempt from s. 119.07(1).

Section 381.0056(4)(a)16., F.S. – Provisions in the school health services plan developed pursuant to this section for maintenance of health records of individual students must be in accordance with s. 1002.22, relating to confidentiality of student records.

Section 381.775, F.S. – Except as provided in the exemption, all oral and written records, information, letters, and reports received, made, or maintained by the Department of Health relative to any applicant for or recipient of services under the brain and spinal cord injury program are privileged, confidential, and exempt from s. 119.07(1). The in camera proceeding before designated officials to determine whether records are relevant to an inquiry and should be released and all records relating thereto are confidential and exempt from s. 119.07(1).

Section 381.82(3)(d), F.S. – Research grant applications provided to the Alzheimer's Disease Research Grant Advisory Board and any records generated by the board relating to review of such applications, except final recommendations, are confidential. Those portions of a meeting during which applications are discussed are exempt, but the closed portions must be recorded.

Section 381.8531, F.S. – The following information held by the Florida Center for Brain Tumor Research is confidential and exempt from disclosure requirements: Any information received from an individual from another state or nation or the federal government that is otherwise confidential or exempt. Personal identifying information of a donor to the central repository or the brain tumor registry is also confidential and exempt from disclosure.

Section 381.92201(1), (2), and (3), F.S. – Records relating to biomedical research grant applications presented to the peer review panel are confidential and exempt; that portion of a peer review panel in which grant applications under cited statutes are discussed is exempt from public meetings requirements; and records generated by the peer review panel relating to review of such applications, except final recommendations, are confidential and exempt. Also published at s. 215.56021, F.S.

Section 381.95(1), F.S. – Information identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained, or regulated by the Department of Health as part of the state's plan of defense against terrorism is exempt from public disclosure requirements.

Section 381.987(1)(2)(3), F.S. – The following information held by the Department of Health is confidential and exempt: A patient's or caregiver's personal identifying information in the medical marijuana use registry established under s. 381.986, F.S., and all personal identifying information pertaining to the physician certification for marijuana and the dispensing thereof. Access is authorized under circumstances set forth in the exemption.

Section 382.008(6), F.S. – All information relating to cause of death in all death and fetal death records and the parentage, marital status, and medical information included in all fetal death records are confidential and exempt from s. 119.07(1), except for health research purposes approved by the Department of Health, nor shall copies of same be provided except as provided in s. 382.025.

Section 382.008(8), F.S. – All information relating to the cause of death and parentage of a nonviable fetus, the marital status of such fetus' parent, and any medical information included in

nonviable birth records held by a state agency is confidential and exempt, except for research purposes as approved by the Department of Health. Certified copies may be issued as provided in the exemption.

Section 382.013(4), F.S. – In the event that a child of undetermined parentage is later identified and a new certificate of birth is prepared, the original birth certificate shall be sealed and filed, shall be confidential and exempt, and shall not be opened to inspection except by, nor shall certified copies of the same be issued except by court order to, any person other than the registrant if of legal age.

Section 382.013(5), F.S. – The original birth certificate shall contain all information required by the Department of Health for legal, social, and health research purposes. However, information concerning parentage, marital status, and medical details shall be confidential and exempt, except for health research purposes as approved by the department, nor shall copies be issued except as provided by s. 382.025.

Section 382.017(1), F.S. – After registering a certificate of foreign birth in the new name of an adoptee, the Department of Health shall place the adoption report or decree under seal, not to be broken except pursuant to court order.

Section 382.025(1), F.S. – Except for birth records over 125 years old which are not under seal pursuant to court order, all birth records of this state are confidential and exempt from s. 119.07(1). Certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from s. 119.07(1) and shall be issued only as authorized by the Department of Health to those individuals and entities listed in the subsection.

Section 382.025(2), F.S. – A certification of the death or fetal death certificate which includes the confidential portions, shall be issued by the Department of Health only to the individuals and entities specified in the subsection. All portions of a death certificate shall cease to be exempt 50 years after the death.

Section 382.025(3), F.S. – Records or data issued by the Department of Health to government and research entities as set forth in this subsection are exempt from s. 119.07(1) and copies of records or data issued pursuant to this subsection remain the property of the department.

Section 382.025(4), F.S. – Except as provided in this section, preparing or issuing certificates of live birth, death, or fetal death is exempt from the provisions of s. 119.07(1), F.S.

Section 383.14(3)(d), F.S. – The confidential registry of cases maintained by the Department of Health pursuant to this section [relating to phenylketonuria and other metabolic, hereditary and congenital disorders] shall be exempt from s. 119.07(1).

Section 383.32(3), F.S. – Birth center clinical records are confidential and exempt from s. 119.07(1). A client's clinical records shall be open to inspection only if the client has signed a consent to release information or the review is made for a licensure survey or complaint investigation.

Section 383.325, F.S. – Inspection reports of birth centers which have been filed with or issued by any governmental agency are to be maintained as public information. However, any record which, by state or federal law or regulation, is deemed confidential shall be exempt from s. 119.07(1) and shall not be distributed or made available as public information unless or until such confidential status expires, except as provided in s. 383.32(2)(c) requiring records to be made available for audit by licensure personnel.

Section 383.412, F.S. – Information held by the State Child Abuse Death Review Committee or local committee which reveals the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential and exempt. Any information held by the Committee or a local committee which reveals the

identity of a deceased child whose death is not the result of abuse or neglect, or the identity of the surviving siblings, family members, or others living in the deceased child's home, is confidential and exempt. Portions of committee meetings at which information made confidential and exempt pursuant to subsection (2) are discussed are exempt from open meetings requirements. The closed portion of the meeting must be recorded; the recording is exempt from disclosure.

Section 383.51, F.S. – The identity of parents who leave a newborn infant at a hospital, emergency medical services station, or fire station in accordance with s. 383.50, is confidential and exempt from public disclosure requirements.

Section 384.26(2), F.S. – All information gathered by the Department of Health and its authorized representatives in the course of contact investigation of sexually transmissible disease infection shall be considered confidential and exempt from s. 119.07(1), and subject to the provisions of s. 384.29.

Section 384.282(3), F.S. – Except as provided in this section, the name of any person subject to proceedings initiated by the Department of Health relating to a public health threat resulting from a sexually transmissible disease, shall be confidential and exempt from s. 119.07(1).

Section 384.287(6), F.S. – An authorized person who receives the results of a test for sexually transmissible disease pursuant to this section, which results disclose human immunodeficiency virus infection and are otherwise confidential pursuant to law, shall maintain the confidentiality of the information received and the identity of the person tested as required by s. 381.004.

Section 384.29, F.S. – All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of sexually transmissible diseases are confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as provided in the section. Except as provided in the section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

Section 384.30(2), F.S. – The fact of consultation, examination, and treatment of a minor for a sexually transmissible disease is confidential and exempt from s. 119.07(1) and shall not be divulged directly or indirectly, such as sending a bill for services rendered to a parent or guardian, except as provided in s. 384.29.

Section 385.202(3), F.S. – Information which discloses or could lead to the disclosure of the identity of any person whose condition or treatment has been reported and studied pursuant to this section relating to the statewide cancer registry shall be confidential and exempt from s. 119.07(1) except as provided in the subsection.

Section 390.01114(6)(f), F.S. – All hearings under this section, including appeals, shall remain confidential and closed to the public, as provided by court rule.

Section 390.01116, F.S. – Any information that can be used to identify a minor petitioning a circuit court for a judicial waiver, as provided in s. 390.01114, of the notice requirements under the Parental Notice of Abortion Act is confidential and exempt if held by a circuit court, an appellate court, the office of criminal conflict and civil regional counsel, or the Justice Administrative Commission.

Section 390.01118, F.S. – Any information that can be used to identify a minor petitioning a circuit court for a judicial waiver, as provided in s. 390.01114, of the consent requirements under the Parental Notice of and Consent for Abortion Act is confidential and exempt if held by a circuit court, an appellate court, the office of conflict and civil regional counsel, or the Justice Administrative Commission.

Section 390.0112(3), F.S. – Reports concerning pregnancy termination which are submitted to the Agency for Health Care Administration pursuant to this section shall be confidential and exempt and shall not be revealed except upon court order in a civil or criminal proceeding.

Section 392.54(2), F.S. – All information gathered by the Department of Health and its authorized representatives in the course of contact investigation of tuberculosis exposure or infection shall be confidential, subject to the provisions of s. 392.65. Such information is exempt from s. 119.07(1).

Section 392.545(3), F.S. – The name of any person subject to proceedings initiated by the Department of Health relating to a public health threat from tuberculosis shall not be revealed by the department, its authorized representatives, the courts, and other parties to the lawsuit except as permitted in s. 392.65.

Section 392.65, F.S. – All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis shall be strictly confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as authorized in the subsection. Except as provided in the section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

Section 393.0674, F.S. – It is a third degree felony for any person to willfully, knowingly, or intentionally release information from the juvenile records, and a first degree misdemeanor for any person to willfully, knowingly, or intentionally release information from the criminal records or central abuse registry, of a person obtained under s. 393.0655, s. 393.066, or s. 393.067 to any other person for any purpose other than screening for employment as specified in those sections.

Section 393.13(4)(i)1., F.S. – Central client records of persons with developmental disabilities are confidential and exempt from s. 119.07(1) and no part of such records shall be released except as authorized in this paragraph.

Section 394.4615(1) and (8), F.S. – Clinical records of persons subject to “The Baker Act” are confidential and exempt from s. 119.07(1). Such records may be released only under the circumstances specified in the statute. Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from s. 119.07(1).

Section 394.464(1) and (3), F.S. – All petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under “The Baker Act” are confidential and exempt. Pleadings and other documents made confidential and exempt may be disclosed by the court upon request to certain persons and entities. The clerk may not publish personal identifying information on a court docket or in a publicly accessible file.

Section 394.467(6)(a)3., F.S. – The independent expert’s report which is submitted at a hearing on involuntary inpatient placement is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing.

Section 394.907(7), F.S. – Records of quality assurance programs of community mental health centers which relate solely to actions taken in carrying out the provisions of this section and records obtained by the Department of Children and Family Services to determine licensee compliance with this section are confidential and exempt from s. 119.07(1). Meetings or portions of meetings of quality assurance program committees that relate solely to actions taken pursuant to this section are exempt from s. 286.011.

Section 394.921(2), F.S. – Psychological or psychiatric reports, drug and alcohol reports, treatment records, medical records, or victim impact statements that have been submitted to the court or admitted into evidence in Jimmy Ryce Act proceedings shall be part of the record but shall be sealed and may be opened only pursuant to a court order.

Section 395.0162(2), F.S. – Any records, reports or documents which are confidential and exempt from s. 119.07(1), shall not be distributed or made available for purposes of compliance with this section (relating to inspection reports of licensed facilities) unless or until such confidential status expires.

Section 395.0193(4), F.S. – Reports of final disciplinary actions taken by the governing board of a licensed facility pursuant to s. 395.0193(3) which have been forwarded to the Division of Health Quality Assurance of the Agency for Health Care Administration pursuant to this subsection are not subject to inspection under the provisions of s. 119.07(1), even if the division's investigation results in a finding of probable cause.

Section 395.0193(7), F.S. – The proceedings and records of peer review panels, committees, or governing boards of licensed facilities (i.e., a hospital or surgical facility licensed in accordance with Ch. 395) which relate solely to actions taken in carrying out this section (i.e., disciplinary proceedings against staff) are not subject to inspection under s. 119.07(1) and meetings held to achieve the objectives of such panels, committees or governing boards are not open to the public under Ch. 286.

Section 395.0197(6)(c), F.S. – The annual report submitted by a facility licensed under Ch. 395 (hospitals and surgical facilities) to the Agency for Health Care Administration concerning information on incidents as provided in this section is confidential and is not available to the public pursuant to s. 119.07(1) or any other law providing access to public records.

Section 395.0197(7), F.S. – An adverse incident report submitted by a facility licensed under Ch. 395 to the Agency for Health Care Administration pursuant to this subsection shall not be available to the public pursuant to s. 119.07(1) or any other law providing access to public records, except as authorized therein.

Section 395.0197(13), F.S. – Records of licensed facilities which are obtained by the Agency for Health Care Administration under cited subsections in order to carry out the provisions of this section relating to incidents and injuries are not available to the public under s. 119.07(1), nor shall they be discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agencies set forth in the subsection.

Section 395.0197(14), F.S. – The meetings of the committees and governing board of a facility licensed under this chapter (hospitals and surgical facilities) held solely for the purpose of achieving the objectives of risk management as provided by this section shall not be open to the public under Ch. 286. The records of such meetings are confidential and exempt from s. 119.07(1), except as provided in subsection (13).

Section 395.1025, F.S. – Notification to an emergency medical technician, paramedic or other person that a patient they treated or transported has an infectious disease shall be done in a manner to protect the confidentiality of such patient information and shall not include the patient's name.

Section 395.1056, F.S. – Those portions of a comprehensive emergency management plan that address the response of a public or private hospital to an act of terrorism held by specified agencies are confidential and exempt from disclosure requirements but may be disclosed to another agency for anti-terrorism efforts as set forth in the exemption. That portion of a public meeting which would reveal information contained in a comprehensive emergency management plan that addresses the response of a hospital to an act of terrorism is exempt from open meetings requirements.

Section 395.3025(4), F.S. – Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative except that appropriate disclosure may be made as provided in the subsection.

Section 395.3025(7)(a), F.S. – If the content of any patient treatment record is provided under this section, the recipient, if other than the patient or the patient's representative, may use such information only for the purpose provided and may not further disclose any information unless expressly permitted by written consent of the patient. The content of such patient records is confidential and exempt from disclosure.

Section 395.3025(8), F.S. – Patient records at hospitals and surgical facilities are exempt from disclosure under s. 119.07(1), except as provided in subsections (1) through (5) of this section.

Section 395.3025(9), F.S. – A facility licensed under Ch. 395 (hospitals and surgical facilities) may prescribe the content and custody of limited-access records which the facility may maintain on its employees. Such records are limited to information regarding evaluations of employee performance and shall be accessible only as provided in the subsection. Such limited-access employee records are exempt from s. 119.07(1) for a period of 5 years from the date such records are designated limited-access records.

Section 395.3025(10) and (11), F.S. – Except as provided in the exemption, the home addresses, telephone numbers, and photographs of employees of any licensed hospital or surgical facility who provide direct patient care or security services, as well as specified information about the spouses and children of such employees, are confidential and exempt. The same information must also be held confidential by the facility upon written request by other employees who have a reasonable belief, based upon specific circumstances that have been reported in accordance with the procedure adopted by the facility, that release of the information may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family.

Section 395.3035(2), F.S. – Certain public hospital records and information, including contracts for managed care arrangements, strategic plans, trade secrets, as described in the subsection, are confidential and exempt from disclosure.

Section 395.3035(3), F.S. – Those portions of a meeting of a public hospital's governing board, relating to contract negotiations as described in the subsection are exempt from the public meeting requirements; however, all governing board meetings at which the board is scheduled to vote on contracts, except managed care contracts, are open to the public. All portions of a board meeting closed to the public shall be subject to procedural requirements as set forth in the subsection.

Section 395.3035(4), F.S. – Those portions of a meeting of a public hospital's governing board at which written strategic plans that are confidential pursuant to s. 395.3035(2), are discussed, reported on, modified, or approved by the governing board are exempt from open meetings requirements provided that certain procedural requirements as set forth in the subsection are complied with.

Section 395.3035(5), F.S. – Any public records such as tapes, minutes, and notes, generated at a public hospital governing board meeting which is closed to the public pursuant to this section are confidential and exempt from disclosure. All such records shall be retained and shall cease to be exempt at the same time as the transcript of the meeting becomes available to the public.

Section 395.3036, F.S. – The records of a private entity that leases a public hospital or other public health care facility are confidential and exempt from disclosure and the meetings of

the governing board of a private entity are exempt from open meetings requirements when the public lessor complies with the public finance accountability provisions of s. 155.40(18) with respect to the transfer of any public funds to the private lessee and when the private lessee meets at least 3 of 5 criteria set forth in the exemption.

Section 395.4025(13), F.S. – Patient care, transport, or treatment records or reports, or patient care quality assurance proceedings, records, or reports obtained or made pursuant to this section (relating to trauma centers) or pursuant to other statutes cited in the subsection, must be held confidential by the Department of Health and are exempt from s. 119.07(1).

Section 395.51(1) and (2), F.S. – Information which is confidential by operation of law and which is obtained by a trauma agency or committee assembled pursuant to s. 395.50, shall retain its confidential status and be exempt from s. 119.07(1). Such information which is obtained by a hospital or emergency medical services provider from a trauma agency or committee shall retain its confidential status and be exempt from s. 119.07(1).

Section 395.51(3), F.S. – Portions of meetings, proceedings, reports and records of a trauma agency or committee assembled pursuant to this chapter, which relate solely to patient care quality assurance are confidential and exempt from s. 286.011. Patient care quality assurance, for the purpose of this section, shall include consideration of specific persons, cases, incidents relevant to the performance of quality control and system evaluation.

Section 397.334(10), F.S. – Information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in specified records is confidential and exempt. Disclosure is permitted under specified conditions.

Section 397.4075(3), F.S. – It is a third degree felony to willfully, knowingly, or intentionally release any criminal or juvenile information obtained under Ch. 397, “Substance Abuse Services,” for any purpose other than background checks of personnel for employment.

Section 397.4103(5), F.S. – Records of substance abuse service providers which relate solely to actions taken in carrying out this section relating to quality improvement and records obtained by the Department of Children and Families to determine a provider’s compliance with this section are confidential and exempt. Meetings or portions of meetings of quality improvement program committees that relate solely to actions taken pursuant to this section are exempt from s. 286.011.

Section 397.501(7), F.S. – Records of substance abuse service providers pertaining to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with Ch. 397 and federal confidentiality regulations, and are exempt from disclosure. Such records may not be disclosed without the individual’s written consent except under circumstances specified in the subsection.

Section 397.6760(1), F.S. – Petitions for involuntary assessment and stabilization, court orders, related records, and personal identifying information regarding substance abuse impaired persons which are filed with or by a court under Part V of ch. 397, are confidential. Disclosure is authorized upon request to persons and entities specified in the exemption.

Section 397.752, F.S. – An inmate’s substance abuse service records are confidential in accordance with s. 397.501(7).

Section 400.0077(1), F.S. – Except as otherwise provided in the subsection, the following records relating to long-term care ombudsman councils are confidential and exempt from s. 119.07(1): resident records held by an ombudsman or by the state or a local ombudsman council;

the names or identities of complainants or residents involved in a complaint; and any other information about a complaint.

Section 400.0077(2), F.S. – That portion of a long-term care ombudsman council meeting in which the council discusses information that is confidential and exempt from s. 119.07(1) is closed to the public and exempt from s. 286.011.

Section 400.022(1)(m), F.S. – Personal and medical records of nursing home residents are confidential and exempt from s. 119.07(1).

Section 400.0255(14), F.S. – Except as provided in this subsection, in any proceeding under this section (relating to hearings of facility decisions to transfer or discharge nursing home residents) the following information concerning the parties is confidential and exempt from disclosure: names and addresses, medical services provided, social and economic conditions, personal information evaluations, medical data, and information verifying income eligibility and amount of medical assistance payments.

Section 400.119, F.S. – Records of meetings of the risk management and quality assurance committee of a long-term care facility, as well as incident reports filed with the facility's risk manager and administrator, notifications of the occurrence of an adverse incident, and adverse-incident reports from the facility are confidential and exempt. Meetings of an internal risk management and quality assurance committee are exempt from open meetings requirements and are not open to the public.

Section 400.494(1), F.S. – Information about patients received by persons employed by, or providing services to, a home health agency or received by the licensing agency through reports or inspection is confidential and exempt from s. 119.07(1) and shall be disclosed only as authorized in the exemption.

Section 400.611, F.S. – The interdisciplinary record of hospice patient care and billing records are confidential and may not be released except as provided in the exemption. Information obtained from patient records by a state agency pursuant to its statutory authority to compile statistical data is confidential and exempt from s. 119.07(1).

Section 400.945, F.S. – Medical and personal identifying information about patients of a home medical equipment provider which is received by the licensing agency through reports or inspection is confidential and exempt.

Section 401.30(3), F.S. – Reports to the Department of Health from emergency medical services licensed pursuant to Part III, Ch. 401, which cover statistical data are public records except that the names of patients and other patient identifying information contained in such reports are confidential and exempt from s. 119.07(1).

Section 401.30(4), F.S. – Records of emergency calls which contain patient examination or treatment information are confidential and exempt from s. 119.07(1), and may not be disclosed except as provided in the subsection.

Section 401.414(3), F.S. – A complaint concerning an alleged violation of Part III of Ch. 401, relating to emergency medical services, and all information obtained in the investigation by the Department of Health shall be confidential and exempt from s. 119.07(1) until 10 days after probable cause is found or the subject of the investigation waives confidentiality, whichever occurs first. However, the department is not prohibited from providing such information to a law enforcement or regulatory agency.

Section 401.425(5), F.S. – The records obtained or produced by an emergency medical review committee providing quality assurance activities as described in subsections (1) through

(4) of the section are exempt from disclosure and committee proceedings and meetings regarding quality assurance activities are exempt from open meetings requirements.

Sections 402.165(8) and 402.166(8), F.S. – All information obtained or produced by the Florida Statewide Advocacy Council or by a local advocacy council that is made confidential by law, that relates to the identity of a client subject to the protections of this section, or that relates to the identity of an individual providing information to the council about abuse or alleged violations of rights, is confidential and exempt from disclosure. Portions of meetings before such councils relating to the identity of such individuals or where testimony is provided relating to records otherwise made confidential by law are not subject to open meetings requirements. All records prepared by council members which reflect a mental impression, investigative strategy, or theory are exempt from s. 119.07(1) until completion of the investigation or the investigation ceases to be active as defined in the section.

Section 402.22(3), F.S. – Statutory confidentiality requirements apply to information used by interdisciplinary teams involved in decisions regarding the design and delivery of specified services to students residing in residential care facilities operated by the Department of Children and Families and the Agency for Persons with Disabilities, and such information is exempt from ss. 119.07(1) and 286.011.

Section 402.308(3)(a), F.S. – Disclosure of the social security number submitted by an applicant for a child care facility license issued by the Department of Children and Families shall be limited to child support enforcement purposes.

Section 402.88(4), F.S. – All records and personal identifying information related to the enrollment of persons in a persons with disabilities registry established pursuant to s. 402.88 and held by a local law enforcement agency are confidential and exempt. Disclosure is authorized by court order or as otherwise provided in the exemption.

Section 403.067(7)(c)6., F.S. – Agricultural records relating to production methods, profits, or financial information held by the Department of Agriculture and Consumer Services in connection with its duties relating to water pollution reduction are confidential and exempt from disclosure requirements.

Section 403.074(3), F.S. – Proprietary information obtained by the Department of Environmental Protection during a visit to provide onsite technical assistance pursuant to the Pollution Prevention Act shall be treated in accordance with s. 403.111, unless such confidentiality is waived by the party who requested assistance.

Section 403.111, F.S. – Except as otherwise provided in this section, upon a determination of confidentiality by the Department of Environmental Protection in accordance with the standard and procedures established in subsection (1), specified manufacturing or financial information which is obtained through inspection or investigation by the department shall be exempt from s. 119.07(1), shall not be disclosed in public hearings, and shall be kept confidential by the department.

Section 405.02, F.S. – Research groups, governmental health agencies, medical societies and in-hospital medical staff committees may use or publish released information only for the purpose of advancing medical research or education.

Section 405.03, F.S. – The identity of any person treated or studied as provided in this chapter (relating to medical information available for research) shall be confidential and exempt from s. 119.07(1).

Section 406.075(3)(b), F.S. – All proceedings and findings of the probable cause panel investigating a medical examiner are exempt from s. 286.011 until probable cause has been found or the subject of the investigation waives confidentiality. The complaint, investigative findings, and

recommendations of the probable cause panel are exempt from s. 119.07(1) until 10 days after probable cause has been found or until the subject has waived confidentiality. The commission may provide such information at any time to any law enforcement or regulatory agency.

Section 406.135(2)(a), F.S. – Except as provided in the exemption, autopsy photographs and video and audio recordings of an autopsy held by the medical examiner are confidential and exempt from public disclosure.

Section 406.135(2)(b), F.S. – An autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt, except as provided in the exemption.

Section 408.061(1)(d), F.S. – Specific provider contract reimbursement data which are obtained by the Agency for Health Care Administration from health care facilities, health care providers, or health insurers as a result of onsite inspections may not be used by the state for purposes of direct provider contracting and are confidential and exempt from disclosure.

Section 408.061(9), F.S. – Portions of patient records obtained or generated by the Agency for Health Care Administration which contain identifying information of any person or the spouse, relative, or guardian of such person or any other identifying information which is patient-specific or otherwise identifies the patient, either directly or indirectly, are confidential and exempt from disclosure.

Section 408.061(10), F.S. – The identity of any health care provider, health care facility, or health care insurer who submits proprietary business information, as defined in the section, to the Agency for Health Care Administration is confidential and exempt from disclosure except as provided in the subsection.

Section 408.061(12), F.S. – Confidential health care information may be released to other governmental entities or to parties contracting with the Agency for Health Care Administration; however, the receiving entity shall retain the confidentiality of such information as provided in this section.

Section 408.185, F.S. – Trade secrets and other confidential proprietary business information submitted by a member of the health care community to the Office of the Attorney General pursuant to a request for an antitrust no-action letter are confidential and exempt from disclosure for one year after the date of submission.

Section 408.910(14), F.S. – Personal identifying information of an enrollee or participant in the Florida Health Choices Program is confidential and exempt from public disclosure. In addition, certain proprietary confidential business information is confidential.

Section 409.1678(6), F.S. – Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in cited statute, which is held by an agency, is confidential and exempt; however, the information may be disclosed as provided in the exemption.

Section 409.175(12), F.S. – It is unlawful for any person, agency, family foster home, summer day camp, or summer 24-hour camp providing care for children to release information from the criminal or juvenile records obtained under this section to any other person for any purpose other than screening for employment as specified in this section.

Section 409.175(16), F.S. – Specified personal information about foster parent applicants, licensed foster parents, and the families of foster parent applicants and licensees, held by the Department of Children and Families is exempt from disclosure unless otherwise provided by a court or as provided in the exemption. The name, address, and telephone number of persons

providing character or neighbor references are exempt.

Section 409.176(12), F.S. – It is unlawful for any person or facility to release information from the criminal or juvenile records obtained under Ch. 435, s. 409.175 or this section (relating to registration of residential child-caring agencies) for any purpose other than screening for employment as specified in those statutes.

Section 409.25661, F.S. – Information obtained by the Department of Revenue under an insurance claims data exchange system is confidential and exempt until such time as the department determines whether a match exists. If a match exists, such information becomes available for public disclosure. If a match does not exist, the nonmatch information shall be destroyed as provided in s. 409.25659, F.S.

Section 409.2577, F.S. – Information gathered or used by the parent locator service is confidential and exempt from s. 119.07(1) and such information may be made available only to the persons and agencies and for the purposes listed in the section.

Section 409.2579, F.S. – Information concerning applicants for or recipients of Title IV-D child support services is confidential and exempt from s. 119.07(1). The use or disclosure of such information by the IV-D program is limited to the purposes, and subject to the limitations, set forth in the section.

Section 409.441(4), F.S. – All information about clients which is part of a runaway youth center's intake and client records system is confidential and exempt from s. 119.07(1).

Section 409.821, F.S. – Information identifying a Florida Kidcare applicant or enrollee held by specified agencies is confidential and exempt, and may be disclosed only as authorized in the exemption.

Section 409.910(17)(i), F.S. – All information obtained and documents prepared pursuant to an investigation of a Medicaid recipient, the recipient's legal representative, or any other person relating to an allegation of recipient fraud or theft is confidential and exempt from s. 119.07(1): until such time as the Agency for Health Care Administration takes final agency action; until the case is referred for criminal prosecution; until an indictment or information is filed in a criminal case; or at all times if otherwise protected by law.

Section 409.91196(1) and (2), F.S. – The rebate amount, percent of rebate, manufacturer's pricing, and supplemental rebate, and other trade secrets that the Agency for Health Care Administration has identified for use in negotiations, held by the agency under cited statute are confidential and exempt from public disclosure requirements. That portion of a meeting of the Medicaid Pharmaceutical and Therapeutics Committee at which this information is discussed is exempt from public meetings requirements. A record of an exempt portion of a meeting must be made and maintained.

Section 409.913(12), F.S. – The complaint and all information obtained pursuant to an investigation of a Medicaid provider, or the authorized representative of a provider, relating to an allegation of fraud, abuse, or neglect are confidential and exempt from s. 119.07(1) until such time as the Agency for Health Care Administration takes final agency action; until the Attorney General refers the case for criminal prosecution; until 10 days after the complaint is determined to be without merit; or at all times if otherwise protected by law.

Section 409.920(9)(f), F.S. – Pursuant to the conduct of the statewide program of Medicaid fraud control, the Attorney General shall safeguard the privacy rights of all individuals and provide safeguards to prevent the use of patient medical records beyond the scope of a specific investigation of fraud or abuse without the patient's written consent.

Section 410.037, F.S. – Information about disabled adults receiving services under ss. 410.031-410.036 (relating to home care of disabled adults) which is received by the Department of Children and Families or its authorized employees, or by persons who provide services to disabled adults or elderly persons as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1). Such information may not be disclosed publicly in a manner that identifies a disabled adult without the written consent of the person or his or her legal guardian.

Section 410.605, F.S. – Information about disabled adults receiving services under the Community Care for Disabled Adults Act which is received by the Department of Children and Families or its authorized employees, or by persons who provide services to disabled adults as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1). Such information may not be disclosed publicly in a manner which would identify a disabled adult without the written consent of such person or the disabled adult's legal guardian.

Section 413.012(1), F.S. – All records furnished to the Division of Blind Services in connection with state or local vocational rehabilitation programs and containing information as to personal facts about applicants or clients given to the state or local vocational rehabilitation agency, its representatives or its employees in the course of the administration of the program including lists of names, addresses and records of client evaluations are confidential and exempt from s. 119.07(1).

Section 413.341, F.S. – Oral and written records, information, letters and reports received, made, or maintained by the Division of Vocational Rehabilitation of the Department of Education relative to any applicant or eligible individual are privileged, confidential, and exempt from s. 119.07(1), and may not be released except as provided in the section. Records that come into the possession of the division and that are confidential by other provisions of law are confidential and exempt from the provisions of s. 119.07(1), and may not be released by the division, except as provided in this section.

Section 413.405(11), F.S. – Meetings, hearings, and forums of the Florida Rehabilitation Council established to assist the Division of Vocational Rehabilitation in the planning and development of statewide rehabilitation programs and services shall be open and accessible to the public unless there is a valid reason for an executive session.

Section 413.615(7)(a) and (b), F.S. – The identity of, and all information identifying, a donor or prospective donor to the Florida Endowment Foundation for Vocational Rehabilitation who desires to remain anonymous is confidential and exempt from disclosure. Portions of the meetings of the foundation during which the identity of donors or prospective donors is discussed are exempt from open meetings requirements. Records relating to clients or applicants to the Division of Vocational Rehabilitation that come into the possession of the foundation and that are confidential by other provisions of law are confidential and exempt from disclosure, and may not be released by the foundation. Portions of meetings of the foundation during which the identities of such clients or applicants are discussed are exempt from open meetings requirements.

Section 413.615(11), F.S. – The identities of donors and prospective donors to the Florida Endowment Foundation for Vocational Rehabilitation who desire to remain anonymous shall be protected and the anonymity shall be maintained in the auditor's report.

Section 414.106, F.S. – That portion of a meeting held by the Department of Children and Families, CareerSource Florida, Inc., or a local workforce development board or local committee created pursuant to s. 455.007 at which personal identifying information contained in records relating to temporary cash assistance is discussed is exempt from open meetings requirements, if the information identifies a participant, a participant's family or household member.

Section 414.295(1), F.S. – Except as provided in the exemption, personal identifying

information of a temporary cash assistance program participant, a participant's family or a participant's family or household member, except for information identifying a noncustodial parent, held by the agencies set forth in the exemption, is confidential and exempt from public disclosure requirements.

Section 415.1045(1)(a), F.S. – All photographs and videotapes taken during the course of a protective investigation of alleged abuse or neglect of a vulnerable adult are confidential and exempt from public disclosure as provided in s. 415.107.

Section 415.107(1), F.S. – All records concerning reports of abuse, neglect or exploitation of a vulnerable adult, including reports made to the central abuse hotline and all records generated as a result of such reports are confidential and exempt from s. 119.07(1) and may not be disclosed except as authorized in ss. 415.101-415.113.

Section 415.107(3)(l), F.S. – Access to records concerning reports of abuse, neglect or exploitation of a vulnerable adult shall be granted to any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

Section 415.107(6), F.S. – The identity of any person reporting adult abuse, neglect or exploitation may not be released without that person's written consent to any person except as authorized in the subsection. This subsection grants protection only for the person who reports adult abuse, neglect or exploitation and protects only the fact that the person is the reporter.

Section 415.1103(10), F.S. – Confidential or exempt information obtained by an elder or vulnerable adult abuse fatality review team retains that status when held by the review team. Information contained in a record created by a review team that reveals the identity of a victim of abuse, exploitation or neglect or the identity of persons responsible for the welfare of such victim is confidential and exempt. Portions of review team meetings relating to abuse, exploitation, or neglect or abuse-related deaths of elderly persons or otherwise vulnerable adults, and the prevention of such abuse, exploitation, neglect, or deaths, during which exempt or confidential information, the identity of the victim, or the identity of persons responsible for the welfare of the victim is discussed are exempt from open meetings requirements.

Section 415.111(2), F.S. – A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult except as provided in ss. 415.101-415.113 commits a second degree misdemeanor.

Section 420.6231, F.S. – Individual identifying information of a person in specified homeless management information system is confidential and exempt. Release of aggregate information that does not disclose identifying information is not precluded.

Section 427.705(6), F.S. – The names, addresses, and telephone numbers provided to the Public Service Commission or administrator of the telecommunications access system established for the hearing impaired and speech impaired populations, by applicants for specialized telecommunications devices are confidential and exempt from s. 119.07(1). The information may be released to contractors only for the purposes set forth in the subsection.

Section 430.105, F.S. – Personal identifying information in a record held by the Department of Elderly Affairs that relates to an individual's health or eligibility for or receipt of health-related, elder care, or long-term care services is confidential and exempt from public disclosure requirements. Such information may be disclosed to another governmental entity for the purpose of administering the department's programs for the elderly or if the affected

individual or his or her legal representative provides written consent.

Section 430.207, F.S. – Information about functionally impaired elderly persons receiving services under the Community Care for the Elderly Act which is received by the Department of Elderly Affairs or its authorized employees, or by persons who provide services to functionally impaired elderly persons as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1).

Section 430.504, F.S. – Information about clients of programs created or funded under s. 430.501 or s. 430.503 (relating to Alzheimer's Disease) which is received by the Department of Elderly Affairs or its authorized employees, or by persons who provide services to clients of programs created or funded under these sections as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1).

Section 430.608, F.S. – Identifying information about elderly persons receiving services under ss. 430.601-430.606 which is collected and held by the Department of Elderly Affairs or its employees, by volunteers, or by persons who provide services to elderly persons under ss. 430.601-430.606 through contracts with the department, is confidential and exempt from disclosure.

Section 435.09, F.S. – No criminal or juvenile information obtained under this section may be used for any other purpose than determining whether persons meet the minimum standards for employment or for an owner or director of a covered service provider. The criminal and juvenile records obtained by the department or employer are exempt from s. 119.07(1).

Section 440.102(8), F.S. – Except as provided in this subsection, all information, interviews, reports, statements, memoranda, and drug test results received or produced as a result of a drug-testing program are confidential and exempt from disclosure, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings except in accordance with this section or in determining compensability under the workers' compensation law.

Section 440.108, F.S. – All investigatory records made or received pursuant to s. 440.107, [relating to enforcement of employer compliance with workers' compensation coverage requirements], and any records necessary to complete an investigation held by the Department of Financial Services are confidential and exempt until the investigation is completed or ceases to be "active" as defined in the exemption. After the investigation is completed or ceases to be active, information in the records remains confidential and exempt if it would jeopardize the integrity of another active investigation; reveal a trade secret, business or personal financial information or personal identifying information regarding the identity of a confidential informant; defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.

Section 440.125, F.S. – Medical records and reports of an injured employee and any information identifying an injured employee in medical bills provided to the Department of Financial Services pursuant to s. 440.13, are confidential and exempt, except as otherwise provided by this section and Ch. 440.

Section 440.132, F.S. – Investigatory records of the Agency for Health Care Administration made or received pursuant to s. 440.134, and any examination records necessary to complete an investigation are confidential and exempt, until the investigation is completed or ceases to be "active," as that term is defined in the subsection, except that medical records which specifically identify patients must remain confidential and exempt.

Section 440.1851(1), F.S. – Personal identifying information of an injured or deceased employee which is contained in records of the Department of Financial Services pursuant to the Workers' Compensation Law is confidential, except as otherwise provided in the exemption.

Section 440.25(3), F.S. – Information from the files, reports, case summaries, mediator's notes, or other communications or materials, oral or written, relating to a mediation conference under the Workers' Compensation Law obtained by any person performing mediation duties is privileged and confidential and may not be disclosed without the written consent of all parties to the conference.

Section 440.3851, F.S. – Except as provided in the exemption, claims files of the Florida Self-Insurers Guaranty Association, Incorporated, and medical records that are part of a claims file and other information relating to the medical condition or medical status of a claimant, are confidential and exempt. Portions of meetings of the Association at which such confidential records are discussed are exempt from open meetings requirements.

Section 440.39(7), F.S. – Documents and inspection results produced pursuant to this subsection relating to investigation and prosecution of claims against third-party tortfeasors, are confidential and exempt from s. 119.07(1).

Section 440.515, F.S. – The Department of Financial Services shall maintain reports from self-insurers filed pursuant to former s. 440.51(6) as confidential and exempt from s. 119.07(1). The reports shall be released only as authorized in this section.

Section 443.101(11)(c), F.S. – Disclosure of drug tests and other information pertaining to drug testing of individuals who receive compensation under this chapter (Reemployment Assistance) shall be governed by s. 443.1715.

Section 443.1316(2)(b), F.S. – Provisions of cited statutes which relate to confidentiality of records apply to collection of reemployment assistance contributions and reimbursements by the Department of Revenue unless prohibited by federal law.

Section 443.1715(1), F.S. – Except as provided in the subsection, information revealing an employing unit's or individual's identity obtained from an employing unit or any individual under the administration of Ch. 443 (Reemployment Assistance), is confidential and exempt from s. 119.07(1) and may be disclosed only as authorized in the subsection.

Section 443.1715(3)(b), F.S. – Unless otherwise authorized by law, information described in the subsection and received by an employer through a drug-testing program, or obtained by a public employee under this chapter (Reemployment Assistance) is confidential and exempt until introduced into the public record under a hearing conducted under s. 443.151(4).

Section 447.205(10), F.S. – Deliberations of the Public Employees Relations Commission in any proceeding before it are exempt from s. 286.011 except any hearing held or oral argument heard by the commission pursuant to Ch. 120 or Ch. 447 shall be open to the public. All draft orders developed in preparation for or preliminary to the issuance of a final written order are confidential and exempt from s. 119.07(1).

Section 447.307(2), F.S. – The petitions and dated statements signed by employees regarding whether employees desire to be represented in a proposed bargaining unit are confidential and exempt from s. 119.07(1), except that an employee, employer, or employee organization shall be given an opportunity to verify and challenge signatures as provided in the subsection.

Section 447.605(1), F.S. – All discussions between the chief executive officer of a public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from s. 286.011.

Section 447.605(3), F.S. – All work products developed by the public employer in preparation for and during collective bargaining negotiations shall be confidential and exempt from s. 119.07(1).

Section 455.213(10), F.S. – Disclosure of a license applicant's social security number obtained by the Department of Business and Professional Regulation pursuant to this section shall be limited to the purpose of administration of the child support enforcement program and use by the department, and as otherwise provided by law.

Section 455.217(5), F.S. – Meetings and records of meetings of any member of the Department of Business and Professional Regulation or of any board within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt from ss. 119.07(1) and 286.011.

Section 455.2235(3), F.S. – Information relating to the mediation of a case pursuant to this section shall be subject to the confidentiality provisions of s. 455.225.

Section 455.225(2), F.S. – For cases dismissed prior to a finding of probable cause, the report submitted by the Department of Business and Professional Regulation regarding dismissal of a complaint which the department has previously determined to be legally sufficient is confidential and exempt from s. 119.07(1).

Section 455.225(4), F.S. – All proceedings of a probable cause panel of a board within the Department of Business and Professional Regulation are exempt from s. 286.011 until 10 days after the panel finds probable cause or until the subject of the investigation waives confidentiality.

Section 455.225(10), F.S. – The complaint and all information obtained pursuant to an investigation by the Department of Business and Professional Regulation are confidential and exempt from s. 119.07(1), until 10 days after probable cause has been found or until the regulated professional or subject of the investigation waives confidentiality, whichever is first. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act.

Section 455.229(1) and (2), F.S. – Information required by the Department of Business and Professional Regulation of an applicant is open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except as provided in the subsection. Information supplied to the department which is exempt or confidential remains exempt or confidential while in the custody of the department. Examination questions and answers may be considered only in camera in any Ch. 120 administrative proceeding. Examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1) unless invalidated by the administrative law judge.

Section 455.232(1), F.S. – No officer, employee or person under contract with the Department of Business and Professional Regulation or any board therein, or any subject of an investigation shall convey knowledge or information to any person not lawfully entitled to such information or knowledge about any meeting or public record, which at the time such knowledge or information is conveyed, is exempt from ss. 119.01, 119.07(1) or 286.011.

Section 455.32(15), F.S. – The exemptions set forth in cited provisions of Ch. 455, relating to records of the Department of Business and Professional Regulation, also apply to records held by the corporation with which the department contracts pursuant to the Management Privatization Act.

Section 456.014(1) and (2), F.S. – Information required by the Department of Health

of an applicant is open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except as provided in the subsection. Examination questions and answers may be considered only in camera in any Ch. 120 administrative proceeding. Examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1) unless invalidated by the administrative law judge.

Section 456.017(4), F.S. – Meetings of any member of the Department of Health or of any board within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are exempt from open meetings requirements and any public records such as tape recordings, minutes, or notes, generated during or as a result of such meetings are confidential and exempt from disclosure.

Section 456.046, F.S. – A patient name or other information that identifies a patient which is in a record obtained by the Department of Health for the purpose of compiling a practitioner profile pursuant to s. 456.041 is confidential and exempt from disclosure.

Section 456.051(1), F.S. – The report of a claim or action for damages for personal injury which is required to be filed with the Department of Health under cited statutes is public information except for the name of the claimant or injured person, which remains confidential.

Section 456.057(7)(a), F.S. – Except as otherwise provided in the exemption, patient records generated by health care practitioners may not be furnished to any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care and treatment.

Section 456.057(9), F.S. – All patient records obtained by the Department of Health and any other documents maintained by the department which identify the patient by name are confidential and exempt and shall be used solely for the purpose of the department and the appropriate board in disciplinary proceedings.

Section 456.073(2), F.S. – For cases dismissed prior to a finding of probable cause, the report submitted by the Department of Health regarding dismissal of a complaint which the department has previously determined to be legally sufficient is confidential and exempt from s. 119.07(1).

Section 456.073(4), F.S. – All proceedings of a probable cause panel of a board within the Department of Health are exempt from s. 286.011 until 10 days after the panel finds probable cause or until the subject of the investigation waives confidentiality.

Section 456.073(9)(c), F.S. – The identity of the expert whose report supported the Department of Health's recommendation for closure of a complaint, which report is provided to the complainant in accordance with this paragraph, shall remain confidential.

Section 456.073(10), F.S. – Except as provided in this subsection, a complaint and all information obtained pursuant to an investigation by the Department of Health is confidential and exempt from s. 119.07(1), until 10 days after probable cause has been found or until the regulated professional or subject of the investigation waives confidentiality, whichever is first.

Section 456.076(13), F.S. – All information obtained by the consultant pursuant to the impaired practitioner program provided by this section is confidential and exempt from s. 119.07(1), F.S.

Section 456.078(4), F.S. – Information relating to the mediation of a case pursuant to this section shall be subject to the confidentiality provisions of s. 456.073.

Section 456.082, F.S. – No officer, employee or person under contract with the Department of Health, or any subject of an investigation shall convey knowledge or information to any person not lawfully entitled to such information or knowledge about any meeting or public record, which at the time such knowledge or information is conveyed, is exempt from ss. 119.01, 119.07(1) or 286.011.

Section 458.3193, F.S. – All personal identifying information contained in records provided by physicians licensed under chapter 458 or 459 in response to physician workforce surveys required as a condition of license renewal and held by the Department of Health is confidential and exempt, and shall be disclosed only as provided in the subsection. NOTE: Also published in s. 459.0083, F.S.

Section 458.331(1)(s), F.S. – If the Department of Health files a petition for enforcement against a physician pursuant to this paragraph, the licensee shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. *See also* ss. 457.109(1)(o) (acupuncturist); 459.015(1)(w) (osteopathic physician); 464.018(1)(j) (nurse); 466.028(1)(s) (dentist), and 486.125(1)(a)1., F.S. (physical therapist).

Section 458.337(3), F.S. – Records of a medical organization or hospital taking disciplinary action against a physician which have been furnished to the Department of Health for the purpose of disciplinary proceedings shall be confidential and exempt from s. 119.07(1).

Section 458.339(3), F.S. – Medical reports pertaining to the mental and physical condition of physicians which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

Section 458.341, F.S. – Patient medical records obtained during a search of a physician's office by the Department of Health pursuant to this section are confidential and exempt from s. 119.07(1).

Section 459.016(3), F.S. – Records of a medical organization taking disciplinary action against an osteopathic physician which have been furnished to the Department of Health for the purpose of disciplinary proceedings shall be confidential and exempt from s. 119.07(1).

Section 459.017(3), F.S. – Medical reports pertaining to the mental and physical condition of osteopathic physicians which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint issued.

Section 459.018, F.S. – Patient medical records obtained during a search of an osteopathic physician's office by the Department of Health pursuant to this section are confidential and exempt from s. 119.07(1).

Section 464.0096, F.S., – Specified records obtained from the coordinated licensure health information system established in s. 464.0095 are exempt as are portions of meetings of the Interstate Commission of Nurse Licensure Compact Administrators where exempt records are discussed.

Section 464.208(2), F.S. – Criminal records or juvenile records relating to vulnerable adults that are obtained by the Board of Nursing for purposes of determining whether a person meets the requirements of Part II of Ch. 464, relating to certified nursing assistants are confidential and exempt from s. 119.07(1).

Section 465.017(3), F.S. – Except as permitted in the enumerated chapters, records maintained in a pharmacy relating to the filling of prescriptions and the dispensing of medicinal drugs shall not be furnished to persons other than the patient or legal representative,

or to the department or to the patient's spouse if the patient is incapacitated and has provided written authorization. Rules adopted by the Board of Pharmacy relative to disposal of records of prescription drugs shall be consistent with the duty to preserve the confidentiality of such records in accordance with applicable state and federal law.

Section 466.022(3), F.S. – Peer review information regarding dentists obtained by the Department of Health as background information shall remain confidential and exempt from ss. 119.07(1) and 286.011 regardless of whether probable cause is found.

Section 466.0275(2), F.S. – Medical reports pertaining to the mental and physical condition of dentists which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

Section 466.041(3), F.S. – Any report of hepatitis B carrier status filed by a licensee or applicant in compliance with the requirements established by the Board of Dentistry shall be confidential and exempt from s. 119.07(1), except for the purpose of investigation or prosecution of an alleged violation of this chapter by the Department of Health.

Section 471.038(7), F.S. – The exemptions set forth in ss. 455.217, 455.225, and 455.229, for records of the Department of Business and Professional Regulation apply to records created or maintained by the Florida Engineers Management Corporation, except as provided in the subsection.

Section 472.0131(5), F.S. – Meetings and records of meetings of any member of the Department of Agriculture and Consumer Services or of the Board of Professional Surveyors and Mappers held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt; however, the exemption does not affect the right of a person to review an examination as provided in subsection (3).

Section 472.0201(1) and (2), F.S. – All information required by the Department of Agriculture and Consumer Services of any applicant shall be a public record and open to public inspection except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt and shall not be discussed with or made accessible to anyone except as provided therein. Any information supplied to the department by any other agency which is exempt from Ch. 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department. Examination questions and answers provided by the department to an administrative law judge in an administrative hearing are confidential and exempt unless invalidated by the administrative law judge.

Section 472.02011, F.S. – An officer, employee, or person under contract with the Department of Agriculture and Consumer Services or the Board of Professional Surveyors and Mappers, or any subject of an investigation may not convey knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from disclosure.

Section 472.033(2), (4), and (10), F.S. – For cases involving a complaint to the Department of Agriculture and Consumer Services that are dismissed before a finding of probable cause, the report of the department is confidential and exempt from s. 119.07(1). All proceedings of the probable cause panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days

after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. However, the exemption does not apply to actions against unlicensed persons pursuant to s. 472.036.

Section 474.214(1)(h), F.S. – If the Department of Business and Professional Regulation files a petition for enforcement against a veterinarian pursuant to this paragraph, the licensee shall not be named or identified by initials in any other public court records and the enforcement proceedings shall be closed.

Section 474.2167, F.S. – Animal medical records held by a state college of veterinary medicine are confidential and exempt.

Section 474.2185, F.S. – Medical reports pertaining to the mental and physical condition of veterinarians which are maintained by the Department of Business and Professional Regulation pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

Section 481.205(3)(a), F.S. – Complaints and any information obtained pursuant to an investigation by the Board of Architecture and Interior Design are confidential and exempt from disclosure as provided in s. 455.225(2) and (10), F.S.

Section 487.031(5), F.S. – Information relative to formulas of products acquired by the Department of Agriculture and Consumer Services pursuant to the registration of pesticides is confidential and exempt from s. 119.07(1).

Section 487.041(5), F.S. – Confidential data received from the Department of Agriculture and Consumer Services by governmental agencies in providing review and comment to the department regarding pesticide registration shall be confidential and exempt from s. 119.07(1).

Section 490.0076, F.S. – A psychologist's personal identifying information, other than the psychologist's name, licensure status, or licensure number, obtained from the coordinated licensure information system, as described in s. 490.0075, and held by the Department of Health or the Board of Psychology is exempt from disclosure requirements unless disclosure is authorized by the state that originally reported the information to the information system. A meeting or portions of a meeting of the Psychology Interjurisdictional Compact Commission, established in s. 490.0075, at which matters specifically exempted from disclosure by state or federal statute are discussed is exempt from s. 286.011. Records generated during an exempt meeting are exempt from disclosure requirements.

Section 491.017 – The Counseling Compact Commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if specified topics must be discussed. If a meeting is closed, the commission's counsel must certify that the meeting may be closed and must reference each relevant exempting provision. Minutes must be kept as described in the exemption. The minutes and documents of a closed meeting must remain under seal subject to release as provided in the exemption.

Section 491.018, F.S. – A counselor's personal identifying information, other than the counselor's name licensure status, or licensure number obtained from the data system, as described in Article X of s. 491.017, and held by the Department of Health or the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling is exempt from disclosure requirements unless disclosure is authorized by the state that originally reported the information to the data system. A meeting or portions of a meeting of the Counseling Compact Commission, or the executive committee or other committees of the commission, at which matters specifically exempted from disclosure by state or federal law are discussed is exempt. Records generated during an exempt meeting are exempt.

Section 493.6121(5), F.S. – Criminal justice information submitted to the Department of Agriculture and Consumer Services pursuant to the department’s prescribed duties relating to licensure of private investigative, private security, and repossession services, is confidential and exempt from s. 119.07(1).

Section 493.6121(7), F.S. – An investigation conducted by the Department of Agriculture and Consumer Services pursuant to this chapter relating to private investigative, private security, and repossession services, is exempt from s. 119.07(1) until a probable cause determination has been made, the case is closed prior to a determination of probable cause, or the subject of the investigation waives confidentiality.

Section 493.6122, F.S. – The residence telephone number and residence address of certain licensees maintained by the Department of Agriculture and Consumer Services is confidential and exempt from s. 119.07(1), except that this information may be provided to law enforcement agencies. When the residence telephone number or address is or appears to be the business telephone number or address, this information is public record.

Section 494.00125(1), F.S. – Except as provided therein, information relating to an investigation by the Office of Financial Regulation pursuant to the Mortgage Brokerage and Mortgage Lending Act, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active” as defined in the subsection, unless disclosure would result in certain enumerated consequences. If the investigation could endanger the safety of employees or their families, specified information about such personnel and their families is confidential and exempt from s. 119.07(1).

Section 494.00125(2), F.S. – All audited statements submitted pursuant to this act (relating to mortgage brokerage and lending) are confidential and exempt from s. 119.07(1), except that employees of the Office of Financial Regulation shall have access to such information in the administration and enforcement of the act and prosecution of violations.

Section 494.00125(3), F.S. – Credit history information and credit scores held by the Office of Financial Regulation and related to licensing under ss. 494.001-494.0077 are confidential and exempt except as provided therein.

Section 497.172(1), F.S. – Portions of meetings of the Board of Funeral, Cemetery, and Consumer Services at which licensure examination questions or answers are discussed are exempt from open meetings requirements; however, the closed meetings must be recorded. Such recordings are exempt from disclosure.

Section 497.172(2), F.S. – Meetings of the probable cause panel of the Board of Funeral, Cemetery, and Consumer Services, pursuant to s. 497.153 are exempt from open meeting requirements although such meetings must be recorded. Records of exempt meetings of the probable cause panel are exempt from disclosure requirements until 10 days after a determination regarding probable cause is made.

Section 497.172(3) and (4), F.S. – Except as provided therein, information held by the Department of Financial Services pursuant to a financial examination or inspection under Ch. 497 are confidential and exempt until the examination or inspection is completed or ceases to be active. Information held by the department relating to an investigation of a violation of Ch. 497 is confidential and exempt until the investigation is completed or ceases to be active or until 10 days after a determination regarding probable cause is made. Trade secrets are confidential and exempt.

Section 499.051(7)(a)(b), F.S. – The complaint and all information obtained pursuant to an investigation by the Department of Business and Professional Regulation under the Florida

Drug and Cosmetic Act are confidential and exempt from disclosure until the investigation and enforcement action are completed. Disclosure is authorized as provided in the exemption.

Section 500.148(1), F.S. – The complaint and all information deemed confidential under cited federal enactments and which is provided to the Department of Agriculture and Consumer Services during a joint food safety or food illness investigation, as a requirement for conducting a federal-state contract or partnership activity, or for regulatory review, is confidential and exempt and may not be disclosed except as provided in the exemption.

Section 501.171(11), F.S. – Information received by the Department of Legal Affairs pursuant to a notice of a data breach or pursuant to certain investigations is confidential and exempt until the investigation is completed or ceases to be active, although certain information remains confidential. Disclosure is authorized under specified circumstances.

Section 501.1735(6), F.S. – All information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.1735, relating to protection of children in online spaces, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section is confidential and exempt until such time as the investigation is completed or ceases to be active, although certain information remains confidential. Disclosure is authorized as provided in the exemption. This exemption takes effect on July 1, 2024.

Section 501.2041(10)(a), F.S. – All information received by the Department of Legal Affairs pursuant to an investigation by the department or a law enforcement agency into certain prohibited social media platform activities is confidential and exempt until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c), F.S. Specified information as described in the exemption remains confidential after the investigation is completed or ceases to be active.

Section 501.2065, F.S. – Criminal or civil intelligence, investigative information, or any other information held by any state or federal agency that is obtained by the Department of Legal Affairs in the course of an investigation under Part II of Ch. 501 and that is confidential or exempt from s. 119.07(1) retains its status as confidential or exempt from s. 119.07(1).

Section 501.722, F.S. – All information received by the Department of Legal Affairs pursuant to a notification of a violation of part V of ch. 501, relating to certain data privacy provisions, or received by the department pursuant to an investigation by the department of law enforcement agency of a violation of that part, is confidential and exempt until such time as the investigation is completed or ceases to be active, although specified information remains confidential. Disclosure is authorized as provided in the exemption. This exemption takes effect on July 1, 2024.

Section 517.12(13), F.S. – Currency transaction reports filed with the Office of Financial Regulation by dealers and investment advisers pursuant to this subsection are confidential and exempt from s. 119.07(1) except as provided in the subsection.

Sections 517.2015 (securities) and 520.9965 (retail installment sales), F.S. – Except as provided in the exemption, information relating to an investigation by the Office of Financial Regulation pursuant to the Florida Securities and Investor Protection Act, or pursuant to the retail installment sales laws, including a consumer complaint, is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active” as defined in the subsection, unless disclosure would result in any of the enumerated consequences. If the investigation could endanger the safety of employees or their families, specified information about such personnel and their families is confidential and exempt.

Section 517.2016, F.S. – Information that would reveal examination techniques or procedures used by the Office of Financial Regulation pursuant to the Florida Securities and Investor Protection Act is confidential and exempt.

Section 526.311(2), F.S. – Any records, documents, or other business material, regardless of form or characteristics, obtained by the Department of Agriculture and Consumer Services in an investigation of an alleged violation of the Motor Fuel Marketing Practices Act are confidential and exempt from disclosure, while the investigation is pending. At the conclusion of the investigation, any matter determined by the department or by a state or federal judicial or administrative body to be a trade secret or proprietary confidential business information held by the department pursuant to such investigation shall be confidential and exempt from disclosure.

Section 527.0201(8), F.S. – Liquefied petroleum gas competency examinations of the Department of Agriculture and Consumer Services are confidential and exempt.

Section 527.062(1), F.S. – Information compiled by the Department of Agriculture and Consumer Services pursuant to an investigation of an accident involving liquefied petroleum gas or equipment is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active” as defined in the subsection.

Section 539.003, F.S. – Except as provided in the subsection, records relating to pawnbroker transactions delivered to appropriate law enforcement officials are confidential and exempt.

Section 542.28(9), F.S. – Notwithstanding s. 119.07(1), it is the duty of the Attorney General or a state attorney to maintain the secrecy of all evidence, testimony, documents, work product, or other results of an investigative demand relevant to an antitrust investigation; however, the Attorney General or state attorney may disclose such investigative evidence to the agencies enumerated in the section.

Section 548.021(2), F.S. – Disclosure of a license applicant’s social security number which is obtained by the State Athletic Commission pursuant to the statute is limited to child support enforcement purposes.

Section 548.062(2), F.S. – Proprietary confidential business information, as defined in the exemption, provided by a promoter to the Florida State Boxing Commission or obtained by the commission through an audit of a promoter’s books and records is confidential and exempt. Disclosure is authorized under specified circumstances.

Section 550.0251(9), F.S. – All information obtained by the Florida Gaming Control Commission pursuant to an investigation for an alleged violation of the chapter or rules of the division is exempt from disclosure until an administrative complaint is issued or the investigation is closed or ceases to be active, as defined therein. The division may, however, provide information to any law enforcement agency or other regulatory agency. With the exception of active criminal intelligence or criminal investigative information and any other information that, if disclosed, would jeopardize the safety of an individual, all other information, records and transcriptions become public when the investigation is closed or ceases to be active.

Section 550.2415(1)(a), F.S. – Test results and the identities of racing animals being tested and of their trainers and owners are confidential and exempt for 10 days after testing of all samples collected on a particular day has been completed and any positive test results derived from such samples have been reported to the director of the Florida Gaming Control Commission or administrative action has been commenced.

Section 556.113, F.S. – Proprietary confidential business information held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system is exempt.

Section 559.5558(2), F.S. – Information held by the Office of Financial Regulation pursuant to an investigation or examination of a violation of statutes relating to consumer

collection practices is confidential and exempt until the investigation or examination is complete or no longer active. Disclosure is authorized to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities. However, specified information, including certain consumer information, remains confidential.

Section 559.952(5)(h), F.S. – Certain information provided to and held by the Office of Financial Regulation in a Financial Technology Sandbox application by specified providers of innovative financial products or services is confidential and exempt. Confidential information may be released as provided in the exemption.

Section 560.129, F.S. – Except as otherwise provided in the exemption, information concerning an investigation or examination by the Office of Financial Regulation pursuant to this chapter (Money Services Businesses), including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from disclosure until the investigation or examination ceases to be “active” as that term is defined in the exemption. Confidentiality is also provided for other records such as trade secrets and personal financial records. Other records may also remain confidential if disclosure would result in any of the consequences listed in the exemption. Quarterly reports submitted under s.560.118(2) are confidential.

Section 560.312(1)(2), F.S. – Payment instrument transaction information held by the Office of Financial Regulation pursuant to s. 560.310, F.S. (check cashing and foreign currency exchangers) which identifies a licensee, payor, payee, or conductor is confidential and exempt, except as provided in the exemption.

Section 560.4041, F.S. – Information that identifies a drawer or deferred presentment provider contained in the database authorized under s. 560.404, is confidential and exempt from public disclosure requirements and may not be released except as provided in the subsection.

Section 561.19(2)(b), F.S. – Any portion of the drawing results of a particular county to determine which applicants are to be considered for beverage licenses which reveals the rank order of persons not receiving notice of selection is confidential and exempt from s. 119.07(1), until such time as all of the licenses from that county’s drawing have been issued.

Section 569.215(1), F.S. – Proprietary confidential business information received by specified state officials or outside counsel representing the state for the purpose of negotiation or verification of annual tobacco settlement payments is confidential and exempt from public disclosure requirements.

Section 570.077, F.S. – Information held by the Department of Agriculture and Consumer Services as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative or criminal justice agency which is confidential or exempt under the laws or regulations of that state or federal agency is confidential and exempt. Disclosure is authorized under specified circumstances. The exemption does not apply to information held by the department as part of an independent examination or investigation conducted by the department.

Section 570.544(8), F.S. – Records of the Division of Consumer Services of the Department of Agriculture and Consumer Services are public records; however, customer lists, customer names, and trade secrets are confidential and exempt from s. 119.07(1). Disclosure necessary to enforcement procedures does not violate this prohibition.

Section 570.686, F.S. – The identity of a donor to the Florida Agriculture Center and Horse Park Authority, if requested by the donor in writing, is confidential and exempt from disclosure.

Section 570.691(6), F.S. – The identity of a donor or prospective donor to a direct-support organization established to assist programs of the Department of Agriculture and Consumer Services who desires to remain anonymous and all information identifying such donor or prospective donor is confidential and exempt from disclosure.

Section 570.715(5), F.S. – Appraisal reports for conservation easement acquisition are confidential and exempt, for use by the Department of Agriculture and Consumer Services and the Board of Trustees of the Internal Improvement Trust Fund, until an option contract is executed or, if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees. However, disclosure is authorized under some circumstances, as described in the paragraph. The department may release a report when the passage of time has rendered the conclusions of value invalid or when the department has terminated negotiations.

Section 581.199, F.S. – It is unlawful for any authorized representative who in an official capacity obtains under the provisions of this chapter (relating to plant industry) any information entitled to protection as a trade secret, as defined in s. 812.081, to reveal that information to any unauthorized person.

Section 585.611(1), F.S. – Personal identifying information of those persons employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research is exempt from disclosure when such information is contained in specified records relating to animal research.

Section 595.409(1)(2), F.S. – Personal identifying information of an applicant for or participant in a school food and nutrition service program held by the Departments of Agriculture and Consumer Services, or Education is exempt. Such information shall be disclosed as provided in the exemption.

Section 597.0042, F.S. – Certain aquaculture records held by the Department of Agriculture and Consumer Services are confidential and exempt. Disclosure to another governmental entity in the performance of its duties is authorized.

Section 601.10(8), F.S. – Any non published reports or data related to studies or research conducted, caused to be conducted, or funded by the Department of Citrus under s.601.13, is confidential and exempt.

Section 616.242(14)(b), F.S. – All investigatory records made or received by the Department of Agriculture and Consumer Services pursuant to an amusement ride investigation are confidential and exempt from public disclosure requirements until the investigation is completed or cases to be “active” as that term is defined in the exemption.

Section 607.0505(6), F.S. – Information provided to, and records and transcripts obtained by, the Department of Legal Affairs pursuant to this section relating to corporations or alien business organizations are confidential and exempt from s. 119.07(1) while the investigation is active. The department shall not disclose confidential information, records, or transcripts except as authorized by the Attorney General in the circumstances listed in the subsection. **Similar confidentiality provisions exist relating to information received by the department regarding nonprofit corporations (s. 617.0503(6)).**

Section 624.23, F.S. – Personal financial and health information as defined therein held by the Department of Financial Services or the Office of Insurance Regulation relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191 is confidential and exempt. The confidential and exempt information may be disclosed to the persons and entities described in the exemption.

Section 624.231, F.S. – If the Department of Financial Services or the Office of Insurance Regulation determines that any portion of a record requested by a person is exempt pursuant to Ch. 119, the insurance code, or Ch. 641, the department or office shall disclose to the person in writing that the requested record will be provided in a redacted format and that there will be additional fees charged for staff time associated with researching and redacting the exempt portion of the record. Before the department or office provides the record, the person must affirm his or her request to receive the record.

Section 624.310(3)(f), F.S. – An emergency order entered by the Office of Insurance Regulation or the Department of Financial Services against a licensee or affiliated party under this subsection is confidential and exempt from s. 119.07(1) until made permanent, unless the department or office finds that the confidentiality will result in substantial risk of financial loss to the public. Emergency cease and desist orders that are not made permanent are available for public inspection 1 year from the date the emergency order expires; however, portions of such order shall remain confidential if disclosure would result in any of the consequences listed in the paragraph.

Section 624.311(2), F.S. – Records of insurance claim negotiations of any state agency or political subdivision are confidential and exempt from s. 119.07(1) until termination of all litigation and settlement of all claims arising out of the same incident.

Section 624.319(3), F.S. – Examination reports of insurers prepared by the Office of Insurance Regulation or the Department of Financial Services or its examiner pursuant to this section are confidential and exempt from s. 119.07(1) until filed. Investigation reports are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active,” as that term is defined in the paragraph. After an investigation is completed or ceases to be active, portions of such records shall remain confidential and exempt if disclosure would result in any of the consequences listed in the paragraph. Work papers held by the Department of Financial Services or the Office of Insurance Regulation are confidential and exempt from disclosure until the examination report is filed or until the investigation is complete or no longer active; however, portions of work papers may remain confidential under the conditions specified therein. Information received from another governmental entity or the National Association of Insurance Commissioners, which is confidential or exempt when held by that entity, for the department’s or office’s use in the performance of its examination or investigation duties are confidential and exempt from disclosure requirements. Lists of insurers or regulated companies are confidential and exempt from s. 119.07(1), if the conditions set forth in the paragraph apply.

Section 624.40851(1) and (2), F.S. – Risk-based capital plans and reports as described in the exemption that are held by the Office of Insurance Regulation, as well as specified additional related materials, are confidential and exempt from disclosure. Hearings relating to the office’s actions regarding such risk-based capital records, are exempt from open meetings requirements, subject to specified conditions.

Section 624.4212(2)(3)(4), F.S. – Certain proprietary confidential business information held by the Office of Insurance Regulation, specified reports submitted, and confidential information received from other jurisdictions which is held by the Office relating to insurer valuation and solvency, are confidential and exempt. Disclosure is authorized under specified circumstances.

Section 624.82(1), F.S. – Orders, records, and other information in the possession of the Office of Insurance Regulation relating to the supervision of any insurer are confidential and exempt from s. 119.07(1), except as otherwise provided in this section. Proceedings and hearings relating to the office’s supervision of any insurer are exempt from s. 286.011, except as otherwise provided in this section.

Section 624.86, F.S. – During the period of administrative supervision, the Office of Insurance Regulation may meet with a supervisor appointed under this part or representatives of

the supervisor, and such meetings are exempt from s. 286.011.

Section 625.121(3)(a)9., F.S. – Except as otherwise provided in this paragraph, a memorandum or other material in support of the actuarial opinion required to be furnished to the Office of Insurance Regulation under this subsection, is confidential and exempt from s. 119.07(1) and is not subject to subpoena or discovery directly from the Office.

Section 625.1214(1), F.S. – Documents, reports, materials, and other information created, produced, or obtained pursuant to ss. 625.121 and 625.0212 (valuation of policies and contracts) are privileged, confidential, and exempt as provided in s. 624.4212, and are not subject to subpoena or discovery directly from the Office of Insurance Regulation.

Section 626.511(3), F.S. – Any information or record regarding the termination of an appointment which is furnished to the Office of Insurance Regulation or the Department of Financial Services under this section is confidential and exempt from s. 119.07(1).

Section 626.601(6), F.S. – The complaint and any information obtained pursuant to the investigation by the Office of Insurance Regulation or the Department of Financial Services are confidential and exempt from s. 119.07(1), unless the department or the Office takes specified action against the individual or entity.

Section 626.631(2), F.S. – Except as provided in the subsection, the records or evidence of the Department of Financial Services relative to a hearing on the suspension or revocation of a license or appointment are confidential and exempt from s. 119.07(1) until after the material has been published at the hearing.

Section 626.84195(2), F.S. – Proprietary business information, as defined in the exemption, provided to the Office of Insurance Regulation by a title insurance agency or insurer is confidential and exempt until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information.

Section 626.842(3), F.S. – Information contained in credit or character reports furnished to the Department of Financial Services under this section (relating to applications of title insurance agents) is confidential and exempt from s. 119.07(1).

Section 626.8433(3), F.S. – Any information or record furnished to the Department of Financial Services under this section regarding the reasons for termination of the appointment of a title insurance agent is confidential and exempt from s. 119.07(1).

Section 626.884(2), F.S. – Except as provided in the subsection, information contained in the books and records of an insurance administrator is confidential and exempt from s. 119.07(1) if the disclosure would reveal a trade secret as defined in s. 688.002.

Section 626.921(8), F.S. – Information furnished to the Department of Financial Services pursuant to pertinent statutes relating to policies and examinations of surplus lines agents is confidential and exempt if disclosure would reveal information specific to a particular policy or policy holder. Information furnished to the Florida Surplus Lines Service Office under the Surplus Lines Law is confidential and exempt if disclosure would reveal information specific to a particular policy or policy holder.

Section 626.9651, F.S. – The Department of Financial Services and the Financial Services Commission must adopt rules consistent with other provisions of the Florida Insurance Code to govern the use of a consumer's nonpublic personal financial and health information.

Section 626.989(5), F.S. – Records of the Department of Financial Services and the Office of Insurance Regulation relating to an investigation of insurance fraud under this section

are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active,” as that term is defined in the subsection, unless disclosure would result in certain enumerated consequences.

Section 626.9891(11)(a), F.S. – Information relating to investigation and tracking of insurance fraud submitted by insurers to the Department of Financial Services is exempt from public disclosure.

Section 627.0628(3)(g), F.S. – A trade secret as defined in s. 668.002 that is used in designing and constructing a hurricane or flood loss model and that is provided pursuant to this section, by a private company, to the Florida Commission on Hurricane Loss Projection Methodology, Office of Insurance Regulation, or the appointed consumer advocate, is confidential and exempt. That portion of a meeting of the commission or of a rate proceeding on an insurer’s rate filing at which a trade secret made confidential by this exemption is discussed is exempt from open meetings requirements. The closed meeting must be recorded; the recording is exempt from disclosure.

Section 627.06292(1), F.S. – Reports of hurricane loss data and associated exposure data that are specific to a particular insurance company, as reported by an insurer or a licensed rating organization to the Office of Insurance Regulation or to a state university center are exempt from disclosure requirements.

Section 627.311(4)(a), F.S. – Certain records of the Florida Automobile Joint Underwriting Association, as described in the exemption, are confidential and exempt from disclosure as set forth in the subsection.

Section 627.311(4)(b), F.S. – The Florida Automobile Joint Underwriting Association must keep portions of meetings during which confidential and exempt underwriting files or confidential and exempt claims files are discussed exempt from open meetings requirements, subject to the conditions set forth in the exemption. A copy of the transcript, less any confidential and exempt information, of any closed meeting during which confidential and exempt claims files are discussed shall become public as to individual claims files after settlement of that claim.

Section 627.3121, F.S. – Certain records held by the Florida Workers’ Compensation Joint Underwriting Association, Inc., as described in the exemption, are confidential and exempt and may only be released as prescribed therein. That portion of a meeting of the association’s board of governors, or any subcommittee of the association’s board, at which records made confidential and exempt by the section are discussed is exempt from open meeting requirements; the transcript and minutes of exempt portions of meetings are confidential and exempt from disclosure. Those portions of the transcript or the minutes pertaining to a confidential and exempt claims file are no longer confidential and exempt upon termination of all litigation with regard to that claim.

Section 627.351(4)(g), F.S. – All records, relating to the Medical Malpractice Joint Underwriting Association or its operation are open for public inspection, except that a claim file in the possession of the Association is confidential and exempt from s. 119.07(1) during processing of that claim. Information in these files that identifies an injured person is confidential and exempt from s. 119.07(1).

Section 627.351(6)(x)1., F.S. – Certain records of the Citizens Property Insurance Corporation, as described in the exemption, are confidential and exempt from disclosure.

Section 627.351(6)(x)4., F.S. -- Portions of meetings of the Citizens Property Insurance Corporation are exempt from open meetings requirements where confidential underwriting files or confidential open claims files are discussed, subject to the conditions set forth in the exemption. A copy of the transcript, less any exempt matters, of any closed meeting where claims are discussed shall become public as to individual claims after settlement of the claim.

Section 627.3518(11), F.S. – Proprietary confidential business information, as defined in the exemption, that is provided to the Citizens Property Insurance Corporation clearinghouse is confidential and exempt.

Section 627.352, F.S. – Those portions of a risk assessment, an evaluation, an audit, and any other report of the Citizen Property Insurance Corporation's information technology security program are confidential and exempt from disclosure requirements, if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or security information as described in the exemption. Portions of meetings which would reveal such data and information are exempt from s. 286.011, F.S. All exempt portions must be recorded and transcribed and the recordings and transcript must be kept confidential and exempt. Confidential and exempt records must be made available to agencies specified in the exemption.

Section 627.6699(8)(c), F.S. – Information relating to rating and renewal practices of small employer health insurance carriers which is submitted by the carriers to the Office of Insurance Regulation pursuant to this subsection constitutes proprietary and trade secret information and may not be disclosed except as agreed to by the carrier or pursuant to court order.

Section 627.912(2)(e), F.S. – The name and address of the injured person that is contained in reports to the Office of Insurance Regulation regarding professional liability claims is confidential and exempt from s. 119.07(1) and must not be disclosed without the person's consent, except for disclosure to the Department of Health.

Section 627.9122(2)(e), F.S. – The name of the injured person contained in a claim report filed by an insurer providing liability coverage for officers and directors is confidential and exempt from s. 119.07(1), and must not be disclosed by the Office of Insurance Regulation without the consent of the injured person.

Section 627.9126(3)(a)6., F.S. – The names of claimants identified in reports filed by liability insurers with the Office of Insurance Regulation are confidential and exempt from s. 119.07(1).

Section 628.801(4), F.S. – Filings and related documents filed by insurance holding companies as provided in this section are confidential and exempt as provided in s. 624.4212 and are not subject to subpoena or discovery directly from the Office of Insurance Regulation.

Section 631.195, F.S. – Specified records of an insurer which are made or received by the Department of Financial Services acting as a receiver are confidential and exempt, including personal and financial information of a consumer, consumer claim files, personnel and payroll records, underwriting files, specified risk information and corporate governance records submitted pursuant to cited statutes and confidential information received from other governmental entities. Release is authorized under certain circumstances.

Section 631.398(1), F.S. – Reports and recommendations made by specified persons to the Office of Insurance Regulation or to the Department of Financial Services relative to the solvency, liquidation, rehabilitation, or conservation of a member insurer or germane to the solvency of a company seeking to do insurance business in this state, are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

Section 631.582, F.S. – Certain records of the Florida Insurance Guaranty Association such as specified claims, medical records that are part of a claims file, information relating to the medical condition or medical status of a claimant, and records pertaining to matters reasonably encompassed in privileged attorney-client communications of the association, are confidential and exempt.

Section 631.62(2), F.S. – A request from the board of directors of the Florida Insurance Guaranty Association that the Office of Insurance Regulation order an examination of any

member insurer is confidential and exempt from s. 119.07(1) until the examination report is released to the public.

Section 631.62(3), F.S. – The reports and recommendations by the board of directors of the Florida Insurance Guaranty Association on any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

Section 631.723(1), F.S. – The reports and recommendations by the board of directors of the Florida Life and Health Insurance Guaranty Association to the Department of Financial Services or to the Office of Insurance Regulation on any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or a company seeking to do insurance business in Florida are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

Section 631.723(3), F.S. – A request by the board of directors of the Florida Life and Health Insurance Guaranty Association that the Office of Insurance Regulation order the examination of any member insurer is confidential and exempt from s. 119.07(1) until the examination report is released to the public.

Section 631.724, F.S. – Negotiations or meetings of the Florida Life and Health Insurance Guaranty Association involving discussions of the association's powers and duties under 631.717 are exempt from s. 286.011. Records of such negotiations or meetings are confidential and exempt from s. 119.07(1) until the termination of a delinquency proceeding.

Section 631.931, F.S. – The reports and recommendations by the board of directors of the Florida Workers' Compensation Insurance Guaranty Association under s. 631.917 on any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer are confidential and exempt until the termination of a delinquency proceeding.

Section 631.932, F.S. – Negotiations between a self-insurance fund and the Florida Workers' Compensation Insurance Guaranty Association are exempt from s. 286.011. Documents related to such negotiations that reveal identifiable payroll and loss and individual claim information are confidential and exempt.

Section 633.112(7), F.S. – Records obtained or prepared by the State Fire Marshal pursuant to his or her investigation of fires and explosions are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be "active" as that term is defined in the subsection.

Section 633.126(5), F.S. – Discussions involving officials of the Department of Financial Services and an insurance company in accordance with this section (relating to investigation of fraudulent insurance claims and crimes) are confidential and exempt from s. 286.011.

Section 633.324(1), F.S. – Test material relating to applicants for licensure, certification, or permitting by the State Fire Marshal is made confidential by s. 119.071(1)(a). An applicant may waive confidentiality in writing for purposes of discussion with the State Fire Marshal or his or her staff.

Section 634.045(5), F.S. – The filings made by a guarantee organization pursuant to this section relating to guarantee agreements provided by motor vehicle service agreement companies are confidential and exempt from s. 119.07(1).

Section 634.201(3), F.S. – The Department of Financial Service's records or evidence relative to a hearing for the suspension or revocation of the license or appointment of a salesman of automobile warranties are confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be "active," as that term is defined in the subsection.

Section 634.348, F.S. – Active examination or investigatory records of the Department of Financial Services or the Office of Insurance Regulation made or received pursuant to Part II, Ch. 634 (Home Warranty Associations) are confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be “active,” as that term is defined in the section.

Section 634.4065(5), F.S. – The filings made by a guarantee organization pursuant to this section relating to guarantee agreements provided by service warranty associations are confidential and exempt from s. 119.07(1).

Section 634.444, F.S. – Active examination or investigatory records of the Department of Financial Services or the Office of Insurance Regulation made or received pursuant to Part III, Ch. 634 (Service Warranty Associations) are confidential and exempt from s. 119.07(1) until such investigation is completed or ceases to be “active,” as that term is defined in the section.

Section 636.064(1) and (2), F.S. – Information pertaining to the diagnosis, treatment, or health of an enrollee of a prepaid limited health service organization is confidential and exempt from disclosure and shall only be available pursuant to specific written consent of the enrollee or as otherwise provided by law. Any proprietary financial information contained in contracts entered into with providers by prepaid limited health service organizations is confidential and exempt from disclosure.

Section 636.064(3), F.S. – Information obtained or produced by the Department of Financial Services or the Office of Insurance Regulation pursuant to an investigation or examination of a prepaid limited health service organization is confidential and exempt from disclosure until the examination report has been filed pursuant to s. 624.319 or until the investigation is completed or ceases to be “active,” as that term is defined in the subsection. Except for information specified in the subsection, all information obtained by the office pursuant to an examination or investigation shall be available after the examination report has been filed or the investigation is completed or ceases to be active.

Section 641.515(2), F.S. – Patient-identifying information contained in reports and records prepared or obtained under cited statutes (relating to investigation of health maintenance organizations) by the Agency for Health Care Administration or by an outside source, is confidential and exempt from s. 119.07(1).

Section 641.55(5)(c), F.S. – Except as otherwise provided in this subsection, any identifying information contained in the reports of a health maintenance organization filed with the Agency for Health Care Administration under this subsection is confidential and exempt from s. 119.07(1).

Section 641.55(6), F.S. – Incident reports filed with the Agency for Health Care Administration by a health maintenance organization pursuant to this subsection are confidential and exempt from s. 119.07(1).

Section 641.55(8), F.S. – Identifying information in records of a health maintenance organization which are obtained by the Agency for Health Care Administration pursuant to this section (internal risk management program) is confidential and exempt from s. 119.07(1). Identifying information contained in records obtained under s. 456.071 is exempt to the extent that it is part of the record of disciplinary proceedings made available to the public by the agency or appropriate board.

Section 648.26(3), F.S. – The Department of Financial Services’ investigatory records pertaining to bail bond agents are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active,” as that term is defined in the subsection. Certain disclosures are authorized as provided in the exemption.

Section 648.34(3), F.S. – Information in a character and credit report furnished to the Department of Financial Services as part of an application for licensure as a bail bond agent is confidential and exempt from s. 119.07(1).

Section 648.39(1), F.S. – Information furnished to the Department of Financial Services pursuant to this subsection regarding the termination of appointment of a managing general agent, bail bond agent is confidential and exempt from s. 119.07(1).

Section 648.46(3), F.S. – The complaint and all information obtained pursuant to the investigation of a bail bond licensee by the Department of Financial Services are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active,” as defined in the subsection. Certain disclosures are authorized as provided in the exemption.

Section 651.105(3), F.S. – Reports of the results of such financial examinations or providers engaged in the execution of care contracts must be kept on file by the Office of Insurance Regulation. Any investigatory records, reports or documents held by the office are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active,” as that term is defined in the subsection.

Section 651.111(2), F.S. – Unless the complainant who has filed a complaint against a continuing care provider specifically requests otherwise, neither the substance of the complaint which is provided to the provider nor any copy of the complaint or any record which is published, released, or otherwise made available to the provider shall disclose the name of any person mentioned in the complaint except the names of Office of Insurance Regulation personnel conducting the investigation or inspection pursuant to this chapter.

Section 651.121(5)(c), F.S. – Except for proceedings conducted under s. 651.018 (authorizing the Office of Insurance Regulation to place a facility in administrative supervision), the books and records of the Continuing Care Advisory Council to the Office of Insurance Regulation of the Financial Services Commission shall be open to inspection at all times.

Section 651.134, F.S. – Any active investigatory record of the Office of Insurance Regulation made or received under Ch. 651 (Continuing Care Contracts) and any active examination record necessary to complete an active investigation is confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active,” as that term is defined in the section.

Section 655.0321, F.S. – The Office of Financial Regulation shall consider the public purposes specified in s. 119.14(4)(b) in determining whether the hearings and proceedings conducted pursuant to s. 655.033 (cease and desist orders) and s. 655.037 (suspension or removal orders) shall be closed and exempt from s. 286.011, and whether related documents shall be confidential and exempt from s. 119.07(1).

Section 655.033(6), F.S. – An emergency order entered by the Office of Financial Regulation pursuant to this subsection (relating to the issuance of cease and desist orders to financial institutions in certain circumstances) is confidential and exempt from s. 119.07(1) until the order is made permanent, unless the office finds that such confidentiality will result in substantial risk of financial loss to the public.

Section 655.057(1), F.S. – Except as otherwise provided in this section and except for such portions thereof which are otherwise public record, all records and information relating to an investigation by the Office of Financial Regulation are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be “active” as that term is defined in the section. After the investigation is completed or ceases to be active, portions of the records shall be confidential and exempt from s. 119.07(1) to the extent that disclosure would cause any of the consequences listed in the subsection.

Section 655.057(2), F.S. – Except as otherwise provided in this section and except for such portions thereof which are public record, reports of examinations, operations, or condition, prepared by, or for the use of, the Office of Financial Regulation or other agency responsible for regulation of banking institutions in this state are confidential and exempt from s. 119.07(1). Examination, operation, or condition reports of a financial institution shall be released within 1 year after the appointment of a liquidator, receiver, or conservator to such financial institution. However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution, shall remain confidential and exempt from s. 119.07(1).

Section 655.057(3), F.S. – Except as otherwise provided in this section and except for those portions that are otherwise public record, after an investigation relating to an informal enforcement action is completed or cases to be active, informal enforcement actions are confidential and exempt to the extent that disclosure would cause any of the consequences listed in the subsection.

Section 655.057(4), F.S. – Except as otherwise provided in this section and except for those portions that are otherwise public record, trade secrets as defined in s. 688.002 which comply with s. 655.0591 and which are held by the Office of Financial Regulation in accordance with its statutory duties with respect to the financial institutions codes are confidential and exempt.

Section 655.057(5), F.S. – Any confidential information or records obtained from the Office of Financial Regulation pursuant to this subsection (authorizing specified disclosures of records or information) shall be maintained as confidential and exempt from s. 119.07(1).

Section 655.057(6)(b), F.S. – Confidential records and information furnished pursuant to a legislative subpoena shall be kept confidential by the legislative body which received the records or information except in a case involving an investigation of charges against a public official subject to impeachment in which case the legislative body shall determine the extent of disclosure.

Section 655.057(7), F.S. – Except as otherwise provided in this subsection, the list of members of a credit union or mutual association which is submitted to the Office of Financial Regulation is confidential and exempt from s. 119.07(1).

Section 655.057(8), F.S. – Except as otherwise provided in this subsection, any portion of the list of shareholders of a bank, trust company, and stock association which is submitted to the Office of Financial Regulation pursuant to this subsection and which reveals the identities of the shareholders is confidential and exempt from s. 119.07(1).

Section 655.057(9), F.S. – Confidential documents supplied to the Office of Financial Regulation or to employees of a financial institution by other governmental agencies shall be confidential and exempt from s. 119.07(1) and may be made public only with the consent of such agency or corporation.

Section 655.50(7), F.S. – Except as provided in the exemption, all reports and records filed with the Office of Financial Regulation pursuant to this section (Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act) are confidential and exempt from s. 119.07(1).

Section 662.1465, F.S. – In specified statutory proceedings in which a family trust company is a party, the clerk must, on written notice from a party, keep all court records of that case separate from other court records and confidential. However, disclosure is required to specified individuals.

Section 662.148(2), F.S. – Certain information, including personal identifying information, held by the Office of Financial Regulation, which relates to a family trust company, is confidential and exempt.

Section 663.416(2), F.S. – Certain information, including personal identifying information of the customers or prospective customers of an affiliated international trust entity, held by the Office of Financial Regulation is confidential and exempt.

Section 663.540(2), F.S. – Certain information, including personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the records of a qualified limited services affiliate, held by the Office of Financial Regulation is confidential and exempt.

Section 681.1097(4), F.S. – A mediation conference conducted pursuant to the RV Mediation and Arbitration Program shall be confidential.

Section 687.144(6), F.S. – The material compiled by the Office of Financial Regulation in an investigation or examination under this act (relating to loan brokers) is confidential until the investigation or examination is complete.

Section 688.006, F.S. – In an action under the Uniform Trade Secrets Act, a court shall preserve the secrecy of an alleged trade secret by reasonable means as described in the section.

Section 717.117(8), F.S. – Social security numbers and property identifiers contained in reports to the Department of Financial Services concerning unclaimed property are confidential and exempt.

Section 717.1301(5), F.S. – Material compiled by the Department of Financial Services in an investigation under the Disposition of Unclaimed Property Act is confidential until the investigation is complete; provided that such material remains confidential if it is submitted to another agency for investigation or prosecution and such investigation has not been completed or become inactive.

Section 721.071, F.S. – If a developer or other person filing material with the Division of Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation pursuant to chapter 721 relating to time-share plans expects the division to keep the material confidential on grounds that the material constitutes a trade secret as defined in s. 812.081, that person shall file the material together with an affidavit of confidentiality as provided in the section. If the division is satisfied as to the facial validity of the claim of confidentiality, it shall keep the affidavit and supporting documentation confidential and shall not disclose such information except upon administrative or court order.

Section 723.006(3), F.S. – Except as otherwise provided in the subsection, mobile home park financial records, as defined in the subsection, which are acquired by the Division of Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation pursuant to an investigation under this section are confidential and exempt.

Section 733.604(1)(b), F.S. – Any inventory of an estate filed with the clerk of court in conjunction with the administration of an estate or of an elective estate filed with the clerk of the court in conjunction with an election made in accordance with Part II, Ch. 732, whether initial, amended, or supplementary, is confidential and exempt. Any accounting, whether interim, final, amended, or supplementary, filed with the clerk of court in an estate proceeding is confidential and exempt. Disclosure is authorized under specified circumstances.

Section 741.29(2), F.S. – A law enforcement agency shall, without charge, send a copy of the initial police report of domestic violence, as well as any subsequent, supplemental, or

related report, which excludes victim/witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under Ch. 119 to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report.

Section 741.30(3)(b), F.S. – A petitioner seeking an injunction for protection against domestic violence may furnish his or her address to the court in a separate confidential filing for safety reasons if the petitioner requires the location of his or her current residence to be confidential.

Section 741.313(7), F.S. – Personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee seeking to take leave as provided therein as provided therein is confidential and exempt. A written request for leave submitted by an agency employee and any agency time sheet reflecting such request are confidential and exempt until 1 year after the leave has been taken.

Section 741.3165, F.S. – Information that is confidential or exempt and that is obtained by a domestic violence fatality review team conducting activities as described in s. 741.316 shall retain its confidential or exempt status when held by the team. Information contained in a record created by a team pursuant to s. 741.316 that reveals the identity of a victim of domestic violence or the identity of the victim's children is confidential and exempt. Portions of meetings of the team regarding domestic violence fatalities and their prevention, during which confidential or exempt information, the identity of the victim, or the identity of the victim's children are discussed, are exempt from s. 286.011, F.S.

Section 741.406, F.S. – The name, address, and telephone number of a participant in the Address Confidentiality Program for Victims of Domestic Violence may not be included in any list of registered voters available to the public.

Section 741.465, F.S. – The addresses, corresponding telephone numbers, and social security numbers of program participants in the Address Confidentiality Program for Victims of Domestic Violence held by the Office of the Attorney General are exempt from disclosure, except that the information may be disclosed under the following circumstances: to a law enforcement agency for purposes of assisting in the execution of a valid arrest warrant; if directed by court order, to a person identified in the order; or if the certification has been canceled. The names, addresses, and telephone numbers of participants contained in voter registration and voting records are exempt, except the information may be disclosed under the following circumstances: to a law enforcement agency for purposes of assisting in the execution of an arrest warrant or, if directed by court order, to a person identified in the order.

Section 741.4651, F.S. – The names, addresses, and telephone numbers of victims of stalking or aggravated stalking are exempt in the same manner as participants in the Address Confidentiality Program for Victims of Domestic Violence under s. 741.465 are exempt from disclosure, provided the victim files a sworn statement of stalking with the Office of the Attorney General and otherwise complies with ss. 741.401-741.409.

Section 742.091, F.S. – Records of any proceeding under the determination of paternity statute which was subsequently dismissed when the mother of the illegitimate child and reputed father marry thereby making the child legitimate are sealed against public inspection.

Section 742.16(9), F.S. – All papers and records pertaining to the affirmation of parental status for gestational surrogacy, including the original birth certificate, are confidential and exempt and subject to inspection only upon court order.

Section 744.1076, F.S. – A court order appointing a court monitor is exempt from public disclosure requirements. Reports of a court monitor relating to the medical condition, financial affairs, or mental health of the ward are confidential and exempt. The reports may be subject to inspection as determined by the court or upon a showing of good cause. Court

determinations relating to a finding of no probable cause and court orders finding no probable cause are confidential; however, such determinations and findings may be subject to inspection as determined by the court or upon a showing of good cause.

Section 744.2103(2), F.S. – No report or disclosure of the personal or medical records of a ward of a public guardian shall be made, except as authorized by law.

Section 744.21031, F.S. – Home addresses, telephone numbers, and other specified personal information of current or former public guardians and employees with fiduciary responsibility, as defined in the exemption, as well as the names and specified information about the spouses and children of these individuals are exempt from disclosure. An agency that is the custodian of the information shall maintain the exempt status only if the specified individuals submit a written request for exempt status to the custodial agency.

Section 744.2104(2) F.S. – All records held by the Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults, persons with a developmental disability, or persons with a mental illness, are confidential and exempt from public disclosure requirements.

Section 744.2105(6), F.S. – Personal identifying information of a donor or prospective donor of funds or property to the direct-support organization of the Office of Public and Professional Guardians who wishes to remain anonymous is confidential and exempt.

Section 744.2111(1)(2)(3), F.S. – A complaint and any information held by the Department of Elderly Affairs as part of the investigative process are confidential and exempt until the investigation is completed or ceases to be “active,” as that term is defined in the exemption. However, once the investigation is completed or ceases to be active, specified personal information relating to complainants or wards remains confidential. The exemption does not prohibit the department from providing such information to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of court under s. 744.368, or pursuant to court order.

Section 744.3701, F.S. – Unless otherwise ordered by the court, upon a showing of good cause, an initial, annual, or final guardianship report or amendment thereto, or any record relating to the settlement of a claim is subject to inspection only by the individuals specified in the section. Court records relating to the settlement of a ward’s or minor’s claim are confidential and exempt and may not be disclosed except as specifically authorized.

Section 760.11(12), F.S. – Complaints filed with the Commission on Human Relations and all records in the commission’s custody which relate to and identify a particular person, including, but not limited to, the entities specified in the subsection are confidential and may not be disclosed except to the parties or in the course of a hearing or proceeding under this section. This restriction does not apply to any record which is part of the record of a hearing or court proceeding.

Section 760.34(1), F.S. – Nothing said or done in the course of informal endeavors by the Commission on Human Relations to resolve complaints about discriminatory housing practices may be made public or used as evidence in a subsequent proceeding under ss. 760.20-760.37 without the written consent of the persons concerned.

Section 760.36, F.S. – A conciliation agreement arising out of a complaint filed under the Fair Housing Act shall be made public unless the complainant and the respondent otherwise agree and the Commission on Human Relations determines that disclosure is not required to further the purposes of the Act.

Section 760.40(2), F.S. – Except as provided in the subsection, DNA analysis results information held by a public entity is exempt from s. 119.07(1).

Section 760.50(5), F.S. – Employers shall maintain the confidentiality of information relating to the medical condition or status of any person covered by health or life insurance benefits provided or administered by the employer. Such information in the possession of a public employer is exempt from s. 119.07(1).

Section 765.51551, F.S. – Donor-identifying information maintained in the anatomical gifts donor registry is confidential and exempt as provided in the exemption.

Section 766.101(7)(c), F.S. – Proceedings of medical review committees are exempt from s. 286.011 and any advisory reports provided to the Department of Health are confidential and exempt from s. 119.07(1), regardless of whether probable cause is found.

Section 766.105(3)(e)2., F.S. – A claim file in the possession of the Patient's Compensation Fund is confidential and exempt until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law.

Section 766.106(6)(b)3., F.S. – An examination report on an injured claimant which is made pursuant to this section relating to medical malpractice claims is available only to the parties and their attorneys and may be used only for the purpose of presuit screening. Otherwise, such report is confidential and exempt from s. 119.07(1).

Section 766.1115(4)(c), F.S. – All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities contracting with health care providers under this paragraph, are confidential and exempt.

Section 766.305(3), F.S. – Information furnished by a person seeking compensation under the Florida Birth-Related Neurological Injury Compensation Plan pursuant to this subsection shall remain confidential and exempt under the provisions of s. 766.315(5)(b).

Section 766.314(8), F.S. – Information obtained by the Florida Birth-Related Neurological Injury Compensation Association to determine the actual cost of maintaining the fund on an actuarially sound basis shall be utilized solely for the purpose of assisting the association. Such information shall otherwise be confidential and exempt.

Section 766.315(5)(b), F.S. – A claim file in the possession of the Florida Birth-Related Neurological Injury Compensation Association or its representative is confidential and exempt until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law.

Section 768.28(16)(b), F.S. – Claims files maintained by any risk management program administered by the state, its agencies and subdivisions are confidential and exempt until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Claims files records may be released to other governmental agencies as provided in the paragraph; such records held by the receiving agency remain confidential as provided in the paragraph.

Section 768.28(16)(c), F.S. – Portions of meetings and proceedings conducted pursuant to a risk management program administered by the state, its agencies or subdivisions relating solely to the evaluation of claims or relating solely to offers of compromise of claims filed with the program are exempt from s. 286.011.

Section 768.28(16)(d), F.S. – Minutes of the meetings and proceedings of a risk management program administered by the state, its agencies or its subdivisions relating solely to the evaluation of claims or relating solely to offers of compromise of claims filed with such

risk management programs are exempt from s. 119.07(1) until termination of all litigation and settlement of all claims arising out of the same incident.

Section 784.046(4)(b), F.S. – A petitioner seeking an injunction for protection against repeat violence, sexual violence or dating violence and related court actions may furnish an address to the court in a separate confidential filing for safety reasons if the petitioner requires the location of his or her current residence to be confidential pursuant to s. 119.071(2)(j).

Section 784.0485(3)(b), F.S. – A petitioner seeking an injunction for protection against stalking may furnish his or her address to the court in a separate confidential filing if, for safety reasons, the petitioner requires the location of the current residence to be confidential.

Section 787.03(6)(c)1., F.S. – The current address and telephone number of the person taking a child or incompetent person when fleeing from domestic violence or to preserve the minor or incompetent person from danger and the current address and telephone number of the minor or incompetent person which are contained in the report made to a sheriff or state attorney under s. 787.03(6)(b) by the person who takes such child or incompetent person; are confidential and exempt from public disclosure requirements.

Section 787.06(10), F.S. – Information about the location of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity, which is held by an agency is confidential and exempt; however, the information may be disclosed as provided in the exemption.

Section 790.0601, F.S. – Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division of Licensing of the Department of Agriculture and Consumer Services or by a tax collector appointed by the Department to receive applications and fees is confidential and exempt from disclosure requirements. Information made confidential and exempt shall be disclosed with express written consent of the applicant or licensee, by court order, or upon request by a law enforcement agency in connection with the performance of lawful duties.

Section 790.0625(4), F.S. – All personal identifying information that is provided pursuant to s. 790.06 and contained in the records of a tax collector appointed under this section is confidential and exempt except as provided in s. 790.0601.

Section 790.065(2)(a)4.d., F.S. – The hearing on the petition filed by a person who has been adjudicated mentally defective or committed to a mental institution for relief from the firearm disabilities imposed by such adjudication or commitment may be open or closed as the petitioner may choose.

Section 790.065(4)(a), F.S. – Any records containing information specified in this section relating to a buyer or transferee of a firearm who is not prohibited under state or federal law from receipt or transfer of a firearm shall be confidential and exempt from s. 119.07(1) and may not be disclosed by the Department of Law Enforcement to any other person or agency.

Section 790.335(2), F.S. – Subject to specified exceptions, a governmental agency or any other person, public or private, may not knowingly and willfully keep or cause to be kept any list, record or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.

Section 794.024, F.S. – A public employee or officer having access to the photograph, name or address of a person alleged to be a victim of an offense described in this chapter (sexual battery), chapter 800 (lewdness, indecent exposure), s. 827.03 (aggravated child abuse), s. 827.04 (child abuse), or s. 827.071 (sexual performance by a child) may not willfully and knowingly disclose it to a person not assisting in the investigation or prosecution of the alleged offense or to

any person other than the defendant, the defendant's attorney, a person specified in a court order entered by the court having jurisdiction over the alleged offense, to organizations authorized to receive such information made exempt by s. 119.071(2)(h), or to a rape crisis center or sexual assault counselor who will be offering services to the victim.

Section 794.03, F.S. – It is unlawful to print, publish, or broadcast or cause or allow to be printed, published or broadcast in any instrument of mass communication the name, address or other identifying fact or information of the victim of any sexual offense. Such identifying information is confidential and exempt.

Section 815.045, F.S. – It is a public necessity that trade secret information as defined in s. 812.081, be expressly made confidential and exempt from the public records law because it is a felony to disclose such records.

Section 828.30(5), F.S. – An animal owner's name, street address, phone number, and animal tag number contained in a rabies vaccination certificate provided to the animal control authority is confidential and exempt from disclosure except as provided in the exemption.

Section 877.19(3), F.S. – Certain information on hate crimes which is reported to the Florida Department of Law Enforcement pursuant to this statute is confidential and exempt. Data required pursuant to this section shall be used only for research or statistical purposes and shall not include any information that may reveal the identity of a crime victim.

Section 893.0551(2), F.S. – Certain identification and location information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner; a pharmacist, or a pharmacy, that is contained in Department of Health records under the electronic prescription drug monitoring program for monitoring the prescribing and dispensing of controlled substances is confidential and exempt from disclosure.

Section 895.06(2), F.S. – A subpoena issued pursuant to this chapter is confidential for 120 days after the date of its issuance. The subpoenaed person or entity may not disclose the existence of the subpoena to any person or entity other than his or her attorney during the 120-day period.

Section 895.06(7), F.S. – Information held by an investigative agency pursuant to an investigation of a violation of s. 895.03 is confidential and exempt; however, the information may be disclosed as provided in the subsection. Information made confidential and exempt under this exemption is no longer confidential and exempt once all investigations to which the information pertains are completed, as defined in the exemption, unless the information is otherwise protected by law.

Section 896.102(2), F.S. – Information and documents filed with the Department of Revenue regarding certain currency transactions are confidential and exempt; however, the information may be released as provided in the subsection.

Section 905.17(1), F.S. – Stenographic records, notes and transcriptions made by a court reporter during a grand jury session are confidential and exempt from s. 119.07(1) and shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection.

Section 905.24, F.S. – Grand jury proceedings are secret and a grand juror or interpreter appointed pursuant to s. 90.6063(2) shall not disclose the nature or substance of the deliberations or vote of the grand jury.

Section 905.26, F.S. – Unless ordered by the court, a grand juror, reporter, stenographer, interpreter, or officer of the court may not disclose the finding of an indictment against a person

not in custody or under recognizance, except by issuing or executing process on the indictment, until the person has been arrested.

Section 905.27(1) and (2), F.S. – A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the grand jury may not disclose evidence received by it except when required by a court. It is unlawful for any person knowingly to publish, disclose or cause to be published or disclosed any witness's testimony before a grand jury unless such testimony is or has been disclosed in a court proceeding.

Section 905.28(1), F.S. – A report or presentment of a grand jury relating to an individual which is not accompanied by a true bill or indictment is confidential and exempt and shall not be made public until the individual concerned has been furnished a copy and given 15 days to file a motion to repress or expunge the report.

Section 905.395, F.S. – Unless pursuant to court order, it is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate or cause or permit such publication or communication to any person outside the statewide grand jury room, any of the proceedings or identity of persons referred to or being investigated by the statewide grand jury.

Section 914.27, F.S. – Information held by a law enforcement agency, prosecutorial agency, or the Victim and Witness Protection Review Committee which discloses the identity or location of a victim or witness who has been identified or certified for protective or relocation services is confidential and exempt from disclosure. Identity and location of immediate family members of such victims or witnesses are also protected as are relocation sites, techniques or procedures utilized or developed as a result of the victim and witness protective services.

Section 916.1065(1), F.S. – A forensic behavioral health evaluation filed with the court pursuant to Ch. 916, is confidential and exempt.

Section 916.107(8), F.S. – Except as provided in the subsection, a forensic client's clinical record is confidential and exempt from s. 119.07(1).

Section 918.16(1), F.S. – Except as provided in s. 918.16(2), in any civil or criminal trial, if any person under 16 or any person with an intellectual disability as defined in cited statute is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters and court reporters, and at the request of the victim, victim or witness advocates designated by the state attorney's office.

Section 918.16(2), F.S. – If the victim of a sex offense is testifying concerning that offense in any civil or criminal trial, the court shall clear the courtroom of all persons upon the request of the victim, regardless of the victim's age or mental capacity, except that parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters and court reporters, and at the request of the victim, victim or witness advocates designated by the state attorney may remain in the courtroom.

Section 925.055(2), F.S. – The names of confidential informants that may be revealed to auditors of law enforcement investigative funds are confidential and exempt.

Section 932.703(2)(e), F.S. –The court may seal any portion of the application and the record of any proceeding under the Florida Contraband Forfeiture Act which is exempt or confidential and exempt from disclosure requirements or may otherwise be sealed pursuant to Rule 2.420, Florida Rules of Judicial Administration.

Section 934.08(1)(b), F.S. – A state or federal law enforcement official who receives intelligence information as described in the paragraph is subject to any limitations on the

unauthorized disclosure of such information.

Section 934.09(8)(c), F.S. – Applications made and orders granted authorizing interception of wire, oral or electronic communications pursuant to cited statutes shall be sealed by the judge and shall be disclosed only upon a showing of good cause before a judge.

Section 934.33(7), F.S. – The record maintained by an investigative or law enforcement agency which contains specified identifying information regarding the installation and use of a pen register or trap and trace device must be provided under seal to the court.

Section 937.028(1), F.S. – When fingerprints are taken for the purpose of identifying a child, should that child become missing, the state agency, public or private organization, or other person taking such fingerprints shall not release the fingerprints to any law enforcement agency or other person for any purpose other than the identification of a missing child. Such records and data are exempt from s. 119.07(1).

Section 943.03(2), F.S. – Records related to a Florida Department of Law Enforcement investigation requested by the Governor concerning official misconduct of public officials and employees, are confidential and exempt from s. 119.07(1) until the investigation is completed or is no longer “active” as defined in the subsection.

Section 943.031(9)(c) and (d), F.S. – The Florida Violent Crime and Drug Control Council may close portions of meetings during which the council will hear or discuss active criminal investigative information or active criminal intelligence information and such portions of meetings are exempt from open meetings requirements, provided that the conditions set forth in the subsection are met. A tape recording of, and any minutes and notes generated during, the closed portion of a meeting are confidential and exempt until the criminal investigative or intelligence information ceases to be active.

Section 943.0314, F.S. – That portion of a meeting of the Domestic Security Oversight Council at which the council will hear or discuss active criminal investigative information or active criminal intelligence information is exempt from open meetings requirements provided that the conditions set forth in the exemption are complied with. An audio or video recording of, and any minutes and notes generated during, a closed meeting are exempt from public disclosure requirements until such time as the criminal investigative information or criminal intelligence information heard or discussed therein ceases to be active.

Section 943.0321(4), F.S. – Information that is exempt from public disclosure under Ch. 119 when in the possession of the Florida Domestic Security and Counter-Terrorism Intelligence Center retains its exemption from public disclosure after such information is revealed to a law enforcement agency or prosecutor, except as otherwise provided by law. Exempt information obtained by the center from a law enforcement agency or prosecutor retains its exemption from public disclosure, except as otherwise provided by law.

Section 943.053(3), F.S. – Criminal history information relating to a juvenile and compiled by the Criminal Justice Information Program from intrastate sources is confidential and exempt except as provided in the exemption.

Section 943.053(5), (8), (9), and (10), F.S. – Sealed records received by a court for the purpose of assisting judges in their case-related responsibilities, or by a private entity under contract to operate a juvenile offender facility, county detention facility or state correctional facility pursuant to cited laws remain confidential and exempt from disclosure.

Section 943.057, F.S. – This section (providing for access to criminal justice information in the Department of Law Enforcement for research or statistical purposes) does not require release of confidential information or require the department to accommodate requests that

would disrupt ongoing operations beyond the extent required by s. 119.07.

Section 943.0582(5), F.S. – Nonjudicial records held by the Florida Department of Law Enforcement pertaining to the arrest of juveniles for certain crimes who have had the records sealed or expunged pursuant to s. 943.0582, are confidential. Disclosure is authorized as provided in the exemption.

Section 943.0583(10)(a), F.S. – A criminal history record of a human trafficking victim that is ordered expunged under this section that is retained by the Florida Department of Law Enforcement is confidential and exempt except that the record shall be made available to criminal justice agencies for their respective criminal justice purposes; to any governmental agency that is authorized by law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties; or by court order.

Section 943.0583(11)(12), F.S. – Criminal intelligence information or criminal investigative information that reveals or may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged or has been expunged under s. 943.0583 is confidential and exempt. Disclosure is authorized under specified circumstances. A petition filed under this section and all documents related to the petition are confidential and exempt.

Section 943.0585(6), F.S. – A criminal history record ordered expunged that is retained by the Department of Law Enforcement pursuant to this section is confidential and exempt and is not available to any person or entity except upon court order.

Section 943.0585(6)(d), F.S. – Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a), is confidential and exempt, except that the Florida Department of Law Enforcement shall disclose the existence of an expunged record to the agencies set forth in the paragraph for their respective licensing and employment purposes and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity identified in the paragraph to disclose such information except to the person to whom the record relates or to persons having direct responsibility for employment or licensure decisions.

Section 943.059(6)(a), F.S. – A criminal history record of a minor or an adult which is ordered sealed by a court pursuant to this section is confidential and exempt and available only to the persons and entities identified in the subsection.

Section 943.059(6)(d), F.S. – Information relating to the existence of such record that is provided in accordance with paragraph (a) is confidential and exempt, except that the Florida Department of Law Enforcement shall disclose a sealed record to the agencies set forth in the paragraph for their respective licensing and employment purposes. It is unlawful for any employee of an entity identified in the paragraph to disclose such information except to the person to whom the record relates or to persons having direct responsibility for employment or licensure decisions. *See also* s. 943.0595(3)(b).

Section 943.082(6), F.S. – The identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Department of Law Enforcement, Department of Education, law enforcement agencies, or school officials is confidential and exempt. Any other information received through the tool and held by such agencies is exempt.

Section 943.1395(6)(b), F.S. – The report of misconduct and all records or information provided to or developed by the Criminal Justice Standards and Training Commission during the course of an investigation conducted by the commission are exempt from s. 119.07(1) and, except as otherwise provided by law, such information shall be subject to public disclosure only after a determination as to probable cause has been made or until the investigation becomes

inactive. However, the officer being investigated or the officer's attorney may review records as authorized in the exemption.

Section 943.173(3), F.S. – Examinations, assessments, and instruments and examination results, other than test scores on officer certification examinations, including developmental materials and workpapers, administered pursuant to s. 943.13(9) or (10) and s. 943.17 are exempt from s. 119.07(1).

Section 943.325(14), F.S. – The results of a DNA analysis and the comparison of analytic results shall be released only to criminal justice agencies as defined in s. 943.045, F.S., at the request of the agency. Otherwise, such information is confidential and exempt.

Section 943.68(10)(a), F.S. – Records held by a law enforcement agency relating to security or transportation services provided under ss. 943.68(1), (5), or (6) to the Governor and other specified persons are exempt from disclosure requirements.

Section 943.687(8), F.S. – Any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential information is discussed is exempt from open meetings requirements.

Section 944.606(3)(d), F.S. – Sexual offender information received from the Department of Corrections by the Department of Law Enforcement, the sheriff, or the chief of police shall be provided to a person who requests it and such information may be released to the public in any manner deemed appropriate, unless the information so received is confidential or exempt from disclosure.

Section 945.10, F.S. – Records of the Department of Corrections relating to inmates and other specified persons and entities, as set forth in the exemption, are confidential and exempt and may not be released except as provided in the exemption.

Section 945.602(7)(b), F.S. – Neither the provisions of this section nor those of Ch. 119 or s. 154.207(7) shall apply to any health care provider under contract with the Department of Corrections except to the extent such provisions would apply to any similar entity not under contract with the department.

Section 945.6032(3), F.S. – The findings and recommendations of a medical review committee created by the Correctional Medical Authority or the Department of Corrections pursuant to s. 766.101 are confidential and exempt from s. 119.07(1) and any proceedings of the committee are exempt from s. 286.011.

Section 946.517, F.S. – Proprietary confidential business information, as defined in the statute, of the corporation created to operate correctional work programs is confidential and exempt.

Section 951.27(2), F.S. – Except as otherwise provided in this subsection, serologic blood test results for infectious disease which are obtained pursuant to s. 951.27(1) on inmates in county and municipal detention facilities are confidential and exempt.

Section 960.001(1)(g)2., F.S. – Any person who views a presentence investigation report pursuant to this paragraph must maintain the confidentiality of the report and may not disclose its contents to any person except statements made to the state attorney or the court.

Section 960.001(8), F.S. – Information gained by a crime victim pursuant to this chapter (providing guidelines for fair treatment of victims in the criminal and juvenile justice systems), regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.

Section 960.003(3), F.S. – Results of human immunodeficiency virus and hepatitis tests performed pursuant to this section on persons charged with or alleged by delinquency petition with certain offenses are confidential and exempt and may not be disclosed to any person other than the individuals and entities identified in the subsection.

Section 960.15, F.S. – Any record or report obtained by the Department of Legal Affairs or a hearing officer, pursuant to a claim for crime victim compensation, that is confidential or exempt from s. 119.07(1) shall retain that status and shall not be subject to public disclosure.

Section 960.28(4), F.S. – Information received or maintained by the Department of Legal Affairs identifying an alleged victim who seeks payment of medical expenses under this section is confidential and exempt from s. 119.07(1).

Section 984.06(3) and (4), F.S. – All information obtained pursuant to Ch. 984 (families in need of services and children in need of services) in the discharge of official duty by the officials specified in the subsection shall not be disclosed to anyone other than persons and agencies entitled under the chapter to receive this information or upon court order. Court records required by Ch. 984 are not open to public inspection.

Section 985.036, F.S. – Nothing in this chapter prohibits the victim of the offense or a minor victim's parent or guardian from the right to be informed of, and to be present during, all crucial stages of the proceedings involving the juvenile offender. However, such person may not reveal to any outside party any confidential information obtained under this subsection regarding the case, except as is reasonably necessary to pursue legal remedies. A law enforcement agency may release a copy of the juvenile offense report to the victim of the offense; however, information gained by the victim under this chapter, including the next of kin of a homicide victim, regarding any case handled in juvenile court must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies.

Section 985.04(1) F.S. – Except as otherwise provided in this section, all information obtained under this chapter (relating to juvenile justice) in the discharge of official duty by any of the entities set forth in the subsection is confidential and exempt and may be disclosed only to the entities specified in the subsection or upon court order. Agencies entering into an agreement to share information about juvenile offenders as authorized by this subsection must comply with s. 943.0525 and must maintain the confidentiality of information otherwise exempt from s. 119.07(1), as provided by law.

Section 985.04(6), F.S. – Records maintained by the Department of Juvenile Justice pertaining to a child found to have committed a delinquent act which, if committed by an adult, would be a crime specified in cited statute may not be destroyed for a period of 25 years after the youth's final referral to the department, except in cases of the child's death. However, such record shall be sealed by the court and may be released only to meet screening requirements for personnel in s. 402.3055 and the other mentioned statutes or department rules although sexual offender and predator registration information is a public record.

Section 985.04(7)(a), F.S. – Records in the custody of the Department of Juvenile Justice regarding children are not open to public inspection and may be inspected only upon order of the Secretary of the department or the secretary's authorized agent as provided therein.

Section 985.045(2), F.S. – The clerk of court shall keep all official records required by this section (delinquency) separate from other records of the circuit court, except those records pertaining to motor vehicle violations, which shall be forwarded to the Department of Highway Safety and Motor Vehicles. Except as provided in ss. 943.053 and 985.04(6)(b) and (7), official records required by this chapter are not open to inspection by the public, but may be inspected only by persons and entities specified in the subsection or deemed by the court to have a proper interest therein. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect, and make abstracts from, official records

under whatever conditions upon the use and disposition of such records the court may deem proper and may punish by contempt proceedings any violation of those conditions.

Section 985.047(2)(a), F.S. – Notwithstanding any provision of law to the contrary, confidentiality of records information does not apply to juveniles who have been arrested for an offense that would be a crime if committed by an adult, regarding the sharing of information on such juveniles with the law enforcement agency or county as well as other specified agencies and individuals. Neither these records provided to the law enforcement agency or county nor the records developed from these records for serious habitual juvenile offenders nor the records provided or developed from records provided to the law enforcement agency or county on juveniles at risk of becoming serious habitual juveniles offenders shall be available for public disclosure under s. 119.07.

Section 985.11, F.S. – Except as provided in cited statutes, fingerprints and photographs of juveniles are not available for public disclosure and inspection under s. 119.07(1), except as provided in ss. 943.053 and 985.04(2), but are available to specified entities or to any other person authorized by the court to have access to such records. The records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause.

Section 985.534(4) and (5), F.S. – The original order of the appellate court in a case affecting a party to a case involving a child under this chapter (juvenile justice) and all papers filed in the case on appeal shall remain in the office of the clerk of the court, sealed and not open to inspection except by order of the appellate court. The case on appeal shall be docketed, and any papers filed in the appellate court shall be entitled with the initials but not the name of the child.

Section 1001.24(4), F.S. – The identity of donors to a Department of Education direct-support organization, and all information identifying donors and prospective donors, is confidential and exempt from s. 119.07(1) and that anonymity shall be maintained in the auditor's report. All records of the organization other than the auditor's report, management letter, and any supplemental data requested by the Auditor General and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt.

Section 1001.453(4), F.S. – The identity of donors and all information identifying donors and prospective donors are confidential and exempt from s. 119.07(1) and that anonymity shall be maintained in the auditor's report of a district school board direct-support organization.

Section 1002.221, F.S. – Education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations, are confidential and exempt. An agency or institution, as defined in s. 1002.22, may not release a student's education records without the written consent of the student or parent except as provided in the exemption and as permitted by FERPA.

Section 1002.225, F.S. – All public postsecondary educational institutions shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, with respect to the education records of students.

Section 1002.36(7)(d), F.S. – The criminal records, private investigator findings, and information from reference checks obtained by the Florida School for the Deaf and the Blind for determining the moral character of employees of the school are confidential and exempt from disclosure.

Section 1002.395(6)(x), F.S. – Information and documentation provided to the Department of Education and the Auditor General relating to the identity of a taxpayer that provides an eligible contribution under this section (Florida Tax Credit Scholarship Program) shall remain confidential at all times in accordance with s. 213.053.

Section 1002.42(18)(c), F.S. – Any information that may identify whether a particular individual has been assigned as a safe-school officer pursuant to s. 1006.12 at a private school and that is held by a law enforcement agency is exempt from disclosure requirements.

Section 1002.72, F.S. – Except as provided in the exemption, the records of children enrolled in the Voluntary Prekindergarten Education Program are confidential.

Section 1002.97, F.S. – Except as provided in the exemption, individual records of children enrolled in school readiness programs, held by a VPEP provider, an early learning coalition or the Department of Education are confidential and exempt.

Section 1003.25(1), F.S. – The cumulative record of a public school pupil that is required by this section is confidential and exempt from s. 119.07(1) and is open to inspection only as provided in Ch. 1002.

Section 1003.53(6), F.S. – School districts and other agencies receiving information contained in student records and juvenile justice records shall use such information only for official purposes connected with the certification of students for admission to and for the administration of the dropout prevention and academic intervention program, and such agencies shall maintain the confidentiality of such information unless otherwise provided by law or rule. Such information is confidential and exempt from s. 119.07(1).

Section 1003.57(1)(c), F.S. – Hearings on exceptional student identification, evaluation, and eligibility determination, or lack thereof, are exempt from s. 286.011, except to the extent that the State Board of Education adopts rules establishing other procedures, and any records created as a result of such hearings are confidential and exempt.

Section 1004.055, F.S. – Certain records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed security incidents are confidential and exempt. Those portions of a public meeting which would reveal such data and information are exempt from s. 286.011, F.S.

Section 1004.0962(2) and (5), F.S. – A campus emergency response, as defined in the exemption, held by a public postsecondary institution or specified agencies is exempt from disclosure requirements. That portion of a public meeting which would reveal a campus emergency response is exempt from s. 286.011, F.S.

Section 1004.098(1), F.S. – Personal identifying information of an applicant for president of a state university or a Florida College System institution held by a state university or college is confidential and exempt, except that the age, race, and gender of all applicants who met the minimum qualifications established for the position who were considered and the personal identifying information of an applicant included in the final group of applicants, are no longer confidential and exempt beginning at the earlier of the date the final group of applicants to be considered is established or 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of employment of an applicant as president.

Section 1004.098(2), F.S. – Any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or Florida College System institution, including any portion of a meeting which would disclose personal identifying information of such applicants which is otherwise confidential and exempt under s. 1004.098(1) is exempt from open meetings requirements. A complete recording must be made of any portion of a meeting which is closed and the closed portion may not be held off the record. The recording of the closed portion is exempt. The exemption does not apply to portions of meetings held to establish qualifications for the position or for establishing any compensation framework to be offered to an applicant, or to any meeting held after a final group of applicants has been established.

Section 1004.22(2), F.S. – Materials relating to methods of manufacture or production, potential or actual trade secrets, potentially patentable material, business transactions, or proprietary information received, generated, ascertained or discovered during the course of research conducted within state universities are confidential and exempt from s. 119.07(1), except that a division of sponsored research shall make available, upon request, title and description of a research project, name of the researcher, and amount and source of funding for the project.

Section 1004.24(4), F.S. – The claims files of a self-insurance program adopted by the Board of Governors, or the board's designee, pursuant to this section are confidential and exempt from s. 119.07(1), and are only for the use of the program in fulfilling its duties.

Section 1004.28(5), F.S. – Other than the auditor's report, management letter, any records related to the expenditure of state funds, and any financial records related to the expenditure of private funds for travel, all records of a university direct-support organization and any supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt from s. 119.07(1). The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. Any portion of a meeting of the board of directors of the organization, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011, F.S.

Section 1004.30, F.S. – Certain records of university health services support organizations are made confidential; however, some records become public records at a specified time in the future. Any portion of a governing board or peer review panel or committee meeting during which a confidential and exempt contract, document, record, marketing plan, or trade secret is discussed is exempt from s. 286.011, as well as any records generated during the closed portion of a governing board or peer review panel or committee meeting which contain information relating to contracts, documents, records, marketing plans, or trade secrets which are made confidential and exempt by this section. A person may petition a court for release of certain documents upon a finding of compelling public interest for release. The organization may petition a court for continued confidentiality upon a showing of good cause.

Section 1004.43(8), F.S. – Proprietary confidential business information, as defined in the subsection, of the not-for-profit corporation organized pursuant to this section for the purpose of operating the H. Lee Moffitt Cancer Center and Research Institute, and the corporation's subsidiaries, is confidential and exempt from disclosure, except that the Auditor General, Office of Program Policy Analysis and Government Accountability, and the Board of Governors must be given access and must maintain the confidentiality of the information so received.

Section 1004.43(9), F.S. – Meetings of the governing body of the not-for-profit corporation operating the H. Lee Moffitt Cancer Center and Research Institute, or its subsidiaries are exempt from open meeting requirements except that meetings at which expenditures of dollars appropriated to the corporation by the state are discussed must remain open to the public.

Section 1004.4472, F.S. – Specified materials held by the Florida Institute for Human and Machine Cognition, Inc., or its subsidiary, including certain donor information, as well as trade secrets, patentable material, proprietary information received or generated from research, and exempt information received from other states or the federal government, are confidential and exempt from disclosure requirements. Portions of meetings where confidential information is discussed are exempt from open meetings requirements.

Section 1004.45(2)(h), F.S. – Information that, if released, would identify donors who desire to remain anonymous, is confidential and exempt. Information which, if released, would identify prospective donors to the museum is confidential and exempt unless the direct-support

organization has obtained the name from another source. Identities of such donors and prospective donors shall not be revealed in the auditor's report.

Section 1004.55(6), F.S. – Records that relate to the client of a regional autism center are confidential and exempt from public disclosure. Personal identifying information of a donor or prospective donor who desires to remain anonymous is also confidential.

Section 1004.70(6), F.S. – Records of a Florida College System institution direct-support organization other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability are confidential and exempt from s. 119.07(1). The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.

Section 1004.71(6), F.S. – The identity of a donor or prospective donor to a statewide Florida College System direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor are confidential and exempt from disclosure. Such anonymity shall be maintained in the auditor's report.

Section 1004.78(2), F.S. – Materials relating to methods of manufacture or production, potential or actual trade secrets, potentially patentable material, business transactions, or proprietary information received, generated, ascertained or discovered during the course of activities conducted within a Florida College System institution are confidential and exempt from s. 119.07(1) provided that an institution shall make available, upon request, the title and description of a project, the name of the investigator and the amount and source of the funding provided for the project.

Section 1005.36(3), F.S. – Confidentiality of student records of closed nonpublic postsecondary institutions which are furnished to the Commission for Independent Education in accordance with this section shall be maintained, to the extent required by law.

Section 1005.38(6), F.S. – Investigatory records held by the Commission for Independent Education are exempt from public disclosure requirements for a period not to exceed 10 days after the panel makes a determination regarding probable cause. Those portions of meetings of the probable cause panel at which exempt records are discussed are exempt from open meetings requirements but must be recorded. The recording of a closed portion of a meeting and the minutes and findings of such meeting are exempt from disclosure for a period not to exceed 10 days after the panel makes a determination regarding probable cause.

Section 1006.07(1)(a), F.S. – Student expulsion hearings are exempt from s. 286.011. However, the student's parent must be given notice of the Sunshine Law and may elect to have the hearing held in compliance with that section.

Section 1006.12(8), F.S. – Any information held by listed agencies that would identify whether an individual has been appointed as a safe-school officer is exempt.

Section 1006.1493, F.S. – In accordance with s. 119.071(3)(a), data and information related to security risk assessments administered pursuant to cited statutes and the security information contained in the annual report required pursuant to s. 1006.1493(4), are confidential and exempt.

Section 1006.52(1), F.S. – Each public postsecondary educational institution may prescribe the content and custody of records which the university may maintain on its students. A student's education records, as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and the federal regulations, and applicant records as defined by this section are confidential and exempt.

Section 1008.23(1), F.S. – All examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed or administered pursuant to cited statutes, shall be confidential and exempt.

Section 1008.23(2), F.S. – All examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered by a Florida College System institution, a state university, or the Department of Education shall be confidential and exempt.

Section 1008.24(4)(b), F.S. – The identity of a school or postsecondary educational institution, personal identifying information of any personnel of any school district or postsecondary educational institution, or any specific allegations of misconduct obtained or reported pursuant to an investigation conducted by the Department of Education of a testing impropriety are confidential and exempt until the conclusion of the investigation or until such time as the investigation ceases to be active.

Section 1008.39(3), F.S. – The Florida Education and Training Placement Information Program must not make public any information that could identify an individual or the individual's employer.

Section 1008.41(1)(b), F.S. – Uniform management information systems for workforce education coordinated by the Commissioner of Education pursuant to this section must provide for compliance with state and federal confidentiality requirements except that the department shall have access to certain reemployment assistance wage reports to collect and report placement data about former students. Such placement reports must not disclose the individual identities of former students.

Section 1009.98(6), F.S. – Information that identifies the purchasers or beneficiaries of a prepaid college plan and their advance payment account activities is exempt from s. 119.07(1). Information which is authorized to be released to postsecondary institutions shall be maintained as exempt from s. 119.07(1).

Section 1009.981(6), F.S. – Information that identifies the benefactors or the designated beneficiary of any account initiated pursuant to the Florida College Savings Program is confidential and exempt from public disclosure requirements. However, the board is authorized to release such information to a community college, college, or university in which a designated beneficiary may enroll or is enrolled. The receiving institution shall maintain the confidentiality of such information.

Section 1009.983(4), F.S. – The identity of donors who desire to remain anonymous shall be confidential and exempt from disclosure, and such anonymity shall be maintained in the auditor's report of the direct-support organization of the Florida Prepaid College Program. Information received by the direct-support organization that is otherwise confidential or exempt shall retain such status and any sensitive, personal information regarding contract beneficiaries, including their identities, is exempt from disclosure.

Section 1009.987, F.S. – The personal financial and health information of a consumer (defined as a party to a participation agreement) held by the Florida Prepaid College Board, Florida ABLE Inc., or the Florida ABLE program relating to an ABLE account or participation agreement or any information that would identify a consumer is confidential and exempt. Disclosure is authorized in specified circumstances.

Section 1012.31(3), F.S. – Public school system employee personnel files are subject to the provisions of s. 119.07(1) except that any complaint and material relating to the investigation of a complaint against an employee is confidential and exempt until the conclusion of the preliminary investigation or until the preliminary investigation ceases to be active; employee evaluations are

confidential until the end of the school year immediately following the school year during which the evaluation was made, but no evaluations made prior to July 1, 1983, shall be made public; payroll deduction records of the employee and medical records are confidential and exempt. However, an employee's personnel file shall be open at all times to the officials designated in the subsection.

Section 1012.56(9)(e), F.S. – For any examination developed by this state, the Department of Education and the State Board of Education shall maintain confidentiality of the examination, developmental materials, and workpapers, which are exempt from s. 119.07(1).

Section 1012.56(9)(g), F.S. – Examination instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered pursuant to this section (educator certification) are confidential and exempt from s. 119.07(1) and from s. 1001.52. Provisions governing access to, maintenance of, and destruction of such instruments and related materials shall be prescribed by rules of the State Board of Education.

Section 1012.796(4), F.S. – The complaint against a teacher or administrator and all information obtained pursuant to the investigation by the Department of Education shall be confidential and exempt from s. 119.07(1) until the conclusion of the preliminary investigation, until such time as the preliminary investigation ceases to be active, or until such time as otherwise provided by s. 1012.798(6). However, the complaint and all material assembled during the investigation may be inspected and copied by the certificate holder or the certificate holder's designee, after the investigation is concluded, but prior to the determination of probable cause.

Section 1012.798(9), F.S. – Information obtained by the recovery network program (established within the Department of Education to assist impaired educators) from a treatment provider which relates to a person's impairment and participation in the program is confidential and exempt from disclosure.

Section 1012.798(11), F.S. – Medical records released pursuant to paragraph (8)(e) of this section relating to the impaired educators recovery network program may be disclosed only to the entities specified only as required for purposes of this section, or as otherwise authorized by law. The medical records are confidential and exempt from disclosure.

Section 1012.81, F.S. – Rules of the State Board of Education shall prescribe the content and custody of limited-access records maintained by a Florida College System institution on its employees. Such limited-access records may include only the records described in the section. Limited access records are confidential and exempt and may not be released except as authorized in the section.

Section 1012.91, F.S. – Each university board of trustees shall adopt rules prescribing the content and custody of limited-access records maintained on its employees. Such limited-access records are limited to the records described in the section. Limited access records are confidential and exempt and may not be released except as authorized in the section.

Section 1012.9931, F.S. – Any portion of a meeting of the Interstate Teacher Mobility Compact Commission or its executive committee in which specified information is discussed is exempt from open meetings requirements. Recordings, minutes, and records generated during any portion of an exempt meeting are exempt. Records relating to an investigation of a teacher received from another member state held by the Commissioner of Education or the Department of Education pursuant to the Compact are exempt from disclosure requirements until such time as the investigation ceases to be "active," as defined in the exemption, or until such time as a preliminary investigation has been concluded with a finding that there is probable cause to proceed and a complaint is filed.

Section 1013.14(1)(a), F.S. – In any case where a board, pursuant to the provisions of Ch. 1013, seeks to purchase real property for educational purposes, all appraisals, offers, or counteroffers are exempt from s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the board. If a contract or agreement for purchase is not submitted to the board for approval, then the exemption from s. 119.07(1) expires 30 days after the negotiations end.

E. SECTION 11.0431, FLORIDA STATUTES - LEGISLATIVE RECORDS; EXEMPTIONS FROM PUBLIC DISCLOSURE.

11.0431 Legislative records; intent of legislation; exemption from public disclosure.—

- (1) It is the policy of the Legislature that every person has the right to inspect and copy records of the Senate and the House of Representatives received in connection with the official business of the Legislature as provided for by the constitution of this state. To that end, public records shall be open to personal inspection and copying at reasonable times except when specific public necessity justifies that public records be exempt from such inspection and copying.
- (2) The following public records are exempt from inspection and copying:
 - (a) Records, or information contained therein, held by the legislative branch of government which, if held by an agency as defined in s. 119.011, or any other unit of government, would be confidential or exempt from the provisions of s. 119.07(1), or otherwise exempt from public disclosure, and records or information of the same type held by the Legislature.
 - (b) A formal complaint about a member or officer of the Legislature or about a lobbyist and the records relating to the complaint, until the complaint is dismissed, a determination as to probable cause has been made, a determination that there are sufficient grounds for review has been made and no probable cause panel is to be appointed, or the respondent has requested in writing that the President of the Senate or the Speaker of the House of Representatives make public the complaint or other records relating to the complaint, whichever occurs first.
 - (c) A legislatively produced draft, and a legislative request for a draft, of a bill, resolution, memorial, or legislative rule, and an amendment thereto, which is not provided to any person other than the member or members who requested the draft, an employee of the Legislature, a member of the Legislature who is a supervisor of the legislative employee, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.
 - (d) A draft of a bill analysis or fiscal note until the bill analysis or fiscal note is provided to a person other than an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.
 - (e) A draft, and a request for a draft, of a reapportionment plan or redistricting plan and an amendment thereto. Any supporting documents associated with such plan or amendment until a bill implementing the plan, or the amendment, is filed.
 - (f) Records prepared for or used in executive sessions of the Senate until 10 years after the date on which the executive session was held.
 - (g) Portions of records of former legislative investigating committees whose records are sealed or confidential as of June 30, 1993, which may reveal the identity of any witness, any person who was a subject of the inquiry, or any person referred to in testimony, documents, or evidence retained in the committee's records; however, this exemption does not apply to a member of the committee, its staff, or any public official who was not a subject of the inquiry.
 - (h) Requests by members for an advisory opinion concerning the application of the rules of either house pertaining to ethics, unless the member requesting the opinion authorizes in writing the release of such information. All advisory opinions shall be open to inspection

except that the identity of the member shall not be disclosed in the opinion unless the member requesting the opinion authorizes in writing the release of such information.

- (i) Portions of correspondence held by the legislative branch which, if disclosed, would reveal: information otherwise exempt from disclosure by law; an individual's medical treatment, history, or condition; the identity or location of an individual if there is a substantial likelihood that releasing such information would jeopardize the health or safety of that individual; or information regarding physical abuse, child abuse, spouse abuse, or abuse of the elderly.
- (3) Any record created prior to July 1, 1993, which was not available to the public from the house, commission, committee, or office of the legislative branch that created the record, is exempt from inspection and copying until July 1, 1993. Prior to July 1, 1993, the presiding officer of each house shall determine which records held by that house should remain exempt from inspection and copying. The presiding officers of both houses shall jointly determine which records held by joint committees should remain exempt from inspection and copying. No later than July 1, 1993, the presiding officers shall publish a list of records that remain exempt from inspection and copying.
- (4) For purposes of this section, "public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the legislative branch.
- (5) Nothing herein shall be construed to limit the authority of each house of the Legislature to adopt rules pursuant to s. 24, Art. I of the State Constitution.

F. TABLE OF APPELLATE CASES (GOVERNMENT- IN-THE-SUNSHINE LAW AND THE PUBLIC RECORDS ACT) NOTE: This listing includes federal cases and Florida appellate (i.e., District Court of Appeal or Supreme Court) cases cited in the Sunshine Manual; the complete text of cited Florida county court and circuit court cases is available online at the Office of the Attorney General website: myfloridalegal.com.

(s) Denotes case cited in Part I, Sunshine Law

(pr) denotes case cited in Part II, Public Records Act

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- Barfield v. Doe*, 348 So. 3d 1156 (Fla. 4th DCA 2022) (pr)
- Barfield v. School Board of Manatee County*, 135 So. 3d 560 (Fla. 2d DCA 2014) (pr)
- Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996) (pr)
- Barron v. Florida Freedom Newspapers*, 531 So. 2d 113 (Fla. 1988) (s), (pr)
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COMPREHENSIVE PLAN: PREFACE

This Plan constitutes a republication of the general and permanent ordinances of the Comprehensive Plan of Islamorada, Florida.

Source materials used in the preparation of the Comprehensive Plan were adopted on January 25, 2001, as supplemented through September 21, 2017, and ordinances subsequently adopted by the Village Council. The source of each policy is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the policy is new and was adopted for the first time with the adoption of the Comprehensive Plan. By use of the comparative tables appearing in the back of this Plan, the reader can locate any policy of the 2022 Comprehensive Plan, as supplemented, and any subsequent ordinance included herein.

The chapters of the Comprehensive Plan have been conveniently arranged in alphabetical order, and the various policies within each chapter have been catchlined to facilitate usage. Notes which tie related policies of the Plan together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Plan is included at the back of this Plan.

Chapter and Policy Numbering System

The chapter and policy numbering system used in this Plan is the same system used in many state and local government codes. Each policy number consists of four parts separated by dashes and periods. The figure before the first dash refers to the chapter number, the figure after the first dash is the goal number, the figure after the first period is the object number, and the figure after the second period refers to the position of the policy within the chapter. Thus, the second goal of chapter 1 is numbered 1-2, the third objective in chapter 1 is number 1-2.1, and the first policy in said goal and objective is numbered 1-2.3.1. Under this system, each policy is identified with its goal and objective, and at the same time new policies can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one policy that would logically come between policies 1-2.4.1 and 1-2.4.2 is desired to be added, such new policy would be numbered 1-2.4.1.5. New goals and new objectives may be included in the same way or, in the case of goals, may be placed at the end of the chapter embracing the subject, and, in the case of objectives, may be placed at the end of the goal embracing the subject. The next successive number shall be assigned to the new goal or objective. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Plan is a prefix system. The numbers to the left of the dash represents a certain portion of the volume. The number to the right of the dash represents the number of the page in that portion. In the case of an appendix to the Plan, the letter immediately to the left of the dash indicates the letter of the appendix. The following are typical parts of comprehensive plans, which may or may not appear in this Plan at this time, and their corresponding prefixes:

COMPREHENSIVE PLAN	1-1
LIST OF PLAN AMENDMENTS	LPA-1
CODE COMPARATIVE TABLES	CCT-1
STATE LAW REFERENCE TABLE	SLT-1

Looseleaf Supplements

Looseleaf Supplements or paper updates to the Comprehensive Plan will no longer be produced after Supplement 24 (October 2022).

Acknowledgments

This publication was under the direct supervision of Tassy Spinks, Director of Supplements, Kyle Cain, Editor, and Erin Bowen, Proofreader, of the CivicPlus, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Jamie Terry for her cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Comprehensive Plan which will make the active law of the Village readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the Village's affairs.

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CHAPTER 1: FUTURE LAND USE ELEMENT

SECTION 1-1: FUTURE LAND USE GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

SECTION 1-2: FUTURE LAND USE MAP

State Law reference— F.S. ch. 163.3177 and F.A.C. § 9J-5.006.

SECTION 1-1: FUTURE LAND USE GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

GOAL 1-1: IMPLEMENT FUTURE LAND USE VISION

GOAL 1-1: IMPLEMENT FUTURE LAND USE VISION

OBJECTIVE 1-1.1: PLAN AND DESIGN FOR RESIDENTIAL QUALITY

OBJECTIVE 1-1.2: REINFORCE AND ENHANCE THE VILLAGE'S APPEARANCE

Realizing the following:

That the Village incorporated to create a Comprehensive Plan to reclaim the Keys by conserving, preserving, and retaining our remarkable assets—our waters and natural environment—and our quality of life;

That the Village is and must continue to be synonymous with sport fishing, diving, the Everglades National Park, the living coral reef, Indian Key, Lignumvitae Key, Shell Key, Windley Quarry, and many species of fish and fowl;

That the Comprehensive Plan must further understanding of the ecological limits of our Keys and prohibit any further degradation of our natural resources by incompatible land and marine activities such as casino boats, sea planes, personal watercraft, and other watercraft that are operated improperly; and

That the Comprehensive Plan must describe public and private actions needed to protect and retain the Village's waterways and natural resources comprising our unique ecosystem as well as preserve the quiet solitude of the backcountry.

The Comprehensive Plan shall provide a growth management framework that:

- Directs development only to sites that can accommodate such activity without promoting conflict with natural resources;
- Encourages sustainability by limiting growth in order to establish and maintain acceptable levels of service for hurricane evacuation, potable water and wastewater services, traffic flow, recreation and open space as well as reclaim and preserve the quality of our natural resources;
- Keeps development away from the shoreline and wetlands;
- Provides a sound basis for developing land use controls that ensure acceptable levels of service for hurricane evacuation, protect coastal resources, including nearshore waters, wetlands, grassbed flats, mangroves, as well as hammocks, and establish a basis for managing landscaping, signage, parking, drainage, and water quality;
- Relies on ecological constraints to establish limits for growth and create standards and criteria to ensure that human induced activities do not diminish assets of our unique coastal environment; and
- Ensures that the character and location of land uses incorporate best management practices and principles of resource conservation, promote orderly land use transition, and minimize

threats to health, safety, and welfare which may be caused by incompatible land uses, environmental degradation, hazards and nuisances.

OBJECTIVE 1-1.1: PLAN AND DESIGN FOR RESIDENTIAL QUALITY

[Policy 1-1.1.1: Protect Residential Areas From Incompatible Development](#)

[Policy 1-1.1.2: Ensure Orderly Land Use Transition](#)

[Policy 1-1.1.3: Ensure Orderly Transition In Residential Densities And Intensities](#)

[Policy 1-1.1.4: Encourage Separation Of Urban And Rural Land Uses](#)

Land Development Regulations shall ensure stability, land use compatibility and conserve the integrity of residential areas.

Policy 1-1.1.1: Protect Residential Areas From Incompatible Development

Stable residential areas shall be protected from encroachment by incompatible development. However, within residential areas, the Land Development Regulations shall allow home-based businesses that do not detract from the residential quality of the neighborhood. These regulations shall incorporate criteria for determining compatible home occupation uses, and standards to ascertain that no negative impacts on adjoining properties result.

Policy 1-1.1.2: Ensure Orderly Land Use Transition

Where it is not feasible to separate residential from non-residential land uses, buffering shall be required to create a smooth land use transition. Buffering may take the form of: 1) physical barriers, such as vegetative berms, hedges or other landscape cover; walls or fences aesthetically designed for screening purposes; and open space systems with dense native vegetation and tree canopy; and/or 2) the development of a transitional use between the incompatible uses.

Policy 1-1.1.3: Ensure Orderly Transition In Residential Densities And Intensities

Residential densities and intensities shall be transitioned in a manner compatible with available public services and level of service standards, natural features, and existing and anticipated future development.

Policy 1-1.1.4: Encourage Separation Of Urban And Rural Land Uses

The Village contains no rural or agricultural lands to separate from urban lands.

OBJECTIVE 1-1.2: REINFORCE AND ENHANCE THE VILLAGE'S APPEARANCE

[Policy 1-1.2.1: Reinforce And Enhance The Village's Community Appearance](#)

[Policy 1-1.2.2: Enhance The Appearance And Function Of The US 1 Corridor](#)

[Policy 1-1.2.3: Enhance The Appearance And Function Of The Old Road](#)

Land Development Regulations shall ensure that development which may impact the appearance of the Village is effectively managed.

Policy 1-1.2.1: Reinforce And Enhance The Village's Community Appearance

Islamorada, Village of Islands shall maintain design review standards in Land Development Regulations, which shall be applied through site plan review procedures, and may include but not be limited to: sign control; architectural design review criteria and other design ordinances to enhance general community appearance as well as to preserve and enhance open space and natural landscapes.

Policy 1-1.2.2: Enhance The Appearance And Function Of The US 1 Corridor

Islamorada, Village of Islands shall promote land use and transportation strategies designed to improve the appearance and function of the U.S. 1 corridor as the major facility providing local residents, visitors and employees with access to residential, commercial and leisure activities.

Policy 1-1.2.3: Enhance The Appearance And Function Of The Old Road

Islamorada, Village of Islands shall promote land use and transportation strategies on the Old Road that enhance its safe use as a local traffic and pedestrian and cyclist friendly corridor. These strategies may include: the use of traffic calming methods; restricting through traffic; prohibiting vehicular access to high intensity uses; enhancing pedestrian and cyclist facilities; and landscaping.

SECTION 1-2: FUTURE LAND USE MAP

GOAL 1-2: DIRECT GROWTH ACCORDING TO THE FUTURE LAND USE MAP SERIES

GOAL 1-3: LIMIT GROWTH WITHIN THE VILLAGE

GOAL 1-4: IMPLEMENT LAND USE GOALS AND OBJECTIVES

GOAL 1-2: DIRECT GROWTH ACCORDING TO THE FUTURE LAND USE MAP SERIES

OBJECTIVE 1-2.1: FUTURE LAND USE MAP DENSITIES AND INTENSITIES DEFINED

OBJECTIVE 1-2.2: NON-CONFORMING USES AND STRUCTURES

OBJECTIVE 1-2.3: ESTABLISH FUTURE LAND USE DESIGNATIONS

OBJECTIVE 1-2.4: RECOGNIZE MIXED USE DEVELOPMENT PATTERNS

OBJECTIVE 1-2.5: INDUSTRIAL USES (I)

OBJECTIVE 1-2.6: MANAGE CONSERVATION RESOURCES

OBJECTIVE 1-2.7: AIRSTRIP FUTURE LAND CATEGORY

OBJECTIVE 1-2.8: PUBLIC AND SEMI-PUBLIC SERVICES (PS)

OBJECTIVE 1-2.9: RECREATION FACILITIES AND OPEN SPACE (RO)

OBJECTIVE 1-2.10: MARICULTURE (M)

OBJECTIVE 1-2.11: ESTABLISH SUB-AREA POLICIES

The Future Land Use Map (FLUM) series, Maps 2-1 through 2-4, shall allocate future land uses, and depict the following:

1. Map 2-1 - Plantation Key and Windley Key Future Land Use Map;
2. Map 2-2 - Upper Matecumbe Key Future Land Use Map;
3. Map 2-3 - Lower Matecumbe Key Future Land Use Map; and
4. Map 2-4 - Future Levels of Service on U.S. 1 (2020).

OBJECTIVE 1-2.1: FUTURE LAND USE MAP DENSITIES AND INTENSITIES DEFINED

Policy 1-2.1.1: Residential Density Defined

Policy 1-2.1.2: Floor Area Ratio Defined

Policy 1-2.1.3: Provide Compliance Bonuses Through Permitting Outdoor Uses Outside Of The Building Permit Allocation System

Policy 1-2.1.4: Restrict Density And Intensity Of Development

Policy 1-2.1.5: Areas Ineligible For Density Or FAR Calculations

Policy 1-2.1.6: Establish Minimum Open Space Requirements

Policy 1-2.1.7: Establish Height Limitation

Policy 1-2.1.8: Establish Gross Floor Area

Policy 1-2.1.9: Promote Low And Medium Intensity And Varied Commercial Designations

Policy 1-2.1.10: Restrict Development Of New Transient Units

Policy 1-2.1.11: Limit Creation Of New Development Rights

[Policy 1-2.1.12: Ensure Energy-Efficient Land Use Patterns](#)

[Policy 1-2.1.13: Future Land Use Map Amendments](#)

[Policy 1-2.1.14: Criteria For Future Land Use Map \(FLUM\) Amendments](#)

The designations on the Future Land Use Maps 2-1 through 2-3 shall be defined by the policies herein:

Single Family 1 unit per lot - Duplex or detached single-family deed restricted affordable housing 2 units per lot - Triplex for Affordable Housing or detached single-family deed restricted affordable housing 3 units per lot - Fourplexes for Affordable Housing or detached single-family deed restricted affordable housing 4 units per lot - Residential High (RH) Density Allowance 6 units per acre - With TDRs 12 units per acre - Affordable Housing 15 units per acre Mixed Use Residential (MU) Residential Density Allowance 6 units per acre - With TDRs 12 units per acre - Affordable Housing 15 units per acre Mixed Use Non-Residential Outside Village Activity Centers - 0.25 Outside VAC's with TDRs - 0.35 Inside Village Activity Centers - 0.35 Working Waterfronts - 0.35 Industrial (I) +1 0.25 Conservation (C) - - Airstrip (A) 1 unit per lot 0.25 Public and Semi-Public Services (PS) Density and Intensity Allowance +1 0.25 With TDRs - 0.35 Residential Institutional Use 12 units per acre - Recreation and Open Space (RO) - 0.15 Mariculture (M) +1 0.25

Note: One caretakers cottage may be provided in FLUM categories, indicated with +1.

Density and intensity may be further constrained by criteria included in the Comprehensive Plan and Land Development Regulations, including but not limited to: requirements for minimum open space; concurrency management and level of service standards for transportation, water, including potable water, stormwater and other public facilities and services; off-street parking and internal circulation; landscaping; impacts on schools; and on-site and off-site improvements and design amenities required to achieve land use compatibility. Natural constraints such as the shape and natural features of a site may also present obstacles to achieving maximum density and/or intensity delineated above.

Policy 1-2.1.1: Residential Density Defined

Residential densities on the Future Land Use Map are the number of dwelling units or rooms allocated per gross acre of land, pursuant to Policy 1-2.1.4 of this Plan.

Policy 1-2.1.2: Floor Area Ratio Defined

Floor Area Ratio (FAR) shall be defined as the total square feet of gross floor area on a lot, parcel or building site or aggregated development of contiguous parcels under common ownership or having shared facilities, divided by the total square feet of land area comprising the lots, parcel or building site. FAR computations shall include all enclosed uses on the lot, parcel or site. Parking structures shall not count as part of the floor area, but shall be counted when computing building height and number of stories.

Policy 1-2.1.3: Provide Compliance Bonuses Through Permitting Outdoor Uses Outside Of The Building Permit Allocation System

Upon the effective date of the Comprehensive Plan, the following limited outdoor uses may be permitted, only as an accessory use, ancillary to a lawfully established principal use of a parcel, outside of the Non-Residential Building Permit Allocation System:

1. Each parcel of land on which a non-residential use has been legally established may be granted upon application, up to one hundred (100) square feet of uncovered outdoor storage area or one (1) covered storage shed up to one hundred (100) square feet, to be located or screened with native vegetation so as to not be visible from U.S. 1 or the Old Highway. Approval of such accessory use shall be conditional upon the site being in compliance with the density, intensity

and parking requirements of the Land Development Regulations, including environmental regulations, and all landscape bufferyards on the property being brought into compliance to the maximum extent practicable, through the removal of any impervious surfaces, including asphalt, as necessary to meet this requirement.

2. Each parcel of land on which a legally established multi-tenant center exists may be granted upon application, up to one hundred fifty (150) square feet of uncovered outdoor storage area or one (1) covered shed up to one hundred fifty (150) square feet, to be located or screened with native vegetation so as to not be visible from U.S. 1 or the Old Highway. Approval of such accessory use shall be conditional upon the site being in compliance with the density, intensity and parking requirements of the Land Development Regulations, including environmental regulations, and all landscape bufferyards on the property being brought into compliance to the most reasonable extent practicable, through the removal of any impervious surfaces, including asphalt, as necessary to meet this requirement.
3. As an alternative to the above options 1. or 2., each legally established restaurant may be granted upon application, up to one hundred fifty (150) square feet of covered or uncovered, unenclosed outdoor seating area. Approval of such accessory use shall be conditional upon approval by the Monroe County Department of Health to ensure that existing wastewater treatment facilities have sufficient capacity, and upon the site being in compliance with the density, intensity and parking requirements of the Land Development Regulations, including environmental regulations, and all landscape bufferyards on the property being brought into compliance to the most reasonable extent practicable, through the removal of any impervious surfaces, including asphalt, as necessary to meet this requirement, as well as compliance with the stormwater management provisions of the Land Development Regulations.

This bonus square footage shall be first applied to any existing but unpermitted outdoor storage area, sheds or seating. Additionally, such square footage as may be granted pursuant to this policy shall not be eligible to be calculated as replacement square footage for the purposes of redevelopment or expansion of any primary or accessory use located on the property to which it has been granted, or any other property.

Policy 1-2.1.4: Restrict Density And Intensity Of Development

The maximum range of allocated density and/or intensity (FAR) stated in the Comprehensive Plan and in the Land Development Regulations, for permitted uses in each future land use map category shall not exceed the thresholds established in accordance with the following table:

MAXIMUM DENSITY AND INTENSITY BY FUTURE LAND USE MAP CATEGORY

FLUM Category	Maximum Residential Density	Maximum Non-Residential Intensity (FAR)
Residential Conservation (RC)	1 unit/4 acres +1	-
Residential Low (RL)	1 unit/2 acres +1	-
Residential Medium (RM)		
Single Family	1 unit per lot	-
Duplex	2 units per lot	-
Triplex for Affordable Housing	3 units per lot	-
Fourplexes for Affordable Housing	4 units per lot	-
Residential High (RH)		

Density Allowance	6 units per acre	-
With TDR's or for Affordable Housing	12 units per acre	-
Mixed Use Residential (MU)		
Residential Density Allowance	6 units per acre	-
With TDR's or for Affordable Housing	12 units per acre	-
Mixed Use Non-Residential		
Outside Village Activity Centers	-	.25
Outside VAC's with TDR's	-	.35
Inside Village Activity Centers	-	.35
Industrial (I)	+1	.25
Conservation (C)	-	-
Airstrip (A)	1 unit per lot	.25
Public and Semi-Public Services (PS)		
Density and Intensity Allowance	+1	.25
With TDR's	-	.35
Residential Institutional Use	12 units per acre	-
Recreation and Open Space (RO)	-	.15
Mariculture (M)	+1	.25

Density and intensity may be further constrained by criteria included in the Comprehensive Plan and Land Development Regulations, including but not limited to: requirements for minimum open space; concurrency management and level of service standards for transportation, stormwater and other public facilities and services; off-street parking and internal circulation; landscaping; impacts on schools; and on-site and off-site improvements and design amenities required to achieve land use compatibility. Natural constraints such as the shape and natural features of a site may also present obstacles to achieving maximum density and/or intensity delineated above.

Policy 1-2.1.5: Areas Ineligible For Density Or FAR Calculations

No density or floor area ratio (FAR) credit shall be granted for undevelopable environmentally sensitive lands including: wetlands; transitional wetlands; mangroves; salt marsh; tidal waters; beaches; beach berms and dunes; and natural shoreline; excepting provisions herein for transfer of development rights.

Policy 1-2.1.6: Establish Minimum Open Space Requirements

The minimum open space requirements established in the Land Development Regulations shall be in accordance with both Policy 6-1.7.6 and the following table:

MINIMUM OPEN SPACE REQUIREMENT BY HABITAT CLASSIFICATION

Habitat Classification	Minimum Open Space Requirement
------------------------	--------------------------------

Submerged Lands (Open Water)	1.00
Beach Berm	0.90
Mangrove and Freshwater Wetlands	
Undisturbed	1.00
Disturbed	.90
Saltmarsh & Buttonwood Wetlands	
Undisturbed	1.00
Disturbed	.90
High Hammock	
High Quality	.90
Moderate Quality	.70
Low Quality	.50
Low Hammock	
High Quality	.90
Moderate Quality	.70
Low Quality	.50
Disturbed	
With Hammock	.30
With Salt Marsh & Buttonwood	.30
With Beach/Berm	.30
With Exotics	.20
Scarified	.20

Policy 1-2.1.7: Establish Height Limitation

The maximum height of any habitable portion of a structure shall be thirty-five (35) feet, unless further restricted by the Land Development Regulations.

Policy 1-2.1.8: Establish Gross Floor Area

The maximum gross floor area (GFA) of any structure, other than those for public uses and except as provided below, constructed after January 28, 2016 shall be ten thousand (10,000) square feet provided the Floor Area Ratio (FAR) and building setbacks are compliant with the Land Development Regulations. The Land Development Regulations may further restrict the maximum building size.

1. Structures existing as of January 28, 2016 that are greater than ten thousand (10,000) square feet of gross floor area in its present configuration may remain and may be replaced with equal floor area; but in no case shall the nonresidential floor area of said structure or replacement structure be increased.

2. Application for site plan and/or conditional use permit for any structures greater than ten thousand (10,000) square feet of gross floor area submitted prior to January 28, 2016, and that have received a notice of approval, notice of intent or notice of public hearing, shall be exempt from the provisions hereof.
3. Replacement of structures greater than ten thousand (10,000) square feet of gross floor area through an approved site plan or conditional use permit shall be exempt from the provisions hereof. In no case shall the approved nonresidential floor area be increased.
4. Structures containing public uses as defined in Section 30-32 of the Village Code shall be exempt from the provisions hereof.
5. Boat Barns as defined in Section 30-32 of the Village Code shall be exempt from the provisions hereof.
6. Hotels and Motels, provided the total amount of nonresidential floor area within any structure does not exceed ten thousand (10,000) square feet shall be exempt from the provisions hereof.
7. Educational Institutional uses as defined in Section 30-32 of the Village Code shall be exempt from the provisions hereof.

Policy 1-2.1.9: Promote Low And Medium Intensity And Varied Commercial Designations

Islamorada, Village of Islands shall promote low and medium intensity professional and business offices, as well as general retail sales and services designed to meet the needs for goods and services of local residents and Village visitors, and shall limit the development of new high intensity uses. The Village shall not promote an increase in highway-oriented businesses that cater to a transient drive-through clientele.

Policy 1-2.1.10: Restrict Development Of New Transient Units

Transient use shall be defined as any use of any structure for a tenancy of twenty-eight (28) days or less. Transient uses shall be considered as residential uses for the purposes of transferring development rights pursuant to conditions established in Policy 1-3.1.4 of this Plan. Islamorada, Village of Islands shall cap the number of new transient units at the number of current and vested hotel and motel rooms, campground and recreational vehicle spaces existing within the Village as of December 6, 2001. Single family and multifamily residences shall not be considered part of the above cap but instead may be used for transient rental use as provided for in Comprehensive Plan Policies 1-2.4.7 and 1-2.4.8.

Policy 1-2.1.11: Limit Creation Of New Development Rights

Islamorada, Village of Islands shall limit the number of development rights within the Village. All duly approved and recorded lots of record which existed as legal lots of record as of December 31, 1997 shall continue to be legal lots of record after Plan adoption.

Policy 1-2.1.12: Ensure Energy-Efficient Land Use Patterns

Islamorada, Village of Islands, shall continue to promote energy-efficient land use patterns by awarding BPAS points for proposed development in areas serviced by infrastructure, proximate to commercial retail centers; by promoting mixed use development centers and by providing bonus points for proposed non-residential development in the established Village Activity Center (VAC) zoning district.

Policy 1-2.1.13: Future Land Use Map Amendments

Islamorada, Village of Islands shall not sponsor private applications for Future Land Use Map (FLUM) amendments that would increase the allowable density/intensity of the properties affected. Private

applications for FLUM amendments that would increase density/intensity will be accepted and accorded due process of review in an equitable manner. Applicants for FLUM amendments that increase density/intensity shall provide a needs analysis through 2020 based upon the amount of vacant lands, the adopted density of the future land use designations and their existing yields, the projected population and the availability of public facilities and services.

Policy 1-2.1.14: Criteria For Future Land Use Map (FLUM) Amendments

Islamorada, Village of Islands, shall maintain specific criteria for amending the Future Land Use Map that are consistent with the general procedures delineated in F.S. chs. 163.3177, 163.3184 and 163.3189, and the principles for guiding development in areas of critical state concern. The Village Council shall make its determination on proposed FLUM amendments on legitimate public purpose based on one (1) or more of the following factors:

1. Demand for the proposed FLUM category in the village in relation to the amount of land currently assigned the FLUM designation and available to accommodate that demand;
2. Compatibility of the site's physical, geological, hydrological and other environmental features, with the uses permitted in the proposed FLUM category;
3. Data errors, including errors in mapping, vegetative types and natural features described in the comprehensive plan;
4. New issues;
5. Recognition of a need for additional detail or comprehensiveness.

However, in no event shall an amendment be approved which would result in an adverse community change.

OBJECTIVE 1-2.2: NON-CONFORMING USES AND STRUCTURES

[Policy 1-2.2.1: Permit Limited Expansion Of Non-Conforming Uses](#)

[Policy 1-2.2.2: Damage Or Destruction Of A Non-Conforming Use](#)

[Policy 1-2.2.3: Change Of Use](#)

[Policy 1-2.2.4: Uses That Are Non-Conforming Due To Density](#)

[Policy 1-2.2.5: Discontinued Non-Conforming Uses](#)

[Policy 1-2.2.6: Enlargement Or Extensions To Non-Conforming Structures](#)

[Policy 1-2.2.7: Damage Or Destruction To Non-Conforming Structures](#)

Islamorada, Village of Islands shall protect legally established uses and structures within the Village, except as provided for in Policy 1-2.2.5 of this Plan, and shall encourage the rehabilitation and maintenance of all residential and non-residential structures, where it can be demonstrated that such non-conforming uses and structures are consistent with the community's character:

Policy 1-2.2.1: Permit Limited Expansion Of Non-Conforming Uses

Islamorada, Village of Islands shall maintain Land Development Regulations which provide a variance process and establish criteria to consider the limited expansion and/or replacement of legally existing non-conforming, non-residential uses. These criteria shall include the extent to which impacts are mitigated, including nuisance impacts on surrounding residential properties, impacts on community character, environmental impacts, buffering and traffic impacts. These regulations shall also include a process to consider the continuance of non-conforming commercial fishing uses where it can be found that the continuance of such uses will not have a negative impact on adjoining properties or on environmental resources.

Policy 1-2.2.2: Damage Or Destruction Of A Non-Conforming Use

Islamorada, Village of Islands shall maintain Land Development Regulations which provide a variance process and establish criteria to consider resumption of non-conforming uses after their damage or destruction. These criteria shall include, but not be limited to: the extent to which impacts are mitigated, including consistency with future land uses; nuisance impacts on surrounding residential properties; impacts on community character; environmental impacts; and buffering and traffic impacts.

Policy 1-2.2.3: Change Of Use

A non-conforming use can only be changed to a use that conforms to all applicable provisions of the Future Land Use Map category and Zoning District in which it is located.

Policy 1-2.2.4: Uses That Are Non-Conforming Due To Density

Legally permitted uses that exceed the density requirements of the Future Land Use Map category and the Land Development Regulations, and the structure in which the use is located is damaged, destroyed or redeveloped so as to require substantial improvement, may be repaired, replaced or restored to the same density, provided that the development is brought into compliance with all other applicable codes and regulations. The Land Development Regulations shall provide a process by which the Director of Planning and Development Services may consider a reduction of any of the applicable regulations upon a finding that the reduction is consistent with the intent of the Plan. Uses that are non-conforming as to density may be expanded as long as the non-conformity is not further increased and the expansion is consistent with all other applicable codes and regulations.

Policy 1-2.2.5: Discontinued Non-Conforming Uses

Non-conforming uses that have ceased operations for one (1) year or more shall be considered discontinued, and shall not be re-established.

Policy 1-2.2.6: Enlargement Or Extensions To Non-Conforming Structures

Enlargement or extensions to non-conforming structures shall be allowed, provided that: 1) the improvement does not constitute a substantial improvement (Improvements to historic sites and improvements to meet health, sanitary or safety code specifications shall not be considered substantial.); 2) a non-conforming use is not located in the non-conforming structure; and 3) the non-conformity is not further increased.

Policy 1-2.2.7: Damage Or Destruction To Non-Conforming Structures

With the following exceptions, non-conforming structures that are damaged or destroyed so as to require substantial improvement shall be repaired or restored in conformance with all applicable provisions of the Building Code and with the Land Development Regulations. The Village shall, through the Land Development Regulations, provide a process to consider the reduction of required setbacks, whereby it can be proven that the reduction in setbacks will not cause negative impacts on environmental resources. The Land Development Regulations shall provide a process by which the Director of Planning and Development Services may consider a reduction of any of the applicable regulations upon a finding that the reduction is consistent with the intent of the Plan.

OBJECTIVE 1-2.3: ESTABLISH FUTURE LAND USE DESIGNATIONS

[Policy 1-2.3.1 Residential Conservation \(RC\)](#)

[Policy 1-2.3.2: Residential Low \(RL\)](#)

[Policy 1-2.3.3: Residential Medium \(RM\)](#)

[Policy 1-2.3.4: Residential High \(RH\)](#)

The Future Land Use designations, as depicted on the Future Land Use Map (FLUM) series shall be established as defined herein.

Policy 1-2.3.1 Residential Conservation (RC)

Areas designated Residential Conservation (RC) on the Future Land Use Map shall allow residential uses at a maximum density of one (1) single family residential unit per four (4) acres. This designation is intended to balance the protection of environmentally sensitive lands, (by providing a buffer to protect large parcels of more environmentally sensitive lands from the encroachment of development), wildlife corridors and transition zones, and areas suitable for re-vegetation, with the protection of the property rights of the owners. On sites designated RC, no more than one (1) unit shall be established per platted lot or parcel existing as of the effective date of this Comprehensive Plan, except for those platted lots or parcels identified as Disturbed with Exotics on the Village habitat maps and containing no tropical hardwood hammock. Substandard lots of less than four (4) acres in size which are contiguous and in common ownership shall be assembled in order to meet the density standards of this policy. Notwithstanding the density limitation, a caretaker's unit may be developed as an accessory use on a conforming parcel, if found to be consistent with the Village's environmental regulations. Such units shall be permitted pursuant to the requirements of the Village's Building Permit Allocation System, only as affordable housing. Criteria established in the Land Development Regulations shall include restrictions on size and location so as to not require clearing of additional land. Within RC, properties are generally suitable as sender sites for transfers of development rights, but may also be receiver sites from C and RC parcels, if needed to achieve the acreage required to construct a maximum of one (1) unit on the receiver parcel(s), or for the addition of a caretakers cottage. The Village may develop an incentive program to extinguish the development rights from RC properties. The RC future land use designation shall allow home occupations having no environmental impact, in accordance with provisions to be established within the Land Development Regulations.

Policy 1-2.3.2: Residential Low (RL)

Areas designated Residential Low (RL) on the Future Land Use Map are characterized as the residential estates within the Village, and shall be developed, redeveloped and/or maintained to protect this character. RL designated properties may be developed at a maximum of one (1) single family residential unit per two (2) acres. Substandard lots, of less than two (2) acres in size which are contiguous and in common ownership shall be assembled in order to meet the density standards of this policy. Notwithstanding the density limitations, a caretaker's unit may be developed as an accessory use on conforming parcels. Such units shall be permitted pursuant to the requirements of the Village's Building Permit Allocation System, only as affordable housing. Criteria established in the Land Development Regulations shall include restrictions on size, and location so as to not require clearing of additional land. The RL future land use designation shall allow home occupations. Within RL, properties are generally suitable as receiver sites from C and RC parcels, if needed to achieve the acreage required to construct a maximum of one (1) unit on the receiver parcel(s), or for the addition of a caretaker's cottage. Supportive community facilities ancillary to the residential uses may be located within areas designated RL. The Land Development Regulations shall provide regulatory procedures for considering the above-noted uses.

Policy 1-2.3.3: Residential Medium (RM)

This designation is intended to provide stable, single family neighborhoods and allow for uses which further the peaceful enjoyment and high quality residential character valued by Village residents. Areas designated Residential Medium (RM) on the Future Land Use Map shall include one (1) single family unit on one (1) lot of record, and duplexes. Duplexes shall only be permitted in Zoning Districts where legally permitted duplexes currently exist. Notwithstanding the density limitations, duplexes or two (2) single-family deed-restricted detached dwelling units, triplexes or three (3) single-family deed-restricted detached dwelling units, and fourplexes or four (4) single-family deed-restricted detached dwelling units

shall be permitted on RM lots fronting U.S. 1, pursuant to the Building Permit Allocation System, if approved as affordable housing. The RM Future Land Use Map designation shall allow home occupations. Supportive community facilities ancillary to the residential uses may be located within areas designated RM. The Land Development Regulations shall provide regulatory procedures for considering the above-noted uses.

Policy 1-2.3.4: Residential High (RH)

Areas designated Residential High (RH) on the Future Land Use Map shall accommodate legally established multiple family developments, including residential institutional uses, and mobile homes in existing approved mobile home parks. The density of new multiple family development located in the designation shall not exceed six (6) units per acre, except that up to twelve (12) units per acre may be permitted pursuant to the standards in the Land Development Regulations for purposes of providing transfers of density from approved sending sites, including environmentally sensitive lands, and fifteen (15) units per acre may be permitted for purposes of providing affordable housing. Supportive community facilities ancillary to the residential uses, and limited public/semi-public uses may be located within areas designated RH. This designation shall allow home occupations. The Land Development Regulations shall provide regulatory procedures for considering the above-noted uses.

OBJECTIVE 1-2.4: RECOGNIZE MIXED USE DEVELOPMENT PATTERNS

[Policy 1-2.4.1: Guide The Location Of Commercial Uses And Revitalize Commercial Areas](#)

[Policy 1-2.4.2: Increase The Vitality Of Existing Village Activity Centers](#)

[Policy 1-2.4.3: Commercial Uses Located Outside Of Village Activity Centers](#)

[Policy 1-2.4.4: Residential Uses In The Mixed Use Designation](#)

[Policy 1-2.4.5: Standards Applicable To Non-Residential Uses In The MU Designation](#)

[Policy 1-2.4.6: Establish Zoning District Criteria For MU](#)

[Policy 1-2.4.7: Limit Transient Rental Use Of Residential Properties](#)

[Policy 1-2.4.8: Enforcement And Implementation Of Transient Rental Regulations](#)

[Policy 1-2.4.9: Affordable Housing Study](#)

Areas designated Mixed Use (MU) on the Future Land Use Map recognize the prevalent and historical mixed use pattern of development in the Village. The MU category shall accommodate a mix of commercial and residential uses, which may be located in the same building, limited public and semi-public uses, recreational facilities, schools, marinas, tourist-oriented facilities, and supportive community facilities ancillary to the permitted uses, pursuant to the standards in the Comprehensive Plan and the Land Development Regulations.

The maintenance and enhancement of commercial fishing, sport fishing, charter boats and related traditional water-dependent and water-related uses such as retail, storage and repair and maintenance which support the fishing and charter boat industry shall be encouraged within this Future Land Use Map category, through the use of floor area ratio bonuses (up to 0.35 FAR), replacement and resumption of legally established nonconformities and streamlined development review.

Policy 1-2.4.1: Guide The Location Of Commercial Uses And Revitalize Commercial Areas

Mixed Use (MU) is the only FLUM category in which commercial uses shall be permitted. The general pattern of commercial land uses in MU shall:

1. Prevent negative impacts on the fragile coastal ecosystem by directing commercial development away from environmentally sensitive lands and critical habitat;
2. Revitalize all existing commercial areas and further distinguish Village Activity Centers;
3. Restrict the scale and intensity of commercial development outside of the Village Activity Centers and other appropriate areas in the Village;

4. Promote safe and efficient vehicle, cyclist and pedestrian movement;
5. Prevent or minimize Village costs to provide infrastructure;
6. Avoid encroachment of incompatible commercial activity into established residential neighborhoods;
7. Enhance the unique character of the Village's commercial land uses through incentives for bufferyards and landscaping; and
8. Facilitate within the Village Activity Centers, the creation of aesthetically pleasing commercial spaces outdoors, as places for social leisure and interaction, while limiting light industrial uses, outdoor storage and sales as a primary use of land, and outdoor retail sales as an accessory use of land.

Policy 1-2.4.2: Increase The Vitality Of Existing Village Activity Centers

A Village Activity Center (VAC) is a compact community hub in which there are jobs, housing, shopping and recreational opportunities all within walking distance. These centers shall be focal points for commercial infill on existing vacant parcels, intensification and revitalization as lively community meeting places. The principal Village Activity Centers shall be the Upper Matecumbe Key and North Plantation Key business centers. The Village has delineated and designated Village Activity Centers on the Zoning Map in the Land Development Regulations. The VAC designations are intended to accommodate a mix of business and professional offices, restaurants, tourist accommodations, retail establishments, services, recreational facilities, limited public and semi-public uses and residential uses. Residential uses include residential institutional uses, with an emphasis on providing and maintaining affordable, workforce, and employee housing and neighborhoods, integrated with or in proximity to employment opportunities.

Policy 1-2.4.3: Commercial Uses Located Outside Of Village Activity Centers

Redevelopment shall be encouraged for commercial structures and uses designated MU and located outside of the Village Activity Centers, but only to the extent that impacts generated by the new structure and use are equal to or less than that generated by the previous structure and use. Commercial uses adjoining residential canals, except commercial fishing uses, shall be limited to fully enclosed uses of medium to low intensity. In lieu of commercial development, vacant properties shall be allowed, one (1) single family home or a transfer of development rights associated with the property, providing that such transfer restricts all future development options as further implemented by standards in the Land Development Regulations.

Policy 1-2.4.4: Residential Uses In The Mixed Use Designation

Residential uses, including residential institutional uses in MU shall not exceed six (6) units per acre, except that up to twelve (12) units per acre may be allowed pursuant to the standards in the Land Development Regulations when used as receiver sites for the transfer of development rights from approved sender sites and fifteen (15) units per acre may be permitted for purposes of providing affordable housing. Notwithstanding the density limitations each parcel of commercially developed land in the Settlers Residential (SR), Village Center (VC), Tourist Commercial (TC), Commercial Fishing (CF), Marine Use (MR), Highway Commercial (HC), Neighborhood Commercial (NC), and Recreation (R) Zoning Districts shall be entitled to construct, subject to the BPAS, one affordable housing unit subject to all other regulations.

Policy 1-2.4.5: Standards Applicable To Non-Residential Uses In The MU Designation

The Floor Area Ratio (FAR) for MU designated parcels outside of the Village Activity Centers shall not exceed 0.25, except that an FAR up to 0.35 may be allowed on designated receiver sites through the

transfer of development rights and for Working Waterfronts parcels, as provided for in the Land Development Regulations. FAR within the Village Activity Centers and on Working Waterfronts parcels shall not exceed 0.35 FAR. The Land Development Regulations shall establish criteria governing the appropriate mass and scale of structures, trip generation, design and location of access and egress facilities, off-street parking and safe pedestrian facilities in MU. Design techniques such as landscaping, screening and buffering shall be applied to ensure land use compatibility within MU areas.

Policy 1-2.4.6: Establish Zoning District Criteria For MU

The following criteria shall be used as guidelines for designating Zoning Districts within the Mixed Use FLUM category:

1. **Residential Zoning Districts:** In general, residential Zoning Districts shall be established where there are existing residential neighborhoods within the Village Activity Centers.
2. **Commercial Zoning Districts:** In general, commercial Zoning Districts shall be established where there are existing commercial uses, including single vacant parcels of land located between two (2) existing commercial uses.
3. **Integrated Use Zoning Districts:** Integrated use Zoning Districts, which encourage commercial and residential uses to co-locate on the same parcel or within the same building shall be established to maintain and promote affordable, workforce and employee housing. Appropriate locations for integrated use zoning shall include, in general, areas where such uses already exist, the core areas of the Village Activity Centers and other select locations along U.S. 1 where existing structures, business types and locations lend themselves to compatible co-existence with residential uses.
4. **School and Recreational Zoning Districts:** These Zoning Districts shall be established to accommodate existing or proposed school or recreational uses.

Policy 1-2.4.7: Limit Transient Rental Use Of Residential Properties

Islamorada, Village of Islands shall continue to allow the transient rental use of twenty-eight (28) days or less, of single family and multifamily residential properties within the Village, including properties located within the Residential Conservation (RC), Residential Low (RL), Residential Medium (RM), Residential High (RH), Mixed Use (MU) and Airport (A) Future Land Use Map categories. Property owners located in the RL, RM, RC, MU, RH and A Future Land Use Map categories may continue transient rental subject to the following requirements:

1. Owners of such properties shall annually register with the Village and shall demonstrate at the time of registration:
 - a. That since December 6, 2001 the owner has continuously either paid or filed for all County tourist development taxes due, and paid local impact fees, for the property it wishes to register;
 - b. That owner has applied for appropriate state licensure to conduct transient rental for the property it wishes to register and shall receive the license within six (6) months of application;
 - c. That the property is not registered for a homestead tax exemption pursuant to Article VII, Section 6 of the Constitution of the State of Florida; and
 - d. That the property otherwise meets all requirements of the Village Land Development Regulations.

2. The annual registration shall allow up to a total of three hundred thirty-one (331) single family and multifamily transient rental units. For each annual registration period after the initial registration period, the following shall additionally apply:
 - a. No new transient rental unit shall be allowed in any Residential Medium (RM) Future Land Use Map category, in mobile home parks or in the Settlers Residential zoning district.
 - b. Effective January 1, 2023, no new transient rental unit in the RH and MU Future Land Use Map categories may be registered unless it is assessed by the Monroe County Property Appraiser at a value in excess of 600% of the median adjusted gross annual income for households within Monroe County. Notwithstanding the foregoing, for properties that have an approved vacation rental license as of December 31, 2022, the year 2007 Monroe County Property Appraiser assessed values shall be used. Properties that have transferred ownership through an arm's length sale of the property or did not have vacation rental license effective as of December 31, 2022 shall not be eligible to utilize the 2007 Monroe County Property Appraiser assessed values.
 - c. Effective January 1, 2023, no new transient rental unit in the RC, RL, or A Future Land Use Map categories may be registered unless it is assessed by the Monroe County Property Appraiser at a value in excess of 900% of the median adjusted gross annual income for households within Monroe County.
3. The priority of registration for transient rental units for all registration periods, for purpose of the three hundred thirty-one (331) unit cap, shall be based upon the total number of months that the unit owner has paid the Monroe County tourist development tax, with units registered in ascending order (i.e., those licenses demonstrating the most months of payment shall be the last retired). Notwithstanding paragraph 1.a. above, if the three hundred thirty-one (331) unit cap is not reached in any year by those units that have paid the Monroe County tourist development tax, new units may be given priority by registration date.
4. Property owners permitted transient rental use pursuant to this policy shall lose their privileges and retire their licenses when ownership (in whole or in part) of the unit is transferred, through an arm's length sale of the property or the asset. If the unit is owned by a natural person, the transfer of the fee simple ownership of the unit to the owner's spouse or children shall not result in termination of the license.

HISTORY

Adopted by Ord. [18-05](#) § 2 on 12/13/2018

Amended by Ord. [20-05](#) § 2 on 10/8/2020

Amended by Ord. [23-03](#) on 2/9/2023

Policy 1-2.4.8: Enforcement And Implementation Of Transient Rental Regulations

Property owners permitted transient rental use pursuant to Policy 1-2.4.7 shall pay an annual fee to the Village as established by resolution to be used for code compliance related to transient rental uses, with any excess funds to be used to further affordable housing programs. Transient rental unit owners shall lose their privileges and their permits shall be revoked for a property being used for transient rental if the property has been found by non-appealable Final Order on two (2) occasions to have violated the Village Code regarding vacation rental units as provided for in the land development regulations.

The Village shall establish land development regulations which shall address enforcement and implementation of transient rental use, including, but not limited to, the following: conspicuous notification on transient rental properties; requiring each unit to identify the unit manager who resides within the village; regulating the number and location of watercraft and automobiles on site; lease

agreements to disclose village regulatory requirements and provide for access for adequate code enforcement; advertising to require identification of state and village license numbers; notification to adjacent property owners; and fines, penalties, revocation of license for violation of the regulations including but not limited to the advertising of units that are not lawfully licensed by the Village.

Policy 1-2.4.9: Affordable Housing Study

The Village, based on its 2004 Workforce Housing Study, shall analyze appropriate policy revisions to the transient rental comprehensive plan policies (Policies 1-2.4.7 and 1-2.4.8) and prepare a report no later than December 31, 2005. The Village shall establish and support the efforts of an Affordable/Workforce Housing Citizen Advisory Committee to address the relationship between affordable housing needs and transient rental uses within the Village.

OBJECTIVE 1-2.5: INDUSTRIAL USES (I)

[Policy 1-2.5.1: Prevent Nuisance Impacts](#)

[Policy 1-2.5.2: Prohibit Industrial Uses In The Village Activity Centers](#)

In accordance with provisions in the Land Development Regulations, Islamorada, Village of Islands shall limit additional industrial development due to the fragile nature of the sensitive island ecosystem. The Future Land Use Map includes low intensity industrial designations for a few sites within the Village that have historically accommodated light industrial uses. Mariculture and aquaculture operations shall be permitted as conditional uses in Industrial (I) designated areas. Limited public/semi-public uses shall also be permitted. One (1) residential dwelling unit per parcel may be provided for on-site security purposes, subject to the Building Permit Allocation System. The FAR for the (I) designated parcels shall not exceed 0.25.

Policy 1-2.5.1: Prevent Nuisance Impacts

The Village shall prevent nuisance impacts frequently associated with industrial and intensive commercial activities by maintaining performance standards for managing emission of noise, air pollution, water pollution, dust, odor, vibration, fire or explosive hazards, and light pollution.

Policy 1-2.5.2: Prohibit Industrial Uses In The Village Activity Centers

The Village shall prohibit industrial uses, including light industrial uses, from locating in the designated Village Activity Centers. Industrial uses shall be directed to those areas designated Industrial (I).

OBJECTIVE 1-2.6: MANAGE CONSERVATION RESOURCES

[Policy 1-2.6.1: Conservation \(C\)](#)

[Policy 1-2.6.2: Equitable Treatment Of Privately Owned Conservation Lands](#)

The Future Land Use Map designates lands as Conservation (C) to provide for the long-term preservation of environmentally sensitive natural resource systems. Conservation resources generally include wetlands, transitional wetlands, mangroves, salt marsh, tidal waters, beaches, beach berms and dunes, natural shoreline or upland hammocks.

Policy 1-2.6.1: Conservation (C)

Lands designated as Conservation (C) shall either remain undeveloped or shall undergo 'restricted development'. 'Restricted development' shall be defined as the development options allowed by the development rights and restrictions stipulated in a conservation management plan developed for the parcel(s), as approved by the Village Council, and shall be restricted to trails and walkways,

government owned passive recreational uses and DEP approved mangrove trimming. Development rights may be transferred from C designated land pursuant to a program approved by the Village.

Policy 1-2.6.2: Equitable Treatment Of Privately Owned Conservation Lands

In order to equitably treat privately owned conservation lands, the Village shall, within the Land Development Regulations, establish programs for land acquisition and for the transfer of development rights.

OBJECTIVE 1-2.7: AIRSTRIP FUTURE LAND CATEGORY

[Policy 1-2.7.1: Airstrip Land Use Designation](#)

The Future Land Use Map designates the Tavernaero Airstrip and adjoining residential lots the Airstrip (A) category. The A land use designation is intended to accommodate the existing airstrip facilities and the residential uses adjoining the airstrip.

Policy 1-2.7.1: Airstrip Land Use Designation

Land use changes impacting flight patterns generated by the Tavernaero Airstrip shall not encroach on to the airstrip hazard zone. Furthermore, land uses proposed within noise impact areas defined in the FAA noise control regulations shall with FAA guidelines for managing noise impacts through land use regulation. The Village's amended Land Development Regulations shall establish the permitted uses and applicable restrictions within the air operations area and the adjoining residential lots. The non-residential maximum intensity of uses within this designation, measured in terms of floor area, should not exceed 0.25. The residential density shall be limited to one (1) unit per lot and shall allow as a principal use the storage of one (1) airplane pursuant to the Land Development Regulations.

OBJECTIVE 1-2.8: PUBLIC AND SEMI-PUBLIC SERVICES (PS)

[Policy 1-2.8.1: Public And Semi-Public Services \(PS\)](#)

[Policy 1-2.8.2: Public Facilities Exemption From Building Permit Allocation System](#)

[Policy 1-2.8.3: Provide On-Site And Off-Site Improvements](#)

The Future Land Use Map shall designate land for public and semi-public services as specified in the policies stipulated below. In addition, some necessary community facilities may be allowed within Residential Low (RL) Residential High (RH), Mixed Use (MU) and Industrial (I) FLUM categories, when found consistent with applicable Land Development Regulations. The sites shall be compatible with adjacent land uses.

Policy 1-2.8.1: Public And Semi-Public Services (PS)

The Public and Semi-Public Services (PS) land use designation is intended to accommodate existing public and semi-public services including: governmental administration buildings; public schools; not-for-profit educational, recreational, religious, arts and cultural or health related institutions; hospital facilities and supportive health care units; residential institutional uses at a maximum of twelve (12) units per acre, essential public services and facilities; fire and emergency operation facilities; and utilities. Wireless communications facilities may be provided as a major conditional use. Lands designated PS shall contain sufficient acreage and open space and be properly screened and buffered in order to minimize potential adverse impacts on adjacent land uses. The maximum floor area ratio for areas designated PS shall not exceed 0.25, except that a FAR up to 0.35 may be allowed on designated receiver sites through the transfer of development rights, as provided for in the Land Development Regulations.

Pursuant to the concurrency management program described in Objective 9-1.2, the Village shall monitor the need for increased land area for public and semi-public services and shall ensure that the PS land use designation on the Future Land Use Map is sufficient to accommodate increased needs for these uses, including public schools and associated facilities.

Policy 1-2.8.2: Public Facilities Exemption From Building Permit Allocation System

Public-owned facilities shall be exempted from the requirements of the Non Residential Building Permit Allocation System. Islamorada, Village of Islands may exempt not-for-profit semi-public services including: educational; scientific; religious; social services; arts and cultural facilities; or civic facilities from the requirements of the Non-Residential BPAS, based on a finding that such activity is consistent with the goals and objectives of this Plan, provides a needed public service that is not being provided by existing commercial entities, is compatible with surrounding uses, and does not negatively impact level of service standards or increase hurricane evacuation times. Dormitories and other accessory residential structures within PS shall require a dwelling unit allocation to be obtained via the Village's BPAS, pursuant to Policy 1-3.1.1.

Policy 1-2.8.3: Provide On-Site And Off-Site Improvements

Prior to issuing a development permit, the Village shall ensure that development applications include a satisfactory plan for providing required on-site and off-site improvements, or impact fees, so that the Village does not assume unanticipated or disproportionate fiscal liabilities for supportive facilities and services.

OBJECTIVE 1-2.9: RECREATION FACILITIES AND OPEN SPACE (RO)

[Policy 1-2.9.1: Provide Recreation Facilities](#)

[Policy 1-2.9.2: Intensity Of Recreation Facilities](#)

The Future Land Use Map designates land for recreational facilities, including open space systems.

Policy 1-2.9.1: Provide Recreation Facilities

Lands designated Recreation and Open Space (RO) shall contain sufficient acreage and open space and shall be properly screened and buffered in order to minimize potential adverse impacts on adjacent land uses. The Village shall monitor the need for additional land area for parks and recreation facilities to meet the changing needs of the Village.

Policy 1-2.9.2: Intensity Of Recreation Facilities

The maximum floor area ratio for any land use within an area designated RO on the Future Land Use Map shall not exceed 0.15. Limited municipal uses shall be permitted on RO designated lands.

OBJECTIVE 1-2.10: MARICULTURE (M)

[Policy 1-2.10.1: Intensity Of Mariculture Operations](#)

The Future Land Use Map designates land for mariculture operations, including the growing and shipping of fresh fish. A caretaker's unit may be developed as an accessory use on conforming parcels. Such units shall be permitted pursuant to the requirements of the Village's Building Permit Allocation System, only as affordable housing. Criteria established in the Land Development Regulations shall include restrictions on size and location so as to not require clearing of additional land.

Policy 1-2.10.1: Intensity Of Mariculture Operations

The maximum FAR for any land use within an area designated Mariculture (M) on the Future Land Use Map shall not exceed 0.25.

OBJECTIVE 1-2.11: ESTABLISH SUB-AREA POLICIES

[Policy 1-2.11.1: Specific Limitations On Plantation Key Mixed Use Area 1 \(PKMU1\)](#)

[Policy 1-2.11.2: Lower Matecumbe Residential High Area 1 \(LMRHA 1\)](#)

[Policy 1-2.11.3: Windley Key Mixed Use Area 1 \(WKMUA 1\)](#)

[Policy 1-2.11.4: Specific Limitations On Windley Key Mixed Use Area 2](#)

[Policy 1-2.11.5: Lower Matecumbe Key Residential Low Area 1 \(LMKRL 1\)](#)

Islamorada shall coordinate land use with the elements of the Comprehensive Plan through the Future Land Use Element sub-area policies solely applicable to a specific geographic area. These sub-area policies shall identify parcels of land that require narrowly-tailored regulation in order to confine development potential to an area or extent less than the maximum development potential allowed by its underlying Future Land Use Map category. The development parameters established for each sub-area policy shall be based either on an inventory of uses and facilities established on the parcel or upon data and analysis supporting the specific sub-area limitations and assumes a development potential less than the maximum development potential allowed by the underlying Future Land Use Map category. Environmentally sensitive area shall be preserved through the application of such methods as conservation easements that require mandatory eradication of invasive exotic vegetation.

Policy 1-2.11.1: Specific Limitations On Plantation Key Mixed Use Area 1 (PKMU1)

The Future Land Use Map designation on the lots identified in the below, shall be Mixed Use (MU):

Real Estate Number	Legal Description	Total Square Footage	FLUM Designation
00413320-000000	Lot 9, Block 4, Plantation Beach, according to the Plat thereof, as recorded in Plat Book 2, at Page 76, of the Public Records of Monroe County, Florida.	5447 sq. ft.	MU
00413330-000000	Lot 10, Block 4, Plantation Beach, according to the Plat thereof, as recorded in Plat Book 2, at Page 76, of the Public Records of Monroe County, Florida.	5763 sq. ft.	MU
00413340-000000	Lot 11, Block 4, Plantation Beach, according to the Plat thereof, as recorded in Plat Book 2, at Page 76, of the Public Records of Monroe County, Florida.	5420 sq. ft.	MU
00413350-000000	Lot 12, Block 4, Plantation Beach, according to the Plat thereof, as recorded in Plat Book 2, at Page 76, of the Public Records of Monroe County, Florida.	4975 sq. ft.	MU

Development on these Lots shall meet the requirements of applicable goals, objectives and policies of the Comprehensive Plan; however, the following further limitations on residential density shall apply to the Lots identified:

1. All four (4) lots shall remain aggregated under a Unity of Title as recorded in the Public Records of Monroe County, Florida, Book 2782, Pages 742-744, Document No. 2063973; and
2. A maximum of two (2) deed restricted affordable residential units as obtained through the Village's building permit allocation system or through the transfer of development rights program.

Policy 1-2.11.2: Lower Matecumbe Residential High Area 1 (LMRHA 1)

Only the land uses listed in paragraphs 1.to 7. below shall be allowed on the parcels identified in the table following as Lower Matecumbe Residential High Area-1 (LMRHA 1):

Real Estate Number	Legal Description	Total Acreage/Square Footage	FLUM Designation
003950000-000000	Lot 8, Block 2, Amended and Extended Plat of Matecumbe Ocean-Bay, Section One, according to the plat thereof as recorded in Plat Book 2, Page 96 of the public records of Monroe County, Florida.	0.77 AC/33,857 SF	LMRHA1
00395010-000000	South 1/2 of Lot 9, Block 2, Amended and Extended Plat of Matecumbe Ocean-Bay, Section One, according to the plat thereof as recorded in Plat Book 2, Page 96 of the public records of Monroe County, Florida.	1.27 AC/55,571 SF	LMRHA1

1. Residential uses consistent with the RH future land use map designation and the Multifamily (MF) Zoning District. Residential dwelling units shall be limited to the legally established eight (8) residential dwelling units.
2. Residential accessory structures and uses consistent with RH future land use map designation and the Multifamily (MF) Zoning District.
3. Docking facility as a minor conditional use as specified in the Multifamily (MF) Zoning District.
4. Homeowners' park and associated facilities as a minor conditional use as specified in the Multifamily (MF) Zoning District.
5. Infrastructure and municipal utility as a minor conditional use as specified in the Multifamily (MF) Zoning District.
6. Residential institutional uses as a minor conditional use as specified in the Multifamily (MF) Zoning District.
7. Attached wireless facility as a minor conditional use as specified in the Multifamily (MF) Zoning District.

Policy 1-2.11.3: Windley Key Mixed Use Area 1 (WKMUA 1)

The Future Land Use Map designation on the subject property identified in the table below, shall be Windley Key Mixed Use Area 1 (WKMUA1):

Real Estate Number	Legal Description	FLUM Designation	Maximum Residential Density	Maximum Nonresidential Intensity (FAR)
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0009382 0-000200	Pt. Gov. Lt. 1 N. of RR Windley Island PB1-50, Section 23, Township 63 south, Range 37 East, Islamorada Fl.	WKMUA 1	With Market- rate:	Two (2) units	0.25 FAR or 0.35 FAR with TDRs or with Working Waterfronts
			With Affordable Housing:	Fifteen (15) units per acre	
			With hotel or motel rooms/units:	Six (6) rooms/units per acre or twelve (12) hotel or motel rooms/units per acre with TDRs	

Policy 1-2.11.4: Specific Limitations On Windley Key Mixed Use Area 2

The Future Land Use Map designation shall be Mixed Use (MU) on the property consisting of approximately 32,075 square feet with Monroe County Property Appraiser Real Estate Number 00405370-000000 and legally described as:

Lot 5, of Galen Beach, according to the map or plat thereof as recorded in Plat Book 2, Page 110, Public Records of Monroe County, Florida.

ALSO INCLUDING THE FOLLOWING:

A parcel of filled, formerly submerged land lying and being in Section 23, Township 63 South, Range 37 East, Monroe County, Florida, and being more particularly described as follows: Commencing at the Northeast corner of Lot 5, GALEN BEACH, according to the plat thereof as recorded in Plat Book 2, Page 110, of the public Records of Monroe County, Florida; thence run South 23 degrees 35' 36" East, along the southwesterly line of Lot 6 of said GALEN BEACH for a distance of 273.1 feet to a point on the shoreline of the Atlantic Ocean as shown on the Plat of GALEN BEACH and the POINT OF BEGINNING of the parcel hereinafter described; thence continue South 23 degrees 35' 36" East for a distance of 106.31 feet to a point on the Mean High Water line of the Atlantic Ocean; thence meandering said Mean High Water line, along the following courses and distances; thence South 66 degrees, 20' 01" West, for 1.77 feet; thence North 77 degrees 48' 11" West, for 4.31 feet; thence North 28 degrees 57' 04" West, for 26.86 feet; thence North 28 degrees 50' 19" West, for 9.84 feet; thence North 82 degrees 46' 42" West, for 14.71 feet; thence South 75 degrees 46' 58" West, for 5.37 feet; thence South 73 degrees 02' 29" West, for 19.88 feet; thence South 73 degrees 36' 34" West, for 34.48 feet; thence South 76 degrees 14' 41" West, for 18.80 feet to a point on the prolongation of the southwesterly line of said Lot 5; thence North 23 degrees 35' 36" West, along said prolongation for 43.74 feet to a point on the shoreline of the Atlantic Ocean, as shown on the plat of GALEN BEACH; thence along said platted shoreline, North 69 degrees 05' 34" East, 100.07 feet to the POINT OF BEGINNING. LESS AND EXCEPT any of the above described lands which are or may hereafter become located waterward of the line of mean high water of the Atlantic Ocean. Parcel Identification Number: 1497631

Development on this property shall meet the requirements of applicable goals, objectives and policies of the Comprehensive Plan; however, the residential land use and residential development potential is hereby further limited to a maximum of one (1) legally established residential dwelling unit.

Policy 1-2.11.5: Lower Matecumbe Key Residential Low Area 1 (LMKRL 1)

The Future Land Use Map designation on the subject property identified in the table below, shall be Lower Matecumbe Key Residential Low Area 1 (LMKRL1):

Real Estate Number	Legal Description	Total Square Footage	FLUM Designation
00394430-000000	MATECUMBE SANDY BEACH LOWER MATECUMBE KEY PB3-127 PT TRACT 4 OR439-564/65 OR2444-1299/1303AFF/MERGER OR2485-2390/2401 EASEMENT/AGR OR2665-647/49	1,571,209.20 SF (36.07 acres)	LMKR L1
00394440-000000	TRACT 4 AND PT TRACT 5 MATECUMBE SANDY BEACH PT SANDY COVE AVE LOWER MATECUMBE KEY OR119-389/91 OR119-395/97 OR192- 267/69 OR323-44/45 OR768-809/10 OR772- 878/93 OR772-894/98 OR795-1722/31 OR796-1469/72 OR889-958/62R/S OR862-1602/07P/R OR905-447D/C OR1472-2292/94 OR2485-2390/2401 EASEMENT/AG OR2492-866/70(RES NO 10-0962)	42,050 SF	LMKR L1

The total residential density of the Lower Matecumbe Key Residential Low Area 1 shall be limited to ten (10) units, one (1) existing and nine (9) additional from the Village's Building Permit Allocation System or by transfer of development rights.

The Bald Eagle's nest in the southwest corner of the Lower Matecumbe Key Residential Low Area 1 shall be protected by a buffer zone in compliance with the requirements set out in the National Bald Eagle Management Guidelines U.S. Fish and Wildlife Guidelines, U.S. Fish and Wildlife Service, May 2007.

Deed restricted affordable caretaker's cottages may be approved consistent with the requirements established in the Land Development Regulations through the Village's Building Permit Allocation System at the Village's discretion.

Accessory guest houses may be approved consistent with the requirements established in the Land Development Regulations.

GOAL 1-3: LIMIT GROWTH WITHIN THE VILLAGE

OBJECTIVE 1-3.1: IMPLEMENT LIMITED GROWTH OBJECTIVES AND POLICIES

Islamorada, Village of Islands shall manage the rate of development and population growth to promote small-town ambiance, improve quality of life for residents, enhance and protect natural resources and environmental quality unique to the Florida Keys, comply with adopted level of service standards for public facilities, effectively time public infrastructure and services according to the availability of public funds and support safe and timely evacuation prior to a hurricane.

OBJECTIVE 1-3.1: IMPLEMENT LIMITED GROWTH OBJECTIVES AND POLICIES

[Policy 1-3.1.1: Establish A Building Permit Allocation System \(BPAS\)](#)

[Policy 1-3.1.2: Maintain Programs For Conservation Of Lands Within Islamorada](#)

[Policy 1-3.1.3: Institute A Program For Transfer Of Development Rights \(TDRs\)](#)

[Policy 1-3.1.4: Recognize Vested Rights](#)

[Policy 1-3.1.5: Consider Administrative Relief Or Acquisition](#)

[Policy 1-3.1.6: Carrying Capacity](#)

Islamorada, Village of Islands shall limit the annual allocation of permits based on the objective to reduce and maintain hurricane evacuation clearance times at or below twenty-four (24) hours as determined by the most up-to-date evacuation model. Land Development Regulations shall implement the goals, objectives and policies of this Comprehensive Plan that limit growth within the Village. These

regulations shall provide a process for distributing the Village's equitable share of the Keys-wide allocation of available annual building permits for residential and non-residential development and shall provide incentives for preserving environmentally sensitive lands, extinguishing development rights, providing affordable housing and promoting redevelopment of the Village Activity Centers, to be adopted in accordance with the framework and timelines established by the following policies:

Policy 1-3.1.1: Establish A Building Permit Allocation System (BPAS).

The Village's Building Permit Allocation System shall award all building permits for new residential and non-residential construction unless otherwise exempted by ordinance or by provisions within this Plan. The annual allocation shall be approved provided that hurricane evacuation clearance time does not exceed twenty-four (24) hours. The Village shall cease issuing permits under the annual allocation once the hurricane evacuation clearance time provided Monroe County, Key West and Marathon also cease issuing permits, except that the Village may voluntarily do so.

RESIDENTIAL AND NON-RESIDENTIAL SCHEDULE

Market Rate Allocations Available from Interlocal Agreement: 10.25 dwelling units

Distribution Schedule:

2024	5 Market Rate Allocations with Land Dedication
	2 Market Rate Allocations without Land Dedication
2025	2 Market Rate Allocations without Land Dedication
2026	1 Market Rate Allocation without Land Dedication

Residential Building Permit Allocation System: The indicated allocations are the maximum allocations that shall be awarded by Islamorada, Village of Islands through the Building Permit Allocation System (BPAS). Unused market rate allocations shall be available for Administrative Relief. Unused Workforce-affordable housing allocations shall be rolled over into the following year's affordable housing allocation. Excluding those awarded through the beneficial use or administrative relief processes, no more than one (1) development permit per Program Year may be allocated in a manner which would result in the clearing of high-quality hammock.

Pursuant to F.A.C. 28-19, the Village shall allocate residential and non-residential allocations in a manner consistent with the requirement to maintain a 24-hour permanent population evacuation. Islamorada, Village of Islands reserves the right to accept its equitable share of the Keys-wide allocation to distribute consistent with the goals, objectives and policies of this Plan. Detailed allocation procedures for distributing available awards shall be adopted through Land Development Regulations, including point criteria consistent with the goals, objectives and policies of the revised Comprehensive Plan through 2033, the planning horizon. Any building allocation remaining from the original 280 awarded in 2013 will be distributed based upon current land development regulations. Should Council determine that the quarterly allocations should be reduced per quarter, this will be adopted through a land development regulation approved by the State Land Planning Agency, Department of Commerce.

Non-Residential Building Permit Allocation System: Land Development Regulations shall include procedures for the distribution of available non-residential floor area shown in the schedule. All applications for the issuance of non-residential square footage must demonstrate the ability to bring the site into compliance with all applicable Land Development Regulations, including environmental standards, in order to be further considered. In the event Workforce-affordable units are transferred across jurisdictional lines, the transfer shall not become effective until the Village executes an interlocal

agreement with the receiving local government and adopts a comprehensive plan amendment reducing the non-residential allocation by 239 square feet for each Workforce-affordable unit transferred across jurisdictional lines. Thereafter, applications shall be evaluated and ranked based on project merit, including consideration of the following:

1. Focus on redevelopment versus new development;
2. The development potential of the site;
3. Focus provisions of amenities associated with the proposed development;
4. Provision of affordable housing in conjunction with the proposed development; and
5. Environmental sensitivity of the proposed development site.

HISTORY

Amended by Ord. [23-02](#) on 2/9/2023

Amended by Ord. [24-06](#) on 4/19/2024

Policy 1-3.1.2: Maintain Programs For Conservation Of Lands Within Islamorada

The Islamorada Village of Islands Council shall maintain an Action Plan for the Village, developed by the Village's Land Acquisition Advisory Committee, in conjunction with Village staff. This Action Plan shall recommend the best means for land acquisition and conservation including retiring development rights from the vacant lands within the Village, while protecting private property rights, and may include programs such as: a general tax; a transfer tax; tax reduction for easements; unity of title; voluntary dedication; establishment of a Land Trust; outright acquisition; grantsmanship and/or fundraising events. The Action Plan shall include a system for continued monitoring, evaluation and update of the adopted programs.

The Land Acquisition Selection System shall be maintained to affirm the Village's future conservation/ecological infrastructure, in coordination with the Monroe County Land Authority, current and proposed Land Development Regulations, and Comprehensive Plan policies. Evaluation of each of the current LAAC priority properties and other potential conservation properties in the Village shall be completed, and shall result in an amended conservation lands listing. Subsequently, during the following budget cycle, the Village shall prepare a Capital Investment Plan for land acquisition and purchase of development rights in coordination with regional, State, Federal and private non-profit programs, including but not limited to the Department of Environmental Protection (CARL), the Monroe County Land Authority, the Department of Community Affairs and other agencies with an interest in conservation lands. This Capital Investment Plan shall be incorporated into the Village's Capital Improvement Program.

The Village shall continue to coordinate with regional, State, Federal and private non-profit programs, including but not limited to the Department of Environmental Protection (CARL/Florida Forever), the Monroe County Land Authority, the Trust for Public Lands, and the Department of Community Affairs (Florida Communities Trust) for the acquisition of properties consistent with the Action Plan.

Policy 1-3.1.3: Institute A Program For Transfer Of Development Rights (TDRs)

Islamorada, Village of Islands, shall through Land Development Regulations maintain a program to facilitate the transfer of a variety of development rights within the Village's boundaries, to achieve the following:

1. Protect environmental resources in balance with protection of property rights;
2. Facilitate redevelopment and revitalize the Village Activity Centers by concentrating mixed use activities;

3. Encourage redevelopment of commercial enterprises and permit limited new commercial development;
4. Protect housing affordability and encourage provision of new affordable housing units throughout the Village;
5. Redistribute existing residential units to achieve planned densities and retire development rights without increasing the overall amount of development. Notwithstanding, affordable housing may be provided only through the Building Permit Allocation System on the sender site in instances following the transfer of nonresidential floor area; and affordable housing and/or nonresidential floor area may be provided only through the Building Permit Allocation System on the sender site in instances following the transfer of hotel or motel units; but in neither case may the sender or receiver site exceed the permitted density or intensity;
6. Protect environmentally sensitive sites through removal of existing dwelling units or rights based on allocated densities and intensities;
7. Encourage the placement of conservation easements on environmentally sensitive or flood prone parcels of land; and
8. Further the public good and the goals, objectives and policies of the Comprehensive Plan.

The Land Development Regulations shall provide for the use of TDRs to transfer non-residential and residential development rights. Three (3) types of development rights may be transferable as conditional uses, as follows:

1. The transfer of density from vacant non-residential and residential lots of record, to vacant non-residential and residential lots of record that are non-conforming as to density, so as to permit the development of the non-conforming receiver site;
2. The off-site transfer of existing non-residential floor area from any property, to any property located in either the Mixed Use (MU) Future Land Use Map Category and zoned for non-residential uses or Industrial (I) Future Land Use Map Category; and
3. Off-site redevelopment of existing residential dwelling units, Transferable ROGO Exemption (TRE) Certificates and of building permits for residential dwelling units.

Off-site redevelopment of all residential TDRs, including building permits for residential dwelling units and TREs shall at a minimum, be subject to the following transfer conditions:

1. Both sender and receiver sites shall be in future land use categories that permit residential uses;
2. The structure cannot be placed in a VE zone on the receiver site;
3. The receiver site shall be less environmentally sensitive than the sender site, according to a habitat analysis conducted by a certified biologist, unless otherwise exempted or limited by the Planning and Development Services Director and pursuant to habitat classifications described in Policy 6-1.7.8, whereby the following conditions apply:
 - a. Transfer shall be permitted from Class I parcels to Class II or Class III parcels;
 - b. Transfer shall be permitted from Class II parcels to Class II or Class III parcels; and
 - c. Transfer shall be permitted from Class III parcels to Class III parcels.
4. The receiver site shall be located in the same or less density restrictive Future Land Use Map category than the sender site, except that affordable residential TDR's located on a Residential High (RH) sender site may be transferable to a Residential Medium (RM) receiver site.

Notwithstanding the above residential TDR dwelling unit and density restrictions, existing dwelling units located on a Mixed Use (MU) sender site may be transferable to an Airport (A) or Residential Medium (RM) receiver site provided the subject receiver site does not contain hammock and meets minimum lot area requirements;

5. Eligible receiver sites shall demonstrate compliance with all applicable criteria set forth in the Land Development Regulations;
6. Regardless of on-site allocated densities available on a parcel of land, exercising the TDR process to remove units, or transfer building permits from a parcel shall, result in a permanent reduction of density, and no additional units to those remaining on the sender site after the transfer takes place shall be permitted on the sender site. Notwithstanding, affordable housing and/or nonresidential floor area may be provided only through the Building Permit Allocation System in instances following the transfer of a hotel or motel unit, but in no case may the sender or receiver site exceed the permitted density or intensity. Each TDR shall require that a Declaration of Covenants, Conditions and Restrictions be placed on the sender site, restricting densities to the number of units remaining on the sender site after the transfer takes place. If no density remains, a Declaration of Covenants, Conditions and Restrictions shall be placed by the owner of the sender site on the property, restricting all further development rights; and
7. The following restrictions on residential transfers shall apply:
 - a. Hotel and motel unit TDRs shall be transferable only to hotel and motel units;
 - b. Market rate TDRs shall be transferable only to market rate units or affordable units;
 - c. Affordable TDRs, including mobile homes from approved mobile home parks, shall be transferable only as an affordable unit, in accordance with affordability standards to be adopted through the Land Development Regulations.

For all non-residential TDR's, the off-site transfer of legally existing nonresidential floor area shall be subject to the following transfer conditions:

1. All properties designated either Mixed Use (MU) and zoned for non-residential uses or Industrial (I) shall be eligible as sender and receiver sites for transfers of non-residential floor area;
2. As a condition of the transfer, eligible receiver sites shall demonstrate compliance with all applicable criteria set forth in the Land Development Regulations; and
3. A Declaration of Covenants, Conditions and Restrictions shall be placed on the sender site, indicating the recorded amount of non-residential floor area remaining following the transfer and a Grant of Conservation Easement Agreement (GOCEA) shall be placed by the owner of the sender site, prohibiting any future development on all hammock areas of the property.

Policy 1-3.1.4: Recognize Vested Rights

The Village shall recognize vested rights by establishing an administrative procedure by which it can be determined whether a property owner has vested rights to complete development otherwise not permitted under the Comprehensive Plan. Vested rights may be found when the property owner demonstrates that a governmental act of approval was obtained from the Village, upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures, and it would be highly inequitable to deny the property owner the right to complete the development as approved.

Policy 1-3.1.5: Consider Administrative Relief Or Acquisition

Applicants who have met all requirements of the Comprehensive Plan with regards to the Building Permit Allocation System, but are otherwise denied a permit, shall be eligible to request consideration

of administrative relief for the parcel, upon four (4) years elapsing from the date of acceptance of the application by the Village.

However, the granting of administrative relief in the form of the issuance of a building permit shall be prohibited for lands within the Florida Forever targeted acquisition areas unless, after sixty (60) days from the receipt of a complete application for administrative relief, it has been determined that the parcel cannot be purchased for conservation purposes by any county, state or federal agency or any private entity. The Village shall routinely notify the Department of Environmental Protection of upcoming administrative relief requests at least 6 months prior to the deadline for administrative relief.

Policy 1-3.1.6: Carrying Capacity

Within one (1) year of the acceptance date by the Governor of the Florida Keys Carrying Capacity Study, Islamorada, Village of Islands shall evaluate the findings and recommendations of the Study and where appropriate and based on a finding that the recommendations are consistent and further the goals and objectives of the Comprehensive Plan, shall amend the Comprehensive Plan.

GOAL 1-4: IMPLEMENT LAND USE GOALS AND OBJECTIVES

[OBJECTIVE 1-4.1: CONCURRENCY MANAGEMENT](#)

[OBJECTIVE 1-4.2: MANAGE AND COORDINATE FUTURE LAND USE DECISIONS](#)

[OBJECTIVE 1-4.3: COASTAL AREA POPULATION DENSITIES AND HURRICANE EVACUATION PLANS](#)

[OBJECTIVE 1-4.4: PROTECT ARCHAEOLOGICAL AND HISTORIC RESOURCES](#)

[OBJECTIVE 1-4.5: PROTECT NATURAL RESOURCES](#)

[OBJECTIVE 1-4.6: PREVENT PROLIFERATION OF URBAN SPRAWL AND COORDINATE THE TIMING AND STAGING OF PUBLIC AND PRIVATE DEVELOPMENT](#)

[OBJECTIVE 1-4.7: APPLICATION OF INNOVATIVE LAND AND WATER RESOURCE MANAGEMENT AND ENERGY CONSERVATION CONCEPTS](#)

[OBJECTIVE 1-4.8: INTERGOVERNMENTAL COORDINATION](#)

[OBJECTIVE 1-4.9: PRESERVE WORKING WATERFRONTS](#)

[OBJECTIVE 1-4.10: PROVIDE CONTINUING LAND USE PROGRAMS](#)

[OBJECTIVE 1-4.11: CONTINUE EVALUATING FUTURE LAND USE ELEMENT EFFECTIVENESS](#)

Islamorada, Village of Islands shall continue to monitor and evaluate development and resource conservation within the Village pursuant to goals and objectives of the Comprehensive Plan Future Land Use Element and carry out an effective implementation program as herein established.

OBJECTIVE 1-4.1: CONCURRENCY MANAGEMENT

[Policy 1-4.1.1: Ensure Existing Concurrency Management System Is Consistent With SFWMDs Lower East Coast Water Supply Plan](#)

Pursuant to F.S. ch. 163, F.S. § 163.3180, for concurrency requirements, the Village shall issue no development order or permit for development unless the applicant provides narrative and graphic information demonstrating to the satisfaction of the Village that public facilities required by the subject development shall be in place concurrent with the impacts of development. Furthermore, the applicant shall assure that the facilities operate at or above adopted level of service (LOS) standards. The applicant's narrative and graphic information shall also demonstrate that the subject development shall not reduce the levels of service for public facilities serving the development below adopted LOS standards.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 1-4.1.1: Ensure Existing Concurrency Management System Is Consistent With SFWMDs Lower East Coast Water Supply Plan

Islamorada, Village of Islands shall ensure that the existing concurrency management system is consistent with the South Florida Water Management District Lower East Coast Water Supply Plan updated November 8, 2018 and the Florida Keys Aqueduct Authority's Master Plan 2020.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

OBJECTIVE 1-4.2: MANAGE AND COORDINATE FUTURE LAND USE DECISIONS

[Policy 1-4.2.1: Implement Comprehensive Plan Through Land Development Regulations](#)

[Policy 1-4.2.2: Continue Regulatory Enforcement Activities](#)

[Policy 1-4.2.3: Coordinate Public And Private Sector Partnerships](#)

Islamorada, Village of Islands shall continue to implement Land Development Regulations to enact the goals, objectives and policies contained within this Comprehensive Plan, which shall ensure that land development activities, resource conservation and infrastructure issues are managed in a manner that includes timely coordination with County, regional and State agencies having jurisdictional authority. The Future Land Use Map and Building Permit Allocation System shall guide the protection of natural resources and conservation of infrastructure levels of service within the Village. Land use approvals shall also be predicated on the availability of infrastructure and services required to support land use activities.

Policy 1-4.2.1: Implement Comprehensive Plan Through Land Development Regulations

Land Development Regulations shall contain at a minimum, the following:

1. Procedures for site plan review including criteria for considering minor and major conditional uses;
2. Administrative procedures by which to manage key programs to implement the goals, objectives and policies of this Comprehensive Plan;
3. Details regarding the application and award process for the Non-Residential Building Permit Allocation System;
4. A program including criteria and procedures for the consideration of all residential and non-residential Transferable Development Rights, plus development of mechanisms for tracking and coordinating recordation of TDRs with relevant agencies;
5. Criteria and procedures for considering beneficial uses and vested rights;
6. Zoning District Maps, as well as permitted uses, bulk regulations and site plan requirements for each Zoning District;
7. Regulations for the outdoor storage and use of property;
8. Landscape standards;
9. Off-street parking, loading and driveway standards;
10. Signage regulations;
11. Special use regulations including adult uses, home occupations, wireless communications facilities, excursion boats, vacation rentals, group homes, liveaboard vessels, outdoor uses, seaplanes and helistop landing areas;

12. Environmental regulations including docks and shoreline uses, turtle nesting protection, creation of a habitat analysis, stormwater management, wastewater, floodplain management, and historical and archaeological sites; and
13. Procedures for the consideration of proposed changes to the Future Land Use Map or text of the Comprehensive Plan.

Policy 1-4.2.2: Continue Regulatory Enforcement Activities

Regulatory enforcement activities shall be continued through the Planning and Development Services Department.

Policy 1-4.2.3: Coordinate Public And Private Sector Partnerships

Islamorada, Village of Islands shall coordinate redevelopment issues with the private sector and public agencies.

OBJECTIVE 1-4.3: COASTAL AREA POPULATION DENSITIES AND HURRICANE EVACUATION PLANS

[Policy 1-4.3.1: Manage Future Land Use](#)

[Policy 1-4.3.2: Manage Nearshore Waters](#)

Islamorada, Village of Islands shall enforce Land Development Regulations which ensure that future land uses shall be compatible with the Future Land Use Element and the character of the Village. The Land Development Regulations shall include administrative procedures which ensure that Village land use decisions impacting population density within the coastal high hazard area are coordinated with the Monroe County Hurricane Evacuation Plan and applicable regional or State hurricane evacuation plans.

Policy 1-4.3.1: Manage Future Land Use

The Future Land Use Element shall prevent development of land uses that do not conform to the Village's character. Regulatory techniques such as conservation easements and protection of historically and archaeologically significant sites shall be integrated into the Land Development Regulations.

Policy 1-4.3.2: Manage Nearshore Waters

Islamorada, Village of Islands shall manage nearshore waters through the enforcement of speed limits, no wake zones, and no motor zones, as well as prohibit boat launching from various rights-of-way that are not designated as public boat ramps and restricting random water access points. Islamorada, Village of Islands shall maintain regulatory techniques that address management and enforcement of land uses and activities in the nearshore waters, so as to be consistent with the Comprehensive Plan and further the protection of the resource.

OBJECTIVE 1-4.4: PROTECT ARCHAEOLOGICAL AND HISTORIC RESOURCES

[Policy 1-4.4.1: Protect Archaeological And Historic Sites](#)

[Policy 1-4.4.2: Prevent Adverse Impact Of Development On Historic Or Archaeological Sites](#)

Land Development Regulations shall prevent damage to archaeologically and historically significant resources of State and local significance. In addition, the Land Development Regulations shall require the preservation of locally significant historic resources as identified by the Village.

Policy 1-4.4.1: Protect Archaeological And Historic Sites

Islamorada, Village of Islands shall coordinate with the State and Federal government to develop programs for identifying, preserving and enhancing sites of historical and archaeological significance.

Policy 1-4.4.2: Prevent Adverse Impact Of Development On Historic Or Archaeological Sites

Development activities shall include precautions necessary to prevent adverse impacts to historic or archaeological sites of significance that may be caused by: 1) destruction or alteration of all or part of such site; 2) isolation from or significant alteration to its surrounding environment; 3) introduction of visible, audible or atmospheric elements that are out of character with the property or significantly alter its setting; 4) transfer or sale of a site of significance without adequate conditions or restrictions regarding preservation, maintenance, or use; and 5) other forms of neglect resulting in its deterioration.

OBJECTIVE 1-4.5: PROTECT NATURAL RESOURCES

[Policy 1-4.5.1: Manage Environmentally Sensitive Lands](#)

[Policy 1-4.5.2: Coordinate Natural Resource Management](#)

[Policy 1-4.5.3: Protect Flora And Fauna Having Special Status](#)

[Policy 1-4.5.4: Manage Stormwater Runoff](#)

[Policy 1-4.5.5: Conserve Water Including Potable Water Supply](#)

[Policy 1-4.5.6: Promote Greenhouse Gas Emission Reduction](#)

Land Development Regulations shall ensure that development and conservation activities protect natural resources as directed by the following policies:

Policy 1-4.5.1: Manage Environmentally Sensitive Lands

Policies in the Conservation Element for managing environmentally sensitive natural systems, including but not limited to water resources, wetlands, upland hammocks, transitional areas, wildlife corridors, sea grasses, the coral reef, other living marine resources and other environmentally sensitive resources, shall be carried out through the Comprehensive Plan and Land Development Regulations. These regulations shall also provide for wetland preservation, wetland mitigation, dedication of conservation easements for preserving open space and reservation of strategic points of shoreline for public access.

Policy 1-4.5.2: Coordinate Natural Resource Management

Islamorada, Village of Islands shall coordinate with the State, the South Florida Water Management District, the South Florida Regional Planning Council, Monroe County, State agencies and other agencies concerned with managing natural resources. Such intergovernmental coordinating activities shall be directed toward protecting and enhancing the values and functions of natural systems.

Policy 1-4.5.3: Protect Flora And Fauna Having Special Status

The habitat of rare and endangered species of flora and fauna and others having special status as identified in the Conservation Element shall be protected.

Policy 1-4.5.4: Manage Stormwater Runoff

The developer/owner of any site shall be responsible for managing on-site run-off. All new development and redevelopment shall comply with adopted level of service standards for surface water management.

Policy 1-4.5.5: Conserve Water Including Potable Water Supply

The water supply including the potable water supply shall be conserved by enforcing water standards as delineated in the Land Development Regulations and coordinating with the South Florida Water

Management District and FCAA to implement any water restriction mandates issued, through the distribution of materials to the public and promoting conservation on the Village website.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 1-4.5.6: Promote Greenhouse Gas Emission Reduction

Islamorada, Village of Islands, shall continue to limit growth, ensure a compact pattern of development that directs future growth to established areas of existing residential and commercial use reducing the need for vehicular travel, promote pedestrian and bicycle traffic strategies contained in the adopted Transportation Demand Management program and provide more locations for bus stops to enhance public transits.

OBJECTIVE 1-4.6: PREVENT PROLIFERATION OF URBAN SPRAWL AND COORDINATE THE TIMING AND STAGING OF PUBLIC AND PRIVATE DEVELOPMENT

[Policy 1-4.6.1: Provide For Timing Of Infrastructure Concurrent With Development Impacts](#)

[Policy 1-4.6.2: Design Public Facilities And Utilities To Minimize Impacts On Natural Systems](#)

[Policy 1-4.6.3: Provide For Developments Not Served By Public Water And/Or Wastewater Systems](#)

[Policy 1-4.6.4: Accommodate Requisite Infrastructure](#)

Land Development Regulations shall ensure that the location, scale, timing and design of development is coordinated with public facilities and services in order to prevent the proliferation of urban sprawl and achieve cost effective land development patterns. Consistent with policies in the Intergovernmental Coordination Element, the Village shall pursue resolution of development and growth management issues with impacts transcending the Village's political jurisdiction, by participating in forums with the Florida Department of Community Affairs, the South Florida Regional Planning Council and other forums convened to coordinate such issues.

Policy 1-4.6.1: Provide For Timing Of Infrastructure Concurrent With Development Impacts

Development orders and permits for all future development shall be timed and staged to ensure that requisite infrastructure and services are available to development concurrent with the impacts of the development.

Policy 1-4.6.2: Design Public Facilities And Utilities To Minimize Impacts On Natural Systems

Public facilities and utilities shall be located and designed to avoid adverse impacts on natural systems. Where avoidance is not possible and alternative locations or technologies are not available, adverse impacts shall be minimized and mitigated.

Policy 1-4.6.3: Provide For Developments Not Served By Public Water And/Or Wastewater Systems

All developments in areas not serviced by public water and/or wastewater systems shall be governed by applicable State laws and administrative regulations. Where conflict may exist in applying such laws and regulations, the more restrictive shall prevail.

Policy 1-4.6.4: Accommodate Requisite Infrastructure

During the site plan review and permitting processes, the Village shall ensure that future developments allocate sufficient land area for infrastructure required to support proposed development.

OBJECTIVE 1-4.7: APPLICATION OF INNOVATIVE LAND AND WATER RESOURCE MANAGEMENT AND ENERGY CONSERVATION CONCEPTS

[Policy 1-4.7.1: Implement Innovative Techniques In The Land Development Regulations](#)

[Policy 1-4.7.2: Conserve Water Through Landscaping](#)

[Policy 1-4.7.3: Conserve Water Through Education](#)

[Policy 1-4.7.4: Conserve Water Through Restrictions](#)

Islamorada, Village of Islands shall maintain Land Development Regulations which apply innovative concepts for managing land, water and energy resources and which are responsive to unique development and conservation issues in the Village.

Policy 1-4.7.1: Implement Innovative Techniques In The Land Development Regulations

Land Development Regulations shall continue to implement land and water resource management techniques which have been demonstrated to be successful and cost effective for resolving development and conservation issues such as surface water management, soil erosion and sedimentation control, land clearing and excessive tree removal, loss of mature plants and wildlife habitat and conservation of water supply.

Policy 1-4.7.2: Conserve Water Through Landscaping

The Village shall assist the FCAA with water conservation efforts by implementing water conservation measures which include Florida Friendly Landscape Principles.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 1-4.7.3: Conserve Water Through Education

The Village shall coordinate with FCAA public education programs for the implementation of water conservation measures.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 1-4.7.4: Conserve Water Through Restrictions

The Village shall comply with SFWMD water use restrictions when shortages are declared by SFWMD.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

OBJECTIVE 1-4.8: INTERGOVERNMENTAL COORDINATION

[Policy 1-4.8.1: Implement Intergovernmental Coordination](#)

Land Development Regulations shall incorporate administrative procedures to ensure the efficient coordination of land and water management issues with all public entities having jurisdictional authority.

Policy 1-4.8.1: Implement Intergovernmental Coordination

Islamorada, Village of Islands shall require that development applications be coordinated, as appropriate, with Monroe County, the Monroe County School Board, other special districts, the South Florida Regional Planning Council (SFRPC), the South Florida Water Management District, as well as applicable State and Federal agencies prior to issuance of a development order or permit. The Village shall coordinate with the SFRPC in meeting regional policies contained in the Regional Plan for South Florida. The Village shall establish a multi-agency review during the site plan review process for all

large scale developments. The powers of the multi-agency review team shall be advisory to the Village Council.

OBJECTIVE 1-4.9: PRESERVE WORKING WATERFRONTS

[Policy 1-4.9.1: Provide Regulatory Incentives](#)

[Policy 1-4.9.2: Implement Working Waterfronts Land Development Regulations](#)

[Policy 1-4.9.3: Outline Working Waterfront Strategies](#)

[Policy 1-4.9.4: Ensure Public Access To The Waterfront](#)

It is the intent of the Village to promote the responsible management of its coastal area, and to balance the protection of recreational and commercial working waterfronts with the provision of water-related recreational activities and with the preservation of coastal and natural resources. Properties identified as Working Waterfronts are identified in Appendix A of Islamorada's Working Waterfronts Preservation Master Plan, adopted by the Village on June 26, 2008.

Working Waterfronts are a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels as defined in the Village code, or provide access for the public to the navigable waters of the state. Working Waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state that are support facilities for recreational, commercial, research, or governmental vessels. These facilities may include utility pilings, fences, docks, lifts, davits, boat ramps, boat slips, seawalls, riprap, bulkheads, elevated walkways, fish cleaning stations and outside dining areas, wet and dry marinas, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, docking facilities and other support structures over the water.

Policy 1-4.9.1: Provide Regulatory Incentives

Islamorada, Village of Islands shall implement a strategy that provides regulatory incentives and criteria to encourage the preservation and enhancement of its working waterfronts.

Policy 1-4.9.2: Implement Working Waterfronts Land Development Regulations

Islamorada, Village of Islands shall encourage the maintenance of community character, culture and traditional uses on the waterfront. To accomplish this, the Village shall within one (1) year adopt land development regulations to:

1. Protect the working waterfront by establishing that commercial fishing activities are an important community value and that impacts associated with these uses are normal and compatible with other uses of the waterfront;
2. Support mixed use development adjacent to and in marinas which provides a range of services and activities for boaters and their families, including restaurants, accessory shops, and other water-dependent activities for residents and visitors;
3. Ensure public access and creation of public spaces in the redevelopment of marine facilities by providing incentives for the provision of pedestrian access along and to the shoreline, protection of view sheds, and creation of public access to boat ramps, subject to the limitations as may be established in the Land Development Regulations;
4. On parcels identified as Working Waterfronts, FAR bonuses may be given as an incentive to maintain and enhance the Working Waterfront uses;
5. Non-conforming structures containing Working Waterfronts uses that are legally established may be repaired or restored if damaged or destroyed, provided that they are repaired or restored

consistent with existing policies;

6. Encourage the protection and facilitate development of dockside facilities for the sale of fresh catch.

Policy 1-4.9.3: Outline Working Waterfront Strategies

The strategy to protect commercial and recreational working waterfronts shall include the following actions:

1. Apply for inclusion in the Waterfronts Florida Partnership Program. This program helps participating communities develop a plan to revitalize, renew and promote interest in their waterfront with possible grant monies.
2. Partnering and working with key stakeholders, including Monroe County, the Department of Environmental Protection and the United States Army Corps of Engineers, with jurisdiction over waterfront areas and uses to ensure that their Comprehensive Plans include provisions and features that protect and preserve existing Working Waterfronts.
3. Land development regulations shall ensure that the overall density and intensity available for maintenance and enhancement of working waterfronts and public access is not significantly reduced over time and that Working Waterfronts are protected.
4. Encourage all marinas to participate in the Eco-Mariner Florida Bay and the Florida Department of Environmental Protection's Clean Marina programs. These programs promote enhanced nearshore water quality and resource protection in the Village's nearshore waters.
5. Coordinate with FDOT to support the efforts of the Organized Fishermen of Florida to ensure retention of current areas used for trap storage on property owned by FDOT.

Policy 1-4.9.4: Ensure Public Access To The Waterfront

The Village shall not vacate, diminish, or otherwise impair publicly-owned pathways, sidewalks, roads, ends of roads, parking areas, docks or boat launching facilities, and other access points currently used, or susceptible to use, by the public to access the shorelines, consistent with Comprehensive Plan Objective 5-1.12, unless there is documented evidence that physical public access is destabilizing unaltered shorelines. Furthermore, the Village shall not abandon any right-of-way, improved or unimproved, which terminates on a body of water. Notwithstanding the foregoing, rights-of-way may be vacated where there is documented evidence that physical public access is destabilizing unaltered shorelines.

OBJECTIVE 1-4.10: PROVIDE CONTINUING LAND USE PROGRAMS

[Policy 1-4.10.1: Maintain A Land Use Information System](#)

[Policy 1-4.10.2: Fiscal Management](#)

[Policy 1-4.10.3: Administer Land Use Controls](#)

[Policy 1-4.10.4: Provide Public Assistance](#)

[Policy 1-4.10.5: Provide Intergovernmental Coordination](#)

[Policy 1-4.10.6: Manage Current Developmental Impacts](#)

[Policy 1-4.10.7: Undertake Special Land Use Studies](#)

Islamorada, Village of Islands shall implement land use goals and objectives by carrying out a continuing program of land use activities as described below:

Policy 1-4.10.1: Maintain A Land Use Information System

Islamorada, Village of Islands shall maintain and periodically update the Village's land use information system, drawing on the resources of the Monroe County Property Appraiser, and outcomes of the Florida Keys Carrying Capacity Study. The land use information system shall include a geographic information system (GIS), Village Planning Department field data, building permit files, engineering base maps and all other relevant land use data files.

Policy 1-4.10.2: Fiscal Management

Islamorada, Village of Islands shall continue to implement the fiscal management policies of the Capital Improvement Program and Budget.

Policy 1-4.10.3: Administer Land Use Controls

Islamorada, Village of Islands shall continue to administer adopted land use controls, including the zoning ordinance, subdivision regulations, building regulations, housing regulations, water and sewer regulations, traffic regulations, and regulations governing streets and sidewalks.

Policy 1-4.10.4: Provide Public Assistance

Islamorada, Village of Islands shall continue to provide land use information and assistance to the public.

Policy 1-4.10.5: Provide Intergovernmental Coordination

Islamorada, Village of Islands shall continue to coordinate land development issues, where applicable, with other public agencies at all levels of government, pursuant to the Intergovernmental Coordination Element of this Plan.

Policy 1-4.10.6: Manage Current Developmental Impacts

Islamorada, Village of Islands shall continue to evaluate and manage impacts of proposed development pursuant to existing ordinances including, but not limited to, public facilities, natural environment, and impact on stable residential neighborhoods.

Policy 1-4.10.7: Undertake Special Land Use Studies

In order to maintain land use policies responsive to changing conditions, problems and issues, Islamorada, Village of Islands shall undertake special studies as needed to develop specific local strategies for resolving unanticipated land use problems and issues.

OBJECTIVE 1-4.11: CONTINUE EVALUATING FUTURE LAND USE ELEMENT EFFECTIVENESS

[Policy 1-4.11.1: Review The Impact Of Change Indicators On Land Use Policy](#)

[Policy 1-4.11.2: Schedule, Budget And Implement Programmed Activities](#)

[Policy 1-4.11.3: Coordinate With Public And Private Sectors](#)

[Policy 1-4.11.4: Achieve Effective Resolution Of Land Use Goals, Objectives And Policies](#)

Islamorada, Village of Islands shall use the following policies as criteria for evaluating the effectiveness of the Future Land Use Element.

Policy 1-4.11.1: Review The Impact Of Change Indicators On Land Use Policy

Trends in the magnitude, distribution and characteristics of population and land use shall serve as indicators of possible changes in land use needs. The policy implications of major trends in land use characteristics shall be evaluated on a continuing basis. Land use policy shall be refined as needed in order to remain responsive to evolving problems and issues.

Policy 1-4.11.2: Schedule, Budget And Implement Programmed Activities

The timely scheduling, programming, budgeting and implementation of programmed land use activities identified in this Element shall be evidence of the Village's effectiveness in carrying out a systematic program for implementing adopted land use goals, objectives and policies.

Policy 1-4.11.3: Coordinate With Public And Private Sectors

While continually implementing and evaluating the Land Use Element, Islamorada, Village of Islands shall maintain a process of intergovernmental coordination as well as coordination with private sector groups interested in land use policy and programs. The effectiveness of this approach shall be evaluated by the success of coordination mechanisms in resolving land use problems and issues.

Policy 1-4.11.4: Achieve Effective Resolution Of Land Use Goals, Objectives And Policies

The effectiveness of the Future Land Use Element shall be measured by the Village's success in achieving land use goals, objectives and policies. The Future Land Use Element incorporates a systematic planning process for identifying land use problems and issues and implementing corrective actions.

CHAPTER 2: TRANSPORTATION ELEMENT

SECTION 2-1: TRANSPORTATION GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

State Law reference— F.S. Ch. 163, Pt. II

SECTION 2-1: TRANSPORTATION GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

GOAL 2-1: ENSURE PROVISION OF AN INTEGRATED MULTI-MODAL TRANSPORTATION SYSTEM

This section specifies goals, objectives and implementing policies for the Transportation Element pursuant to the requirements of F.S. ch. 163, Part II.

GOAL 2-1: ENSURE PROVISION OF AN INTEGRATED MULTI-MODAL TRANSPORTATION SYSTEM

OBJECTIVE 2-1.1: INTEGRATE MOTORIZED AND NON-MOTORIZED SYSTEMS

OBJECTIVE 2-1.2: ESTABLISH LEVEL OF SERVICE (LOS) STANDARDS FOR TRANSPORTATION FACILITIES

OBJECTIVE 2-1.3: COORDINATE EXISTING AND PROPOSED LAND USES WITH THE TRANSPORTATION SYSTEM

OBJECTIVE 2-1.4: SUPPORT THE PROVISION OF SUITABLE TRANSIT SERVICE

OBJECTIVE 2-1.5: ESTABLISH A TRANSPORTATION SYSTEM THAT PROTECTS COMMUNITY AND NEIGHBORHOOD INTEGRITY WHILE ESTABLISHING A PEDESTRIAN FRIENDLY ENVIRONMENT

OBJECTIVE 2-1.6: PROVIDE FOR A SAFE, CONVENIENT AND EFFICIENT MULTI-MODAL CIRCULATION SYSTEM THAT ACHIEVES VILLAGE QUALITY OF LIFE GOALS

OBJECTIVE 2-1.7: PROTECT RIGHTS-OF-WAY

OBJECTIVE 2-1.8: PROGRAM AND BUDGET TRANSPORTATION IMPROVEMENTS

OBJECTIVE 2-1.9: COORDINATE PLANNING AND IMPLEMENTATION WITH LOCAL, STATE AND FEDERAL GOVERNMENTS

Islamorada, Village of Islands shall develop and maintain an integrated multi-modal transportation system in the Village, which promotes mobility and accessibility and moves people and goods in a manner consistent with the local land use and environmental protection goals of the Village. The system shall be coordinated with proposed residential and commercial infill, redevelopment and revitalization efforts and stress multi-modal mobility and transportation choice for Village residents.

OBJECTIVE 2-1.1: INTEGRATE MOTORIZED AND NON-MOTORIZED SYSTEMS

Policy 2-1.1.1: Future Transportation Map Series

The Village shall develop an integrated multi-modal transportation system that emphasizes safe and convenient movement of pedestrians and bicyclists, and other non-motorized and motorized vehicles within the Village, by using effective transportation management practices.

Policy 2-1.1.1: Future Transportation Map Series

The Existing Transportation Map Series (1999), unless otherwise noted, shall be adopted as the Future Transportation Map Series. This map series may be amended as a result of studies required by the goals, objectives and policies of this Element.

Map 1-11: Major Thoroughfares by Functional Classification and Number of Lanes identifies the existing and future roadway network, including arterial and collector streets, their functional classification, and the number of lanes within each facility.

Map 1-12: Major Trip Generators and Attractors identifies the sites of major trip generators/attractors in the Village.

Map 1-13: Pedestrian/Bike Ways illustrates existing major bicycle and pedestrian ways.

Map 1-14: Hurricane Evacuation Route identifies U.S. 1 as the primary hurricane evacuation route throughout the Village.

Map 2-4: Levels of Service on U.S. 1 (2020) illustrates the 2020 projected levels of service for U.S. 1.

OBJECTIVE 2-1.2: ESTABLISH LEVEL OF SERVICE (LOS) STANDARDS FOR TRANSPORTATION FACILITIES

[Policy 2-1.2.1: Adopt Level Of Service \(LOS\) Standards Pursuant To The US 1 Level Of Service Task Force](#)

[\[Policy 2-1.2.2 Deleted Pursuant To Ordinance No 09-23\]](#)

[Policy 2-1.2.3: Coordinate Sharing Of FDOT Funded Countywide Annual LOS Assessment With Monroe County](#)

[Policy 2-1.2.4: Prevent Development Resulting In Additional Trips On Deficient US 1 Without Mitigation](#)

[Policy 2-1.2.5: Consider Reducing Speed Limits On Deficient Highway Segments](#)

[Policy 2-1.2.6: Request That FDOT Designate US 1 A Constrained Roadway](#)

[Policy 2-1.2.7: Request That FDOT Use Community Impact Assessment And Full Cost Accounting Cost/Benefit Analysis During The Early Stages Of Planning For Any Capital Improvements](#)

[Policy 2-1.2.8: Address Long Term Strategies To Reduce Clearance Time](#)

[Policy 2-1.2.9: Provide A Staged/Phased Evacuation Procedure To Maintain A 24-Hour Hurricane Evacuation Clearance Time](#)

[Policy 2-1.2.10: Support Regional Hurricane Evacuation Model](#)

Islamorada, Village of Islands shall establish daily level of service standards for highway and roadway facilities, and shall coordinate with other government agencies to ensure that these standards are maintained.

Policy 2-1.2.1: Adopt Level Of Service (LOS) Standards Pursuant To The US 1 Level Of Service Task Force

Islamorada, Village of Islands hereby adopts the following level of service (LOS) standards for roadways, pursuant to the methodology developed by the U.S. 1 Level of Service Task Force for analyzing LOS in Monroe County:

1. The level of service on U.S. 1 shall be maintained within 5% of LOS C as measured on an overall countywide basis not dependent on any single road segment, using the measured median travel speed from the annual report of public facilities capacity.
2. For all other roadways for which the Village is responsible, the Village hereby adopts a minimum LOS standard of D as measured by peak hour traffic volumes at all intersections, including but not limited to all intersections with U.S. 1.

[Policy 2-1.2.2 Deleted Pursuant To Ordinance No 09-23]

Policy 2-1.2.3: Coordinate Sharing Of FDOT Funded Countywide Annual LOS Assessment With Monroe County

Islamorada, Village of Islands shall continue to request that two (2) copies of the U.S. 1 Arterial Travel Time and Delay Study, funded by the Department of Transportation for the Florida Keys, be forwarded to the Islamorada Planning and Development Services Department annually, within one (1) month of its receipt by the Growth Management Division.

Policy 2-1.2.4: Prevent Development Resulting In Additional Trips On Deficient US 1 Without Mitigation

The Village shall deny development permits for development that would result in additional trips on U.S. 1 upon exhausting the 5% below LOS C allowance authorized by the U.S. 1 Task Force Methodology as measured on an overall countywide basis not dependent on any single U.S. 1 segment, unless the impacts of the proposed development can be mitigated for its proportionate share of required transportation concurrency improvements pursuant to F.S. § 163.3180.

Policy 2-1.2.5: Consider Reducing Speed Limits On Deficient Highway Segments

Upon receipt of the annual U.S. 1 Arterial Travel Time and Delay study, and upon a finding that a U.S. 1 highway segment within Islamorada has dropped below 5% of LOS C for any three (3) consecutive years after December 31, 1997, the Village Council may consider, in consultation with affected citizens, reducing the maximum speed limits established for said deficient highway segments within the Village. Any such proposed changes shall first be analyzed by a consulting engineer to predict the impact on LOS and shall be coordinated with the Florida Department of Transportation, and brought to the attention of the U.S. 1 Level of Service Task Group, and other Keys jurisdictions prior to any decision.

Policy 2-1.2.6: Request That FDOT Designate US 1 A Constrained Roadway

Islamorada, Village of Islands requests that the Florida Department of Transportation designate U.S. 1 from Mile Marker 72.658 to MM 90.939, within Islamorada, a constrained roadway facility, to not add any additional lanes in recognition of physical, environmental and policy constraints, including but not limited to: limited width of right-of-way through the 'heart of Islamorada' where provision of existing required parking for many of the businesses necessitates encroachment into the existing highway right-of-way; decrease in commercial property values resulting from parking removal and proximity of high speed, high volume traffic to businesses; potential displacement of commercial properties in the Village Activity Centers of Upper Matecumbe and Plantation Key; the negative impacts that widening would place upon many State or Federally listed endangered and threatened species, and local species of special concern adjacent to existing right-of-way throughout the Village, including Sea Oats Beach on Lower Matecumbe and upland hammocks on Plantation Key; increased run-off from greater pervious surface area and its undesirable impact on water quality; temperature increases as a result of increased pavement and a reduction in vegetated cover; the presence of historical structures and sites in close proximity of highway right-of-way; the effects of highway widening on the health, safety and welfare of bicyclists and pedestrians created by proximity and increased volumes and speed of traffic; adverse traffic impacts including noise and fumes to adjacent residential subdivisions, residential estates and commercial establishments created by additional through lanes and increased traffic volumes; increased potential for vehicle/pedestrian/cyclist collisions due to increased traffic volumes and speed; increased difficulties executing safe left hand turns due to increased traffic volumes and speed; unsafe highway crossing conditions created for all pedestrians, particularly children and seniors due to increased traffic volumes and speeds; contradiction with the Village's policies to limit growth to preserve the Village's natural assets; contradiction with the values of the Village citizenry and Council as expressed in the Village Vision and Mission Statement, which recognize and protect the high quality of life in the Village; impact on the 'sense of place' and unique character created by small scale of the Village's 'Main Street'; growth management implications of highway widening on the carrying capacity of the Florida Keys; and the Village's intent to remain consistent with policies herein to designate U.S. 1 a State Scenic Highway and a Federal All American Roadway.

Notwithstanding the Village's resolve to avoid widening US1 as expressed herein and in Policies 2-1.6.4, 2-1.6.5 and 2-1.9.1, the Village shall not seek a constrained designation until it has exhausted all other alternatives to road widening that adequately reduce clearance time below 24 hours.

Policy 2-1.2.7: Request That FDOT Use Community Impact Assessment And Full Cost Accounting Cost/Benefit Analysis During The Early Stages Of Planning For Any Capital Improvements

Islamorada, Village of Islands recognizes that the Florida Department of Transportation is obligated to assess community values at early stages of project examination where Federal funding is involved. Therefore, the Village shall coordinate with FDOT to ensure that a comprehensive assessment of impacted community facilities and values is conducted in the early stages of planning for all proposed highway projects within the Village in order to meet National Environmental Policy Act (NEPA) policy, as described by FDOT's manual, Community Impact Assessment: A Handbook for Transportation Professionals, prepared by Jeff Kramer and Kristine M. Williams for FDOT. Citizen consultation and workshops with the Village Council shall also be requested to supplement factual information and review evolving drafts of any documents. Additionally, the Village shall coordinate with FDOT to ensure that a full cost accounting cost/benefit analysis is conducted, which defines the full range of costs and impacts of the proposed project to Village residents, environment and economy, and the full range of benefits anticipated to be accrued by Village residents, the environment and economy, as discussed in Policy 2-1.2.6 of this Element. The Village shall request that such documents be utilized by FDOT, in consultation with the Village Council, as a basis for decision-making regarding the feasibility of proceeding to preliminary engineering.

Policy 2-1.2.8: Address Long Term Strategies To Reduce Clearance Time

The Village shall address long term strategies to reduce clearance time and coordinate permit allocations by implementing the following program in coordination with FDOT, FDCA and other local governments in the Keys:

1. Cooperate with the Department of Community Affairs, the Department of Transportation and affected local governments and the Tourist Development Council to achieve consensus on long term strategies to further reduce clearance time and accommodate proposed allocations Keys-wide through the Year 2033 and revise any short term interagency/interlocal agreements to provide a schedule for implementing strategies, specify responsibilities for implementing the strategy, including shared funding, and determine the share of allocation available for each jurisdiction based on the ability to maintain clearance time at or below twenty-four (24) hours. In any Keys-wide reduction in allocation, the Village asserts that the Administrative Commission should and will request it to consider and prorate any voluntary reduction in allocation adopted by the Village; and
2. Amend data and analysis and plan to incorporate strategy; revise capital improvements schedule to incorporate necessary transportation projects adopted for Islamorada; and amend permit allocation system based on adopted strategy and ability to maintain clearance time at or below twenty-four (24) hours.

Policy 2-1.2.9: Provide A Staged/Phased Evacuation Procedure To Maintain A 24-Hour Hurricane Evacuation Clearance Time

In the event of a pending major hurricane (category 3-5) Islamorada, Village of Islands shall implement the following staged/phased evacuation procedures to achieve and maintain an overall 24-hour hurricane evacuation clearance time for the resident population.

1. Approximately forty-eight (48) hours in advance of tropical storm winds, a mandatory evacuation of nonresidents, visitors, recreational vehicles (RVs), travel trailers, live-aboards (transient and

non-transient), and military personnel from the Village shall be initiated. State parks and campgrounds should be closed at this time or sooner and entry into the Village by nonresidents should be strictly limited.

2. Approximately thirty-six (36) hours in advance of tropical storm winds, a mandatory evacuation of mobile home residents, special needs residents, and hospital and nursing home patients from the Village shall be initiated.
3. Approximately thirty (30) hours in advance of tropical storm winds, a mandatory phased evacuation of permanent residents by evacuation zone shall be initiated. Islamorada, Village of Islands is within existing evacuation Zone 4—West end of Long Key Bridge to CR 905 and CR 905A intersection (MM 63-106.5).

The actual sequence of the evacuation by zones will vary depending on the individual storm. The concepts incorporated in this staged evacuation procedure should be embodied in the Village Comprehensive Emergency Management Plan. The evacuation plan shall be monitored and updated on an annual basis to reflect increases, decreases and or shifts in population; particularly the resident and non-resident populations.

Policy 2-1.2.10: Support Regional Hurricane Evacuation Model

The Village shall support state funding for the update of the hurricane evacuation model that considers the impact of Miami-Dade County on evacuees, contains more uniform standards for counting and allocating dwelling units and reflects the benefits from staged/phased evacuation pursuant to Policy 2-1.2.9.

OBJECTIVE 2-1.3: COORDINATE EXISTING AND PROPOSED LAND USES WITH THE TRANSPORTATION SYSTEM

[Policy 2-1.3.1: Ensure Transportation Consistency With Other Florida Keys Jurisdictions](#)

[Policy 2-1.3.2: Use Future Land Use Map \(FLUM\) To Guide Transportation Planning](#)

[Policy 2-1.3.3: Implement Transportation System Management \(TSM\) Strategies](#)

[Policy 2-1.3.4: Implement Transportation System Management \(TSM\) Strategies](#)

[Policy 2-1.3.5: Preserve Frontage Roads For Local Trips](#)

[Policy 2-1.3.6: On And Off-Street Parking Strategies At Major Trip Attractors And Generators Along US 1](#)

[\[Policy 2-1.3.7 Deleted Pursuant To Ordinance No 09-23\]](#)

[Policy 2-1.3.8: Regulate Snake Creek Drawbridge](#)

[Policy 2-1.3.9: Implement Transportation Demand Management \(TDM\) Programs](#)

[Policy 2-1.3.10: Maintain Design Standards And Procedures](#)

[Policy 2-1.3.11: Facilitate Travel On Local Waterways](#)

[Policy 2-1.3.12: Review Impacts Of Commercial Development And Redevelopment On Marine Traffic](#)

[Policy 2-1.3.13: Designate US 1 A Local Scenic Roadway](#)

[Policy 2-1.3.14: Support Designation Of US 1 As A Scenic Highway By State And Federal Governments](#)

[Policy 2-1.3.15: Implement Strategies To Reduce Greenhouse Emissions From The Transportation Sector](#)

Islamorada, Village of Islands shall coordinate the transportation system with the Future Land Use Map Series and ensure that population densities, housing and employment patterns, land uses and all other short and long term development plans are consistent with the transportation modes and services proposed. Through implementation of Transportation System Management (TSM), parking management, corridor enhancement, and Transportation Demand Management (TDM) strategies the Village shall regain corridor functionality and sense of place. Coordination shall be achieved by enacting the following strategies:

Policy 2-1.3.1: Ensure Transportation Consistency With Other Florida Keys Jurisdictions

Islamorada, Village of Islands shall implement a Transportation Element that is internally consistent with other elements of the Comprehensive Plan and which considers the applicable provisions of the Comprehensive Plans of Monroe County and its incorporated jurisdictions.

Policy 2-1.3.2: Use Future Land Use Map (FLUM) To Guide Transportation Planning

The adopted FLUM shall be used to guide the planning of future transportation facilities, ensuring coordination between transportation planning and future development patterns. The Land Development Regulations shall ensure that site plans for future infill development and redevelopment are reviewed for the incremental impacts of projected vehicle trip generation on existing and planned roadway capacity, as measured by adopted LOS standards. Pursuant to Objective 9-1.2 the Village has established a concurrency management program to ensure that no development is approved unless such development is found to be consistent with the adopted LOS standards.

Policy 2-1.3.3: Implement Transportation System Management (TSM) Strategies

Islamorada, Village of Islands, shall implement TSM strategies or implement other appropriate strategies to maintain daily levels of service, to achieve a 24-hour hurricane evacuation from the Florida Keys, and to create a safer pedestrian and cyclist environment.

TSM Strategies shall focus on measures that do not interfere with the physical design of U.S. 1, except as coordinated with FDOT and adjacent property owners. The Village shall also coordinate with FDOT to identify funding mechanisms to implement the preferred strategies. The adopted TSM strategy shall be implemented in accordance with an updated Florida Keys Hurricane Evacuation Model. Implementation of this policy may require funding which will exceed the reasonable budgetary constraints of the Village. The Village should not be expected to bear the sole burden of implementing this policy without substantial financial assistance and participation of other affected jurisdictions in their equitable share of the responsibility for the improvements and strategies to reduce hurricane evacuation times.

Policy 2-1.3.4: Implement Transportation System Management (TSM) Strategies

Land Development Regulations shall mandate review of all site plans and development proposals to ensure consistency with the TSM strategies adopted by the Village, pursuant to Policy 2-1.3.3. These implementing regulations shall be based upon an evaluation of land use access needs, pedestrian and bicycle access needs at major trip attractors and generators, and vehicle and pedestrian circulation within the Village.

Policy 2-1.3.5: Preserve Frontage Roads For Local Trips

Islamorada, Village of Islands shall preserve frontage roads within the Village to accommodate local trips, particularly pedestrian and cyclist trips, by enhancing the ability to circulate safely to and from specific trip generators, including safe access from rear yards, where appropriate.

Policy 2-1.3.6: On And Off-Street Parking Strategies At Major Trip Attractors And Generators Along US 1

Land Development Regulations shall provide standards for the provision and efficient use of parking facilities, including mechanisms to coordinate multiple uses of existing and proposed motor-vehicle parking supply. Additionally, new non-residential development and redevelopment shall be required to install bicycle parking facilities according to criteria and design standards set forth in the amended Land Development Regulations.

[Policy 2-1.3.7 Deleted Pursuant To Ordinance No 09-23]

Policy 2-1.3.8: Regulate Snake Creek Drawbridge

Islamorada, Village of Islands shall continue to urge the Florida Department of Transportation and the U.S. Coast Guard to limit the raising of the Snake Creek Drawbridge to once every hour on the hour, rather than on demand, to prevent disruption of the flow of traffic on U.S. 1, and reduce safety hazards that such disruption may cause.

Policy 2-1.3.9: Implement Transportation Demand Management (TDM) Programs

Islamorada, Village of Islands shall implement the adopted Transportation Demand Management (TDM) programs, such as ridesharing, vanpools and telecommuting to modify local resident and visitor travel demand and reduce the number of trips made and per capita vehicle miles traveled within the community.

Policy 2-1.3.10: Maintain Design Standards And Procedures

As applicable studies are completed, Islamorada, Village of Islands shall maintain and revise Land Development Regulations, which specify design standards and procedures addressing, but not be limited to:

1. The interface of vehicles with sidewalks and/or bikeways;
2. Adequate storage and turning bays;
3. Provision of service roads and parking;
4. Spacing and design of median openings and curb cuts;
5. Driveway and parking lot access, spacing and landscaping;
6. Traffic operations;
7. Pedestrian friendly site design, particularly within the two (2) business centers; and
8. Standards for emergency services access, including fire trucks.

These regulations shall be developed with affected property owners and coordinated through the building permit process.

Policy 2-1.3.11: Facilitate Travel On Local Waterways

Land Development Regulations shall require that developments impacting water-based transportation provide improvements that accommodate the safe movement of water-based vessels and shall specify that accommodations for temporary public docking (i.e., a few hours) are required for certain types of shoreline development frequented by the general public.

Policy 2-1.3.12: Review Impacts Of Commercial Development And Redevelopment On Marine Traffic

Land Development Regulations shall require trip generation estimates and an assessment of marine traffic related impacts associated with commercial development or redevelopment activity fronting on canals or water bodies, where surrounding land uses are residential in character.

Policy 2-1.3.13: Designate US 1 A Local Scenic Roadway

Islamorada, Village of Islands designates U.S. 1 as a local scenic roadway. To protect the environmentally sensitive areas, native vegetation and habitat along the U.S. 1 corridor, Land Development Regulations shall be maintained to address roadside landscaping requirements, stormwater management design standards, tree protection and land clearing best management practices, to enhance the scenic character of the corridor.

Policy 2-1.3.14: Support Designation Of US 1 As A Scenic Highway By State And Federal Governments

Islamorada, Village of Islands shall continue to support the designation of the U.S. 1 Highway Corridor as a Florida State Scenic Highway and support Federal designation as the only potential All American Roadway in the United States.

Policy 2-1.3.15: Implement Strategies To Reduce Greenhouse Emissions From The Transportation Sector

Islamorada, Village of Islands, shall support the following activities designed to reduce greenhouse emissions from the transportation sector:

1. Implement the recommendations of the adopted Transportation Demand Management Program regarding the construction of sidewalks at specified locations to promote bicycle and pedestrian travel rather than vehicular; and
2. Implement the recommendation of the adopted Transportation Demand Management Program regarding the construction of additional locations for the Miami-Dade Express bus stops and shelters to enhance the utilization of public transit.

OBJECTIVE 2-1.4: SUPPORT THE PROVISION OF SUITABLE TRANSIT SERVICE

[Policy 2-1.4.1 Deleted Pursuant To Ordinance No 09-23\]](#)

[Policy 2-1.4.2: Continue To Support Monroe County Paratransit Services For The Transportation Disadvantaged](#)

Islamorada, Village of Islands shall support the provision of suitable transit services to service a small, stable, local population and visitors, by implementing the following policies:

[Policy 2-1.4.1 Deleted Pursuant To Ordinance No 09-23]

Policy 2-1.4.2: Continue To Support Monroe County Paratransit Services For The Transportation Disadvantaged

Islamorada, Village of Islands shall continue to support paratransit services provided to Village residents by Monroe County, or other paratransit services that benefit the transportation disadvantaged, provided that the Village is satisfied with the quality of service received. Alternatively, the Village may, at any time, choose to opt out of the Monroe County system should the Village elect to assume the mandate and responsibility for paratransit.

OBJECTIVE 2-1.5: ESTABLISH A TRANSPORTATION SYSTEM THAT PROTECTS COMMUNITY AND NEIGHBORHOOD INTEGRITY WHILE ESTABLISHING A PEDESTRIAN FRIENDLY ENVIRONMENT

[Policy 2-1.5.1: Facilitate Bicycle And Pedestrian Transportation](#)

[Policy 2-1.5.2: Bicycle/Pedestrian Transportation Master Plan](#)

[Policy 2-1.5.3: Ensure Continuity Of The Overseas Heritage Trail Within Islamorada](#)

[Policy 2-1.5.4: Encourage FDOT To Provide Bike Lanes](#)

[Policy 2-1.5.5: Promote Energy Efficiency In Plans Through Pedestrian And Bicycle Paths](#)

The Village transportation system shall protect community and neighborhood integrity in addition to providing a pedestrian friendly environment for local trips, while calming through traffic in residential neighborhoods and commercial areas. Islamorada, Village of Islands shall coordinate with State and County governments to ensure that the future nature of U.S. 1 is responsive to existing development as well as duly approved future land use plans of the Village and adjacent local governments.

Policy 2-1.5.1: Facilitate Bicycle And Pedestrian Transportation

Islamorada, Village of Islands shall provide land use and other strategies to promote the use of bicycles and pedestrian movement. The Land Development Regulations shall require that developments impacting bicycle and pedestrian movement provide improvements that safely accommodate the movement of bicycles and pedestrians within the site design and on adjacent right-of-way.

Policy 2-1.5.2: Bicycle/Pedestrian Transportation Master Plan

Islamorada, Village of Islands shall maintain a Bicycle/Pedestrian Transportation Master Plan that identifies a system of arterial, collector and local pathways linking residential neighborhoods with schools, commercial districts, and with parks and recreational areas. The Plan addresses on and off-road options including: the potential to close and utilize abandoned road rights-of-way; to acquire and develop lands to facilitate canal crossings in residential neighborhoods; and other means necessary to gain connectivity and circulation via a linked network.

The Bicycle/Pedestrian Master Plan also addresses pedestrian access and the crossing of U.S. 1 at designated locations. This includes assessing alternatives of pedestrian signalization, street striping, landscaped medians, signage, underpasses or overpasses at locations where high volume pedestrian crossings conflict with high volume vehicular traffic, and impede traffic flow. The Bicycle/Pedestrian Master Plan includes standards for the development and designation of such pathways including, but not limited to standards for surfacing and maintenance, stormwater drainage, signage and landscaping. Criteria, included in the Land Acquisition Selection System pursuant to Policy 1-3.1.3 of the Future Land Use Element of this Plan, established priorities for vacant land acquisitions.

Policy 2-1.5.3: Ensure Continuity Of The Overseas Heritage Trail Within Islamorada

Islamorada, Village of Islands shall continue to coordinate with Monroe County, State and Federal agencies to identify and alleviate discontinuities, and provide amenities and enhancements to the Overseas Heritage Trail within the Village, as part of the Bicycle/Pedestrian Master Plan.

Policy 2-1.5.4: Encourage FDOT To Provide Bike Lanes

Islamorada, Village of Islands shall coordinate with FDOT to ensure that all road and bridge construction, reconstruction, widening or resurfacing of U.S. 1 includes appropriate bicycle facilities, developed according to State adopted construction standards.

Policy 2-1.5.5: Promote Energy Efficiency In Plans Through Pedestrian And Bicycle Paths

In accordance with policies within the Recreation and Open Space and Transportation Elements of this Plan, Islamorada, Village of Islands shall use a systematic approach to promote development of a linked pedestrian and bicycle pathway network by the public and private sectors to improve energy-efficient transportation links between major activity areas such as residential neighborhoods, employment centers, shopping areas, parks and schools.

OBJECTIVE 2-1.6: PROVIDE FOR A SAFE, CONVENIENT AND EFFICIENT MULTI-MODAL CIRCULATION SYSTEM THAT ACHIEVES VILLAGE QUALITY OF LIFE GOALS

[Policy 2-1.6.1: Participate In The Identification Of Improvements To Reduce Accidents In High Accident Locations](#)
[Policy 2-1.6.2: Increase Safety For Travel By All Modes Within Islamorada](#)
[Policy 2-1.6.3: Adopt A 24 Hour Hurricane Evacuation Time For The Florida Keys](#)
[Policy 2-1.6.4: Coordinate With FDOT To Ensure Implementation Of Effective Emergency Management Strategies](#)
[Policy 2-1.6.5: Discourage Widening Of US 1 Through Islamorada](#)
[Policy 2-1.6.6: Oppose Widening Of The 18 Mile Stretch \(MM 106 To MM 126\)](#)

Islamorada, Village of Islands shall provide for a safe, convenient and energy efficient multi-modal circulation system. Such system shall preserve environmentally sensitive areas, conserve energy and natural resources and promote community aesthetic values.

Policy 2-1.6.1: Participate In The Identification Of Improvements To Reduce Accidents In High Accident Locations

Islamorada, Village of Islands shall coordinate with the FDOT to monitor high accident frequency locations within the Village to identify design improvements to alleviate hazardous conditions.

Policy 2-1.6.2: Increase Safety For Travel By All Modes Within Islamorada

Islamorada, Village of Islands, in partnership with the Florida Department of Transportation, shall implement Land Development Regulations to increase safety on U.S. 1 within the Village, including but not limited to:

1. Maintenance of adequate sight clearance at intersections;
2. Development of standards to accommodate emergency vehicle access; and
3. Assurance of adequate clear zones for shoulder recovery.

Policy 2-1.6.3: Adopt A 24 Hour Hurricane Evacuation Time For The Florida Keys

Islamorada, Village of Islands hereby adopts twenty-four (24) hours as the maximum allowable hurricane evacuation clearance time standard, pursuant to Policies 2-1.2.9 and 2-1.2.10. The Village shall reduce and maintain hurricane evacuation clearance time at or below twenty-four (24) hours by implementing transportation improvements and strategies in coordination with FDOT and other affected local governments and by pursuing a toll on the 18 Mile Stretch, limiting tourist marketing activities, and limiting the annual allocation of permits in an equitable share as determined by interlocal agreement with the affected local governments in the Keys and the Department of Community Affairs. In any Keys-wide reduction in allocation the Village asserts that the Administration Commission should, and will request it to consider and prorate any voluntary reduction adopted by the Village to the allocation originally assigned to the Keys by Final Order of the Administration Commission.

Policy 2-1.6.4: Coordinate With FDOT To Ensure Implementation Of Effective Emergency Management Strategies

Islamorada, Village of Islands, shall participate with the Florida Department of Transportation in all State led planning for hurricane events, to ensure that effective emergency management strategies that do not require widening of U.S. 1 are implemented. Also, provision of safe rooms in all new residential and non-residential structures shall be encouraged as a haven in the case of a Category 1 or 2 hurricane. Strategies acceptable to the Village shall assure that the Village's vision, needs and quality of life goals relating to U.S. 1 and future revitalization efforts are not compromised.

Policy 2-1.6.5: Discourage Widening Of US 1 Through Islamorada

Islamorada, Village of Islands shall not support the widening of U.S 1 within the Village, pursuant to Policy 2-1.2.6, as providing additional lanes will adversely affect the small town character promoted and guided by the Future Land Use Element, and be in conflict with the limited growth goals, objectives and policies of the Comprehensive Plan. The Village shall work with the local, State and Federal agencies to identify alternatives to road widening.

Policy 2-1.6.6: Oppose Widening Of The 18 Mile Stretch (MM 106 To MM 126)

Islamorada, Village of Islands shall oppose widening of the 18 Mile Stretch to ensure prevention of adverse impacts to the distinct character of the Village from: increased crime and traffic; additional development in the Village's fragile ecosystem which is inconsistent with the Comprehensive Plan and other policies of the Village; increased costs to Village's taxpayers needed to offset the negative impacts associated with additional development and traffic in and through the Village; and to prevent negative impacts to the high quality wetlands of the 18 Mile Stretch.

OBJECTIVE 2-1.7: PROTECT RIGHTS-OF-WAY

[Policy 2-1.7.1: Continue To Prohibit Encroachments Into FDOT Right-Of-Way](#)

Islamorada, Village of Islands shall protect existing and future rights-of-way from building encroachment through the implementation of the following policy.

Policy 2-1.7.1: Continue To Prohibit Encroachments Into FDOT Right-Of-Way

Building setbacks shall be specified along U.S. 1 and the Village's frontage road rights-of-way in order to preserve existing and future rights-of-way for multi-modal transportation and utilities. The Village's long range planning activities shall continue to identify possible needs for additional future rights-of-way based on ongoing analysis of land use and traffic circulation issues, and pedestrian, cyclist and public transit needs, and through coordination with the FDOT to identify surplus right-of-way for use in reconfiguring non-conforming parking, access and provide a safe bicycle and pedestrian pathway through the Upper Matecumbe Key Village Activity Center. Development of Land Development Regulations permitting parking areas associated with Working Waterfront properties adjacent to those portions of U.S. 1 which have been historically used for parking since September 15, 1986, may be considered, upon coordination with and after approval by FDOT.

OBJECTIVE 2-1.8: PROGRAM AND BUDGET TRANSPORTATION IMPROVEMENTS

[Policy 2-1.8.1: Program Multi-Modal Transportation Improvements Through A Transportation Improvement Program \(TIP\), Capital Improvement Program \(CIP\) And FDOT's Annual Work Program](#)

[Policy 2-1.8.2: Maintain Existing Roadways](#)

Annually, after the effective date of the Comprehensive Plan, Islamorada, Village of Islands shall ensure programming of adequate funding for existing and future multi-modal transportation needs.

Policy 2-1.8.1: Program Multi-Modal Transportation Improvements Through A Transportation Improvement Program (TIP), Capital Improvement Program (CIP) And FDOT's Annual Work Program

Starting in FY 2001/02 Islamorada, Village of Islands shall develop 1 Year and 5 Year Transportation Improvement Programs to guide the Village towards reaching its future transportation and land use vision, where it is found by the Village that studies are warranted, and projects are appropriate. Annually, these programmed improvements shall be incorporated in the Village's Capital Improvement Program, and coordinated with FDOT's Annual Work Program, as necessary to ensure that adequate funding is available.

Policy 2-1.8.2: Maintain Existing Roadways

Islamorada, Village of Islands shall continue to maintain those paved roadways and rights-of-way for which jurisdiction and responsibility was conveyed to the Village by the Monroe County Board of County Commissioners by Statutory Deed, executed May 12, 1999.

OBJECTIVE 2-1.9: COORDINATE PLANNING AND IMPLEMENTATION WITH LOCAL, STATE AND FEDERAL GOVERNMENTS

[Policy 2-1.9.1: Continue To Coordinate With FDOT](#)

[Policy 2-1.9.2: Coordinate Implementation Of Transportation Improvements With Monroe County And Other Keys Jurisdictions](#)

[Policy 2-1.9.3: Continue To Participate In The Florida Keys Carrying Capacity Study](#)

[Policy 2-1.9.4: Coordinate Joint Referrals Of Development Projects](#)

[Policy 2-1.9.5: Facilitate Public Involvement](#)

[Policy 2-1.9.6: Develop Indicators To Monitor Transportation Policy Effectiveness](#)

Islamorada, Village of Islands shall continue to coordinate the multi-modal transportation system services and facilities with local, State and Federal governments.

Policy 2-1.9.1: Continue To Coordinate With FDOT

Islamorada, Village of Islands shall continue to hold an annual workshop with the Florida Department of Transportation to discuss the FDOT Work Program, issues related to the Village's policy to maintain U.S. 1 as a two-lane street, and other issues of mutual concern, and to establish strategies, agreements and other mechanisms that demonstrate the area-wide coordination necessary to fully develop and implement the plans, strategies, programs and other provisions of this Transportation Element.

Policy 2-1.9.2: Coordinate Implementation Of Transportation Improvements With Monroe County And Other Keys Jurisdictions

Islamorada, Village of Islands shall pursue resolution of development and growth management issues with impacts transcending the Village's political jurisdiction, through the continued participation on Intergovernmental Task Forces. Issues relating to transportation to be pursued through these forums shall include, but not be limited to: issues of joint concern relating to growth management and development impacts including alternative strategies to road widening; strategies for managing LOS impacts of new development and tourism on U.S. 1 within the Village and unincorporated areas; level of service (LOS) standards for infrastructure system impacting the Village and adjacent areas; maintaining the role of U.S. 1 as 'Main Street' Islamorada, including review of developments outside the Village limits that impact the level of service on U.S. 1 in Islamorada; and coordination of hurricane evacuation plans, shelter space allocations and post disaster recovery management plans with Monroe County.

Cross reference— Policy 8-1.2.1 Coordinate Development and Growth Management Issues.

Policy 2-1.9.3: Continue To Participate In The Florida Keys Carrying Capacity Study

Acknowledging that policies leading to traffic growth in one (1) political jurisdiction create incremental impacts in all upstream and downstream jurisdictions, the Village shall support an intergovernmental effort to measure and analyze the LOS impacts on roadways associated with commercial, residential and tourist-oriented growth management policies, in all of Monroe County jurisdictions, as part of the Carrying Capacity Model Study. The Village shall continue to support the technical undertakings of this study, and the establishment of carrying capacity limitations for the Florida Keys.

Policy 2-1.9.4: Coordinate Joint Referrals Of Development Projects

In order to ensure maintenance of adopted LOS standards, the Village shall require inter-jurisdictional referrals of all traffic impact studies for development permit applications that may impact transportation levels of service, and that generate more than a de minimis impact on the LOS on U.S. 1 outside of Islamorada. Based upon the LOS impacts estimated for a new development, the Village shall submit the development application, associated site plans and traffic impact studies to all affected Monroe County jurisdictions for review and comments.

Prior to adoption of Land Development Regulations, the Village shall seek the agreement of other jurisdictions, to execute interlocal agreements containing reciprocal arrangements for referrals of all development plans and policies relating to growth that may result in impacts to U.S. 1 LOS within the Village, including incremental impacts.

Policy 2-1.9.5: Facilitate Public Involvement

All citizens and property owners within Islamorada, Village of Islands shall be encouraged to participate in all multi-modal transportation planning activities of the Village.

Policy 2-1.9.6: Develop Indicators To Monitor Transportation Policy Effectiveness

Islamorada, Village of Islands shall develop a set of indicators by which the achievement of mobility goals shall be assessed on a bi-annual basis.

CHAPTER 3: HOUSING ELEMENT

SECTION 3-1: HOUSING GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

State Law reference— F.A.C. 9J-5.010(3)

SECTION 3-1: HOUSING GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

GOAL 3-1: FACILITATE PROVISION OF QUALITY HOUSING

GOAL 3-2: WORKFORCE-AFFORDABLE HOUSING

This section specifies goals, objectives, and implementing policies for the Housing Element pursuant to F.S. ch. 163.3177(6)(f) and F.A.C. 9J-5.010(3)(a)—(c)

GOAL 3-1: FACILITATE PROVISION OF QUALITY HOUSING

OBJECTIVE 3-1.1: PROVIDE ADEQUATE AFFORDABLE HOUSING TO MEET CURRENT AND FUTURE NEEDS

OBJECTIVE 3-1.2: PROVIDE ALTERNATIVE SOLUTIONS TO IMPROVE ACCESS TO AFFORDABLE HOUSING

OBJECTIVE 3-1.3: ELIMINATE SUBSTANDARD HOUSING CONDITIONS AND BLIGHTING INFLUENCES

OBJECTIVE 3-1.4: PROVIDE RELOCATION HOUSING

OBJECTIVE 3-1.5: PROVIDE ADEQUATE SITES FOR AFFORDABLE AND MARKET HOUSING

OBJECTIVE 3-1.6: SUPPORT PRIVATE SECTOR PROVISION OF GROUP HOMES, HOUSING FOR THE ELDERLY AND FOSTER CARE FACILITIES

OBJECTIVE 3-1.7: PRESERVE NEIGHBORHOOD QUALITY AND EXISTING HOUSING STOCK

OBJECTIVE 3-1.8: EVALUATE HOUSING ELEMENT EFFECTIVENESS

Islamorada, Village of Islands shall facilitate private sector provision of an adequate supply of quality housing that is responsive to the diverse housing needs of current and future residents.

OBJECTIVE 3-1.1: PROVIDE ADEQUATE AFFORDABLE HOUSING TO MEET CURRENT AND FUTURE NEEDS

Policy 3-1.1.1: Protect Existing Affordable Housing Supply

Policy 3-1.1.2: Dedicate Sufficient Residential Dwelling Unit Allocations To Affordable Housing

Policy 3-1.1.3: Identify And Address Barriers To Affordable Housing Within The Land Development Regulations

Policy 3-1.1.4: Recognize The Deficiency Of Workforce Housing Within The Village

Policy 3-1.1.5: Recognize And Support The Use Of Financial Assistance Programs By Private Interests

Policy 3-1.1.6: Meet The Affordable Housing Need

Policy 3-1.1.7: Provide For Workforce Housing

Policy 3-1.1.8: Mandate Provision Of Affordable Housing

Policy 3-1.1.9: Provide Technical Assistance, Information And Referral Services

Policy 3-1.1.10: Maintain A Streamlined Development Review Process

Islamorada, Village of Islands shall develop programs and strategies to achieve adequate, affordable and safe housing to meet current and future residents needs by implementing the following policies:

Policy 3-1.1.1: Protect Existing Affordable Housing Supply

Islamorada, Village of Islands shall require Land Development Regulations that establish criteria for identifying existing affordable housing units, along with an incentive program encouraging registration

and protection of these units as part of the Village's affordable housing supply.

Policy 3-1.1.2: Dedicate Sufficient Residential Dwelling Unit Allocations To Affordable Housing

Islamorada, Village of Islands shall dedicate a percentage of the Village's total residential dwelling unit allocations towards affordable housing each year. At the end of each year, any unused affordable housing awards shall be re-evaluated to determine if the units should be made available during the following year. Annually, the Local Planning Agency and Village Council shall assess the demand for and supply of affordable housing awards, and may adjust the percentage of units dedicated to affordable housing.

Policy 3-1.1.3: Identify And Address Barriers To Affordable Housing Within The Land Development Regulations

Islamorada, Village of Islands shall maintain Land Development Regulations which identify and eliminate regulatory barriers to affordable housing, found in the current policy.

Policy 3-1.1.4: Recognize The Deficiency Of Workforce Housing Within The Village

Islamorada has conducted a comprehensive report on Workforce Housing needs, authored by Freilich, Leitner and Carlisle entitled "Workforce Housing Study" (June 23, 2004). The report's conclusions include an existing deficiency of three hundred fifty-six (356) units for the resident workforce, an existing deficiency of seven hundred ninety-four (794) units for non-resident workforce, and, by the year 2020, a projected total workforce housing need of 1,192 units. Islamorada shall continue to monitor changes to workforce housing needs and the availability of new data which might serve to better refine these figures and analyze such data as it becomes available.

Policy 3-1.1.5: Recognize And Support The Use Of Financial Assistance Programs By Private Interests

Islamorada, Village of Islands recognizes the use of Federal, State and County housing financial support programs by private interests as a means of providing housing opportunities for very low, low and moderate income persons and families, where appropriate. As part of the re-evaluation of affordable housing needs, the Village shall identify inconsistencies between Village policy and procedures, and those of agencies that provide financial assistance for affordable housing applicants.

Policy 3-1.1.6: Meet The Affordable Housing Need

Upon application, the Village shall participate in efforts to improve affordable housing supply on a County and region-wide basis:

1. **Coordinate with State Departments.** The Village shall coordinate siting and permitting activities impacting group home facilities with the State Departments of Health and Children and Family Services;
2. **Coordinate with Regional Agencies.** Islamorada, Village of Islands shall coordinate with the South Florida Regional Planning Council's affordable housing committees; and
3. **Coordinate with Appropriate Agencies.** Where appropriate the Village shall coordinate planning efforts with the Monroe County Housing Authority and Growth Management Division, as well as appropriate Federal and State agencies.

Policy 3-1.1.7: Provide For Workforce Housing

The Village shall explore the feasibility and potential impacts of implementing a program to provide workforce housing, which shall be separate and apart from the Building Permit Allocation System. The

intent of this program is to quantify all alternative affordable housing stock (unpermitted and/or illegal) existing on December 31, 1997, determine the impacts on the adopted level of service standards as a result of these units and analyze the feasibility of developing a program to permit the replacement of these units consistent with the Comprehensive Plan and Land Development Regulations.

Policy 3-1.1.8: Mandate Provision Of Affordable Housing

Islamorada, Village of Islands, shall maintain the adopted Land Development Regulations that establish a fair and equitable method for requiring developers of new or expanded uses and developers of housing to provide or mitigate for impacts of their development on the availability of affordable housing within the Village.

Policy 3-1.1.9: Provide Technical Assistance, Information And Referral Services

Islamorada, Village of Islands shall provide technical assistance, information and referral services to the private sector regarding Village housing policy and programs, and shall assist with permit applications.

Policy 3-1.1.10: Maintain A Streamlined Development Review Process

Land Development Regulations shall maintain a streamlined development review and permitting process for housing, including affordable housing, in order to minimize costs and delays which unnecessarily raise the cost of housing.

OBJECTIVE 3-1.2: PROVIDE ALTERNATIVE SOLUTIONS TO IMPROVE ACCESS TO AFFORDABLE HOUSING

[Policy 3-1.2.1: Coordinate With Other Agencies](#)

[Policy 3-1.2.2: Implement Policy Consistent With DCA/SFRPC Regional Affordable Housing Strategy](#)

Islamorada, Village of Islands shall provide for exchange of information related to job training, job creation and economic solutions in an effort to improve access to affordable housing. The Village shall achieve this through implementation of the following policies.

Policy 3-1.2.1: Coordinate With Other Agencies

Islamorada, Village of Islands shall provide to residents and individuals employed in the Village access to information pertaining to County-wide programs to aid in job training, day-care facilities, English language courses and high school equivalency (GED) which are currently provided by the following agencies:

1. Florida Department of Children and Family Services;
2. Monroe County Public Schools;
3. Florida Keys Community College; and
4. Monroe County Department of Human Services.

Policy 3-1.2.2: Implement Policy Consistent With DCA/SFRPC Regional Affordable Housing Strategy

Islamorada, Village of Islands shall require the applicable long range affordable housing policies to be consistent with the final recommendations of the joint DCA/SFRPC Regional Affordable Housing Strategy.

OBJECTIVE 3-1.3: ELIMINATE SUBSTANDARD HOUSING CONDITIONS AND BLIGHTING INFLUENCES

[Policy 3-1.3.1: Enforce Building Codes And Zoning Regulations](#)

[Policy 3-1.3.2: Maintain Accurate Housing Records](#)

[Policy 3-1.3.3: Facilitate Housing Demolition And Rehabilitation](#)

[Policy 3-1.3.4: Regulate Liveaboards And Other Marine Vessels](#)

[Policy 3-1.3.5: Minimize Potential Blighting Influences](#)

[Policy 3-1.3.6: Implement Principles And Standards To Ensure Quality Housing](#)

Islamorada, Village of Islands shall continue to eliminate substandard housing conditions and blighting influences in residential neighborhoods, and improve structural and aesthetic housing conditions by implementing the following policies:

Policy 3-1.3.1: Enforce Building Codes And Zoning Regulations

Islamorada, Village of Islands shall continue to ensure that new housing construction, remodeling or rehabilitation of existing residences conforms to the Florida Building Code. The Village shall strictly enforce its zoning regulations, building codes and ordinances to ensure compliance, as well as protect and preserve the structural integrity and aesthetics of the Village's housing stock.

Policy 3-1.3.2: Maintain Accurate Housing Records

The Village Building Department, based on current Census data, shall identify substandard housing units and maintain a record of such units. The Village shall contact owners of substandard housing units in order to communicate necessary corrective actions and inform owners of available Federal, State, and local housing assistance programs.

Policy 3-1.3.3: Facilitate Housing Demolition And Rehabilitation

Islamorada, Village of Islands shall continue to facilitate the demolition or rehabilitation of unsound housing that poses a threat to the safety and welfare of the community.

Policy 3-1.3.4: Regulate Liveaboards And Other Marine Vessels

Land Development Regulations pertaining to live-aboard vessels and related water activities within jurisdictional waters shall ensure the responsible utilization of near shore waters by adopting enforceable standards to address:

1. Unsafe or derelict vessels;
2. Safety issues;
3. Water quality issues; and
4. Quality of life issues.

Policy 3-1.3.5: Minimize Potential Blighting Influences

The Village shall continue to avoid potential blighting influences within residential areas through land use planning. Where unavoidable, adverse impacts of land use transition shall be minimized through screening, landscaping and other site design regulations, which promote land use compatibility and appropriate land use transition.

Policy 3-1.3.6: Implement Principles And Standards To Ensure Quality Housing

Islamorada, Village of Islands shall maintain Land Development Regulations that establish principles, standards techniques and strategies to guide the preservation, rehabilitation and demolition of housing units.

OBJECTIVE 3-1.4: PROVIDE RELOCATION HOUSING

[Policy 3-1.4.1: Provide Alternative Housing Sites For Displaced Structures And Residents Thereof](#)

Islamorada, Village of Islands shall apply uniform and equitable treatment of persons and businesses displaced by Village programs consistent with F.S. § 421.55. This objective shall be measured through the implementation of the following policy:

Policy 3-1.4.1: Provide Alternative Housing Sites For Displaced Structures And Residents Thereof

Pursuant to F.S. § 421.55, Islamorada, Village of Islands shall assist any person who is required to move from any real property as a direct result of the Village's acquisition of such real property for public purposes by locating alternate sites and housing facilities available to them as replacement dwellings. When planning to acquire land for public purposes the Village shall assess the degree of displacement that may be incurred. The Village shall not be responsible for relocating Village residents who are displaced as the result of a County, State or Federal program or action.

OBJECTIVE 3-1.5: PROVIDE ADEQUATE SITES FOR AFFORDABLE AND MARKET HOUSING

[Policy 3-1.5.1: Coordinate With Housing Providers](#)

[Policy 3-1.5.2: Designate Adequate Sites For Affordable Housing On The Future Land Use Map](#)

[Policy 3-1.5.3: Provide Diverse Housing Types](#)

[Policy 3-1.5.4: Develop Public/Private Partnerships](#)

[Policy 3-1.5.5: Ensure Compliance With The Florida Building Code And Other Village Regulations](#)

Islamorada, Village of Islands shall designate adequate housing sites for all residents of Islamorada, including very low, low, moderate, and market income housing, on the Future Land Use Map, through the implementation of the following policies:

Policy 3-1.5.1: Coordinate With Housing Providers

Islamorada, Village of Islands shall continue to investigate methods for improving coordination among participants involved in housing production, including the private and non-profit sectors. The Village shall continue to promote access to a broad range of housing opportunities with a full complement of public services through cooperation and coordination with the private sector, Federal and State agencies and local governments.

Policy 3-1.5.2: Designate Adequate Sites For Affordable Housing On The Future Land Use Map

Islamorada, Village of Islands shall designate adequate housing sites for all residents of the Village, including very low, low and moderate income housing, as infill development in all residential Future Land Use Map categories, pursuant to Policies 1-3.1.1, 1-2.3.1, 1-2.3.2, 1-2.3.3, 1-2.3.4, and 1-2.4.4, Objective 1-2.5, and Policies 1-2.7.1, 1-2.8.1 and 1-2.10 of the Future Land Use Element of this Plan.

Sites for affordable housing for very low, low and moderate income households shall be approved only if such sites have access to the following facilities, services and/or activity centers:

1. Serviced by potable water and wastewater systems;
2. Accessible to employment centers and shopping centers, offering household goods and services needed on a frequent and recurring basis;

3. Located on a paved street accessible to a collector or arterial street;
4. Accessible to public parks, recreation areas, and/or open space; and
5. Located on sites having adequate surface water management, and solid waste collection and disposal.

Policy 3-1.5.3: Provide Diverse Housing Types

Islamorada, Village of Islands shall continue to provide land use designations and zoning districts on the Future Land Use Map and the Zoning Map to ensure that attached housing units are allowed within the Village.

Policy 3-1.5.4: Develop Public/Private Partnerships

The Village shall continue to assist in developing local government partnerships with the private sector in order to improve the efficiency of the housing delivery system.

Policy 3-1.5.5: Ensure Compliance With The Florida Building Code And Other Village Regulations

Building Codes within the Village shall be consistent with State mandated criteria governing construction in coastal areas. The Village's amended Land Development Regulations shall continue to allow manufactured housing within specified zoning districts, provided the housing unit complies with building standards of F.S. chs. 320 and 553, as well as all applicable Housing and Urban Development (HUD) safety codes.

OBJECTIVE 3-1.6: SUPPORT PRIVATE SECTOR PROVISION OF GROUP HOMES, HOUSING FOR THE ELDERLY AND FOSTER CARE FACILITIES

[Policy 3-1.6.1: Support Provision Of Community Residential Homes](#)

Islamorada, Village of Islands shall support private and non-profit entities to provide housing that meets the unique needs of the elderly, dependent children, the physically challenged and the developmentally disabled.

Policy 3-1.6.1: Support Provision Of Community Residential Homes

The Village shall continue to support provision of community care facilities within the Village by allowing single family community residential homes licensed or funded by the Florida Department of Children and Family Services in all single family and multi-family residential and designated multi-family zoning districts, pursuant to F.S. ch. 419, as hereinafter may be amended.

OBJECTIVE 3-1.7: PRESERVE NEIGHBORHOOD QUALITY AND EXISTING HOUSING STOCK

[Policy 3-1.7.1: Preserve And Rehabilitate Existing Housing](#)

[Policy 3-1.7.2: Maintain Active Code Enforcement](#)

[Policy 3-1.7.3: Historical Housing Assessment And Survey](#)

[Policy 3-1.7.4: Identify And Preserve Historically Significant Housing](#)

[Policy 3-1.7.5: Ensure Compatibility Of New Development](#)

[Policy 3-1.7.6: Provide Energy-Efficient Housing](#)

The useful life of the existing housing stock shall be preserved through implementation of laws, ordinances and programs directed toward preserving neighborhood quality, including conservation of natural resources, maintenance of community facilities and code enforcement activities. In addition, the

Village shall preserve and protect housing identified as historically significant. This objective shall be achieved through the implementation of the following policies:

Policy 3-1.7.1: Preserve And Rehabilitate Existing Housing

Islamorada, Village of Islands shall maintain Land Development Regulations which encourage the preservation and rehabilitation of existing housing as means of maintaining or improving residential conditions and reducing the waste of valuable resources.

Policy 3-1.7.2: Maintain Active Code Enforcement

Islamorada, Village of Islands shall continue to maintain an active code enforcement program which identifies residential and non-residential structures that fail to comply with the minimum specifications governing building construction, electrical facilities, water and wastewater systems, fire protection and flood prevention. Where structures are found to meet less than minimum specifications, the Village shall duly notice the violation and stipulate conditions for bringing the structure into compliance.

Policy 3-1.7.3: Historical Housing Assessment And Survey

Islamorada, Village of Islands shall maintain a comprehensive professional survey identifying architecturally and historically significant sites and structures in the Village. The survey shall primarily focus on structures and properties that are at least forty (40) years old. Any such structures or sites identified in the survey shall be added to the Village's list of locally significant historical resources.

Policy 3-1.7.4: Identify And Preserve Historically Significant Housing

Land Development Regulations shall identify and preserve historically significant resources. The Village shall maintain historic preservation regulations that require any development or redevelopment of the identified historic resources to be consistent with Law of Fla. ch. 74-100, as applicable.

Policy 3-1.7.5: Ensure Compatibility Of New Development

The Village shall continue to enforce Land Development Regulations that do not permit any development inconsistent with the surrounding neighborhood, in terms of residential unit type, lot sizes, housing size and setbacks, or having negative impacts on the environment or the character of the surrounding community.

Policy 3-1.7.6: Provide Energy-Efficient Housing

Islamorada, Village of Islands shall require all building permits to meet the requirements of the Florida Building Code regarding energy-saving features. The Village shall continue to award positive BPAS points for solar energy features, cisterns, water-conserving plumbing fixtures, storm windows, air conditioning units with an energy rating of twelve (12) or better, and heat recovery units which provide supplemental heating of domestic hot water.

OBJECTIVE 3-1.8: EVALUATE HOUSING ELEMENT EFFECTIVENESS

[Policy 3-1.8.1: Evaluate The Impact Of Change Indicators On Housing Policy](#)

[Policy 3-1.8.2: Schedule, Budget And Implement Programmed Activities](#)

[Policy 3-1.8.3: Coordinate With Public And Private Sectors](#)

[Policy 3-1.8.4: Effectively Achieve Housing Goals, Objectives And Policies](#)

Islamorada, Village of Islands shall use the following policies as criteria for evaluating the effectiveness of this Housing Element:

Policy 3-1.8.1: Evaluate The Impact Of Change Indicators On Housing Policy

Annually, after the effective date of this Plan, major shifts in the magnitude, distribution and characteristics of population and housing shall be evaluated as indicators of change in various aspects of housing supply and demand. Housing policy shall be re-evaluated and refined as needed in order to remain responsive to changing problems and issues.

Policy 3-1.8.2: Schedule, Budget And Implement Programmed Activities

The timely scheduling, programming, budgeting and implementation of housing programs identified in this Housing Element shall be evidence of the Village's effectiveness in carrying out a systematic program for implementing housing goals, objectives and policies.

Policy 3-1.8.3: Coordinate With Public And Private Sectors

While continually implementing and evaluating the Housing Element, Islamorada, Village of Islands shall maintain a process of intergovernmental coordination and coordination with private sector groups interested in housing policy and programs. The effectiveness of this approach shall be evaluated by the success of coordination mechanisms to resolve housing issues.

Policy 3-1.8.4: Effectively Achieve Housing Goals, Objectives And Policies

The effectiveness of the Housing Element shall be measured by the Village's success in achieving housing goals, objectives and policies.

GOAL 3-2: WORKFORCE-AFFORDABLE HOUSING

OBJECTIVE 3-2.1: PROVIDE WORKFORCE-AFFORDABLE HOUSING BUILDING PERMIT ALLOCATIONS

To support the Village of Islamorada's workforce by alleviating constraints on affordable housing, the Village shall participate in the Workforce-Affordable Housing Initiative, as approved by the Florida Administration Commission during its June 13, 2018 meeting. The Workforce-Affordable Housing Initiative will require any participating new construction or repurposed structures to commit to evacuating renters within the 48 to 24-hour window of evacuation from the Village.

HISTORY

Adopted by Ord. [19-03](#) on 4/4/2019

OBJECTIVE 3-2.1: PROVIDE WORKFORCE-AFFORDABLE HOUSING BUILDING PERMIT ALLOCATIONS

[Policy 3-2.1.1: Distribution Of Workforce-Affordable Housing Allocations](#)

[Policy 3-2.1.2: Specific Standards And Requirements For Workforce-Affordable Housing](#)

[Policy 3-2.1.3: Evacuation Exemptions](#)

[Policy 3-2.1.4: ADA Compliance](#)

[Policy 3-2.1.5: Evaluation And Report](#)

Pursuant to Objective 3-1.1, the Village has worked with the State Department of Economic Opportunity to "provide alternative solutions to improve access to affordable housing." The Village therefore shall establish a new limited category to be known as the "Affordable-Early Evacuation Pool" for 300 workforce-affordable building permit allocations to participate in the Workforce-Affordable Housing Initiative. These allocations are in addition to the maximum allocations identified in Rules 28-19, Florida Administrative Code. The Village shall be responsible for the management, distribution, and enforcement of requirements associated with the POA allocations. The Village of Islamorada shall ensure adherence to these requirements through implementing the policies of this objective.

Policy 3-2.1.1: Distribution Of Workforce-Affordable Housing Allocations

Workforce-affordable housing allocations may be reserved and distributed at any time through adequate public notice and hearing procedures as set forth in Chapter 30 of the Village's Land Development Regulations. Notwithstanding the ability to reserve units through the Council, the Village shall allocate 30 Workforce-Affordable allocations per year and in accordance with the Building Permit Allocation System (BPAS) ranking procedures established in Chapter 30 Article 4, Division 11 "Building Permit Allocation System (BPAS).

HISTORY

Amended by Ord. [24-06](#) on 4/19/2024

Policy 3-2.1.2: Specific Standards And Requirements For Workforce-Affordable Housing

Workforce-affordable housing units built under this program shall:

1. be duplex, triplex, or multifamily structures;
2. be rental units;
3. require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;
4. not be placed in the V-Zone or within the Coastal Barrier Resource Systems;
5. require on-site property management;
6. comply with applicable habitat and other locational criteria and densities for multifamily affordable housing units;
7. shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, tropical hardwood hammock or freshwater wetlands (except for disturbed categories);
8. incorporate sustainable and resilient design principles into the overall site design;
9. ensure accessibility to employee centers and amenities;
10. requires a minimum of two dwelling unit allocations per site;
11. require deed-restrictions ensuring that:
 - a. the property remains workforce-affordable housing in perpetuity;
 - b. tenants evacuate during the period in which transient units are required to evacuate;
 - c. rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident;
 - d. onsite property managers are formally trained in evacuation procedures.

HISTORY

Adopted by Ord. [24-06](#) on 4/19/2024

Policy 3-2.1.3: Evacuation Exemptions

Persons living in workforce-affordable housing who are exempt from evacuation requirements of Policy 2-1.2.9 includes all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency, provided that the person claiming exemption under this policy has faithfully certified their status with property management.

Policy 3-2.1.4: ADA Compliance

All workforce-affordable housing developments must demonstrate compliance with all applicable federal standards for accessibility for persons with disabilities.

Policy 3-2.1.5: Evaluation And Report

The Village of Islamorada shall provide an Annual Report to the state land planning agency on the progress and implementation of the Workforce Affordable Housing Initiative. Reported information for each year shall include documentation of the number of workforce-affordable units built, occupancy rates, and compliance with the requirement to evacuate the units within the Phase I evacuation. Such report shall be provided to the State in a timely manner such that the State may include the information in the required Annual Report to the Governor and Cabinet on the Village of Islamorada's progress toward completion of its Work Program pursuant to Rule 28-19 of the F.A.C.

CHAPTER 4: PUBLIC FACILITIES ELEMENT

SECTION 4.1: PUBLIC FACILITY GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

State Law reference— F.A.C. § 9J-5.011(2).

SECTION 4.1: PUBLIC FACILITY GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

GOAL 4-1: PROVIDE NEEDED PUBLIC FACILITIES

GOAL 4-2: ADDRESS WASTEWATER ISSUES

GOAL 4-3: ADDRESS DRAINAGE/STORMWATER ISSUES

GOAL 4-4: MANAGE SOLID WASTE

GOAL 4-5: POTABLE WATER

GOAL 4-6: PROTECT NATURAL GROUNDWATER AQUIFER RECHARGE AREAS

This section specifies goals, objectives, and implementing policies for the Public Facilities Element pursuant to F.S. Ch. 163.3177(6)(c) and F.A.C. 9J-5.011(2)(a)—(c).

GOAL 4-1: PROVIDE NEEDED PUBLIC FACILITIES

OBJECTIVE 4-1.1: ADOPT LEVEL OF SERVICE (LOS) STANDARDS

OBJECTIVE 4-1.2: MAINTAIN A SCHEDULE OF PUBLIC FACILITY CAPITAL IMPROVEMENT NEEDS TO ENSURE THAT THE VILLAGE'S INFRASTRUCTURE RESPONSIBILITIES ARE MET

Islamorada, Village of Islands shall ensure availability of needed public facilities associated with wastewater disposal, water, including potable water, distribution and treatment, drainage, solid waste collection and disposal, and protection of natural ground water aquifer recharge in a manner that is environmentally sound and protects marine environments (including sea grass meadows, near shore waters, mangrove islands and extensive living coral reef), while protecting investments in existing facilities and promotes orderly, compact growth.

OBJECTIVE 4-1.1: ADOPT LEVEL OF SERVICE (LOS) STANDARDS

Policy 4-1.1.1: Adopt Wastewater Management System(s) Level Of Service Standards

Policy 4-1.1.2: Adopt Stormwater Level Of Service Standards

Policy 4-1.1.3: Adopt Potable Water Level Of Service Standards

Policy 4-1.1.4: Adopt Solid Waste Level Of Service Standards

Policy 4-1.1.5: Demand And Supply Information System

Policy 4-1.1.6: Coordinate Between Future Land Use And Potable Water/Wastewater System Needs

Policy 4-1.1.7: Ensure Area Wide Planning For Potable Water

Policy 4-1.1.8: Meet Concurrency Requirements

Policy 4-1.1.9: Conserve Resources And Discourage Urban Sprawl

Policy 4-1.1.10: Adopt A 10-Year Water Supply Facilities Work Plan

Policy 4-1.1.11: Update 10-Year Water Supply Facilities Work Plan

Policy 4-1.1.12: Ensure Area Wide Planning For Wastewater Systems

Policy 4-1.1.13: Adopt The Water Supply Facilities Work Plan

Islamorada, Village of Islands shall ensure that, at the time a development permit is issued, adequate wastewater treatment facilities, stormwater facilities, water, including potable water and solid waste disposal facilities are available to support the development at adopted level of service standards, concurrent with the impacts of such development, in accordance with the following policies:

Policy 4-1.1.1: Adopt Wastewater Management System(s) Level Of Service Standards

Islamorada, Village of Islands hereby adopts the level of service standards for wastewater management systems as currently required by Federal and State regulations as follows:

FLORIDA STATUTORY TREATMENT STANDARDS	MG/L			
	BOD	TSS	TN	TP
Design flows less than or equal to 100,000 gpd (BAT)	10	10	10	1
Design flows greater than 100,000 gpd (AWT)	5	5	3	1
Wastewater Supply LOS	70 gal/cap/day			

Source: Florida Statutes, Islamorada, Wastewater Master Plan and Ten-Year Water Supply Facilities Work Plan

Policy 4-1.1.2: Adopt Stormwater Level Of Service Standards

Islamorada, Village of Islands hereby adopts LOS standards for stormwater management as currently mandated by State agencies, as defined in the Village's adopted Stormwater Management Master Plan as follows:

1. Post development runoff shall not exceed the pre-development runoff rate for a 25-year storm event, up to and including an event with a 24-hour duration;
2. Stormwater treatment and disposal facilities shall be designed to meet the design and performance standards established in F.A.C. Ch. 62-25, § 25.025, with treatment of the runoff from the first one (1) inch of rainfall on-site to meet the water quality standards required by F.A.C. Ch. 62, § 302.500; and
3. Stormwater facilities which directly discharge into 'Outstanding Florida Waters' (OFW) shall provide an additional treatment pursuant to F.A.C. Ch. 62-25.025 (9). Stormwater facilities must be designed so as to not degrade the receiving water body below the minimum conditions necessary to assure the suitability of water for the designated use of its classification as established in F.A.C. Ch. 62-302.

Policy 4-1.1.3: Adopt Potable Water Level Of Service Standards

Islamorada, Village of Islands hereby adopts LOS standards for water, including potable water, as follows:

MEASURE	LOT STANDARD
Residential LOS	66.5 gal/cap/day
Non Residential LOS	0.35 gal/sq. ft./ day
Overall LOS	+ 171 gal/cap/day
Equivalent Residential Unit	371.7 gal/day
Minimum Pressure	20 PSI at customer
Minimum Quality	Shall be as defined by the USEPA (part 143 National Secondary Drinking Standards, 40 CFR 143, 44FR 42198)

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 4-1.1.4: Adopt Solid Waste Level Of Service Standards

Islamorada, Village of Islands hereby adopts LOS standards for solid waste management as follows:

MEASURE	LOS STANDARD
Residential Collection Frequency	Minimum 1 time/2 weeks for Domestic refuse Minimum 1 time/2 weeks for Yard trash
Disposal Quantity	5.44 lbs/capita/day OR 12.2 lbs/day/ ERU (equivalent residential unit) 6.37 pounds/acre/day (non-residential unit)
Duration of Capacity	Sufficient capacity shall be available at a solid waste disposal site to accommodate all existing and approved development for a period of three (3) years from the projected date of completion of the proposed development or use.

Policy 4-1.1.5: Demand And Supply Information System

Islamorada, Village of Islands shall continue the process of updating facility demand and capacity information for water, including potable water, and shall prepare annual summaries of capacity and demand information for respective facilities and/or service areas by coordinating with the Florida Keys Aqueduct Authority.

Policy 4-1.1.6: Coordinate Between Future Land Use And Potable Water/Wastewater System Needs

The Village's Land Development Regulations shall be enforced to ensure that incremental decisions by the Village concerning water, including potable water, and wastewater system needs, plans and the location and timing of improvements shall be consistent with the objectives and policies of the Future Land Use Element, and the Conservation Element of this Comprehensive Plan, as amended on August 20, 2020, and the South Florida Water Management District Lower East Coast Regional Water Supply Plan updated November 8, 2018.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 4-1.1.7: Ensure Area Wide Planning For Potable Water

Potable water within the Village shall be coordinated with regional and county plans. Islamorada, Village of Islands shall meet annually with the Florida Keys Aqueduct Authority to review and refine area wide management strategies for the delivery of water, including potable water. Florida Keys Aqueduct Authority provides an annual update with the Potable Water Demand Summary and the Water Supply Available Vs. Water Demand Projections.

Policy 4-1.1.8: Meet Concurrency Requirements

Public facilities and services needed to support development shall be made available concurrent with the impacts of development, in accordance with the adopted level of service referenced in Policies 4-1.1.1, 4-1.1.2, 4-1.1.3, 4-1.1.4, 7-1.1.1 and Chapter 9J-5.0055, F.A.C. Development approval may be phased to allow the provision of public facilities and services necessary to maintain the adopted level of service.

Policy 4-1.1.9: Conserve Resources And Discourage Urban Sprawl

Islamorada, Village of Islands shall encourage the maximized use of existing enhanced public facilities and infill development to conserve resources and discourage urban sprawl.

Policy 4-1.1.10: Adopt A 10-Year Water Supply Facilities Work Plan

Islamorada, Village of Islands shall adopt a Ten-Year Water Supply Facilities Work Plan Update, dated August 20, 2020 in coordination with the Florida Keys Aqueduct Authority that identifies existing and proposed alternative water supply projects, traditional water supply projects, conservation methods and reuse necessary to meet the water supply needs of the Village, consistent with the South Florida Water Management District Lower East Coast Regional Water Supply Plan updated November 8, 2018 and the Florida Keys Aqueduct Authority Master Plan 2020.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 4-1.1.11: Update 10-Year Water Supply Facilities Work Plan

Islamorada, Village of Islands shall update the Ten-Year Water Supply Facilities Work Plan every five (5) years or within eighteen (18) months after the governing board of the South Florida Water Management District approves an updated regional water supply plan.

Policy 4-1.1.12: Ensure Area Wide Planning For Wastewater Systems

Islamorada, Village of Islands shall coordinate planning for wastewater systems to ensure that all systems are consistent with the adopted Village Master Plan for wastewater.

Policy 4-1.1.13: Adopt The Water Supply Facilities Work Plan

Islamorada, Village of Islands, (Village) hereby adopts by reference the Water Supply Facilities Work Plan (Work Plan), dated August 20, 2020 for a planning period of not less than ten (10) years. The Work Plan addresses issues that pertain to water supply facilities and requirements needed to serve current and future development within the Village's water service area. The Village shall review and update the Work Plan at least every five (5) years within eighteen (18) months after the governing board of the water management district approves an updated regional water supply plan. Any changes affecting the Work Plan shall be included in the annual Capital Improvements Plan update to ensure consistency between the Work Plan and the Capital Improvements Element.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

OBJECTIVE 4-1.2: MAINTAIN A SCHEDULE OF PUBLIC FACILITY CAPITAL IMPROVEMENT NEEDS TO ENSURE THAT THE VILLAGE'S INFRASTRUCTURE RESPONSIBILITIES ARE MET

[Policy 4-1.2.1: Adopt A Capital Improvements Schedule](#)

[Policy 4-1.2.2: Correct Existing Deficiencies First](#)

[Policy 4-1.2.3: Establish Priorities For Programming Capital Improvement Projects](#)

[Policy 4-1.2.4: Ensure Compliance With The Capital Improvements Element](#)

Islamorada, Village of Islands shall develop and maintain a five (5) year schedule of capital improvement needs for public facilities and shall annually update the schedule as stipulated in the Capital Improvements Element. During the process of programming and budgeting for capital outlays, the Village shall investigate innovative techniques, including impact fees, to finance public facilities and services.

Policy 4-1.2.1: Adopt A Capital Improvements Schedule

The Village Council, after considering the recommendations of the Local Planning Agency, shall annually evaluate and rank capital improvement projects proposed for inclusion in the adopted five (5) year schedule of capital improvement needs.

Policy 4-1.2.2: Correct Existing Deficiencies First

In developing the annual schedule of capital improvement projects, Islamorada, Village of Islands shall assign highest priority to those projects required for purposes of correcting existing deficiencies, to be ranked in accordance with Policy 4-1.2.3.

Policy 4-1.2.3: Establish Priorities For Programming Capital Improvement Projects

In developing the annual schedule of capital improvements, projects shall be evaluated and ranked according to the following priority guidelines:

Level 1: Highest priority shall be assigned if the project:

1. Is needed to protect public health and safety;
2. Fulfills the Village's legal commitment to provide facilities and services; and
3. Preserves or achieves full use of existing facilities.

Level 2: Second priority shall be assigned if the project:

1. Increases efficiency of existing facilities;
2. Prevents or reduces future improvement costs; and
3. Provides service to developed areas lacking full service or promotes in-fill development.

Level 3: Third priority shall be assigned if the project:

1. Represents a logical extension of facilities and services in a manner consistent with Future Land Use Element goals, objectives and policies, including the Future Land Use Map.

Policy 4-1.2.4: Ensure Compliance With The Capital Improvements Element

All major public facility projects shall be undertaken in accordance with the schedule provided in the Capital Improvements Element of this Comprehensive Plan, as may be hereinafter amended.

GOAL 4-2: ADDRESS WASTEWATER ISSUES

[OBJECTIVE 4-2.1: IMPLEMENT THE WASTEWATER MANAGEMENT MASTER PLAN](#)

[OBJECTIVE 4-2.2: REDUCE IMPACTS OF WASTEWATER SYSTEMS](#)

[OBJECTIVE 4-2.3: CORRECT EXISTING DEFICIENCIES](#)

Islamorada, Village of Islands shall provide for environmentally and economically sound treatment and disposal of sewage, which corrects existing inadequacies while providing for present and future residents, consistent with the Village's policies to limit growth.

OBJECTIVE 4-2.1: IMPLEMENT THE WASTEWATER MANAGEMENT MASTER PLAN

[Policy 4-2.1.1: Focus On Appropriately Sized Systems](#)

[Policy 4-2.1.2: Improve The Village's Wastewater System\(s\)](#)

[Policy 4-2.1.3: Conditions Governing Development Orders Or Permits](#)

Islamorada, Village of Islands shall complete implementation of the Wastewater Management Master Plan (dated August, 2005, adopted by the Village on November 3, 2005), subject to the time frames and priorities listed below. Implementation shall consist of, but not be limited to:

1. Continued implementation of the Lower Matecumbe Key Decentralized Wastewater Treatment Demonstration Project;
2. On North Plantation Key:
 - a. Complete connections of Phase I and II by July, 2009;
 - b. Complete expansion design for Phase III and connections from Middle Plantation Key by December, 2012;
3. On South Plantation Key, secure the site, design and construct plant and collection system by December, 2012;
4. On Windley Key, secure the site, design and construct plant and collection system by December, 2012;
5. On Upper Matecumbe Key, secure the site, design and construct plant and collection system by December, 2012;
6. On Lower Matecumbe Key, secure the site, design and construct plant and collection system by December, 2012.

Policy 4-2.1.1: Focus On Appropriately Sized Systems

The wastewater systems shall be designed to provide only the service capacities necessary to comply with growth and development anticipated through the Comprehensive Plan.

Policy 4-2.1.2: Improve The Village's Wastewater System(s)

Upon adoption of the Wastewater Master Plan, the Village shall incorporate recommended improvements into the Capital Improvements Element and amend the Comprehensive Plan as appropriate.

Policy 4-2.1.3: Conditions Governing Development Orders Or Permits

Islamorada, Village of Islands shall assure that wastewater treatment facilities proposed through development orders or permits for new development or redevelopment shall be designed, installed and maintained consistent with regulations of all Federal, State and local on-site wastewater treatment systems. Performance criteria shall be included within the Land Development Regulations that regulate the location, timing and scale of development in order to ensure that new development is effectively served by wastewater services.

OBJECTIVE 4-2.2: REDUCE IMPACTS OF WASTEWATER SYSTEMS

[Policy 4-2.2.1: Site Sewage Disposal Facilities To Minimize Potential Environmental Impacts](#)

[Policy 4-2.2.2: Prepare Design Criteria, Minimum Performance Standards And Level Of Service Standards](#)

[Policy 4-2.2.3: Reduce Environmental Impacts](#)

[Policy 4-2.2.4: Eliminate Phosphorous](#)

Islamorada, Village of Islands shall regulate land use and development to conserve potable water and protect the functions of natural drainage features and groundwater from the impacts of wastewater systems.

Policy 4-2.2.1: Site Sewage Disposal Facilities To Minimize Potential Environmental Impacts

Islamorada, Village of Islands shall require that sewage disposal facilities shall be designed and located in a manner that in the event of a power failure, untreated effluent will not be discharged into any surface body of water, groundwater or any wetland.

Policy 4-2.2.2: Prepare Design Criteria, Minimum Performance Standards And Level Of Service Standards

To further protect water quality, Islamorada, Village of Islands shall, based on the results of the Village's Wastewater Master Plan, incorporate into the Land Development Regulations threshold design criteria, minimum performance standards and revised level of service standards.

Policy 4-2.2.3: Reduce Environmental Impacts

Islamorada, Village of Islands shall require Land Development Regulations to ensure that the siting of any sewage disposal system has the least environmental impact. Considerations shall include but not be limited to: restricting the location of any discharge point to as far away as possible from any water body, locating OSDS drain fields in the least environmentally sensitive portion of a parcel proposed for development, restricting the location of any new centralized facilities from environmentally sensitive parcels, appropriately sizing facilities consistent with limited growth objectives, and identifying and implementing reuse alternatives.

Policy 4-2.2.4: Eliminate Phosphorous

Islamorada, Village of Islands, in conjunction with appropriate Federal, State, and local agencies, shall continue to minimize or eliminate the use of products containing phosphorous.

OBJECTIVE 4-2.3: CORRECT EXISTING DEFICIENCIES

[Policy 4-2.3.1: Eliminate Cesspits](#)

[Policy 4-2.3.2: Require Connection To Wastewater Facilities](#)

[Policy 4-2.3.3: Improve Failing Package Treatment Plants](#)

[Policy 4-2.3.4: Enact An On Site Treatment And Disposal System \(OSTDS\) Program](#)

[Policy 4-2.3.5: Require Pumpout Facilities](#)

[Policy 4-2.3.6: Maintain And Enforce Liveaboard Regulations](#)

Islamorada, Village of Islands, in conjunction with the Florida Department of Environmental Protection and/or the Monroe County Health Department shall correct existing facility deficiencies by requiring the elimination of cesspits, improvement of failing septic tanks and package treatment plants, and the regulation of liveaboards.

Policy 4-2.3.1: Eliminate Cesspits

The Wastewater Master Plan shall provide a cesspit identification and replacement process to be coordinated with the Florida Department of Environmental Protection and/or the Monroe County Health Department which shall continue through all phases of wastewater infrastructure improvements. All cesspits within the Village shall be replaced by 2015.

Policy 4-2.3.2: Require Connection To Wastewater Facilities

As wastewater facilities become available, affected property owners within the improvement area shall have three hundred sixty-five (365) days to connect to the new or upgraded facility.

Policy 4-2.3.3: Improve Failing Package Treatment Plants

Islamorada, Village of Islands shall coordinate and cooperate with the Department of Environmental Protection to ensure that failing package treatment plants are improved.

Policy 4-2.3.4: Enact An On Site Treatment And Disposal System (OSTDS) Program

Islamorada, Village of Islands shall coordinate with the Florida Department of Environmental Protection and/or the Monroe County Health Department in the OSTDS inspection program. Included in the program shall be a mandatory pump out and reporting requirements.

Policy 4-2.3.5: Require Pumpout Facilities

Islamorada, Village of Islands shall continue to implement an ordinance requiring standard and/or mobile pumpout facilities at commercial marina operations. All waste from a Type III MSD or from portable toilets on vessels shall be disposed in an approved sewage pumpout or waste reception facility.

Policy 4-2.3.6: Maintain And Enforce Liveaboard Regulations

Islamorada, Village of Islands shall implement discharge regulations (creating a 'No Discharge' Zone), fee requirements and enforcement provisions designed to reduce pollutant discharges into surface waters from moored/anchored vessels (liveaboards) in nearshore waters.

GOAL 4-3: ADDRESS DRAINAGE/STORMWATER ISSUES

[OBJECTIVE 4-3.1: IMPLEMENT STORMWATER IMPROVEMENTS](#)

[OBJECTIVE 4-3.2: PROTECT NATURAL FUNCTIONS](#)

Islamorada, Village of Islands shall provide a stormwater management system which corrects existing deficiencies, protects real and personal property and enhances and protects ground and nearshore water quality.

OBJECTIVE 4-3.1: IMPLEMENT STORMWATER IMPROVEMENTS

[Policy 4-3.1.1: Implement Priority Stormwater Projects](#)

[Policy 4-3.1.2: Implement Financial And Regulatory Mechanisms For Stormwater Improvements](#)

[Policy 4-3.1.3: Request Funding From FDOT For US 1 Stormwater Improvements](#)

Islamorada, Village of Islands shall implement the Village's adopted Stormwater Management Master Plan (Islamorada, Village of Islands, Stormwater Management Master Plan, Project No. 00-0206, prepared by Law Engineering and Environmental Services, Inc., in cooperation with the South Florida Water Management District, September 2000), incorporated herein by reference, through administering an annual Stormwater Management Program.

Policy 4-3.1.1: Implement Priority Stormwater Projects

Islamorada, Village of Islands shall continue implementation of priority improvement projects identified in the Village's Stormwater Management Master Plan to improve and make corrections for stormwater management, erosion and sedimentation control and water quality. The Stormwater Management Program shall follow the schedule for improvements provided in the Stormwater Management Master Plan. Each improvement project shall include planning, design and construction phases. The Village shall fund annual improvement projects through the various innovative funding mechanisms and grant

programs identified in the Stormwater Management Master Plan. The Village shall acquire easements as necessary, in conjunction with annual stormwater improvement projects. The Village shall review and update the Stormwater Management Program, as needed, on an annual basis.

Policy 4-3.1.2: Implement Financial And Regulatory Mechanisms For Stormwater Improvements

Islamorada, Village of Islands shall continue to fund drainage basin improvements through the Village's stormwater utility, and monitor the performance of the system. The Village shall amend the capital improvement schedule to incorporate programs and funding allocations, as necessary, to implement stormwater improvement projects. The Village shall maintain a regulatory framework for alleviating and/or preventing increased stormwater and surface water management problems and issues generated by development and/or redevelopment activity.

Policy 4-3.1.3: Request Funding From FDOT For US 1 Stormwater Improvements

Islamorada, Village of Islands shall request funding from FDOT to correct identified stormwater deficiencies within the U.S. 1 corridor.

OBJECTIVE 4-3.2: PROTECT NATURAL FUNCTIONS

[Policy 4-3.2.1: Ensure That Developed Lands Provide Adequate Drainage And Protection From Flooding And Manage The Retention Of Ground And Surface Water At Levels That Enhance Natural Storage Capacity Of Watersheds](#)

[Policy 4-3.2.2: Provide Adequate On-Site Retention And Ground Water Recharge While Directing Surplus Run-Off To Receiving Waterways In A Manner Which Prevents Imbalance To Their Ecosystems](#)

[Policy 4-3.2.3: Pursue The Development Of Adequate Off-Site Surface Water Management Facilities](#)

[Policy 4-3.2.4: Coordinate Watershed Management Plans And Policies With Appropriate Public Agencies](#)

[Policy 4-3.2.5: Require Buffer Zones](#)

[Policy 4-3.2.6: Manage Land Use In The Floodplain And Coastal Areas](#)

Islamorada, Village of Islands shall protect the functions of natural groundwater recharge areas and natural drainage features.

Policy 4-3.2.1: Ensure That Developed Lands Provide Adequate Drainage And Protection From Flooding And Manage The Retention Of Ground And Surface Water At Levels That Enhance Natural Storage Capacity Of Watersheds

Islamorada, Village of Islands shall promote the ecological, biological and hydrological role that surface waters play in sustaining surface vegetation. The Village shall manage the location, design and intensity of development in order to foster continuance of natural hydrological processes, including promoting on-site retention of surface waters, natural return of surface water into the soil, and channeling excess stormwater volume primarily via natural grassy swales. Land Development Regulation shall require the integration of natural storage areas and natural drainage courses into water management plans for new development and redevelopment.

Policy 4-3.2.2: Provide Adequate On-Site Retention And Ground Water Recharge While Directing Surplus Run-Off To Receiving Waterways In A Manner Which Prevents Imbalance To Their Ecosystems

Islamorada, Village of Islands shall require Land Development Regulations to include land use controls, such as subdivision regulations, zoning and site plan review, erosion controls, water quality controls, landscaping and flood management regulations to assist in implementing the Stormwater Management

Program. The programs shall be assessed annually and updated as necessary based on improved knowledge of problems, issues and best management practices.

Policy 4-3.2.3: Pursue The Development Of Adequate Off-Site Surface Water Management Facilities

The Village shall monitor, at regular intervals, the performance of existing off-site drainage facilities, evaluate existing and potential future problems or issues, and pursue the funding of necessary structural and non-structural system improvements for effective surface water management. All new developments shall provide an equitable contribution for off-site drainage improvements necessitated by the development.

Policy 4-3.2.4: Coordinate Watershed Management Plans And Policies With Appropriate Public Agencies

Islamorada, Village of Islands shall ensure coordination of watershed management plans and policies with appropriate local, regional, State and Federal agencies, including Monroe County, the South Florida Water Management District, the State Department of Environmental Protection, the Agricultural Extension Service, the United States Army Corps of Engineers and the U.S. Fish and Wildlife Service.

Policy 4-3.2.5: Require Buffer Zones

Islamorada, Village of Islands shall maintain Land Development Regulations that require new development to provide buffer zones adjacent to natural drainageways and retention areas.

Policy 4-3.2.6: Manage Land Use In The Floodplain And Coastal Areas

Land Development Regulations shall include performance criteria regulating development within floodplain and shoreline areas as a result of the Stormwater Management Master Plan.

GOAL 4-4: MANAGE SOLID WASTE

OBJECTIVE 4-4.1: MONITOR AND EVALUATE SOLID WASTE

Islamorada, Village of Islands, shall provide for the adequate collection, disposal and resource recovery of solid waste in an environmentally sound and economically feasible manner to meet the needs of present and future Village residents.

OBJECTIVE 4-4.1: MONITOR AND EVALUATE SOLID WASTE

Policy 4-4.1.1: Evaluate Recycling Programs

Policy 4-4.1.2: Maintain Hazardous Materials Programs

Islamorada, Village of Islands shall maintain a system for evaluating and monitoring the solid waste collection capabilities of private companies to ensure that the projected demand for disposal is met. This process shall be a subcomponent of the concurrency management process. The procedures shall include working with the service provider to ensure that solid waste collection needs and evolving private market conditions are effectively coordinated so that the Village's future population is adequately served by solid waste collection, disposal and recycling services.

Policy 4-4.1.1: Evaluate Recycling Programs

The Village shall continually evaluate existing recycling programs and determine methods to enhance and improve these programs consistent with State mandated recycling goals.

Policy 4-4.1.2: Maintain Hazardous Materials Programs

The Village will maintain an education program and establish special hazardous waste collection programs.

GOAL 4-5: POTABLE WATER

OBJECTIVE 4-5.1: INVESTIGATE POTABLE WATER ISSUES

OBJECTIVE 4-5.2: PROMOTE WATER CONSERVATION

Islamorada, Village of Islands shall support the Florida Keys Aqueduct Authority in the fulfillment of their statutory obligation and authority to provide for safe, high quality and adequate supply, treatment, distribution and conservation of water, including potable water, to meet the needs of present and future residents.

OBJECTIVE 4-5.1: INVESTIGATE POTABLE WATER ISSUES

Policy 4-5.1.1: Potable Water System Projects

The Village shall investigate potential water supply and water quality issues and coordinate at least annually in a meeting with the Florida Keys Aqueduct Authority for purposes of identifying problems, issues and opportunities associated with water quality, supply and distribution.

Policy 4-5.1.1: Potable Water System Projects

The Village shall coordinate technical issues surrounding short and long-range decisions concerning management of water quality, water supply and distribution on a continuing basis. The Village shall continue to ensure that all new development demonstrate a source of available water supply, including management and coordination of related issues with the Florida Keys Aqueduct Authority.

OBJECTIVE 4-5.2: PROMOTE WATER CONSERVATION

Policy 4-5.2.1: Enforce Water Conservation Measures

Policy 4-5.2.2: Coordinate With SFWMD And FKAA On Conservation And Reuse Issues

Policy 4-5.2.3: Provide Information On Water Conservation

Policy 4-5.2.4: Leak Detection And Repair Program

Policy 4-5.2.5: Ensure Adequate Water Supply For New Development

Islamorada, Village of Islands shall assist the FKAA with water conservation and reuse efforts and assist in implementing the FKAA's Water Conservation Plan consistent with SFWMD's Water Shortage Plan, Water Conservation Program and Lower East Coast Water Supply Plan. Recognizing that the Village is located in an area that the SFWMD identifies as a "priority water resource caution area," the Village shall strive to lower its per person per day usage of water below +/- 171 gallons per person per day (gpcpd) and will continue to work with the Florida Keys Aqueduct Authority (FKAA) through the site plan review process and the SFWMD to reduce demand within the Village for potable water.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 4-5.2.1: Enforce Water Conservation Measures

Islamorada, Village of Islands shall continue to enforce Land Development Regulations which regulate Florida Friendly Landscape Principles, and the installation of water conservation irrigation systems and water-conserving plumbing fixtures.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 4-5.2.2: Coordinate With SFWMD And FCAA On Conservation And Reuse Issues

Islamorada, Village of Islands shall continue to coordinate water conservation issues with SFWMD and FCAA policies and programs.

Policy 4-5.2.3: Provide Information On Water Conservation

The Village shall inform residents and business owners of the regional water conservation programs. This information shall be available at Village Hall and will include brochures and pamphlets to educate and inform people as to the importance of water conservation. Further information could be made available on the Village website, including links to Florida Keys Aqueduct Conservation Resources webpage and the Environmental Protection Agency's "Water Sense for Kids" webpage.

HISTORY

Adopted by Ord. [20-04](#) Exh. A on 8/20/2020

Policy 4-5.2.4: Leak Detection And Repair Program

The Village shall develop a leak detection and repair program for all Village-owned facilities by the end of 2030. The Village will make every effort to establish this program at an earlier date, dependent on available programming of resources.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 4-5.2.5: Ensure Adequate Water Supply For New Development

Prior to the issuance of a building permit for new development, the Village shall receive written notification from its water utility, the Florida Keys Aqueduct Authority, that adequate water to serve the new development will be available no later than the anticipated time that a certificate of occupancy is to be issued.

GOAL 4-6: PROTECT NATURAL GROUNDWATER AQUIFER RECHARGE AREAS

OBJECTIVE 4-6.1: PROTECT FRESHWATER LENSES

Islamorada, Village of Islands shall protect the quality and quantity of water in the potable water aquifer and in the freshwater lens system to ensure public health and preserve ecosystems dependent upon fresh water.

OBJECTIVE 4-6.1: PROTECT FRESHWATER LENSES

Policy 4-6.1.1: Adopt Stormwater Management Regulations

Islamorada, Village of Islands shall protect freshwater lenses within the Village from loss of recharge potential, ensure the preservation of the existing freshwater lens systems and from threats of groundwater contamination.

Policy 4-6.1.1: Adopt Stormwater Management Regulations

The Village shall continue to maintain Land Development Regulations for managing stormwater run-off. The regulations shall be consistent with the adopted Stormwater Management Master Plan and regulate the quality and quantity of stormwater discharges, encourage use of site specific natural drainage features to the maximum extent possible before utilizing structural stormwater control, and shall restrict the percentage of impervious areas on development and redevelopment sites.

CHAPTER 5: COASTAL MANAGEMENT ELEMENT

SECTION 5-1: COASTAL MANAGEMENT GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

State Law reference— F.A.C. § 9J-5.012(3).

SECTION 5-1: COASTAL MANAGEMENT GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

GOAL 5-1: COASTAL MANAGEMENT

This section specifies goals, objectives and implementing policies for the Coastal Management Element pursuant to F.S. §§ 163.3177(6)(g) and 163.3178 and F.A.C. 9J-5.012(3).

GOAL 5-1: COASTAL MANAGEMENT

OBJECTIVE 5-1.1: PROTECT COASTAL RESOURCES, WETLANDS, ESTUARIES, LIVING MARINE RESOURCES AND WILDLIFE HABITATS

OBJECTIVE 5-1.2: MAINTAIN CRITERIA FOR PRIORITIZING SHORELINE USES AND PROVIDE PUBLIC ACCESS TO THE SHORELINE

OBJECTIVE 5-1.3: IDENTIFY, ASSESS AND RESTRICT DEVELOPMENT IN WETLANDS

OBJECTIVE 5-1.4: ELIMINATE THE LOSS OF UNDISTURBED WETLANDS

OBJECTIVE 5-1.5: ESTABLISH LAND USE CONTROLS AND CONSTRUCTION STANDARDS FOR PROTECTING THE NATURAL SHORELINE, INCLUDING BEACHES AND BERMS

OBJECTIVE 5-1.6: MINIMIZE COASTAL HAZARDS

OBJECTIVE 5-1.7: IMPLEMENT POLICIES CONTROLLING POLLUTANT DISCHARGES INTO SURFACE WATERS FROM DREDGE AND FILL ACTIVITIES

OBJECTIVE 5-1.8: LIMIT PUBLIC SUBSIDY OF DEVELOPMENT IN THE COASTAL HIGH HAZARD AREA

OBJECTIVE 5-1.9: AVOID POPULATION CONCENTRATIONS IN THE COASTAL HIGH HAZARD AREA

OBJECTIVE 5-1.10: COORDINATE HURRICANE EVACUATION

OBJECTIVE 5-1.11: FACILITATE POST-DISASTER REDEVELOPMENT

OBJECTIVE 5-1.12: REGULATE ACCESS TO PUBLIC BEACHES AND SHORELINES

OBJECTIVE 5-1.13: PROTECT HISTORIC RESOURCES

OBJECTIVE 5-1.14: IDENTIFY PUBLIC FACILITY LEVEL OF SERVICE STANDARDS IN THE COASTAL AREA

OBJECTIVE 5-1.15: ENSURE INTERGOVERNMENTAL COORDINATION WITHIN THE COASTAL AREA

OBJECTIVE 5-1.16: CONTINUE EVALUATING COASTAL MANAGEMENT ELEMENT EFFECTIVENESS

OBJECTIVE 5-1.17: MAINTAIN CONSISTENCY WITH FEDERAL, STATE, OR REGIONAL COASTAL INITIATIVES AND PROGRAMS

OBJECTIVE 5-2.3: DEVELOPMENT AND REDEVELOPMENT PRINCIPLES, STRATEGIES AND SOLUTIONS TO PROTECT CRITICAL INFRASTRUCTURE FROM FLOOD EVENTS

OBJECTIVE 5-2.4: SITE DEVELOPMENT TECHNIQUES AND BEST PRACTICES TO MINIMIZE LOSS DUE TO FLOODING

Islamorada, Village of Islands shall restrict development activities that would damage or destroy coastal resources, protect human life and limit public expenditures in areas subject to destruction by natural disasters.

OBJECTIVE 5-1.1: PROTECT COASTAL RESOURCES, WETLANDS, ESTUARIES, LIVING MARINE RESOURCES AND WILDLIFE HABITATS

[Policy 5-1.1.1: Restrict Development In Wetlands](#)

[Policy 5-1.1.2: Limit Development Impacts On Wetlands](#)

[Policy 5-1.1.3: Protect Coastal And Estuarine Environmental Quality And The Shoreline](#)

[Policy 5-1.1.4: Protect, Stabilize And Enhance Shorelines](#)

[Policy 5-1.1.5: Prohibit Construction Of New Bulkheads, Seawalls Or Other Hardened Vertical Shoreline Structures On Open Water](#)

[Policy 5-1.1.6: Enact Measures To Stabilize Canals And Shorelines](#)

[Policy 5-1.1.7: Limit Hardened Shorelines](#)

[Policy 5-1.1.8: Protect Living Marine Resources, Wetlands And Seagrass Beds](#)

[Policy 5-1.1.9: Protect Mangroves And Provide Management Standards](#)

[Policy 5-1.1.10: Maintain A 50 Foot Buffer Adjacent To Wetlands](#)

[Policy 5-1.1.11: Manage Impacts Of Coastal Development On Tidal Flushing And Circulation Patterns](#)

[Policy 5-1.1.12: Promote Propagation Of Fish And Wildlife](#)

Islamorada, Village of Islands shall maintain Land Development Regulations designed to protect, conserve and enhance coastal resources, wetlands, water resources, living marine resources and other natural resources by:

1. Preventing adverse impacts of development and redevelopment on wetlands, estuaries, water resources, living marine resources and other natural resources;
2. Maintaining or improving coastal environmental quality by commencing the Stormwater Management Plan identified in Policy 4-3.1;
3. Regulating land development activities that could have negative impacts on coastal shorelines, including impacts on water quality, living marine organisms, seagrass beds and wetlands;
4. Directing growth away from VE Flood Zones through Local Mitigation Strategies and the Building Permit Allocation System identified in Policy 1-3.1.1 of this Plan;
5. Maintaining a Transfer of Development Rights (TDR) Program that directs growth away from VE zones as described in Policy 1-3.1.4 of this Plan;
6. Managing nearshore waters and flats through the enforcement of speed limits, no wake zones and no motor zones;
7. Regulating activities with potentially adverse impacts on coastal resources, including but not limited to ultra-light planes, seaplanes, live-aboard vessels and personal watercraft;
8. Preventing adverse impacts of lighting on coastal resources;
9. Prohibiting the mooring of live aboard vessels outside of approved marinas;
10. Prohibiting boat launching from various rights-of-way that are not designated as public boat ramps and restricting random water access points; and
11. Regulating the impacts of development on native vegetative communities and wildlife habitats.

These objectives shall be accomplished as described below, and through coordination with the South Florida Water Management District.

Policy 5-1.1.1: Restrict Development In Wetlands

Islamorada, Village of Islands shall maintain Land Development Regulations that prohibit development within undisturbed wetlands and limit development of disturbed wetlands as described in Objective 5-1.3. The Village shall encourage the dedication of conservation easements for all wetlands and upland

buffer areas adjacent to wetlands. Wetlands shall be defined per F.S. § 373.019(22), further described by the delineation methodology in F.S. § 373.4211.

The following plant species are wetland species commonly found within Islamorada, Village of Islands, although the applicable State list of jurisdictional wetland vegetation shall apply:

COMMON NAME	SCIENTIFIC NAME
Black Mangrove	Avicennia germinas
White Mangrove	Laguncularia racemosa
Red Mangrove	Rhizophora mangle
Sea Purslane	Sesuvium portulacastrum
Key Grass	Monanthochloe
Cordgrass	Spartina spartinae
Buttonwood	Conocarpus erectus
Saltwort	Batis maritima
Sea Blite	Suaeda linearis
Salt Grass	Distichlis spicata
Dropseed	Sporobolus virginicus
Fringe-Rushes	Fimbristylis spp

Policy 5-1.1.2: Limit Development Impacts On Wetlands

Wetlands shall be protected from physical or hydrologic alterations in order to maintain their natural functions. No fill or structures shall be permitted in submerged lands, mangroves, salt ponds and freshwater wetlands, except for pile supported docks and walkways designed to minimize adverse impacts on wetlands and as may be permitted under the ADID Program (Policy 5-1.3.5). Islamorada, Village of Islands shall maintain Land Development Regulations which shall provide criteria for protecting and/or enhancing wetlands when adjacent areas are developed.

Policy 5-1.1.3: Protect Coastal And Estuarine Environmental Quality And The Shoreline

Land Development Regulations shall ensure that the potential impacts of shoreline development be analyzed as part of the development review process. The Village shall not approve a development order until the potential impacts identified by the applicant and public entities having jurisdiction over the impacted resources have been considered by the Village. The applicant shall bear the burden of demonstrating that adverse impacts on natural resources of the coastal zone will be prevented and that all applicable State and/or Federal regulatory measures have been satisfied. The development review process shall involve all local, regional, State and Federal entities with jurisdictional authority. All development shall:

1. Protect fish and wildlife habitat;
2. Prevent degradation of water quality and estuaries;
3. Manage surface water run-off to prevent water quality degradation;
4. Protect living marine resources;

5. Reduce exposure to natural hazards; and
6. Ensure adequate public access.

Policy 5-1.1.4: Protect, Stabilize And Enhance Shorelines

Land Development Regulations shall stipulate that no native vegetation shall be removed from shorelines without a duly authorized permit. Similarly, criteria shall be included requiring applicants for development along the shoreline to re-vegetate, stabilize and enhance damaged vegetative shorelines by planting native plant species, which:

1. Contribute to fish and wildlife habitat, marine productivity and water quality;
2. Offer protection from erosion and flooding;
3. Contribute to the natural soil building process;
4. Provide habitat for a diverse community of plants and animals, including species listed by the State of Florida as endangered, threatened, or species of special concern; and
5. Are aesthetically pleasing and can be reasonably incorporated as a landscaping asset for waterfront residences.

Native vegetation shall not be removed unless the applicant agrees to a mitigation plan to ensure that re-vegetation occurs.

Policy 5-1.1.5: Prohibit Construction Of New Bulkheads, Seawalls Or Other Hardened Vertical Shoreline Structures On Open Water

No new bulkheads, seawalls or other hardened vertical shoreline structures shall be permitted on open water except under the specific criteria established and set forth in F.S. § 373.414(5), as may be amended.

Policy 5-1.1.6: Enact Measures To Stabilize Canals And Shorelines

In lieu of constructing bulkheads, seawalls or other hardened vertical shoreline structures, residential canals and altered shorelines shall be stabilized by maintaining native aquatic and/or terrestrial vegetation. In cases where it can be affirmatively demonstrated that native vegetation will not prevent erosion, then riprap or sloping rock revetments shall be permitted to the minimum extent necessary, in conjunction with native vegetation as approved by the Director of Planning and Development Services. Shoreline stabilization on open water shall be reviewed and evaluated based upon the criteria established pursuant to Administrative Rule 62-312.440 of the Florida Administrative Code ("F.A.C."), as may be amended.

Policy 5-1.1.7: Limit Hardened Shorelines

Bulkheads, seawalls or other hardened vertical shoreline structures shall be permitted on residential canals and altered shorelines only in the following situations:

1. To replace an existing deteriorated bulkhead or seawall; or
2. To stabilize a severely eroding shoreline area where riprap in conjunction with native vegetation will not suffice.

Policy 5-1.1.8: Protect Living Marine Resources, Wetlands And Seagrass Beds

Land Development Regulations shall prevent adverse impacts of development on seagrass beds, wetlands and other living marine resources. Since these areas are sensitive to increased turbidity, stormwater runoff and other forms of pollution, the introduction of nutrients shall be regulated through effective water quality management. Development impacting marine resources shall be coordinated with State and Federal agencies having jurisdiction prior to the Village granting plan approval and/or prior to release of any permit for construction.

Policy 5-1.1.9: Protect Mangroves And Provide Management Standards

Islamorada, Village of Islands shall continue to coordinate with the Department of Environmental Protection, to restrict mangrove trimming. Such restrictions ensure the minimal alteration necessary to maintain navigation in existing navigable channels and canals, or where necessary to allow an upland owner limited ingress and egress to waters in conjunction with a permitted structure installed according to the design guidelines of the Land Development Regulations, and to allow limited visual access consistent with, or more restrictive than Florida State standards as spelled out in F.S. § 403.9321—403.9334.

Any ordinance enacted pursuant to this policy shall not affect any mangrove alteration made by the Village pursuant to the governmental exemptions contained in Florida's Mangrove Protection Act.

Policy 5-1.1.10: Maintain A 50 Foot Buffer Adjacent To Wetlands

Islamorada, Village of Islands shall require minimum vegetated setbacks of fifty (50) feet to be maintained as an open space buffer for development occurring adjacent to all types of wetlands except for tidally inundated mangrove fringes or permitted under Objectives 5-1.2 and 5-1.3. If a fifty (50) foot setback results in less than two thousand (2,000) square feet of principal structure footprint of reasonable configuration then the setback may be reduced to allow for two thousand (2,000) square feet of principal structure footprint of reasonable configuration; provided the setback is not reduced to less than twenty-five (25) feet. On properties classified as scarified adjacent to wetlands, the wetland setback may be reduced to twenty-five (25) feet, without regard to buildable area if the entire setback area is planted and maintained in native vegetation with a site-suitable stormwater management plan, and thereafter placed under conservation easement. The wetland setback required by this subsection shall not apply to mangrove or wetland fringes occurring along man-made canals, channels or basins. 'Development' shall include all activities as currently defined in the F.S. § 380.05, hereby incorporated by reference.

Policy 5-1.1.11: Manage Impacts Of Coastal Development On Tidal Flushing And Circulation Patterns

No development shall produce changes in the tidal flushing and circulation patterns unless all agencies having jurisdiction grant clearance and the applicant has submitted hydrographic information sufficient to demonstrate that no adverse environmental impacts shall be caused by the proposed changes in tidal flushing and circulation patterns. No alteration in tidal flow shall be permitted that causes stagnation or siltation.

Policy 5-1.1.12: Promote Propagation Of Fish And Wildlife

Islamorada, Village of Islands shall incorporate criteria in the Land Development Regulations that prevent adverse impacts from development on submerged lands, water quality, reef systems and other habitats for fish and wildlife.

OBJECTIVE 5-1.2: MAINTAIN CRITERIA FOR PRIORITIZING SHORELINE USES AND PROVIDE PUBLIC ACCESS TO THE SHORELINE

[Policy 5-1.2.1: Implement Policies For Shoreline Land Uses](#)

[Policy 5-1.2.2: Limit Impacts Of Development And Redevelopment On Water Quality, Wildlife Habitat](#)

And Living Marine Resources

Policy 5-1.2.3: Establish Criteria For Prioritizing Shoreline Uses

Policy 5-1.2.4: Ensure Adequate Water Depth For Docking Facilities

Policy 5-1.2.5: Establish A Minimum Mooring Depth Of Four Feet

Policy 5-1.2.6: Regulate Docks

Policy 5-1.2.7: Prohibit Mooring Over Hard-Bottom Communities

Policy 5-1.2.8: Protect Seagrass Beds

Policy 5-1.2.9: Preserve Public Shoreline Access

Policy 5-1.2.10: Prohibit The Establishment Of New Marinas

Policy 5-1.2.11: Define Altered And Unaltered Shorelines

Policy 5-1.2.12: Establish Setbacks From Shorelines

Policy 5-1.2.13: Establish Standards For Shoreline Structures And Uses

Land Development Regulations shall prioritize shoreline uses, in accordance with the following policies:

Policy 5-1.2.1: Implement Policies For Shoreline Land Uses

Land Development Regulations shall limit the specific and cumulative impacts of development and redevelopment on water quality, wildlife habitat and living marine resources by enforcing development standards.

Policy 5-1.2.2: Limit Impacts Of Development And Redevelopment On Water Quality, Wildlife Habitat And Living Marine Resources

Land Development Regulations shall implement shoreline land use priorities, including criteria for regulating water dependent and water related shoreline land uses. These criteria and regulations shall include the level of service standards for surface water management, potable water, and wastewater management stipulated in the Public Facilities Element.

Policy 5-1.2.3: Establish Criteria For Prioritizing Shoreline Uses

When reviewing applications for shoreline development, shoreline uses shall be prioritized as follows:

1. Non-structural shoreline protection uses such as native shoreline re-vegetation programs; Approved water-dependent shoreline uses such as pile supported access ways and permitted dock facilities;
2. Docks and commercial marina expansion. These uses shall be permitted only in areas with at least four (4) feet of water at mean low water depth at the terminal end, and which do not adversely impact seagrass, mangrove or hard bottom communities. Priority shall be directed to water dependent uses that are available for public use;
3. Parking facilities for shoreline access located outside wetlands;
4. Residential structures that comply with the building code for structures within the coastal building zone; and
5. Recreational facilities.

Policy 5-1.2.4: Ensure Adequate Water Depth For Docking Facilities

Except as provided herein, the siting of docking facilities and boat slips on man made water bodies shall require minus four (-4) feet mean low water (MLW) depth at the terminal end. These structures must have continuous access to open water at depths of minus four (-4) feet MLW or greater over a

channel width of twenty (20) feet, or access to open water via a marked, Federal and State approved navigation channel.

1. Docking facilities may be developed on any shoreline if there is a mean low water (MLW) depth of at least minus four (-4) feet at the terminal end of the docking facility, and continuous access to open water; or
2. Docking facilities may be developed on the shoreline if there is a mean low water (MLW) depth of at least minus four (-4) feet at the terminal end of the docking facility and the docking facility is located in a channel or canal or basin that connects five or more contiguous lots, with continuous access to open water.

For purposes of this policy 'open water' means the portion of the straits of Florida, Florida Bay, the Gulf of Mexico or the Atlantic Ocean, which consists of an uninterrupted expanse of water deeper than four (4) feet at mean low water (MLW) and 'continuous access' means a natural passage or an existing manmade channel no shallower than four (4) feet at mean low water (MLW) and no narrower than twenty (20) feet.

Policy 5-1.2.5: Establish A Minimum Mooring Depth Of Four Feet

The minimum water depth requirement at the mooring site shall be minus four (-4) feet mean low water as indicated by a survey signed and sealed by a Professional Surveyor.

Policy 5-1.2.6: Regulate Docks

The following restrictions shall apply to all structures built over or adjacent to water (including but not limited to boat docks, fishing piers, swimming piers and observation decks):

1. The maximum permitted length of docks shall be commensurate with the shoreline width of the land parcel at which the dock is located, subject to a maximum length of one hundred (100) feet from the mean low water line;
2. The length of docks shall not exceed ten (10) percent of the width of the water body as measured laterally across the water body from the proposed location of placement and from the point of mean low water to the opposing point of mean low water. An exception to this shall be made in cases where adequate depth at the terminal end of the dock pursuant to Policies 5-1.2.3 and 5-1.2.4 is not available. In such cases the dock may be shortened only enough to allow the centerline of an average width vessel to lie in four feet of water at mean low water;
3. No dock or mooring structure together with a moored boat shall preempt more than twenty-five (25) percent of the navigable portion of a man-made water body. This should allow for a structure built over water on either side of the water body to have a moored boat and room for free passage of two boats down the center of the water body;
4. All fishing, swimming and other piers, and observation decks shall conform to design criteria in the Land Development Regulations, which prohibit their use as a dock; and
5. Only designs perpendicular to the shoreline shall be allowed except where such structures would preclude lawful navigation of the waterway; or
6. Where perpendicular designs are not feasible, a parallel structure may be permitted provided that the structure:
 - a. Does not exceed five (5) feet in width, and
 - b. Is confined to an existing cleared area along the shoreline whenever possible. Where a mangrove fringe or wetland vegetation exists along the shoreline, a dock with an

walkway perpendicular to the shoreline, such as a "T" or "L" dock, shall be the only design permitted.

Policy 5-1.2.7: Prohibit Mooring Over Hard-Bottom Communities

Islamorada, Village of Islands shall prohibit the location of mooring sites over submerged land which is characterized by a hard-bottom community, regardless of water depth, unless it meets criteria for exemption by DEP. This prohibition shall also apply to mooring fields.

Policy 5-1.2.8: Protect Seagrass Beds

Docking facilities and piers terminating over submerged lands vegetated with seagrasses shall require minus five (-5) feet mean low water (MLW) depth at the terminal end, unless it meets criteria for exemption by DEP. This minus five (-5) feet mean low water (MLW) depth requirement shall also apply to mooring fields. Design criteria to permit sunlight to reach the bottom shall be maintained in the land development regulations.

Policy 5-1.2.9: Preserve Public Shoreline Access

Land Development Regulations shall preserve physical and visual access points, including but not limited to scenic corridors, breezeways, public rights-of-way to the shoreline and public beaches on the Florida Bay and Atlantic Ocean coastlines. Notwithstanding the foregoing, rights-of-way may be vacated where there is documented evidence that physical public access is destabilizing unaltered shorelines.

Policy 5-1.2.10: Prohibit The Establishment Of New Marinas

In order to protect endangered species such as manatees and protect natural resources such as wetlands, and sea grass communities, prevent the degradation of near shore water quality, and eliminate the need for new dredging for navigational purposes, the establishment of new marinas in Islamorada, Village of Islands will not be permitted until such time as an analysis is completed of the need for additional marina siting which shall meet or exceed state standards (Rules 9J-5.012(3)(b)1, 2 and 3; 9J-5.013(2)(b)2).

Policy 5-1.2.11: Define Altered And Unaltered Shorelines

Land Development Regulations shall define 'altered shoreline' and 'unaltered shoreline' which shall be written to recognize the following general features of each:

1. **Altered shorelines** are generally located directly along dredged canals, basins and channels and/or have been filled or vertically bulkheaded to such a degree that the original natural slope landward of the water is no longer present.
2. **Unaltered shorelines** are generally located along natural non-dredged waterways and open water and have a sloping profile typical of the original natural conditions of the shoreline even though fill or riprap may be present.

Policy 5-1.2.12: Establish Setbacks From Shorelines

Land Development Regulations shall provide minimum shoreline setbacks to protect coastal ecology. This policy shall ensure accomplishment of the following objectives:

1. Protection of natural shoreline vegetation;
2. Protection of marine turtle nesting beaches;

3. Protection of water quality (through assimilative and filtrative uptake of pollutants by protected natural shoreline vegetation);
4. Protection of structures from the effects of long-term sea level rise;
5. Protection of beaches and shorelines from erosion; and
6. Protection of the character and over water views of the community.

In order to meet these objectives principal structures shall be set back to the following minimum standards:

1. Along lawfully altered shorelines including manmade canals, channels and basins, principal structures shall be set back at least twenty (20) feet as measured from the mean high water (MHW) line;
2. Along open water shorelines not adjacent to manmade canals, channels, or basins which have been legally altered:
 - a. And where a mangrove fringe of at least ten (10) feet in width occurs across the entire shoreline of the property, principal structures shall be set back at least thirty (30) feet as measured from the mean high water line or the landward extent of the mangroves, whichever is further inland;
 - b. And where no mangrove fringe exists, principal structures shall be set back at least thirty (30) feet from the mean high water line, provided that native vegetation exists or is planted and maintained in a ten (10) foot width across the entire shoreline as approved by the Director of Planning and Development Services, and is placed under conservation easement; otherwise the setback shall be fifty (50) feet as measured from the mean high water (MHW) line.
 - c. On infill lots surrounded by significant development where principal structures are set back less than fifty (50) feet from the mean high water line or the landward extent of mangroves, the Director of Planning and Development Services may evaluate the community character, the presence or absence of environmental features and the setbacks on adjacent developed properties within two (2) parcels on either side of proposed development, and may allow principal structures to be set back as far as practicable or in line with adjacent principal structures. In no event shall the setback be less than thirty (30) feet. On shorelines where the existing pattern of setback is greater than thirty (30) feet, the greater setback shall apply.
3. Along unaltered and unlawfully altered shorelines, principal structures shall be set back fifty (50) feet as measured from the mean high water line or the landward extent of the mangroves, whichever is further landward.

Specific standards shall be adopted for accessory structures within the shoreline setback, however in no case shall they be set back less than ten (10) feet from the MHW line, excluding structures allowed in this Chapter including, but not limited to, docks, piers, decks, walkways, access ways and utility pilings providing all structures are elevated.

Policy 5-1.2.13: Establish Standards For Shoreline Structures And Uses

Land Development Regulations shall provide standards for shoreline structures and uses to protect coastal ecology. This policy shall ensure accomplishment of the following standards:

1. Any proposed development within the shoreline setback shall include a site-suitable stormwater management plan for the entire developed parcel, which meets the requirements of the Land Development Regulations;
2. Proposed development projects shall require approval or waiver by the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers prior to issuance of a Village building permit;
3. All structures within the shoreline setback shall be located such that the open space ratios for the entire parcel and all scenic corridors and bufferyards are maintained;
4. Structures shall be located in existing cleared areas before encroaching into native vegetation. The remaining upland area of the shoreline setback shall be maintained as native vegetation or landscaped areas that allow infiltration of stormwater runoff;
5. Side yard setbacks must be maintained for all structures in the shoreline setback except for parallel docks, sea walls, fences, and retaining walls;
6. Pools, spas, fish cleaning tables, and similar pollutant sources may not discharge directly into surface waters. Where no runoff control structures are present, berms and vegetation shall be used to control runoff. Native vegetation shall not be removed to install berms or runoff control structures;
7. Shoreline structures shall be designed to protect tidal flushing and circulation patterns. Any project that may produce changes in circulation patterns shall be approved only after sufficient hydrographic information is available to allow an accurate evaluation of the possible impacts of the project. Previously existing manmade alterations shall be evaluated so as to determine whether more hydrological benefits will accrue through their removal as part of the project;
8. Walkways landward of MHW serving nonresidential uses or residential uses of more than three (3) dwelling units shall not exceed eight (8) feet in width. Walkways serving all other uses shall not exceed five (5) feet in width. All walkways shall be approximately perpendicular to the shoreline;
9. No development other than pile supported docks and walkways designed to minimize adverse impacts on marine turtles shall be allowed within fifty (50) feet of any portion of any beach berm complex which is known to serve as a nesting area for marine turtles (See Policy 5-1.5.2):
 - a. The fifty (50) foot setback shall be measured from either the landward toe of the most landward beach berm or from fifty (50) feet landward of MHW, whichever is less. The maximum total setback will be one hundred (100) feet from MHW pursuant to Policy 5-1.2.12; and
 - b. Structures designed to minimize adverse impacts on marine turtles will have a minimum horizontal distance of four (4) feet between pilings or other upright members and a minimum clearance of two (2) feet above grade. The entire structure must be designed to allow crawling turtles to pass underneath it moving only in a forward direction. Stairs or ramps with less than the minimum two (2) feet clearance above grade are discouraged. If built, these portions of the structure must be enclosed with vertical or horizontal barriers no more than two (2) inches apart, to prevent the entrapment of crawling turtles.

10. Special Approvals:

- a. For structures serving commercial uses, public uses, or more than three dwelling units, the Director of Planning and Development Services may approve deviations from the adopted standards as a minor conditional use. Such approval may include additional structures or uses provided that such approval is consistent with any permitted uses, densities, and intensities of the land use district, furthers the purposes of this plan, is

consistent with the general standards applicable to all uses, and the proposed structures are located in a disturbed area of an altered shoreline. Such additional uses are limited to waterfront dining areas, pedestrian walkways, public monuments or statues, informational kiosks, fuel or septic facilities and water-dependent marina uses. Any such development shall make adequate provision for a water quality-monitoring program for a period of five (5) years after the completion of the development.

The Director of Planning and Development Services may approve a variance for the following shoreline structures to provide the upland owner reasonable access to adjacent waters. The variance procedure shall be included in the Land Development Regulations to allow the minimum relaxation of the above restrictions and shall incorporate, among other criteria, requirements that such structures not be inconsistent with community character, detrimental to marine resources, do not interfere with public recreational uses in or on adjacent waters and pose no navigational or safety hazard. Structures eligible for the special variance procedure are:

- b. Structures serving three or fewer dwelling units. The Director of Planning and Development Services may approve designs that address unique circumstances such as odd shaped lots, even if such designs are inconsistent with the above standards. Such approval may be granted only upon the Director's written concurrence with the applicant's written finding that the proposed design furthers the purpose of this section and the goals of this Plan. Only the minimum possible deviation from the above standards will be allowed in order to address the unique circumstances. No such special approval will be available for after-the-fact permits submitted to remedy a Code Compliance violation;
- c. Nonconforming structures lawfully existing within the shoreline setback along manmade canals, channels, or basins, or serving three or fewer dwelling units on any shoreline, may be rebuilt in the same footprint provided that there will be no adverse impacts on stormwater runoff or navigation; and
- d. Docks or docking facilities lawfully existing along the shoreline of manmade canals, channels, or basins, or serving three or fewer dwelling units on any shoreline, to be expanded or extended beyond the size limitations contained in this section in order reach the water depths specified for docking facilities in Policy 5-1.2.4. Any dock or docking facility so enlarged must comply with all other requirements of this Plan. The variance procedure shall incorporate, among other criteria, requirements that such structures be consistent with community character, not interfere with public recreational uses in or on adjacent waters and pose no navigational or safety hazard. Due to inaccessibility to sufficient water depth, prevalence of sea turtle nesting habitat and seagrass communities, this variance procedure shall not be available for new docks located on Lower Matecumbe Key.

OBJECTIVE 5-1.3: IDENTIFY, ASSESS AND RESTRICT DEVELOPMENT IN WETLANDS

[Policy 5-1.3.1: Participate In ADID Program](#)

[Policy 5-1.3.2: Generate Wetlands Maps](#)

[Policy 5-1.3.3: Evaluate Wetlands Functional Assessment Using Keys Wetlands Evaluation Procedure \(KEYWEP\)](#)

[Policy 5-1.3.4: Analyze The Function Of Wetlands](#)

[Policy 5-1.3.5: Regulate Development In Disturbed Wetlands Through KEYWEP](#)

[Policy 5-1.3.6: Mitigate Development In Disturbed Wetlands](#)

[Policy 5-1.3.7: Require Wetland Mitigation Within The Jurisdiction Of Islamorada, Village Of Islands](#)

[Policy 5-1.3.8: Update Wetlands Data Annually](#)

Islamorada, Village of Islands shall develop an information system to be used as the basis for regulating land development activities in wetland areas, to identify potential wetland restoration sites and to identify high quality wetland sites for possible future acquisition by the Village, State and/or private non-profit conservation organization.

Policy 5-1.3.1: Participate In ADID Program

Islamorada, Village of Islands shall participate in the Florida Keys Advance Identification of Wetlands (ADID) Program. This program is designed to facilitate the regulatory process under Section 404 of the Clean Water Act of 1973 by providing comprehensive wetlands mapping and assessment information. The geographic scope of the ADID program on the islands connected by U.S. 1 includes:

1. Privately owned lands with development potential on the islands connected by U.S. 1;
2. Publicly-owned lands on the islands connected by U.S. 1; and
3. Offshore islands.

As part of the ADID Program, the Village shall:

1. Inform and educate the public regarding wetlands protection and the applications of information from the ADID Program;
2. Adopt preliminary Army Corps of Engineers (ACOE) and Department of Environmental Protection (DEP) jurisdictional lines;
3. Update wetlands spatial data on the Village's geographic information system (GIS);
4. Assigned staff of the Planning and Development Services shall attend DEP wetlands identification and delineation training sessions;
5. Assist with the development of a Florida Keys wetlands functional quality analysis;
6. Adopt the Keys Wetlands Evaluation Procedure (KEYWEP) contained in the ADID to classify wetlands;
7. Assist with the functional assessment of wetlands within the Village; and
8. Assist with ground-truthing GIS data.

Policy 5-1.3.2: Generate Wetlands Maps

Islamorada, Village of Islands shall use data made available from the ADID program and the Florida Fish & Wildlife Conservation Commissions to generate wetlands maps. These wetlands maps shall replace those currently in use by the Village. In order to prepare the new wetlands maps, the Village shall compile information obtained from the ADID Program, National Wetlands Inventory (NWI) and the FWCC in the Geographic Information System (GIS). The maps and/or overlays shall show:

1. All undisturbed and disturbed marine and freshwater wetlands by vegetative cover type;
2. Advisory ACOE and DEP jurisdictional lines mapped as part of the ADID Program; and
3. Wetland 'suitable/unsuitable' designations with respect to ACOE Section 404 permitted activities mapped as part of the ADID Program.

Policy 5-1.3.3: Evaluate Wetlands Functional Assessment Using Keys Wetlands Evaluation Procedure (KEYWEP)

As part of the ADID Program, Islamorada, Village of Islands shall continue to use the Keys Wetlands Evaluation Procedure (KEYWEP) as the methodology for determining wetlands functionality. This methodology is tailored for use in the Florida Keys and is based upon habitat suitability, water quality and flood flow alteration functions of marine and freshwater wetlands.

Policy 5-1.3.4: Analyze The Function Of Wetlands

As part of the ADID Program, Islamorada, Village of Islands, EPA, FWS and FWCC will continue to jointly carry out the functional analysis of wetlands. This shall be completed on all wetland vegetative cover areas within improved subdivisions and on selected sites outside improved subdivisions, according to statistically valid selected sample locations for each wetland vegetative cover type. In addition to the functional analysis, the field team shall ground-truth the wetland vegetative cover maps using a differential global positioning system. The wetland vegetative cover boundaries in the GIS shall be revised to reflect results of the ground-truthing.

Policy 5-1.3.5: Regulate Development In Disturbed Wetlands Through KEYWEP

The development potential of disturbed wetlands will be determined through the KEYWEP quality ranking system as follows:

1. **'Red-Flag' Wetlands:** Wetlands whose high level of functional capacity and lack of disturbance prohibit development under any circumstances. This classification is given to wetlands meeting specific criteria in the KEYWEP and are of obvious exceptionally high value avoiding the expenditure of significant resources on the assessment of the wetland;
2. **High Functional Capacity Wetlands:** Wetlands which score 5.5 or higher regardless of previous disturbance. Development is prohibited under any circumstances. These wetlands exhibit the greatest number of beneficial functions to the highest measurable degree, most notably habitat and landscape function;
3. **Moderate Functional Capacity Wetlands:** Wetlands, which score between 4.6 and 5.4. These wetlands exhibit moderate functionality and are suitable for development with appropriate mitigation; and
4. **Low Functional Capacity Wetlands:** Wetlands, which score less than 4.6 or are assigned a 'green-flag' designation as suitable for development. These wetlands are suitable for development with appropriate mitigation. These wetlands exhibit low functionality.

Policy 5-1.3.6: Mitigate Development In Disturbed Wetlands

Islamorada, Village of Islands shall maintain Land Development Regulations, which apply the accepted ACOE/DEP methodology for calculating the mitigation value of disturbed wetlands identified as developable through the KEYWEP. The debit value will be calculated based on the quality and the size of the wetland area to be developed.

Policy 5-1.3.7: Require Wetland Mitigation Within The Jurisdiction Of Islamorada, Village Of Islands

Islamorada, Village of Islands shall execute a Memorandum of Understanding with the ACOE to ensure that all required wetland mitigation take place within the Village.

Policy 5-1.3.8: Update Wetlands Data Annually

Islamorada, Village of Islands shall update the wetlands data annually in the Geographic Information System to reflect information obtained during wetlands permitting and wetland impact mitigation during the preceding year.

OBJECTIVE 5-1.4: ELIMINATE THE LOSS OF UNDISTURBED WETLANDS

Policy 5-1.4.1: Mandate Open Space In Undisturbed Wetlands

Islamorada, Village of Islands shall eliminate the loss of undisturbed wetlands, as identified in the ADID, through open space requirements.

Policy 5-1.4.1: Mandate Open Space In Undisturbed Wetlands

The open space requirement in undisturbed wetlands shall be 100% of the following types of wetlands, except pile supported structures which are permitted under Objective 5-1.2:

1. Submerged lands;
2. Mangroves;
3. Salt ponds;
4. Salt marsh and buttonwood wetlands;
5. Freshwater wetlands; and
6. Freshwater ponds.

Wetlands require a 100% open space requirement for undisturbed wetlands and by requiring a fifty (50) foot buffer around freshwater resources. No fill or structures shall be permitted in mangrove wetlands except for elevated, pile-supported walkways, docks, observation platforms, piers and utility pilings. Allocated density (dwelling units per acre) shall be assigned to freshwater wetlands and undisturbed salt marsh and buttonwood wetland only for use as transferable development rights away from these habitats. Submerged lands, salt ponds, freshwater ponds and mangroves shall not be assigned any density or intensity.

OBJECTIVE 5-1.5: ESTABLISH LAND USE CONTROLS AND CONSTRUCTION STANDARDS FOR PROTECTING THE NATURAL SHORELINE, INCLUDING BEACHES AND BERMES

Policy 5-1.5.1: Maximize Protection Of Sea Turtles

Policy 5-1.5.2: Protect Sea Turtles From Land Development Activities

Policy 5-1.5.3: Support The Efforts Of Save A Turtle, Inc.

Policy 5-1.5.4: Attend Sea Turtle Training

Policy 5-1.5.5: Identify Sea Turtle Nesting Areas

Policy 5-1.5.6: Stabilize Natural Shoreline And Beach Or Berm

Policy 5-1.5.7: Maintain Beach Re-Nourishment Standards

Policy 5-1.5.8: Restrict Operation Of Vehicles On Beaches And Shorelines

Policy 5-1.5.9: Maintain And Re-Establish The Beach And Berm System

Policy 5-1.5.10: Prohibit Activities Involving Direct Illumination Of Designated Sea Turtle Nesting Areas

Policy 5-1.5.11: Maintain Procedures For Enforcement And Penalties

Policy 5-1.5.12: Restore Modified Shorelines On Open Water

Within one year of the effective date of the Comprehensive Plan, Islamorada, Village of Islands shall adopt Land Development Regulations regulating construction of man-made structures on publicly owned beaches, except beach access structures compliant with construction standards of the State Division of Beaches and Shores. Additionally, water dependent structures such as lifeguard stands or beach re-nourishment may be constructed if such structures meet the construction standards of Federal and State agencies having jurisdiction. No vegetation shall be removed unless the applicant agrees to a mitigation plan to ensure that re-vegetation occurs.

Policy 5-1.5.1: Maximize Protection Of Sea Turtles

Land Development Regulations shall maximize protection of sea turtles and such regulations shall apply to existing and new development and shall generally accomplish the following:

1. Prohibit activities disruptive to sea turtles;
2. Establish standards for preventing interior or exterior lighting from illuminating nesting areas during the nesting season;
3. Establish standards for mechanical beach cleaning; and
4. Protect sea turtles from predation.

Any such development activity must include measures to restore the beach and vegetation pursuant to a plan approved by Federal and State agencies having appropriate jurisdiction. Existing vegetation shall not be removed unless the applicant agrees to a mitigation plan to ensure that re-vegetation occurs.

Appropriate Federal and State agencies having jurisdiction shall approve mitigation plans and establish the appropriate re-vegetation ratio in cooperation with the Planning and Development Services Department.

Policy 5-1.5.2: Protect Sea Turtles From Land Development Activities

Islamorada, Village of Islands shall protect sea turtles from land development activities. Land Development Regulations shall be maintained to accomplish the following:

1. Restrict existing and prohibit new beachfront outdoor lighting in the vicinity of nesting areas;
2. Prohibit structures within fifty (50) feet of the crest of the landward toe of the beach or berm for any beach which is known to serve as an active nesting area, where a beach or berm cannot be determined a one hundred (100) foot setback from the mean high water line shall be required; and
3. Establish general standards for coastal construction in the vicinity of active nesting areas; and
4. Require removal of invasive exotic vegetation from development sites with beach or berm as a condition of development approval for adjacent uplands.
5. Beaches known to serve as nesting areas for sea turtles are those areas documented as such on the Village's threatened and endangered species maps and any areas for which nesting or nesting attempts ('crawls') have been otherwise documented. Within mapped nesting areas, the Director of Planning and Development Services may, in cooperation with the Florida Department of Environmental Protection, determine that specific segments of shoreline have been previously, lawfully altered to such a degree that suitable nesting habitat for sea turtles is no longer present. In such cases, the Director may recommend reasonable measures to restore the nesting habitat. If such measures are not feasible, the Director will waive the setback requirements of this paragraph. Restoration of suitable nesting habitat will be required for unlawfully altered beaches.

Policy 5-1.5.3: Support The Efforts Of Save A Turtle, Inc.

Islamorada, Village of Islands shall support and, when appropriate, assist the conservation efforts of Save A Turtle, Inc.

Policy 5-1.5.4: Attend Sea Turtle Training

Staff of the Planning and Development Services shall attend routine DEP training sessions in sea turtle handling. This training shall qualify staff to handle marine turtles and their eggs, as appropriate, when they are observed during beach site inspections.

Policy 5-1.5.5: Identify Sea Turtle Nesting Areas

Islamorada, Village of Islands shall identify beach-nesting habitat of sea turtles as priority acquisition sites for conservation purposes. Particular emphasis shall be placed upon acquisition of undisturbed beaches which are located within platted subdivisions with infrastructure.

Policy 5-1.5.6: Stabilize Natural Shoreline And Beach Or Berm

Land Development Regulations shall specify criteria for beach re-nourishment projects. Shoreline development shall be restricted in order to preserve natural shorelines, beaches, and berms. Rigid shore protection structures shall not be permitted. When beach re-nourishment projects are needed, the berm system shall be restored, as necessary, utilizing native vegetation. Sand used in beach re-nourishment projects must meet all applicable criteria for maintenance and enhancement of sea turtle nesting habitat, including grain size, color, composition, and percent clay. Restoration to the natural shoreline will be performed using the best science and management practices available, including monitoring which will include characterizing the shoreline's health.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-1.5.7: Maintain Beach Re-Nourishment Standards

Any proposed beach re-nourishment project shall meet standards of best management practices and shall receive permits from all Federal and State agencies having jurisdiction, including the DEP. Sand used in beach re-nourishment projects must meet all applicable criteria for the maintenance and enhancement of sea turtle nesting habitat, including grain size, composition and percent clay. Islamorada, Village of Islands shall maintain Land Development Regulations that contain specific criteria for beach re-nourishment projects.

Policy 5-1.5.8: Restrict Operation Of Vehicles On Beaches And Shorelines

Islamorada, Village of Islands shall continue to enforce restrictions that prohibit any motorized vehicle on any Village beach or shoreline, except mechanical beach cleaning equipment, public safety and emergency vehicles, and vehicles permitted by the DEP.

Policy 5-1.5.9: Maintain And Re-Establish The Beach And Berm System

Islamorada, Village of Islands Land Development Regulations shall require beach and system restoration where development is proposed on the upland adjacent to disturbed beach and/or berm habitats.

Policy 5-1.5.10: Prohibit Activities Involving Direct Illumination Of Designated Sea Turtle Nesting Areas

Islamorada, Village of Islands shall prohibit activities involving direct illumination of designated sea turtle nesting areas at nighttime during the nesting season for the protection of nesting females, nests, and hatchling marine turtles, including:

1. The operation of all motorized vehicles except emergency and law enforcement vehicles or those permitted on the beach for marine turtle conservation or research; and
2. The building of campfires or bonfires.

Policy 5-1.5.11: Maintain Procedures For Enforcement And Penalties

Land Development Regulations shall be maintained which establish penalties for non-compliance with sea turtle protection policies sufficient to discourage violations. Enforcement capability should be adequate to respond to possible violations within the timeframe necessary to prevent continued and prolonged impacts to marine turtles and hatchlings.

Policy 5-1.5.12: Restore Modified Shorelines On Open Water

Within one (1) year of the effective date of the Comprehensive Plan, Islamorada, Village of Islands shall adopt Land Development Regulations that require properties with hardened shorelines on open water to submit an implementation plan for restoration of the natural shoreline when undergoing new development or substantial improvement to existing development. The restoration must occur prior to the proposed construction to the maximum extent practicable as determined by the Planning and Development Services Director. The posting of bonds or other sureties pursuant the Land Development Regulations will be acceptable.

OBJECTIVE 5-1.6: MINIMIZE COASTAL HAZARDS

[Policy 5-1.6.1: Coastal High Hazard Area Defined](#)

[Policy 5-1.6.2: Manage Coastal Hazards And Coordinate Updates Of The Hazard Mitigation Plan](#)

[Policy 5-1.6.3: Maintain A Local Hazard Mitigation Strategy And Post Disaster Redevelopment Program](#)

[\[Policy 5-1.6.4 Deleted Pursuant To Ordinance No 09-23\]](#)

[Policy 5-1.6.5: Identify Areas Particularly Susceptible To Damage Within The CHHA](#)

[Policy 5-1.6.6: Limit Redevelopment In CHHA](#)

[Policy 5-1.6.7: Restore Or Enhance Disturbed Or Degraded Natural Resources](#)

[Policy 5-1.6.8: Implement General Hazard Mitigation By Restricting The Density/Intensity Of Development](#)

[Policy 5-1.6.9: Identify The Erosion And Sedimentation Problem Areas](#)

[Policy 5-1.6.10: Identify Shorelines With Serious Erosion Problems](#)

Land Development Regulations shall be maintained which regulate development activities in a manner that minimizes the danger to life and property occasioned by hurricane events.

Policy 5-1.6.1: Coastal High Hazard Area Defined

As defined by F.S. § 163.3178 the coastal high hazard area is the area below the elevation of the category 1 storm surge line as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model.

Policy 5-1.6.2: Manage Coastal Hazards And Coordinate Updates Of The Hazard Mitigation Plan

Islamorada, Village of Islands shall continue to participate in the Monroe County Technical Coordinating Committee to prepare the hazard mitigation component of the Local Mitigation Strategy Plan. The Village shall enforce more restrictive land use controls within the coastal high hazard area than in areas outside of the coastal high hazard, including but not limited to:

1. Mandating that all development and redevelopment within the coastal high hazard area comply with the following regulatory techniques for hazard mitigation:
 - a. State and local regulations to establish shoreline setbacks, as well as applicable State and local construction codes regulating construction activity in coastal areas;
 - b. Surface water management improvements, which mitigate loss of floodplain and comply with adopted surface water management level of service standards for drainage;

- c. Publicly funded infrastructure shall not be built within the coastal high hazard area unless the facility is for the protection of public health, safety and welfare; and
- d. Land use controls shall ensure that wetlands are preserved and protected from the adverse impacts of development.

- 2. A multi-agency site plan review process shall be initiated to ensure that all proposed development or redevelopment having potential adverse impacts on water quality, wetlands, shoreline stabilization, natural habitats, fish or wildlife, hurricane evacuation or other coastal resources shall be coordinated with County, State, Federal or regional agencies having jurisdiction. A primary function of this review process shall be to effectively reconcile hazard mitigation issues prior to issuance of any development orders.

Policy 5-1.6.3: Maintain A Local Hazard Mitigation Strategy And Post Disaster Redevelopment Program

Islamorada, Village of Islands shall implement a Local Mitigation Strategy for hazard mitigation and a Post Disaster Redevelopment Plan to increase public safety and reduce damages and public expenditures.

[Policy 5-1.6.4 Deleted Pursuant To Ordinance No 09-23]

Policy 5-1.6.5: Identify Areas Particularly Susceptible To Damage Within The CHHA

The Local Mitigation Strategy shall identify areas particularly susceptible to damage within the CHHA, including FEMA designated V-zones within the Village and repetitive loss areas as defined by FEMA's analytical model, and shall specify procedures for relocating or replacing public infrastructure away from these locations, where feasible. Working in coordination with County, State, and Federal agencies and programs, including the Flood Mitigation Assistance Program (FMAP), Repetitive Flood Claims (RFC), and Severe Repetitive Loss (SRL), the Village will continue to work with the State of Florida Division of Emergency Management, the Federal Emergency Management Agency, and the National Flood Insurance Program to mitigate flooding hazards through the acquisition, elevation, or relocation mitigation alternatives.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-1.6.6: Limit Redevelopment In CHHA

Islamorada, Village of Islands shall limit redevelopment in areas within the CHHA shown by the Local Mitigation Strategy to be particularly susceptible to repeated damage. Criteria for assessing redevelopment potential for these properties shall be addressed within the Post Disaster Redevelopment Plan, to be prepared pursuant to Policy 5-1.6.3. The Village shall work to reduce population densities within the CHHA upon redevelopment. Structures that are storm damaged over 50% of their most recent appraised value may be reconstructed only when the entire structure will then conform to all applicable regulations, including all land development regulations, and Florida Building Codes and coastal construction codes. The Village will develop and support public and private projects and programs to retrofit, relocate, or acquire properties susceptible to repetitive flooding.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-1.6.7: Restore Or Enhance Disturbed Or Degraded Natural Resources

Islamorada, Village of Islands shall maintain a framework to restore or enhance publicly owned disturbed or degraded natural resources, including beaches and dunes, estuaries, wetlands and

drainage systems, and shall maintain regulations to mitigate future disruptions or degradations.

Policy 5-1.6.8: Implement General Hazard Mitigation By Restricting The Density/Intensity Of Development

Maximum densities and intensities within the Coastal High Hazard Area shall be restricted by the densities and intensities established pursuant to the Policy 1-2.1.4, in conjunction with open space requirements established by Policy 1-2.1.6, of the Future Land Use Element of this Plan. Based upon the findings of the adopted Local Mitigation Strategy, within the Land Development Regulations, densities and intensities permitted within locations indicated by the Local Mitigation Strategy may be further restricted.

Policy 5-1.6.9: Identify The Erosion And Sedimentation Problem Areas

Islamorada, Village of Islands shall identify erosion and sedimentation problem areas within its jurisdiction. The adopted Stormwater Management Master Plan addresses drainage improvements required for these areas to mitigate erosion and sedimentation problems.

Policy 5-1.6.10: Identify Shorelines With Serious Erosion Problems

Islamorada, Village of Islands shall identify shoreline areas on public and private lands where there is evidence of serious shoreline erosion and shall assess options for shoreline stabilization consistent with Policies 5-1.1.2, 3, 4, and 5.

OBJECTIVE 5-1.7: IMPLEMENT POLICIES CONTROLLING POLLUTANT DISCHARGES INTO SURFACE WATERS FROM DREDGE AND FILL ACTIVITIES

[Policy 5-1.7.1: Support County, State And Federal Policies](#)

[Policy 5-1.7.2: Prohibit New Dredging](#)

[Policy 5-1.7.3: Protect Seagrass And Facilitate The Establishment Of Marine Vegetation](#)

[Policy 5-1.7.4: Placement Of Dredged Spoil](#)

[Policy 5-1.7.5: Prohibit The Placement Of Fill In VE Flood Zones](#)

[Policy 5-1.7.6: After The Fact Permits For Dredge And Fill](#)

[Policy 5-1.7.7: Develop Monetary Penalties For Dredge And Fill Violations](#)

Land Development Regulations shall be maintained that continue to implement policies controlling pollutant discharges into surface waters from dredge and fill activities.

Policy 5-1.7.1: Support County, State And Federal Policies

Islamorada, Village of Islands shall support County, State and Federal policies and regulations concerning the permitting of dredge and fill activity, except in those instances where more stringent regulations, as adopted by the Village, shall supersede other agency standards.

Policy 5-1.7.2: Prohibit New Dredging

No new dredging shall be permitted within the Islamorada, Village of Islands.

Policy 5-1.7.3: Protect Seagrass And Facilitate The Establishment Of Marine Vegetation

No maintenance dredging shall be permitted within areas vegetated with seagrass beds or characterized by hard bottom communities except for maintenance in public navigation channels. To facilitate the establishment of bottom vegetation, maintenance dredging in artificial waterways shall not exceed depths greater than minus six (-6) feet mean low water (MLW).

Policy 5-1.7.4: Placement Of Dredged Spoil

All dredged spoil resulting from maintenance dredging shall be placed on permitted upland sites where drainage can be contained on-site.

Policy 5-1.7.5: Prohibit The Placement Of Fill In VE Flood Zones

Land Development Regulations shall prohibit the placement of fill in VE Flood Zones, unless specifically allowed as part of a permitted beach re-nourishment project.

Policy 5-1.7.6: After The Fact Permits For Dredge And Fill

No 'after-the-fact' permits shall be issued that violate Islamorada, Village of Islands dredge and fill regulations. All illegal structures and fill shall be removed and damages mitigated.

Policy 5-1.7.7: Develop Monetary Penalties For Dredge And Fill Violations

Islamorada, Village of Islands shall maintain a schedule of monetary penalties that provides for fair and equitable penalties for all dredge and fill violations. Penalty revenues obtained from these violations shall be set aside and used specifically for water quality enhancement projects.

OBJECTIVE 5-1.8: LIMIT PUBLIC SUBSIDY OF DEVELOPMENT IN THE COASTAL HIGH HAZARD AREA

[Policy 5-1.8.1: Inventory Existing Infrastructure In The Coastal High-Hazard Area](#)

[Policy 5-1.8.2: Restrict Future Infrastructure In The Coastal High Hazard Area](#)

[Policy 5-1.8.3: Limit Public Expenditures In The CHHA](#)

Islamorada, Village of Islands shall continue to limit public expenditures that subsidize private development permitted in the coastal high hazard area, including high velocity storm surge areas. However, public funds for improved public facilities, such as improvements to roads, potable water, wastewater or drainage included in the Capital Improvements Element and water dependent structures, such as beach access ways, piers and beach re-nourishment activities, may be permitted where consistent with the Land Development Regulations and approved by State and Federal agencies having jurisdiction.

Policy 5-1.8.1: Inventory Existing Infrastructure In The Coastal High-Hazard Area

Islamorada, Village of Islands shall maintain a list of infrastructure facilities located in the Coastal High-Hazard Area (CHHA), which could be relocated, mitigated or replaced, should State funding become available for such activities. Infrastructure is defined as roads, bridges, stormwater and wastewater management systems and potable water facilities. The Village shall give priority for relocating, mitigating or replacing infrastructure facilities located in the high velocity storm surge areas.

Policy 5-1.8.2: Restrict Future Infrastructure In The Coastal High Hazard Area

Islamorada, Village of Islands shall continue to allow infrastructure facilities to be constructed within the CHHA provided that the facilities are necessary to serve the existing and/or future population projected in the Comprehensive Plan, and are constructed in a manner that minimizes the impacts from storm events if required to address an existing condition.

Policy 5-1.8.3: Limit Public Expenditures In The CHHA

Islamorada, Village of Islands shall limit public expenditures for infrastructure improvements, which subsidize development in designated coastal high hazard areas. Infrastructure improvements are defined as those activities (construction of roads, bridges, sewer and water plants), which lead to an increase in the capacity of a facility and allow for an additional number of facility users. Improvements to a facility which address an existing deficiency are not governed by this policy.

OBJECTIVE 5-1.9: AVOID POPULATION CONCENTRATIONS IN THE COASTAL HIGH HAZARD AREA

[Policy 5-1.9.1: Restrict Development In Coastal High Hazard Areas](#)

[Policy 5-1.9.2: The CHHA Shall Include FEMA Velocity Zones](#)

Islamorada, Village of Islands shall direct population concentrations away from the Coastal High Hazard Area (CHHA) by not increasing the density of residential development and redevelopment within the CHHA above what is allowed by Policy 1-2.1.4. This policy mandates maximum density thresholds for properties within the CHHA. The density threshold varies with the severity of environmental constraints of each site and the proximity of the site to the shoreline. The intent of the density allocation is to direct population concentrations away from CHHA to the greatest extent consistent with the State Comprehensive Plan's private property rights goal and related policies.

Policy 5-1.9.1: Restrict Development In Coastal High Hazard Areas

Islamorada, Village of Islands shall continue to allow development within the CHHA. However, the Village shall direct population concentrations, including non-residential development away from the areas designated as high velocity storm surge area. Residential development and/or redevelopment in the CHHA shall not exceed the residential densities as adopted under Policy 1-2.1.4 for that property.

Policy 5-1.9.2: The CHHA Shall Include FEMA Velocity Zones

Coastal High Hazard Areas shall include those areas within the Federal Emergency Management Agency designated V (velocity) zones and those areas which are seaward of the coastal construction control line.

OBJECTIVE 5-1.10: COORDINATE HURRICANE EVACUATION

[Policy 5-1.10.1: Provide Hurricane Evacuation Logistical Support](#)

[Policy 5-1.10.2: Coordinate With Monroe County In Emergency Preparedness](#)

[Policy 5-1.10.3: Ensure Village Hurricane Preparedness](#)

[Policy 5-1.10.4: Designate US 1 The Primary Evacuation Route](#)

[Policy 5-1.10.5: Ensure A Quick Re-Entry Into The Village Following An Evacuation](#)

Islamorada, Village of Islands shall coordinate with Monroe County in hurricane evacuation through the implementation of the following policies:

Policy 5-1.10.1: Provide Hurricane Evacuation Logistical Support

In order to prevent evacuees crowding roads and shelters, Islamorada, Village of Islands shall coordinate with Monroe County in disseminating information concerning the need of residents to evacuate at various hurricane threat levels. The Village shall coordinate with the Monroe County Emergency Management Director in assisting implementation of the Monroe County campaign to educate the general citizenry regarding emergency preparedness plans, including specific citizen directives.

Policy 5-1.10.2: Coordinate With Monroe County In Emergency Preparedness

In order to provide for safe and efficient evacuation of the residents of Islamorada in the event of a hurricane, Islamorada, Village of Islands shall coordinate with Monroe County in annually updating the Local Mitigation Strategy Plan and in updating hurricane evacuation shelter assignments as well as other policy formulation surrounding land use and emergency preparedness. This update shall enable Monroe County and the incorporated municipalities to plan for future population densities, which will neither adversely impact the efficiency of the evacuation plan nor increase evacuation times.

Policy 5-1.10.3: Ensure Village Hurricane Preparedness

Islamorada, Village of Islands shall maintain an operational policy for managing public facilities, including transportation, in the event of a major hurricane. The operational policy will identify a strategy for ensuring a safe and efficient Post Disaster Management Plan. In addition, the Village will participate in the State's Carrying Capacity and Hurricane Evacuation studies, and shall evaluate the findings and recommendations and where appropriate and based on a finding that the recommendations of these studies are consistent with the goals and objectives of the Comprehensive Plan, shall amend the Comprehensive Plan.

Policy 5-1.10.4: Designate US 1 The Primary Evacuation Route

Islamorada, Village of Islands shall designate U.S. 1 as the primary evacuation route out of Islamorada as part of the Peacetime Emergency Plan. Pursuant to Policy 2-1.6.3 of the Transportation Element, the Village shall cooperate with other Monroe County jurisdictions to work towards achieving and maintaining a 24-hour evacuation of the Florida Keys.

Policy 5-1.10.5: Ensure A Quick Re-Entry Into The Village Following An Evacuation

Islamorada, Village of Islands shall work with the appropriate agencies to develop a program for ensuring quick re-entry by Village residents into Islamorada following an evacuation.

OBJECTIVE 5-1.11: FACILITATE POST-DISASTER REDEVELOPMENT

[Policy 5-1.11.1: Recovery Operations](#)

[Policy 5-1.11.2: Conduct Post Hurricane Assessments](#)

[Policy 5-1.11.3: Coordinate Repair And Clean Up](#)

[Policy 5-1.11.4: Propose Hazard Mitigation And Comprehensive Plan Amendments](#)

[Policy 5-1.11.5: Manage Redevelopment Activities](#)

[Policy 5-1.11.6: Review Post Disaster Management Alternatives](#)

[Policy 5-1.11.7: Maintain A Contingency Fund For Disaster Assistance](#)

[Policy 5-1.11.8: Regulate Redevelopment Of Non-Conforming Structures](#)

The Local Mitigation Strategy Plan shall be updated every five years in coordination with the Monroe County Local Mitigation Work Group to reduce or eliminate exposure of human life and public and private property to natural hazards. In addition, the Village shall develop local plan components including development of policies for managing recovery operations through the Recovery Task Force.

Policy 5-1.11.1: Recovery Operations

Islamorada, Village of Islands shall ensure that the Local Mitigation Strategy includes strategies for post-disaster recovery operations. As part of the post disaster recovery planning process the Village Council shall appoint a Recovery Task Force comprised of the Village Manager, the Assistant Village Manager, the Planning and Development Services Director and others as determined by the Village Council. The Recovery Task Force shall be responsible for assessing the conditions following a hurricane or other similar disaster and shall propose strategic actions necessary to establish order and reestablish communication and basic service delivery systems necessary for health, safety and welfare.

Policy 5-1.11.2: Conduct Post Hurricane Assessments

The Recovery Task Force shall coordinate their management plan with the Monroe County Emergency Management Office for compliance with the Local Peacetime Emergency Plan and shall present the management plan to the Village Council for review and approval. The management plan should provide a basis for considering the following activities during times of natural disaster:

1. Ensure a means to restore economic activity;
2. Establish a framework for deciding whether to implement a temporary moratorium on building activity as may be required for public safety;
3. Develop procedures for reviewing and deciding upon emergency building permits;
4. Coordinate with State and Federal officials to prepare disaster assistance applications;
5. Analyze and recommend to the Village Council hazard mitigation options, including reconstruction or relocation of damaged public facilities;
6. Develop a redevelopment plan; and
7. Recommend amendments to the Local Peacetime Emergency Plan and other appropriate policies and procedures.

Policy 5-1.11.3: Coordinate Repair And Clean Up

In planning post-disaster redevelopment activities, factors to be considered in order to protect the public health and safety shall include:

1. Repairs to potable water, wastewater and power facilities;
2. Removal of debris;
3. Stabilization or removal of structures in a perilous condition;
4. Minimal repairs to make structures habitable; and
5. Emergency repairs related to environmental damage.

These considerations shall receive first priority when determining the appropriateness of emergency building permits. Long term redevelopment activities shall be postponed until the Recovery Task Force has coordinated immediate repair and clean-up operations.

Policy 5-1.11.4: Propose Hazard Mitigation And Comprehensive Plan Amendments

The Recovery Task Force shall propose needed Comprehensive Plan amendments to reflect the recommendations, contained in any inter-agency hazard mitigation reports or other reports.

Policy 5-1.11.5: Manage Redevelopment Activities

Islamorada, Village of Islands shall manage unanticipated future redevelopment activities necessitated by hurricane events or other natural disasters through this Comprehensive Plan and adopted Land Development Regulations.

Policy 5-1.11.6: Review Post Disaster Management Alternatives

The Recovery Task Force shall be charged with the responsibility for reviewing available alternatives for managing damaged public facilities following a hurricane event. The Task Force shall evaluate future options for such facilities including, but not limited to abandonment, repair in place, relocation and reconstruction with structural modifications. The Task Force shall consider these options based on the following considerations:

1. Construction and maintenance costs;
2. Recurring damages;

3. Impacts on land use, the environment, and the public sector;
4. Repair to any public facilities that shall be deemed historic structures according to the inventory of the National Register of Historic Places shall be guided by the Secretary of the Interior's Guidelines for Rehabilitation; and
5. Other relevant factors.

Policy 5-1.11.7: Maintain A Contingency Fund For Disaster Assistance

Islamorada, Village of Islands shall maintain a contingency fund in order to cover the Village's required match for disaster assistance grants.

Policy 5-1.11.8: Regulate Redevelopment Of Non-Conforming Structures

If a non-conforming structure is substantially damaged (based on the definition in F.S. Ch. 161) or abandoned, it shall be rebuilt only to the extent that complies with the current Flood Plain Management standards for the affected property.

OBJECTIVE 5-1.12: REGULATE ACCESS TO PUBLIC BEACHES AND SHORELINES

[Policy 5-1.12.1: Maintain Designated Beach Accesses](#)

[Policy 5-1.12.2: Provide Beach Access At Publicly Funded Oceanfront Developments](#)

[Policy 5-1.12.3: Consider Scenic Views In Site Plans](#)

[Policy 5-1.12.4: Enforce Resilient Access To Shoreline](#)

Islamorada, Village of Islands shall maintain land use policies that promote continuance of the existing shoreline access and water dependent and related activities described in the Coastal Management Element data inventory and analysis. Beaches shall remain unobstructed and, to the extent lawful, no barriers shall be erected which prevents pedestrian access along the shoreline, subject to reasonable regulations, such as closing times, access, protection of endangered species and use. As such, the Village shall enforce standards contained within the following policies:

Policy 5-1.12.1: Maintain Designated Beach Accesses

Islamorada, Village of Islands shall continue to maintain all designated public beach access points.

Policy 5-1.12.2: Provide Beach Access At Publicly Funded Oceanfront Developments

Publicly funded projects that improve, change or in some way support shorefront development shall provide for public access to the shoreline, as well as the necessary support facilities and services, such as boardwalks, beach/dune walkovers, parking lots and restrooms.

Policy 5-1.12.3: Consider Scenic Views In Site Plans

The Land Development Regulations shall include stipulations requiring site plans for waterfront sites to include design measures, which provide, enhance and preserve scenic views of the water from public rights-of-way. Structures along the shoreline shall be regulated through the Land Development Regulations that prevent walling-off of water front views. Site plan and building criteria in the Land Development Regulations shall also prevent adverse impacts on natural coastal resources.

Policy 5-1.12.4: Enforce Resilient Access To Shoreline

Islamorada, Village of Islands hosts a fragile ecosystem, and in order to protect this ecosystem, the Village will allow access to the shoreline only using public access pathways and right-of-ways, reducing the degradation of the local ecosystem and protection it offers.

OBJECTIVE 5-1.13: PROTECT HISTORIC RESOURCES

[Policy 5-1.13.1: Promote Identification Of The Village's Historic, Archaeological And Cultural Resources](#)
[Policy 5-1.13.2: Implement Performance Standards For Protecting Sites Of Historic Or Archaeological Significance](#)

Islamorada, Village of Islands shall ensure protection of historic resources and shall ensure that there shall be no loss of historic resources on Village-owned property. Land Development Regulations shall ensure that historic resources on public and private property shall be protected, preserved or re-used in a manner sensitive to the historic properties of the site and/or structure.

Policy 5-1.13.1: Promote Identification Of The Village's Historic, Archaeological And Cultural Resources

Islamorada, Village of Islands shall ensure that all municipal actions encourage and promote the preservation of the Village's historic resources. To this end the Village shall coordinate with the State Division of Historic Resources (DHR), local historical groups and other groups to identify, document and preserve the Village's historical, archaeological and cultural resources. The Village shall update the Historic and Archeological Resource Map as data becomes available and is approved by the DHR.

Policy 5-1.13.2: Implement Performance Standards For Protecting Sites Of Historic Or Archaeological Significance

Land Development Regulations shall address adverse impacts to historic or archaeological sites of significance created by development or redevelopment of the site.

OBJECTIVE 5-1.14: IDENTIFY PUBLIC FACILITY LEVEL OF SERVICE STANDARDS IN THE COASTAL AREA

[Policy 5-1.14.1: Ensure Available Infrastructure And Coordinate Timing And Staging Of Public Facilities With Private Development](#)

Islamorada, Village of Islands adopts those levels of service standards for infrastructure in the coastal area as cited in Policy 4-1.1.2 of the Public Facilities Element and the Concurrency Management System cited in Policy 9-1.2.1 of the Capital Improvements Element.

Policy 5-1.14.1: Ensure Available Infrastructure And Coordinate Timing And Staging Of Public Facilities With Private Development

Islamorada, Village of Islands shall maintain Land Development Regulations which ensure that future development is directed only to those areas where public facilities, which meet the Village's adopted level of service standards, are available concurrent with the impacts of the development or redevelopment. The Village shall ensure that funds for future needed infrastructure improvements are phased to coincide with demands generated by development or redevelopment. The infrastructure shall be designed in a manner consistent with the existing and projected future demands generated by development and redevelopment, at the densities permitted through the Future Land Use Element of this Plan. In order to ensure appropriate timing and staging, no development order shall be granted until a plan is submitted by the developer/applicant to the Village which demonstrates that all required infrastructure shall be in place and available for use by the development concurrent with the impacts of development. The infrastructure shall also be consistent with applicable local, regional and State coastal resource protection policies.

OBJECTIVE 5-1.15: ENSURE INTERGOVERNMENTAL COORDINATION WITHIN THE COASTAL AREA

Policy 5-1.15.1: Implement Policies For Intergovernmental Coordination Within The Coastal Area

Islamorada, Village of Islands shall establish an intergovernmental coordination mechanism in order to manage coastal resources within the jurisdiction of more than one (1) local government or public agency. The Village shall assist other agencies in implementing appropriate portions of existing multi-jurisdictional resource planning and management plans addressing the coastal area, including management of surface water runoffs, impacts of development on coastal waters and living marine resources.

Policy 5-1.15.1: Implement Policies For Intergovernmental Coordination Within The Coastal Area

Islamorada, Village of Islands shall coordinate with Monroe County and appropriate regional, State and Federal agencies in managing coastal resources. Management activities shall include, but not be limited to the following:

1. The Village shall coordinate the following coastal resource management issues that transcend jurisdictional lines with Monroe County:
 - a. Participate in County forums and technical review concerning emergency preparedness and hurricane evacuation issues and update of the Peacetime Emergency Plan, including emergency management strategies for hurricanes;
 - b. Participate in technical review and in formulation of policies concerning the U.S. 1 corridor, including stormwater management policies. This activity shall also be coordinated with the State DOT;
 - c. Public access issues shall be coordinated with Monroe County, including issues surrounding maintenance and improvements; and
 - d. Issues surrounding conservation of the shoreline of the Atlantic Ocean and Florida Bay shall be coordinated with Monroe County, the U.S. Army Corps of Engineers and DEP, as appropriate.
2. Islamorada, Village of Islands shall maintain a multi-agency development review process in order to coordinate intergovernmental and resource management issues surrounding proposed development and redevelopment. Islamorada, Village of Islands shall also incorporate procedures to ensure that all issues surrounding development impacting wetlands or other resources under Federal or State jurisdiction are managed based on timely coordination, exchange of information and appropriate follow-up by the Village and all agencies having jurisdiction. The Village shall require the applicant to get jurisdictional determinations from all appropriate agencies prior to the issuance of development orders or building permits for all sites within the Village. The Village shall coordinate with the U.S. Coast Guard, U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, Florida Department of Environmental Protection, the South Florida Water Management District, the South Florida Regional Planning Council, and other Federal, State and regional agencies as may be appropriate in managing the following activities:
 - a. Islamorada, Village of Islands shall coordinate all development and resource conservation measures impacting the waters of the Atlantic Ocean and the Florida Bay with the above-cited agencies as well as other applicable public agencies. These activities shall include, but not be limited to review of proposed development potentially impacting natural resources, including development petitions for docks, shoreline

stabilization, dredging or other alteration of natural resources under Federal or State jurisdiction;

- b. All applications for development activity impacting waters of the State or other lands under the jurisdiction of the State shall be coordinated with agencies having appropriate jurisdiction;
- c. Islamorada, Village of Islands shall coordinate with technical staff within DEP and SFWMD in order to ensure implementation of sound principles and practices of coastal resource management during the development review process as well as in the formulation of policies impacting coastal resource management; and
- d. Islamorada, Village of Islands shall coordinate with the SFWMD, DEP and other appropriate State agencies in matters surrounding stormwater management, drainage, water quality and quantity and consumptive use permitting.

- 3. Islamorada, Village of Islands shall coordinate on a continuing basis with the South Florida Regional Planning Council (SFRPC) in preparing Comprehensive Plan amendments which are consistent with the South Florida Regional Planning Council Comprehensive Plan. In addition, the Village shall coordinate other planning issues of regional significance with the SFRPC. The Village shall forward copies of development proposals within the coastal area to public agencies having jurisdiction in the management of potentially impacted natural resources.

OBJECTIVE 5-1.16: CONTINUE EVALUATING COASTAL MANAGEMENT ELEMENT EFFECTIVENESS

[Policy 5-1.16.1: Review The Impact Of Changing Conditions On Coastal Management Policy](#)

[Policy 5-1.16.2: Schedule, Budget And Implement Programmed Activities](#)

[Policy 5-1.16.3: Coordinate With Public And Private Sectors](#)

[Policy 5-1.16.4: Achieve Effective Resolution Of Coastal Management Goals, Objectives And Policies](#)

Islamorada, Village of Islands shall use the following policies as criteria in evaluating the effectiveness of the Coastal Management Element.

Policy 5-1.16.1: Review The Impact Of Changing Conditions On Coastal Management Policy

Islamorada, Village of Islands shall monitor and evaluate significant changes in the characteristics of natural coastal resources. Policy implications of such changes shall be examined and corrective measures shall be pursued. Coastal management policies shall be refined as needed in order to remain responsive to evolving problems and issues.

Policy 5-1.16.2: Schedule, Budget And Implement Programmed Activities

The timely scheduling, programming, budgeting and implementation of programmed coastal management activities identified in this Element shall be evidence of the Village's effectiveness in carrying out a systematic program for implementing coastal management goals, objectives and policies.

Policy 5-1.16.3: Coordinate With Public And Private Sectors

While continually implementing and evaluating the Coastal Management Element, Islamorada, Village of Islands shall maintain a process of intergovernmental coordination as well as coordination with private sector groups interested in coastal management policy and programs. The effectiveness of this approach shall be evaluated by the success of coordination mechanisms in resolving coastal management problems and issues.

Policy 5-1.16.4: Achieve Effective Resolution Of Coastal Management Goals, Objectives And Policies

The effectiveness of the Coastal Management Element shall be measured by the Village's success in achieving coastal management goals, objectives and policies. The Coastal Management Element incorporates a systematic planning process for identifying coastal management problems and issues and implementing corrective actions.

OBJECTIVE 5-1.17: MAINTAIN CONSISTENCY WITH FEDERAL, STATE, OR REGIONAL COASTAL INITIATIVES AND PROGRAMS

[Policy 5-1.17.1: Coastal Construction Control Line](#)

[Policy 5-1.17.2: Florida Building Code](#)

[Policy 5-1.17.3: National Flood Insurance Program, Community Rating System](#)

The Village will maintain Federal, State, and regional programs that will assist in reducing flood risk to a level that is at minimum consistent with the required program, and where possible and in the best interest of the Village, more stringent than the program.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-1.17.1: Coastal Construction Control Line

The Village shall enforce all regulations pertaining to the State's Coastal Construction Control Line as established pursuant to F.S. § 161.053 to be consistent with F.S. Ch. 161.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-1.17.2: Florida Building Code

Ensure the Village remains either consistent with, or more stringent than, the building construction techniques, and additional flood resistant construction requirements within the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-1.17.3: National Flood Insurance Program, Community Rating System

The Village will continue to participate in the Community Rating System administered by the National Flood Insurance Program. The Village shall continue to strengthen their sea-level rise adaptation strategies and work to reduce flood risk and losses, to improve their Community Rating Score.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

OBJECTIVE 5-2.3: DEVELOPMENT AND REDEVELOPMENT PRINCIPLES, STRATEGIES AND SOLUTIONS TO PROTECT CRITICAL INFRASTRUCTURE FROM FLOOD EVENTS

[Policy 5-2.2.1: Implement Updated FEMA Maps](#)

[Policy 5-2.3.1: Inventory Of Critical Facilities](#)

[Policy 5-2.3.2: Strategies And Solutions To Protect Critical Facilities](#)

[Policy 5-2.3.3: Shoreline Stabilization Strategy](#)

The Village shall update data of critical facilities and create new strategies related to climate change

impacts to infrastructure and shoreline protection.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-2.2.1: Implement Updated FEMA Maps

Islamorada, Village of Islands shall implement the revised and updated FEMA flood maps upon receipt of the Final Map Determination by FEMA and evaluate floor elevation requirements, as necessary, for all new construction in vulnerable areas.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-2.3.1: Inventory Of Critical Facilities

The Village will maintain a list of critical facilities within areas vulnerable to repeat flooding and analyze the facilities' capacity to accommodate sea-level rise over the life expectancy of the infrastructure.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-2.3.2: Strategies And Solutions To Protect Critical Facilities

The Village shall develop strategies that identify how the Village will respond to impacts on critical facilities located in flood areas, considering the potential need and cost to maintain or relocate critical facilities from the areas expected to be affected.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-2.3.3: Shoreline Stabilization Strategy

The Village will enforce a shoreline stabilization strategy to protect and enhance the built and natural environments from erosion and sea-level rise impacts, prioritizing natural green infrastructure approaches. The Village shall assure shoreline stabilization strategies are found to be in the public interest while taking into consideration the Village's vulnerability to climate change impacts. The Village shall consider public access to beaches, impacts to neighboring properties and the values and functions of beaches and coastal/marine systems relative to shoreline stabilization strategies.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

OBJECTIVE 5-2.4: SITE DEVELOPMENT TECHNIQUES AND BEST PRACTICES TO MINIMIZE LOSS DUE TO FLOODING

[Policy 5-2.4.1: New Planning, Design And Permitting Standards](#)

[Policy 5-2.4.2: Monitor Changes To Road Elevation Standards](#)

[Policy 5-2.4.3: Adaptation Action Areas](#)

In compliance with F. S. 163.3178(2)(f)3, during this short-term planning period the Village will implement site development techniques and best practices that reduce losses due to flooding.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-2.4.1: New Planning, Design And Permitting Standards

The Village will incorporate a planning, design and permitting standard for infrastructure and public facilities that includes a sea-level rise assumption as developed by the Southeast Regional Climate Compact. The Village shall review and update sea-level rise projections when new and pertinent data is available.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-2.4.2: Monitor Changes To Road Elevation Standards

The Village shall coordinate with appropriate agencies to monitor changes to minimum road elevation standards which may be specific to areas within Monroe County due to its unique exposure to climate change and sea-level rise impacts. Best science available will influence the management technique(s) to be utilized.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

Policy 5-2.4.3: Adaptation Action Areas

The Village shall consider designation of "Adaptation Action Areas" with specific site development techniques and best practices to minimize losses due to flooding and claims made under flood insurance policies. New site development techniques could include living shorelines, bio-retention swales, permeable pavement and green roofs.

HISTORY

Adopted by Ord. [19-09](#) § 2 on 5/30/2019

CHAPTER 6: CONSERVATION ELEMENT

SECTION 6-1: CONSERVATION GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

State Law reference— F.A.C. Ch. 163.3177 and § 9J-5.013.

SECTION 6-1: CONSERVATION GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

GOAL 6-1: CONSERVE NATURAL AND ENVIRONMENTAL RESOURCES

This section specifies goals, objectives, and implementing policies for the Conservation Element pursuant to F.S. Ch. 163.3177(6)(d) and F.A.C. 9J-5.013(2).

GOAL 6-1: CONSERVE NATURAL AND ENVIRONMENTAL RESOURCES

OBJECTIVE 6-1.1: MAINTAIN AIR QUALITY STANDARDS

OBJECTIVE 6-1.2: ENSURE WATER, INCLUDING POTABLE WATER, AVAILABILITY

OBJECTIVE 6-1.3: PROTECT FLOODPLAIN FUNCTIONS

OBJECTIVE 6-1.4: PROTECT NATURAL RESOURCES

OBJECTIVE 6-1.5: MAINTAIN SURFACE WATER QUALITY AND QUANTITY

OBJECTIVE 6-1.6: PROTECT AND PRESERVE WETLANDS

OBJECTIVE 6-1.7: PROTECT NATIVE VEGETATION AND MARINE HABITATS

OBJECTIVE 6-1.8: HABITAT RESTORATION PROGRAM

OBJECTIVE 6-1.9: PROTECT FISHERIES, WILDLIFE AND WILDLIFE HABITATS

OBJECTIVE 6-1.10: PREVENT POTENTIAL ADVERSE IMPACTS OF FUTURE MINING OF MINERALS AND MINERAL EXCAVATION ACTIVITIES

OBJECTIVE 6-1.11: MANAGE DISPOSAL OF WASTES

OBJECTIVE 6-1.12: PROTECT ARCHAEOLOGICAL AND HISTORIC RESOURCES

OBJECTIVE 6-1.13: APPLICATION OF INNOVATIVE LAND AND WATER RESOURCE MANAGEMENT AND ENERGY CONSERVATION CONCEPTS

OBJECTIVE 6-1.14: EVALUATE THE EFFECTIVENESS OF THE CONSERVATION ELEMENT

Islamorada, Village of Islands shall conserve, manage, use and protect the natural and environmental resources within the Village based on their carrying capacity limitations to ensure continued resource availability and environmental quality.

OBJECTIVE 6-1.1: MAINTAIN AIR QUALITY STANDARDS

Policy 6-1.1.1: Support Enforcement Of Air Quality Standards

Policy 6-1.1.2: Combat Erosion And Generation Of Dust Particles

Islamorada, Village of Islands shall maintain the best possible air quality by meeting or exceeding State and Federal air quality standards through the implementation of the following policies:

Policy 6-1.1.1: Support Enforcement Of Air Quality Standards

Islamorada, Village of Islands shall support enforcement of applicable State and Federal air quality standards in order to maintain and/or improve the existing air quality.

Policy 6-1.1.2: Combat Erosion And Generation Of Dust Particles

Islamorada, Village of Islands shall require standards to prevent erosion and the generation of fugitive dust particles. These regulations shall require that measures be taken on building sites or cleared areas

to ensure that exposed, destabilized or other altered soil is covered with an acceptable erosion control material during construction and expeditiously re-vegetated when the project is complete.

OBJECTIVE 6-1.2: ENSURE WATER, INCLUDING POTABLE WATER, AVAILABILITY

[Policy 6-1.2.1: Ensure Potable Water Supply](#)

[Policy 6-1.2.2: Protect And Conserve Potable Water Supply](#)

[Policy 6-1.2.3: Coordinate Water Conservation Practices With Other Jurisdictions](#)

[Policy 6-1.2.4: Implement Water Demand Management Policies And Programs](#)

[Policy 6-1.2.5: Conserve Water During Emergencies](#)

[Policy 6-1.2.6: Coordinate With Florida Keys Aqueduct Authority](#)

Islamorada, Village of Islands shall coordinate with the Florida Keys Aqueduct Authority to secure provision of water, including potable water, in sufficient quantities to meet present and projected needs, commensurate with reasonable demand through the implementation of the following policies:

Policy 6-1.2.1: Ensure Potable Water Supply

Islamorada, Village of Islands shall ensure that existing and new development shall be serviced with an adequate supply of water, including potable water, at levels of service indicated in Policy 4-1.1.3 of the Public Facilities Element, and that, at a minimum, meets State water quality standards.

Policy 6-1.2.2: Protect And Conserve Potable Water Supply

Islamorada, Village of Islands shall continue to conserve and protect and monitor through the site plan review process, the quality of current and projected future water supply. In order to assist implementation of the water conservation policies of the South Florida Water Management District (SFWMD) and the Florida Keys Aqueduct Authority (FKAA) and to achieve a reduction in the current rates of water consumption, the following standards shall be in effect:

1. Potable water shall be conserved through enforcement of conservation measures and monitored through the site plan review process;
2. The Village shall continue to enforce the provisions of Chapter 34-34 of the Code specifically:
 - a. Chapter 34-34(a) requiring that irrigation with potable water on any property within the Village may occur between the hours of 5:00 p.m. and 9:00 a.m. only;
 - b. Chapter 34-34(b) requiring that irrigation systems installed after 2003 shall include a water sensing device that shall automatically discontinue irrigation during periods of rainfall.
3. The Village shall require the use of alternative water supplies such as treated wastewater, stormwater, cisterns and reverse osmosis systems for landscape irrigation for all new development and substantial redevelopment; and
4. The Village shall require the use of water-saving plumbing fixtures on all new development that meet or exceed the requirements of the Florida Building Code.

HISTORY

Adopted by Ord. [20-04](#) Exh. A on 8/20/2020

Policy 6-1.2.3: Coordinate Water Conservation Practices With Other Jurisdictions

Islamorada, Village of Islands shall cooperate with local, regional, State and Federal agencies to maintain adequate fresh water supplies during dry periods and to conserve water where practicable.

The Village shall coordinate with state, regional and county governments and other agencies having jurisdiction on water quantity and quality issues.

Policy 6-1.2.4: Implement Water Demand Management Policies And Programs

Islamorada, Village of Islands shall continue to cooperate with the Florida Keys Aqueduct Authority and the South Florida Water Management District to implement water demand management policies and programs consistent with the Lower East Coast Water Supply Plan Update November 8, 2018, the Florida Keys Aqueduct Authority Master Plan 2020 and the Village's Ten-Year Water Supply Facilities Work Plan 2020 Update.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 6-1.2.5: Conserve Water During Emergencies

Islamorada, Village of Islands shall cooperate with FKAA and SFWMD to conserve water resources during emergencies through the distribution of materials to the public and promoting conservation on the Village website.

HISTORY

Adopted by Ord. [20-04](#) Exh. A on 8/20/2020

Policy 6-1.2.6: Coordinate With Florida Keys Aqueduct Authority

Islamorada, Village of Islands shall update the administrative procedures, which mandates technical review of public facility plans during site plan review to be consistent with the Village's Ten-Year Water Supply Facilities Work Plan. The procedures shall continue to mandate coordination among the developer, the Village and FKAA in order to efficiently manage potable water service system issues. Islamorada, Village of Islands shall not approve any development order unless the FKAA has reviewed and approved that project's water, including potable water service system, demand needs and ensures the availability of water at adopted LOS for the proposed development. The review will occur as development applications are submitted for review through the Community Development Department.

HISTORY

Adopted by Ord. [20-04](#) Exh. A on 8/20/2020

OBJECTIVE 6-1.3: PROTECT FLOODPLAIN FUNCTIONS

[Policy 6-1.3.1: Enforce Policies To Maintain The Floodplain](#)

Islamorada, Village of Islands shall protect the natural functions of the 100-year floodplain.

Policy 6-1.3.1: Enforce Policies To Maintain The Floodplain

Islamorada, Village of Islands shall require surface water management and flood damage prevention regulations. New development encroaching into the 100-year floodplain shall incorporate flood protection measures sufficient to protect against the 100-year flood. Islamorada, Village of Islands shall maintain consistency with program policies of the National Flood Insurance Program. Islamorada, Village of Islands shall monitor new cost effective programs for minimizing flood damage. Such programs may include modification to construction setback requirements or other site design techniques, as well as upgraded building and construction techniques.

OBJECTIVE 6-1.4: PROTECT NATURAL RESOURCES

[Policy 6-1.4.1: Manage Conservation Lands](#)

[Policy 6-1.4.2: Coordinate Natural Resource Management With Appropriate Agencies](#)

[Policy 6-1.4.3: Implement The Comprehensive Plan Through Land Development Regulations](#)

[Policy 6-1.4.4: Regulate Development To Promote Natural Resource Conservation](#)
[Policy 6-1.4.5: Require Site Plan Review](#)
[Policy 6-1.4.6: Protect Flora And Fauna Having Special Status](#)
[Policy 6-1.4.7: Promote The Recovery Of Threatened And Endangered Plant Species](#)
[Policy 6-1.4.8: Develop A List Of Priority Upland Habitat Acquisition Sites](#)
[Policy 6-1.4.9: Cooperate With The Monroe County Land Authority To Acquire Land Within Islamorada, Village Of Islands](#)
[Policy 6-1.4.10: Establish Criteria For Prioritizing Sites For Conservation Purposes](#)
[Policy 6-1.4.11: Identify Native Upland Habitats Used By The Schaus' Swallowtail Butterfly](#)
[Policy 6-1.4.12: Protect The Schaus' Swallowtail Butterfly From Development Activities](#)
[Policy 6-1.4.13: Encourage The Planting Of Torchwood Within Schaus' Swallowtail Butterfly Habitat](#)
[Policy 6-1.4.14: Monitor FKAA Compliance With Federal Regulations Prohibiting Potable Water Hookups In Schaus' Swallowtail Butterfly Habitat](#)
[Policy 6-1.4.15: Protect The Florida Tree Snail From Development Activities](#)
[Policy 6-1.4.16: Identify Potential Introduction Sites For The Florida Tree Snail](#)
[Policy 6-1.4.17: Development Within Tropical Hardwood Hammock](#)
[Policy 6-1.4.18: Manage Stormwater Run-Off](#)
[Policy 6-1.4.19: Enforce Land Development Activities To Protect Natural Resources](#)

Islamorada, Village of Islands shall conserve and protect the remaining natural systems of the Village through appropriate land use designations and regulations, in recognition of the inherent values of these areas when left in their natural state. Islamorada, Village of Islands shall ensure that designated conservation land resources are protected based on locally determined criteria that further the goals, objectives and policies of the Conservation Element.

Policy 6-1.4.1: Manage Conservation Lands

Policies in this Element for managing environmentally sensitive natural systems, including but not limited to water resources, wetlands, native habitats and other natural resources shall be implemented through criteria in the Land Development Regulations. The natural resources identified in the Comprehensive Plan shall be protected and/or preserved pursuant to goals, objectives and policies stipulated in this Element. The Land Development Regulations shall provide detailed procedures and performance criteria to implement conservation and natural resource protection. However, in no instance shall Islamorada, Village of Islands adopt regulations that are less restrictive than existing Village regulations.

Policy 6-1.4.2: Coordinate Natural Resource Management With Appropriate Agencies

Islamorada, Village of Islands shall coordinate with the South Florida Water Management District, the South Florida Regional Planning Council, Monroe County, State agencies and other agencies concerned with managing natural resources. The Village may also coordinate with private environmental organizations and individuals interested in resource conservation. The goal of such coordinating activities shall be to protect the values and functions of natural systems.

Policy 6-1.4.3: Implement The Comprehensive Plan Through Land Development Regulations

Islamorada, Village of Islands shall maintain Land Development Regulations in order to:

1. Regulate future land use activities and natural resources identified on the FLUM;
2. Adequately protect property rights; and
3. Implement the goals, objectives and policies of the Comprehensive Plan.

Policy 6-1.4.4: Regulate Development To Promote Natural Resource Conservation

Islamorada, Village of Islands shall use the best available technical criteria and information to formulate regulations and ordinances which shall ensure that future development is compatible with the functioning and carrying capacity of existing natural systems and resources conservation.

Policy 6-1.4.5: Require Site Plan Review

Islamorada, Village of Islands shall require site plan review of all proposed development or redevelopment to prevent unnecessary destruction or inappropriate use of existing natural resources and natural sites. Through the site plan review process the Village shall enforce qualitative and quantitative criteria governing the management of stormwater and the preservation of open space, native vegetation and wetlands, consistent with this Plan.

Policy 6-1.4.6: Protect Flora And Fauna Having Special Status

Islamorada, Village of Islands shall restrict development activities, which may adversely impact plant and animal species designated as having endangered, threatened or special concern by a State or Federal agency. These restrictions shall also apply to the Village's list of regionally important plant species. Islamorada, Village of Islands shall further protect native plants and animals by protecting natural areas through public acquisition and encouraging the dedication of conservation easements or deed restrictions.

Policy 6-1.4.7: Promote The Recovery Of Threatened And Endangered Plant Species

Islamorada, Village of Islands shall work cooperatively with the Fish and Wildlife Service (FWS) to promote the recovery of plant species designated by the Federal government as threatened and endangered. Related activities shall include:

1. Identification of sites with key tree-cactus (*Cereus robinii*), and Small's milkpea (*Galactia smallii*);
2. Notification to the FWS when development proposals are received for sites having historic and/or current occurrences of Federally-designated plant species listed in 1., above;
3. Cooperation with the FWS in locating potential introduction sites for Federally designated plant species; and
4. Technical assistance, and where possible, financial assistance, with acquisition of:
 - a. Sites having known populations of Federally-designated plant species; or
 - b. Sites deemed highly suitable as reintroduction sites for such species.

Policy 6-1.4.8: Develop A List Of Priority Upland Habitat Acquisition Sites

As part of the Land Acquisition Program a list of priority, native upland habitat acquisition sites shall be drafted and updated annually. This list shall be developed in consultation with Department of Community Affairs, the Department of Environmental Protection, the National Audubon Society Research Department, the Nature Conservancy, the Monroe County Land Authority and other agencies as appropriate. Priority native upland vegetation acquisition sites shall include those which:

1. Are determined to be high quality habitat;
2. Include plant species of special status;
3. Are documented habitat for wildlife species of special status;

4. Are located within Improved Subdivisions; and/or
5. Are documented as significant coastal upland natural communities by the Florida Natural Areas Inventory.

Policy 6-1.4.9: Cooperate With The Monroe County Land Authority To Acquire Land Within Islamorada, Village Of Islands

Islamorada, Village of Islands Planning and Development Services Department shall work cooperatively with the Monroe County Land Authority to develop and administer the acquisition program established in Policy 1-3.1.3 to acquire environmentally sensitive lands. Islamorada, Village of Islands shall work cooperatively with the Monroe County Land Authority to develop land acquisition lists.

Policy 6-1.4.10: Establish Criteria For Prioritizing Sites For Conservation Purposes

Islamorada, Village of Islands shall continuously identify, in cooperation with the FWS and FWCC, the following as priority sites for acquisition or protection:

1. Nesting sites of the southern bald eagle (*Haliaeetus leucocephala*), osprey (*Pandion haliaetus*), the brown pelican (*Pelecanus occidentalis*) and the roseate tern (*Sterna dougallii*); and
2. Wintering grounds for the peregrine falcon (*Falco peregrinus*) and the piping plover (*Charadrius melodus*); and
3. Native upland habitats in private ownership used by species listed by a State or Federal agency as threatened or endangered, such as the Schaus' swallowtail butterfly, eastern indigo snake (*Drymarchon corais couperi*) and the white-crowned pigeon (*Columba leucocephala*); and
4. Disturbed habitat with potential for restoration or that provides wildlife corridors between existing environmentally sensitive lands or buffers environmentally sensitive lands from the encroachment of development; and
5. Transitional habitat with potential for wildlife corridors or tropical flyways.

Particular emphasis shall be placed upon acquisition of identified native upland sites located within residential subdivisions. These priority sites shall be identified on the Existing Conditions and Threatened and Endangered Animal Species Map.

Policy 6-1.4.11: Identify Native Upland Habitats Used By The Schaus' Swallowtail Butterfly

Islamorada, Village of Islands, in cooperation with the FWS and FWCC, shall identify the native upland habitats used by the Schaus' swallowtail butterfly, which are not protected in publicly-owned conservation lands.

Policy 6-1.4.12: Protect The Schaus' Swallowtail Butterfly From Development Activities

Islamorada, Village of Islands shall implement activities that prohibit the destruction of the Federally designated Schaus' swallowtail butterfly (*Heraclides aristodemus ponceanus*).

Policy 6-1.4.13: Encourage The Planting Of Torchwood Within Schaus' Swallowtail Butterfly Habitat

Islamorada, Village of Islands shall encourage planting of torchwood (*Amyris elemifera*) within the range of the Schaus' Swallowtail Butterfly habitat. Restoration sites shall be re-vegetated, in part, with torchwood. Tree donations for replacement shall include torchwood.

Policy 6-1.4.14: Monitor FCAA Compliance With Federal Regulations Prohibiting Potable Water Hookups In Schaus' Swallowtail Butterfly Habitat

Islamorada, Village of Islands shall monitor FCAA compliance with Federal regulations prohibiting potable water hookups to designated habitat areas of the Schaus, swallowtail butterfly (pursuant to FCAA Rules Chapter 48-7).

Policy 6-1.4.15: Protect The Florida Tree Snail From Development Activities

Islamorada, Village of Islands shall implement activities to prohibit the destruction of the State protected Florida Tree Snail (*Liguus fasciatus*).

Policy 6-1.4.16: Identify Potential Introduction Sites For The Florida Tree Snail

Islamorada, Village of Islands shall cooperate with the FWCC in locating potential introduction sites for the Florida Tree Snail including sites not currently in public ownership.

Policy 6-1.4.17: Development Within Tropical Hardwood Hammock

Islamorada, Village of Islands shall maintain Land Development Regulations implementing the Building Permit Allocation System (BPAS) described in Policy 1-3.1.1. The Village shall provide disincentives in the BPAS to developments proposed within hardwood hammocks which may adversely impact plant and animal species designated as endangered, threatened or of special concern by a State or Federal agency. These regulations shall also apply to the Village list of regionally important plant species.

Policy 6-1.4.18: Manage Stormwater Run-Off

Islamorada, Village of Islands shall require the developer/owner of any site responsible for managing stormwater run-off from that site. All new development and substantially redeveloped property shall comply with standards adopted for stormwater management in the Land Development Regulations.

Policy 6-1.4.19: Enforce Land Development Activities To Protect Natural Resources

Islamorada, Village of Islands shall strictly enforce all Land Development Regulations designed to protect and conserve natural resources and shall support the enforcement of related State and Federal regulations.

OBJECTIVE 6-1.5: MAINTAIN SURFACE WATER QUALITY AND QUANTITY

[Policy 6-1.5.1: Protect Water Quality Through Surface Water Management And Land Use Planning](#)

[Policy 6-1.5.2: Regulate Wastewater Treatment Discharge To Preserve Water Quality](#)

[Policy 6-1.5.3: Preserve And Enhance The Atlantic Ocean And Florida Bay Shorelines](#)

[Policy 6-1.5.4: Protect And Conserve Outstanding Florida Waters](#)

Islamorada, Village of Islands shall require Land Development Regulations to help maintain the environmental health of Florida Bay, the Atlantic Ocean and all surface waters within its jurisdiction, in order to protect the economic and social well being of its citizens. The Village shall help ensure that the ambient water quality of near shore waters meets or exceeds State standards for Class III Outstanding Florida Waters.

Policy 6-1.5.1: Protect Water Quality Through Surface Water Management And Land Use Planning

Land Development Regulations shall incorporate the following standards to protect the quality of the Village's water resources and to conform to the Principles for Guiding Development in the Florida Keys Area of Critical State Concern and the policies of the Florida Keys National Marine Sanctuary:

1. Surface water management systems shall be designed and operated consistent with the Village's adopted drainage level of service (reference Policy 4-1.1.1) and applicable State, Federal, and regional standards;
2. Applications for development shall include a surface water management plan that meets the adopted requirements of the Land Development Regulations; and
3. Provisions shall be incorporated into the Land Development Regulations that all development shall be designed to protect or enhance water quality. The use of nearshore waters for activities that are contrary to the public interest and do not satisfy a community need shall be prohibited.

Policy 6-1.5.2: Regulate Wastewater Treatment Discharge To Preserve Water Quality

The Land Development Regulations shall incorporate performance standards consistent with State wastewater discharge treatment requirements in order to protect water quality.

Policy 6-1.5.3: Preserve And Enhance The Atlantic Ocean And Florida Bay Shorelines

In order to stabilize areas susceptible to shoreline erosion, the Land Development Regulations shall require that all new development preserve native shoreline vegetation and include plantings of native vegetation along shorelines that are eroding. Where exotic vegetation is present, such vegetation shall be removed and shall be replaced with native plant species.

Policy 6-1.5.4: Protect And Conserve Outstanding Florida Waters

The Land Development Regulations shall prohibit development activities that adversely impact water quality, contribute to shoreline erosion and sedimentation or negatively impact wetlands.

OBJECTIVE 6-1.6: PROTECT AND PRESERVE WETLANDS

[Policy 6-1.6.1: Protect Upland Buffer Areas](#)

[Policy 6-1.6.2: Dedicate Conservation Easements Or Reservations](#)

[Policy 6-1.6.3: Manage And Regulate Wetlands](#)

Islamorada, Village of Islands shall maintain criteria designed to protect and preserve wetlands from physical and hydrologic alteration consistent with Objectives 5-1.2 and 5-1.3.

Policy 6-1.6.1: Protect Upland Buffer Areas

The upland buffer area is located landward of the upland edge of a wetland (i.e. landward of the upland/wetland jurisdictional line) extending up to fifty (50) feet as described in Policy 5-1.1.10. Islamorada, Village of Islands shall restrict development within the buffer area pursuant to Objectives 5-1.2 and 5-1.3 other than the following:

1. Utility pilings;
2. Pilings for elevated walkways and docks; and
3. Access ways to structures, located on upland or disturbed salt marsh and buttonwood wetlands and included within the same property, for which there is no alternate means of access. Such access shall be by elevated structure that is designed and constructed such that the natural movement of water, including volume, rate and direction of flow shall not be substantially disrupted or altered.

The Land Development Regulations shall incorporate specific standards for upland buffers.

Policy 6-1.6.2: Dedicate Conservation Easements Or Reservations

Islamorada, Village of Islands shall protect and preserve wetlands and upland buffer areas. The Village shall provide for the dedication of conservation easements or reservations where the dedication is reasonable in order to protect the value and function of a wetland or upland buffer area as determined by the Director of Planning & Development Services.

Policy 6-1.6.3: Manage And Regulate Wetlands

Wetlands shall be used for purposes that are compatible with their natural values and functions. Islamorada, Village of Islands shall provide these areas with the maximum possible protection. These protective requirements shall provide for the dedication of conservation easements for wetland preservation. Such policies shall be applied in order to protect and preserve natural resources which may be threatened by future development.

OBJECTIVE 6-1.7: PROTECT NATIVE VEGETATION AND MARINE HABITATS

[Policy 6-1.7.1: Protect Vegetative Communities And Marine Habitats](#)

[Policy 6-1.7.2: Preserve Native Plant Communities](#)

[Policy 6-1.7.3: Remove Invasive Exotic Vegetation](#)

[Policy 6-1.7.4: Include Identification Of Measures For Protecting Native Upland Vegetation](#)

[Policy 6-1.7.5: Define Open Space](#)

[Policy 6-1.7.6: Open Space Requirements For Vegetated Communities](#)

[Policy 6-1.7.7: Restrict Clearing Of Native Vegetation To The Development Area](#)

[Policy 6-1.7.8: Cluster Development In Sensitive Natural Areas](#)

[Policy 6-1.7.9: Allow Flexibility To Achieve Clustering](#)

[Policy 6-1.7.10: Reduce Habitat Fragmentation](#)

[Policy 6-1.7.11: Participate In Florida Champion Tree Program](#)

[Policy 6-1.7.12: Protect Champion And Specimen Trees](#)

[Policy 6-1.7.13: Minimize Impacts On The Native Plants](#)

Islamorada, Village of Islands shall provide criteria designed to protect and retain native vegetative communities and marine habitats. Native vegetative communities include tropical hardwood hammocks, wetlands, beaches and berms. Marine habitats include coral reefs, seagrass beds and hard-bottom communities.

Policy 6-1.7.1: Protect Vegetative Communities And Marine Habitats

Islamorada, Village of Islands shall provide for tree protection. Land clearing shall be used to manage and protect against development impacts on major vegetative communities and marine habitats. Additionally, these provisions shall mandate restoration in order to compensate for loss of vegetation and to enhance stabilization of shorelines impacted by development.

Policy 6-1.7.2: Preserve Native Plant Communities

Islamorada, Village of Islands shall maintain regulations providing for tree protection and land clearing which mandate that new development preserve, at a minimum, all undisturbed wetlands and 90% of high quality tropical hardwood hammocks on the parcel being developed (Policy 5-1.4.1 and Policy 6-1.7.6). These regulations shall further provide for the preservation and/or transplantation of plant species that have been designated as endangered, threatened or of special concern by a State or Federal agency. These regulations shall also apply to the Village's list of regionally important plant species. An incentive program shall be provided for conservation of upland areas containing these plant communities and species.

Policy 6-1.7.3: Remove Invasive Exotic Vegetation

Islamorada, Village of Islands shall require the owner/applicant to remove all invasive exotic vegetation from the subject site as a condition for new development. The site shall be maintained free of invasive exotic vegetation for a period of at least one (1) year. The list of invasive exotic vegetation will be developed pursuant to the Florida Exotic Pest Plant Council annual recommendations.

Policy 6-1.7.4: Include Identification Of Measures For Protecting Native Upland Vegetation

Environmental Impact Assessments shall include identification of measures for protecting native upland vegetation. Successful implementation of these measures shall be required as a condition of issuance of a Certificate of Occupancy or Completion.

Policy 6-1.7.5: Define Open Space

Open space shall mean the portion of any parcel or area of land or water which is required to be maintained such that the area within its boundaries is open or vegetated and unobstructed from the ground to the sky. There shall be no disturbance of the ground surface and vegetation within required open space areas. The required open space shall remain vegetated with native vegetation. Open space ratio (O.S.R.) means the percentage of the total gross area of a parcel that is open space.

Policy 6-1.7.6: Open Space Requirements For Vegetated Communities

Islamorada, Village of Islands shall require the provision of open space as a part of a development plan in order to ensure the continued existence of natural wildlife habitat and to provide open green areas for the movement, aesthetics and safety of the human population utilizing the development. Open space areas shall be designated and treated in such a manner as to maintain their integrity whether their primary purpose is to serve as natural wildlife habitat or as cultivated, landscaped space. No land shall be developed, used or occupied such that the amount of open space on the parcel proposed for development is less than the open space ratios listed below for each habitat. The open space requirements for native upland vegetation communities that exhibit functional integrity and viability shall meet or exceed these percentages, as follows:

MINIMUM OPEN SPACE REQUIREMENT BY HABITAT CLASSIFICATION

Habitat Classification	Minimum Open Space Requirement
Submerged Lands (Open water)	1.00
Beach Berm	0.90
Mangrove and Freshwater Wetlands	
Undisturbed	1.00
Disturbed	0.90
Saltmarsh and Buttonwood Wetlands	
Undisturbed	1.00
Disturbed	0.90
High Hammock	
High Quality	0.90
Moderate Quality	0.70
Low Quality	0.50

Low Hammock	
High Quality	0.90
Moderate Quality	0.70
Low Quality	0.50
Disturbed	
With Hammock	0.30
With Saltmarsh and Buttonwood	0.30
With Beach/Berm	0.30
With Exotics	0.20
Scarified	0.20

Policy 6-1.7.7: Restrict Clearing Of Native Vegetation To The Development Area

Clearing of native vegetation shall be limited to the immediate development area. The immediate development area shall include the area of approved clearing shown on the approved site plan and shall be fenced throughout the duration of construction. During construction, there shall be no disturbances of the ground surface and native vegetation within required open space areas.

Policy 6-1.7.8: Cluster Development In Sensitive Natural Areas

Islamorada, Village of Islands shall require development to avoid sensitive natural areas to the maximum extent feasible. In the event development must be permitted, adverse impacts shall be mitigated by clustering.

Clustering requirements shall be as follows:

1. Development which may impact sensitive natural resources may be required to utilize reduced construction 'footprints', modified construction techniques, innovative construction techniques, land use and development techniques which minimize negative environmental impacts or results, and the like;
2. When a parcel proposed for development contains more than one (1) habitat type, development shall be:
 - a. Clustered on the least sensitive portion of the parcel, until the maximum allowable density is reached;
 - b. If further development occurs, it shall be clustered on the next least sensitive portion of the parcel, until maximum allowable density is reached, etc.; and
 - c. Development permitted on the least sensitive portion(s) of a parcel shall be clustered within that portion(s) of the parcel.
3. Modification of the development footprint to minimize the impact on existing native understory and canopy trees.

When a parcel proposed for development contains more than one (1) habitat type, all development shall be clustered on the least sensitive portions of the parcel. For the purpose of this policy, the relative sensitivity of separate habitat types shall be classified as shown below with Class I being the most sensitive and Class III being the least sensitive.

Class I

Saltmarsh and/or buttonwood association wetlands;

Beach or berm;

High hammock (high quality);

Low hammock (high quality);

High hammock (moderate quality);

Low hammock (moderate quality);

High hammock (low quality);

Low hammock (low quality);

Class II

Disturbed beach or berm;

Disturbed with salt marsh and/or buttonwood association wetlands (lawfully converted to disturbed uplands);

Disturbed with high hammock;

Disturbed with low hammock;

Class III

Disturbed; and

Disturbed with exotics.

Development within the least sensitive habitat shall achieve the maximum density or intensity allowable and shall fully utilize the net buildable area of the habitat prior to expanding to the next least sensitive habitat type on the site.

Policy 6-1.7.9: Allow Flexibility To Achieve Clustering

Bulk regulations and development standards of the Land Development Regulations shall be reviewed and revised as to allow greater flexibility for clustering.

Policy 6-1.7.10: Reduce Habitat Fragmentation

All development shall be clustered in a manner that reduces habitat fragmentation and preserves the largest possible area of contiguous, undisturbed habitat(s). The Director of Planning and Development Services may vary the clustering requirements described above in order to reduce habitat fragmentation.

Policy 6-1.7.11: Participate In Florida Champion Tree Program

Islamorada, Village of Islands shall actively participate in the Florida Champion Tree Program of the Florida Department of Agriculture.

Policy 6-1.7.12: Protect Champion And Specimen Trees

Excluding those species identified in Policy 6-1.7.3, development shall not disturb the following vegetation:

1. Champion trees;
2. Specimen trees (diameter at breast height that is greater than 75% of the record tree of the same species for the State of Florida); or
3. Plant species listed by the FWS as threatened and endangered.

Policy 6-1.7.13: Minimize Impacts On The Native Plants

Development shall be sited to minimize impacts on the following plants:

1. Species listed by the Florida Department of Agriculture and Consumer Services as threatened, endangered or commercially exploited (excluding those specifically protected by Policy 6-1.7.8);
2. Other locally rare native species as identified by the Planning and Development Services Department;
3. Native canopy trees with diameter at breast height (dbh) of three (3) inches or greater; and
4. Native under story trees with diameter at breast height (dbh) of three (3) inches or greater.

In those instances, where an applicant can demonstrate that avoidance of such species or trees is not possible by clustering or by an alternate design approach, then successful transplantation of such species shall be considered on-site. 'Successful' transplantation shall be deemed as 100% survival after a period of two (2) years.

Where the probability that transplanted plants will survive is low (as determined by the Director of Planning & Development Services), then the applicant shall be required to pay into a Village Restoration Fund or to donate nursery stock to the Village or State restoration projects. Donated nursery stock shall be identical in species composition, size and maturity to that which will be lost to construction. Stock of different species and/or maturity may be substituted with written approval from the Director of Planning & Development Services.

OBJECTIVE 6-1.8: HABITAT RESTORATION PROGRAM

[Policy 6-1.8.1: Prioritize Wetland Restoration Sites](#)

[Policy 6-1.8.2: Prioritize Upland Restoration Sites](#)

[Policy 6-1.8.3: Support The Restoration Of Seagrass Beds](#)

[Policy 6-1.8.4: Program For The Removal Of Invasive Exotic Vegetation From Village Owned Lands](#)

[Policy 6-1.8.5: Maintain A Program To Restore Village Owned Beaches And Berms](#)

[Policy 6-1.8.6: Funding Of Restoration Projects](#)

[Policy 6-1.8.7: Establish A Restoration Fund](#)

Islamorada, Village of Islands shall initiate a program to restore and maintain disrupted marine, wetland, beach, berm and native upland vegetation systems on Village owned public lands, where practicable.

Policy 6-1.8.1: Prioritize Wetland Restoration Sites

Within five (5) years of the effective date of the Comprehensive Plan, priority wetland restoration sites shall be drafted and updated every other year. This list shall be developed by the Village in consultation with representatives of the ACOE, EPA, FWS, DEP, and FWCC. Priority wetland restoration sites shall

be those disturbed wetlands having the greatest functional value as determined in the Florida Keys Advance Identification of Wetlands Program.

Policy 6-1.8.2: Prioritize Upland Restoration Sites

Within five (5) years of the effective date of the Comprehensive Plan, a list of priority native upland vegetation restoration sites shall be drafted and updated every other year. This list shall be developed by Islamorada, Village of Islands in consultation with the Florida Department of Agriculture and Consumer Services (Division of Plant Industries), the Florida Natural Areas Inventory and the National Audubon Society Research Department. Priority upland restoration sites shall be identified based on findings of the general evaluation of upland vegetation. Priority sites shall be those disturbed areas where restoration will result in the greatest habitat benefit at the least cost. Candidate restoration sites shall include publicly-owned as well as privately-owned sites.

Policy 6-1.8.3: Support The Restoration Of Seagrass Beds

Islamorada, Village of Islands shall cooperate with NOAA, EPA, DEP and FKNMS to restore seagrass beds within its jurisdiction.

Policy 6-1.8.4: Program For The Removal Of Invasive Exotic Vegetation From Village Owned Lands

A program shall be maintained and updated every other year for removing invasive exotic vegetation from Village owned lands, including plans for re-vegetation.

Policy 6-1.8.5: Maintain A Program To Restore Village Owned Beaches And Berms

A program shall be maintained for restoring Village-owned beach/berm areas.

Policy 6-1.8.6: Funding Of Restoration Projects

Restoration projects shall be completed as funding becomes available. Local, State and Federal funding sources shall be used to support restoration projects.

Policy 6-1.8.7: Establish A Restoration Fund

Islamorada, Village of Islands shall establish a restoration fund. This fund shall consist of monies paid, according to a designated fee structure, in lieu of tree relocation or replacement (pursuant to Policy 6-1.7.13). The fund shall be used to purchase trees for Village restoration projects on upland sites.

OBJECTIVE 6-1.9: PROTECT FISHERIES, WILDLIFE AND WILDLIFE HABITATS

[Policy 6-1.9.1: Manage The Impacts Of Development On Fisheries](#)

[Policy 6-1.9.2: Protect Wildlife And Wildlife Habitats](#)

[Policy 6-1.9.3: Update The Existing Conditions And Threatened And Endangered Species Map](#)

[Policy 6-1.9.4: Coordinate With Interest Groups To Educate The Public](#)

[Policy 6-1.9.5: Require Habitat Analysis](#)

[Policy 6-1.9.6: Ensure Maintenance Of Habitat Quality](#)

[Policy 6-1.9.7: Protect Manatee Habitats](#)

[Policy 6-1.9.8: Ensure FCAA Compliance With Federal Regulations Prohibiting Potable Water Hookups Designated Eastern Indigo Snake Habitat](#)

Islamorada, Village of Islands shall provide requirements designed to protect fisheries, wildlife and wildlife habitat from the adverse impacts of development by regulating the location, density and intensity of those activities that cause the adverse impact. Islamorada, Village of Islands shall enforce these requirements and shall coordinate with all Federal, State and local government agencies to

promote protection of fisheries, wildlife and wildlife habitats. The requirements shall provide for flexible development alternatives, including density transfers from wetlands to adjacent uplands, allowing more flexible development options on developable portions of the site.

Policy 6-1.9.1: Manage The Impacts Of Development On Fisheries

Islamorada, Village of Islands shall maintain procedures for coordinating with the appropriate Federal, State and local agencies when reviewing the potential impacts of development proposals on fisheries, including proposed subdivisions and site plan review petitions. Such coordination shall be designed to help identify potential adverse impacts of proposed development on marine habitats and fisheries. The procedures shall also contain parameters to preserve marine habitats and fisheries.

Policy 6-1.9.2: Protect Wildlife And Wildlife Habitats

Islamorada, Village of Islands shall restrict development activities known to adversely impact wildlife and wildlife habitats. Islamorada, Village of Islands shall further protect wildlife and wildlife habitats by promoting public acquisition and through the dedication of conservation easements or deed restrictions.

Policy 6-1.9.3: Update The Existing Conditions And Threatened And Endangered Species Map

Within three (3) years of the effective date of the Comprehensive Plan, Islamorada, Village of Islands shall cooperate with the FWCC, DEP and FWS to update the current Existing Conditions and Threatened and Endangered Species Map adopted from Monroe County, using the Village GIS. This map shall thereafter be updated every five (5) years.

Policy 6-1.9.4: Coordinate With Interest Groups To Educate The Public

Islamorada, Village of Islands shall coordinate with public interest groups to distribute educational pamphlets designed to promote knowledge and awareness of endangered, threatened and regionally important species.

Policy 6-1.9.5: Require Habitat Analysis

Islamorada, Village of Islands shall require a habitat analysis to be prepared and submitted as a part of a development application, for the following environmentally sensitive lands:

1. Tropical hardwood hammock as identified on the Existing Conditions Map; or
2. Wetlands as identified on the ADID maps; or
3. As determined by the Director of Planning and Development Services.

The Habitat Analysis shall analyze the distribution and quality of undisturbed lands within the parcel proposed to be developed. The habitat analysis shall include, at a minimum, the following:

1. A written methodology for completing the Habitat Analysis;
2. Requirements for integrating data regarding the historic sightings of rare and endangered species and critical nesting/feeding areas for birds; and
3. Evaluation criteria, which will differentiate high, medium and low quality habitat.

Before adoption, the revisions shall undergo scientific peer review by experts in terrestrial and wildlife ecology. To the extent possible, the reviewers shall include those individuals who participated in development of the existing HEI methodology adopted from Monroe County.

Policy 6-1.9.6: Ensure Maintenance Of Habitat Quality

Once a development permit has been issued and site preparation has commenced, the habitat quality rating either resulting from the habitat analysis or as a result of the applicant's stipulation of high quality shall remain in perpetuity and all future development of the parcel shall conform to the applicable habitat and quality so analyzed or stipulated. This shall be assured by attachment of a deed restriction to run with the land, stating the amount of required open space. Likewise, a habitat analysis which is part of a development application or permit, which application for development is then denied or abandoned or which permit is abandoned or expired, shall be revised and resubmitted according to the applicable standards at the time of submittal of a new application for development.

Policy 6-1.9.7: Protect Manatee Habitats

Islamorada, Village of Islands shall promote protection of manatee habitats in a manner consistent with guidelines of the State Department of Environmental Protection (DEP). Applicants for expanding marinas shall provide environmental data related to manatee observations and manatee mortality.

Policy 6-1.9.8: Ensure FCAA Compliance With Federal Regulations Prohibiting Potable Water Hookups Designated Eastern Indigo Snake Habitat

Islamorada, Village of Islands shall monitor FCAA compliance with Federal regulations prohibiting water including potable water, hookups to designated habitat areas of the Eastern Indigo Snake (pursuant to FCAA Rules Chapter 48-7).

OBJECTIVE 6-1.10: PREVENT POTENTIAL ADVERSE IMPACTS OF FUTURE MINING OF MINERALS AND MINERAL EXCAVATION ACTIVITIES

[Policy 6-1.10.1: Prohibit Mining Activities](#)

No mining activities shall be permitted within Islamorada, Village of Islands in order to protect and preserve the natural systems that would potentially receive irretrievable losses from the impacts of such operations.

Policy 6-1.10.1: Prohibit Mining Activities

Islamorada, Village of Islands Land Development Regulations shall prohibit mining of minerals based on the retrievable losses that such intense activities may potentially impose on the Village's fragile coastal ecosystem. Mining shall include the extraction of minerals solely for the purpose of commercial sale. The Land Development Regulations shall prohibit the removal of coral from Village waters.

OBJECTIVE 6-1.11: MANAGE DISPOSAL OF WASTES

[Policy 6-1.11.1: Coordinate Solid And Hazardous Waste Disposal](#)

[Policy 6-1.11.2: Manage Hazardous Waste](#)

Islamorada, Village of Islands shall ensure that the generation, storage, transport and disposal of wastes in the Village are managed with the best available technology to protect environmental quality.

Policy 6-1.11.1: Coordinate Solid And Hazardous Waste Disposal

Islamorada, Village of Islands shall cooperate with the appropriate Federal, State and local agencies to assure that solid and hazardous wastes generated within the Village are properly managed to protect the environment.

Policy 6-1.11.2: Manage Hazardous Waste

Islamorada, Village of Islands shall incorporate development restrictions directed toward preserving natural systems. The Village shall manage hazardous waste in compliance with all appropriate Federal and State requirements.

OBJECTIVE 6-1.12: PROTECT ARCHAEOLOGICAL AND HISTORIC RESOURCES

[Policy 6-1.12.1: Develop Programs To Protect Archaeological And Historic Sites](#)

[Policy 6-1.12.2: Prevent Adverse Impacts Of Development On Historic Or Archaeological Sites](#)

[Policy 6-1.12.3: Historical And Archaeological Sites Survey](#)

[Policy 6-1.12.4: Preserve Historically Significant Resources](#)

Islamorada, Village of Islands shall ensure that future land development activities incorporate appropriate measures to prevent damage to archaeologically and historically significant resources of local, regional, State and National significance.

Policy 6-1.12.1: Develop Programs To Protect Archaeological And Historic Sites

Islamorada, Village of Islands shall coordinate with the State and Federal government to develop programs for implementing Village, State and Federal policies for identifying, preserving and enhancing sites of historical and archaeological significance. Programs for identification, evaluation of relative significance, protection, preservation and enhancement shall be promoted, utilizing all available local, State and Federal and private sector resources.

Policy 6-1.12.2: Prevent Adverse Impacts Of Development On Historic Or Archaeological Sites

Islamorada, Village of Islands shall require provisions to address adverse impacts to historic or archaeological sites of significance created by development or redevelopment of the site.

Policy 6-1.12.3: Historical And Archaeological Sites Survey

Islamorada, Village of Islands has completed a comprehensive professional survey identifying and analyzing potential architectural and historical sites and structures in Islamorada (Policy 3-1.7.4). The survey identified housing units with historical and/or architectural significance. The survey primarily focuses on structures and properties that are at least forty (40) years old. Any such structures or sites identified in the survey shall be added to the Village's list of locally significant historical resources.

Policy 6-1.12.4: Preserve Historically Significant Resources

Islamorada, Village of Islands shall preserve the identified historically significant resources pursuant to the study outlined in Policy 6-1.12.3. Until historic preservation regulations are adopted, any development or redevelopment of the identified historic resources shall be governed Law of Fla. Ch. 74-100, as applicable.

OBJECTIVE 6-1.13: APPLICATION OF INNOVATIVE LAND AND WATER RESOURCE MANAGEMENT AND ENERGY CONSERVATION CONCEPTS

[Policy 6-1.13.1: Maintain Innovative Techniques In The Land Development Regulations](#)

[Policy 6-1.13.2: Coordinate Energy Management](#)

[Policy 6-1.13.3: Address Energy Efficiency In Plans](#)

[Policy 6-1.13.4: Address Energy Conservation In Building And Construction](#)

[Policy 6-1.13.5: Coordinate Energy Management](#)

[Policy 6-1.13.6: Conserve Energy In Buildings And Construction](#)

Islamorada, Village of Islands shall maintain requirements which incorporate concepts for managing

land, water and energy resources that are responsive to the unique development and conservation issues identified within this Plan.

Policy 6-1.13.1: Maintain Innovative Techniques In The Land Development Regulations

Islamorada, Village of Islands shall utilize land and water resource management techniques. These techniques shall have been proven successful and cost effective for resolving development and conservation issues such as surface water management, soil erosion and sedimentation control, land clearing and excessive tree removal, loss of mature plants and wildlife habitat and conservation of water supply.

Policy 6-1.13.2: Coordinate Energy Management

Islamorada, Village of Islands shall participate in regional, State or local initiatives directed at coordinating energy management within the public and private sectors. These tasks may include joint formulation of energy related decisions with concerned Federal, State, regional and County agencies and concerned private entities. Such activities shall be directed toward maximizing awareness of energy-related problems, issues and alternative techniques for resolving energy-related problems and issues, and identify future areas where joint efforts may enhance mutual goals and objectives.

Policy 6-1.13.3: Address Energy Efficiency In Plans

Islamorada, Village of Islands shall promote a systematic approach to the development of a pedestrian and bicycle path network by the public and private sectors in order to improve energy efficient transportation links between major activity areas such as residential neighborhoods, employment centers, shopping areas, parks and schools.

Policy 6-1.13.4: Address Energy Conservation In Building And Construction

Islamorada, Village of Islands shall enforce energy efficient building codes and promote efficient energy conservation in building heating and cooling systems. The Village shall promote attendance at regional training workshops in energy efficiency in construction and continue to foster cooperative relationships between building trades, architects, engineers and building officials.

Policy 6-1.13.5: Coordinate Energy Management

Islamorada, Village of Islands shall participate in regional, State or local initiatives to directed at coordinating energy management within the public and private sectors. These tasks may include joint formulation of energy related decisions with concerned Federal, State, regional and County agencies as well as with concerned private entities. Such activities shall be directed toward maximizing awareness of energy-related issues, alternative techniques for resolving energy related problems, and issues and use of solar energy systems. The activities shall identify future areas where joint efforts may enhance mutual goals and objectives.

Policy 6-1.13.6: Conserve Energy In Buildings And Construction

Islamorada, Village of Islands shall enforce energy-efficient building codes and promote efficient energy conservation in building, heating and cooling systems. The Village shall promote attendance at regional training workshops in energy efficiency in construction and continue to foster cooperative relationships between building trades, architects, engineers and building officials. The Village shall also consider the use of alternative sources for building, heating and cooling systems, including but not limited to solar power.

OBJECTIVE 6-1.14: EVALUATE THE EFFECTIVENESS OF THE CONSERVATION ELEMENT

- [Policy 6-1.14.1: Review The Impact Of Changing Conditions On Conservation Policy](#)
[Policy 6-1.14.2: Schedule, Budget And Implement Programmed Activities](#)
[Policy 6-1.14.3: Coordinate With Public And Private Sectors](#)
[Policy 6-1.14.4: Achieve Effective Resolution Of Conservation Goals, Objectives And Policies](#)

Islamorada, Village of Islands shall use the following policies as criteria to evaluate the effectiveness of the Conservation Element:

Policy 6-1.14.1: Review The Impact Of Changing Conditions On Conservation Policy

Islamorada, Village of Islands shall monitor and evaluate significant changes in the characteristics of natural resources within its boundaries. Policy implications of such changes shall be examined and corrective measures shall be pursued. Conservation policies shall be refined as needed in order to remain responsive to evolving problems and issues.

Policy 6-1.14.2: Schedule, Budget And Implement Programmed Activities

The timely scheduling, programming, budgeting and implementation of programmed conservation activities identified in this Element shall be evidence of the Village's effectiveness in carrying out a systematic program for implementing conservation goals, objectives and policies.

Policy 6-1.14.3: Coordinate With Public And Private Sectors

While continually implementing and evaluating the Conservation Element, Islamorada, Village of Islands shall maintain a process of intergovernmental coordination as well as coordination with private sector groups interested in conservation policy and programs. The effectiveness of this approach shall be evaluated by the success of coordination mechanisms in resolving conservation problems and issues.

Policy 6-1.14.4: Achieve Effective Resolution Of Conservation Goals, Objectives And Policies

The effectiveness of the Conservation Element shall be measured by Islamorada, Village of Islands success in achieving conservation goals, objectives and policies. The Conservation Element incorporates a systematic planning process for identifying conservation problems and issues and implementing corrective measures.

CHAPTER 7: RECREATION AND OPEN SPACE ELEMENT

SECTION 7-1: RECREATION AND OPEN SPACE GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

State Law reference— F.S. § 163.3177(6)(e).

SECTION 7-1: RECREATION AND OPEN SPACE GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

GOAL 7-1: PROVIDE ADEQUATE RECREATION AND OPEN SPACE

This section specifies goals, objectives and implementing policies for the Recreation and Open Space Element pursuant to F.S. Ch. 163.3177(6)(e).

GOAL 7-1: PROVIDE ADEQUATE RECREATION AND OPEN SPACE

OBJECTIVE 7-1.1: PROVIDE A SYSTEM OF RECREATION AND OPEN SPACE SITES AND FACILITIES

OBJECTIVE 7-1.2: INDICATE RECREATION FACILITIES AND OPEN SPACES AS RO ON THE FUTURE LAND USE MAP

OBJECTIVE 7-1.3: PROTECT OPEN SPACE SYSTEMS

OBJECTIVE 7-1.4: ENSURE PUBLIC AND PRIVATE COORDINATION TO PLAN AND IMPLEMENT RECREATION IMPROVEMENTS

Islamorada, Village of Islands shall provide a comprehensive recreation and open space system that meets the current and future needs of the citizens of the Village.

OBJECTIVE 7-1.1: PROVIDE A SYSTEM OF RECREATION AND OPEN SPACE SITES AND FACILITIES

Policy 7-1.1.1: Maintain A Minimum Level Of Service Standard Of 3.79 Acres Per 1,000 Persons For Parks And Recreation Facilities

Policy 7-1.1.2: Monitor And Update Recreation Demand And Supply

Policy 7-1.1.3: Program Park Improvements

Policy 7-1.1.4: Role Of Village Committees

Policy 7-1.1.5: Require Mandatory Land Dedication Or Fees In Lieu Thereof

Policy 7-1.1.6: Designate Or Acquire Natural Reservations

Policy 7-1.1.7: Maintain Existing Recreation Land And Facilities

Policy 7-1.1.8: Incorporate Creative Design Concepts And Conserve Environmentally Sensitive Open Space

Policy 7-1.1.9: Ensure Recreation And Open Space Facilities Are ADA Accessible

Policy 7-1.1.10: Promote Environmental Concerns Through Recreational Programs

The Village shall comprehensively review the need for new recreation and open space sites and facilities, predicated on data, standards and policies contained in the Comprehensive Plan, and shall adequately maintain the provided sites and facilities.

Policy 7-1.1.1: Maintain A Minimum Level Of Service Standard Of 3.79 Acres Per 1,000 Persons For Parks And Recreation Facilities

Islamorada, Village of Islands shall maintain a minimum level of service standard for Village-managed public recreation sites of 3.79 acres per one thousand (1,000) permanent residents and seasonal visitors.

Policy 7-1.1.2: Monitor And Update Recreation Demand And Supply

Islamorada, Village of Islands shall prepare a report updating the recreation land and facility demand and supply analysis contained in the Recreation and Open Space Data Inventory and Analysis of this Plan. If the analysis identifies any deficiencies, the Village shall identify and enact a method for meeting the deficiency.

Policy 7-1.1.3: Program Park Improvements

Park improvement plans resulting from the analysis in Policy 7-1.1.2 shall be programmed in the Village's Capital Improvement Program.

Policy 7-1.1.4: Role Of Village Committees

The Village Land Acquisition Advisory Committee and the Village Parks and Recreation Committee shall assist as advisory committees, with defined roles and responsibilities, in the development of the above-noted Recreation and Open Space Master Plan.

Policy 7-1.1.5: Require Mandatory Land Dedication Or Fees In Lieu Thereof

The Village shall mandate the dedication of land for parks and recreation or fees in lieu thereof, to be used for the acquisition of land for parks, conservation and/or open space. The formula shall be a pro rata formula based on the Village's demand and supply analysis, to ensure that new developments provide necessary recreation lands, facilities and/or fees in lieu thereof in order to accommodate the additional generated demand.

Policy 7-1.1.6: Designate Or Acquire Natural Reservations

'Natural reservations' are areas designated for conservation purposes. As land, facility and improvement needs are identified, the Village shall investigate the potential of funding such conservation programs through use of public or private not-for-profit agency resources. Natural Reservations shall include lands:

1. Owned or managed by a Federal, State, regional or local government or nonprofit agency;
2. Purchased under the Florida Communities Trust;
3. Purchased by the Monroe County Land Authority;
4. Located within State or Federal sanctuaries or preserves;
5. Identified as a Federal, State, or Locally designated archaeological or historic site; and
6. Properties deeded to the Village in perpetuity.

Policy 7-1.1.7: Maintain Existing Recreation Land And Facilities

The Village shall continue to ensure that existing recreation lands and facilities are well managed and well maintained. Annually, prior to the adoption of the Village budget, the Village shall review the need for improvements, repairs and general preventive maintenance, and shall set aside capital for such needs during the budget process.

Policy 7-1.1.8: Incorporate Creative Design Concepts And Conserve Environmentally Sensitive Open Space

Active and passive recreation areas shall be planned in a manner compatible with the unique natural resources found in the Village. Park improvements plans shall be designed to preserve, protect and

enhance the environmental features found on each site. Where appropriate, recreation areas shall be designed to provide a circulation system that minimizes conflict between bicyclists, pedestrians and vehicles. Adequate landscape and screening shall be integrated into park improvement plans to minimize land use conflicts, protect stability of established residential areas and enhance community appearance.

Policy 7-1.1.9: Ensure Recreation And Open Space Facilities Are ADA Accessible

All public recreational facilities shall continue to be made accessible to automobiles, bicycles and pedestrians, as appropriate, given their function as part of the recreation and open space system, in a manner that is compatible with the character and quality of on-site natural resources. When planning and designing access to recreation and open space, the Village shall ensure that sites are ADA compliant by removing barriers limiting access to the physically challenged, elderly and children, and shall ensure that parking spaces and bicycle racks are provided.

Policy 7-1.1.10: Promote Environmental Concerns Through Recreational Programs

The Village shall promote environmental education and management as an integral part of park and recreation programs. Through cooperative programming with resource agencies and local educational advisors, park and recreation resources shall serve as instruments for teaching both residents and visitors about the importance of and the need for preserving the Village's natural resources.

OBJECTIVE 7-1.2: INDICATE RECREATION FACILITIES AND OPEN SPACES AS RO ON THE FUTURE LAND USE MAP

[Policy 7-1.2.1: Indicate Amount And Location Of Lands For Park And Recreation Facilities On The Future Land Use Map \(FLUM\)](#)

[Policy 7-1.2.2: Intensity Of Public And Private Parks And Recreation Facilities](#)

Future Land Use Maps 2-1 through 2-3 shall indicate land for public parks and recreation facilities, including open space systems, with a land use designation of Recreation and Open Space (RO). This objective shall be achieved through implementation of the following policies:

Policy 7-1.2.1: Indicate Amount And Location Of Lands For Park And Recreation Facilities On The Future Land Use Map (FLUM)

The Recreation and Open Space (RO) land use designation is intended to accommodate existing public parks and recreation facilities, and open space systems. The Village shall allocate RO lands on the FLUM based on the ability of these lands to:

1. Accommodate the land needs of existing public parks and recreation facilities, including open space systems;
2. Provide, maintain and conserve quality parks and recreation facilities required to meet the needs of existing and projected future population magnitude, distribution and characteristics;
3. Preserve unique natural resources and areas of historic significance;
4. Protect established residential areas from encroachment by non-residential development; and
5. Ensure compatibility with adjacent land uses to the greatest practical extent by providing landscaping and buffer areas to protect adjacent residential development from the off-site impacts of parks and recreation facilities.

Policy 7-1.2.2: Intensity Of Public And Private Parks And Recreation Facilities

The maximum floor area ratio (FAR) for any land use within an area designated RO on the Future Land Use Map shall not exceed 0.15. The Village shall require open space ratios, maximum building heights, parking standards, permeable surface area standards and other size and dimension regulations applicable to developments in RO FLUM categories.

OBJECTIVE 7-1.3: PROTECT OPEN SPACE SYSTEMS

[Policy 7-1.3.1: Implement Land Development Regulations That Ensure Provision Of Open Space](#)

[Policy 7-1.3.2: Adopt Standards For Review And Maintenance](#)

[Policy 7-1.3.3: Maintain Standards To Avoid Or Mitigate Adverse Impacts Of Park Use Upon Sensitive Natural Resources](#)

Islamorada, Village of Islands shall protect lands designated as open space from incompatible land uses and such designated lands shall remain functionally intact.

Policy 7-1.3.1: Implement Land Development Regulations That Ensure Provision Of Open Space

The Land Development Regulations shall include specific open space definitions and standards for open space ratios, native vegetation and landscaping. Regulations shall include stipulations governing the provision and use of open space for buffering, protection of natural habitats and corridors and other commonly accepted uses.

Policy 7-1.3.2: Adopt Standards For Review And Maintenance

When public recreation and open space system improvements are proposed, Islamorada, Village of Islands shall carry out a site plan review process to ensure that site improvements adequately address access, drainage, vehicular parking, pedestrian circulation and perpetual maintenance. Land Development Regulations shall include specific criteria for design of these improvements.

Policy 7-1.3.3: Maintain Standards To Avoid Or Mitigate Adverse Impacts Of Park Use Upon Sensitive Natural Resources

Islamorada, Village of Islands shall require standards to avoid or mitigate adverse impacts of park use upon sensitive natural resources, including, but not limited to high quality hammock vegetation, documented habitat of species designated as rare or endangered by the State and Federal governments; undisturbed beach/berm (particularly turtle nesting beaches), mangrove, salt marsh, buttonwood and freshwater wetlands. Public use shall be directed away from or minimized in such areas through controlled access and limitations on permitted activities.

OBJECTIVE 7-1.4: ENSURE PUBLIC AND PRIVATE COORDINATION TO PLAN AND IMPLEMENT RECREATION IMPROVEMENTS

[Policy 7-1.4.1: Consider Negotiation Of An Interlocal Agreement For Shared Use Of School Grounds As Parks](#)

[Policy 7-1.4.2: Provide Facilities For Public Recreation Programs](#)

[Policy 7-1.4.3: Coordinate With The Private Sector](#)

[Policy 7-1.4.4: Seek Grants And Alternative Sources To Finance Recreation And Open Space Acquisition, Planning, Design And Development](#)

[Policy 7-1.4.5: Inform Citizens Of Existing Recreation Opportunities And Issues](#)

[Policy 7-1.4.6: Implement Cooperative Programs](#)

[Policy 7-1.4.7: Review Plans And Policies](#)

[Policy 7-1.4.8: Ensure Responsible Fiscal Management](#)

[Policy 7-1.4.9: Program Future Recreation Facilities In The Capital Improvement Program](#)

During the review of recreation site and facility needs, Islamorada, Village of Islands shall coordinate

planning for recreation improvements with each level of government, including the Monroe County School Board, major civic groups and the private sector in order to promote recreational opportunities, including environmental education activities, in a cost effective manner.

Policy 7-1.4.1: Consider Negotiation Of An Interlocal Agreement For Shared Use Of School Grounds As Parks

Islamorada, Village of Islands may promote the implementation of the joint school-park concept by working with the Monroe County School Board. The Village may attempt to maximize joint use of school sites for both school and recreational activities. This concept promotes economy and efficient use of potential park and recreation resources centrally located to potential user groups. By December 31, 2005 the Village shall have considered whether to negotiate an inter-local agreement with the Monroe County School Board to implement recreation facilities at one (1) or more of the following sites: Plantation Key Elementary School and/or Coral Shores High School, and/or private educational facilities located within the Islamorada, Village of Islands.

Policy 7-1.4.2: Provide Facilities For Public Recreation Programs

Islamorada, Village of Islands shall provide recreational facilities for the use and enjoyment of civic groups, which provide recreation programs such as baseball, soccer and softball, for Islamorada residents.

Policy 7-1.4.3: Coordinate With The Private Sector

The Village may identify potential opportunities to coordinate with the private sector to:

1. Plan special events, picnics, festivals, and parades for families and kids;
2. Establish a youth corps for students to assist civic improvements and clean-up; and
3. Organize "adopt a street or park" programs using civic clubs as catalysts.

Policy 7-1.4.4: Seek Grants And Alternative Sources To Finance Recreation And Open Space Acquisition, Planning, Design And Development

Islamorada, Village of Islands shall ensure that local and non-local sources of financial and technical assistance for land acquisition, planning, design and development of recreation and open spaces are sought and received to ensure that recreation objectives are achieved in a cost effective and fiscally equitable manner.

Policy 7-1.4.5: Inform Citizens Of Existing Recreation Opportunities And Issues

Outreach efforts shall target residents such as the physically challenged or economically disadvantaged who do not regularly participate in recreation programs, as well as more traditional user groups.

Policy 7-1.4.6: Implement Cooperative Programs

Recreation and open space resources shall be used by the Village as an instrument for environmental education. This effort shall facilitate the use of local parks as year round community education and recreation facilities for all age groups.

Policy 7-1.4.7: Review Plans And Policies

Islamorada, Village of Islands shall review and amend existing plans and policies, as necessary, based on a continuing analysis of problems and issues related to parks, recreation, and open space. These

analytical efforts shall include evaluation of major shifts in the indicators of supply and demand and shall be reviewed on a continuing basis.

Policy 7-1.4.8: Ensure Responsible Fiscal Management

Each year fiscal management policies including the Capital Improvement Program and budget shall be reviewed, evaluated and refined to reflect current program priorities for parks, recreation and open space.

Policy 7-1.4.9: Program Future Recreation Facilities In The Capital Improvement Program

If in the future, Islamorada, Village of Islands identifies recreation improvements for which public funds are needed, as opposed to developer-financed improvements, the Village shall schedule and incorporate such projects in the Capital Improvements Program.

CHAPTER 8: INTERGOVERNMENTAL COORDINATION ELEMENT

SECTION 8-1: INTERGOVERNMENTAL COORDINATION GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

State Law reference— F.A.C. 9J-5.015(3)

SECTION 8-1: INTERGOVERNMENTAL COORDINATION GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

GOAL 8-1: PROVIDE MECHANISMS FOR IMPROVED INTERGOVERNMENTAL COORDINATION

GOAL 8-2: MONITORING AND EVALUATION

This section specifies goals, objectives and implementing policies for the Intergovernmental Coordination Element pursuant to F.S. ch. 163.3177(6)(h) and F.A.C. 9J-5.015.

GOAL 8-1: PROVIDE MECHANISMS FOR IMPROVED INTERGOVERNMENTAL COORDINATION

OBJECTIVE 8-1.1: ENSURE INTERGOVERNMENTAL COORDINATION

OBJECTIVE 8-1.2: MANAGE AND COORDINATE FUTURE LAND USE DECISIONS

OBJECTIVE 8-1.3: INTERGOVERNMENTAL COORDINATION OF LEVEL OF SERVICE STANDARDS

OBJECTIVE 8-1.4: MULTI-JURISDICTIONAL ENVIRONMENTAL ISSUES

Islamorada, Village of Islands shall undertake actions necessary to establish governmental relationships designed to improve the coordination of public and private entities involved in development activities, resource conservation and growth management, including the achievement of consistency among all government agencies implementing plans and programs affecting the Village.

OBJECTIVE 8-1.1: ENSURE INTERGOVERNMENTAL COORDINATION

Policy 8-1.1.1: Responsible Entity For Intergovernmental Coordination

Policy 8-1.1.2: Coordinate Transportation, Potable Water And Wastewater Issues

Policy 8-1.1.3: Interlocal Agreement With FKAA To Identify The Availability Of Water Supply To Serve Existing And New Development

Policy 8-1.1.4: Coordinate Technical Issues

Policy 8-1.1.5: Require Findings To Be Addressed In Development Review Process

Policy 8-1.1.6: Coordinate Land And Water Management

Policy 8-1.1.7: Coordinate With The Monroe County School Board

Policy 8-1.1.8: Cooperate With The South Florida Regional Planning Council (SFRPC)

Policy 8-1.1.9: Consider Participation On The South Florida Regional Planning Council (SFRPC)

Policy 8-1.1.10: Participate On The Governor's Task Force On Sustainable South Florida

Islamorada, Village of Islands shall continue to improve coordination activities and ensure annual coordination of the Village Comprehensive Plan with the plans of other entities, through the continued participation on intergovernmental task forces, and the circulation of all Comprehensive Plan amendments simultaneous with their transmittal to the Department of Community Affairs, with:

1. Government agencies having planning and impact assessment duties affecting the Village;
2. Local government agencies and units providing services, but not having regulatory authority over the use of land;
3. Monroe County School Board; and

4. Comprehensive Plans of Monroe County and adjacent municipalities.

Policy 8-1.1.1: Responsible Entity For Intergovernmental Coordination

The Village Council shall be responsible for ensuring an effective intergovernmental coordination program for Islamorada.

Policy 8-1.1.2: Coordinate Transportation, Potable Water And Wastewater Issues

The Village shall increase intergovernmental coordination activities regarding issues involving: planning and financing of transportation system improvements, water, including potable water, distribution expansion, replacement, and financing, and planning and financing of wastewater systems, for projects within and adjacent to the Village.

Policy 8-1.1.3: Interlocal Agreement With FCAA To Identify The Availability Of Water Supply To Serve Existing And New Development

By December 31, 2030, Islamorada, Village of Islands, shall enter into an interlocal agreement with the FCAA to formulate a mechanism that will allow the FCAA and the Village to identify the availability of water supply needed to serve existing and new development within the Village; monitor the use of potable water; and implement such alternative water supply projects, traditional water supply projects, conservation projects and reuse necessary to meet the Village's water supply needs. Village will make every effort to enter into an interlocal agreement at an earlier date, dependent on available programming of resources.

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

Policy 8-1.1.4: Coordinate Technical Issues

The Village shall pursue resolution of development and growth management issues having impacts that transcend the Village's political jurisdiction by participating in conflict resolution forums sponsored by the South Florida Regional Planning Council. Technical issues related to annexation shall be coordinated with Monroe County and other public or private entities providing public services of mutual benefit to the Village and County.

Policy 8-1.1.5: Require Findings To Be Addressed In Development Review Process

The review of proposed developments shall include findings that indicate the relationships of such proposed developments to the Comprehensive Plans of adjacent local governments.

Policy 8-1.1.6: Coordinate Land And Water Management

Islamorada, Village of Islands shall continue and modify as needed administrative procedures that ensure efficient coordination of land and water management issues surrounding proposed developments are carried out in a timely manner with all public entities having jurisdictional authority.

Policy 8-1.1.7: Coordinate With The Monroe County School Board

Islamorada, Village of Islands shall meet at least annually with the Monroe County School Board for the purpose of reviewing and comparing plans, in particular proposed land use amendments and changes to the Capital Improvements Program (CIP) and to establish formal agreements between the Village and the School Board, as needed. Such agreements may include, but not be limited to the following issues:

1. Expansion of existing school sites;
2. Traffic circulation in and around school sites;
3. Acquisition of new sites;
4. Use of School Board property and facilities by the Village; and
5. Use of Village property and facilities by the School Board.

Policy 8-1.1.8: Cooperate With The South Florida Regional Planning Council (SFRPC)

Islamorada, Village of Islands shall cooperate with the South Florida Regional Planning Council in the review of regional policies and standards, which require coordination with local governments. The Village shall coordinate with SFRPC in all matters of regional significance in which the SFRPC desires Village input, including but not limited to comprehensive plan review, intergovernmental coordination and review of projects of regional significance.

Policy 8-1.1.9: Consider Participation On The South Florida Regional Planning Council (SFRPC)

In order to maximize the opportunities for improving intergovernmental coordination as well as to ensure representation of the Village's interests and values, Islamorada, Village of Islands shall consider requesting a seat on the South Florida Regional Planning Council (SFRPC).

Policy 8-1.1.10: Participate On The Governor's Task Force On Sustainable South Florida

Islamorada, Village of Islands shall participate on the Governor's Task Force on Sustainable South Florida to the greatest extent possible.

OBJECTIVE 8-1.2: MANAGE AND COORDINATE FUTURE LAND USE DECISIONS

[Policy 8-1.2.1: Coordinate Development And Growth Management Issues](#)

[Policy 8-1.2.2: Coordinate With Adjacent Jurisdictions](#)

[Policy 8-1.2.3: Coordinate With The SFRPC](#)

[Policy 8-1.2.4: Coordinate With The SFWMD](#)

[Policy 8-1.2.5: Coordinate Transportation Improvements](#)

[Policy 8-1.2.6: Coordinate With FDOT](#)

[Policy 8-1.2.7: Coordinate Issues Related To Tourist Impacts](#)

[Policy 8-1.2.8: Implement Intergovernmental Coordination](#)

Upon adoption of the Comprehensive Plan, Islamorada, Village of Islands shall enforce Land Development Regulations which ensure that land development activities, resource conservation and infrastructure issues which transcend jurisdictional boundaries are managed in a manner that includes timely coordination with County, regional and State agencies having jurisdictional authority. Management of land and physical improvements identified on the FLUM will be regulated in order to protect and/or conserve natural systems, including coastal resources, locally significant plant species, soil conditions, vegetative communities, natural habitats and waterbodies. Land use shall also be predicated on availability of man-made infrastructure and service systems required to support respective land use activities.

Policy 8-1.2.1: Coordinate Development And Growth Management Issues

Islamorada, Village of Islands shall pursue resolution of development and growth management issues with impacts transcending the Village's political jurisdiction, through the continued participation on intergovernmental task forces. Issues of regional and State significance shall be coordinated with the South Florida Regional Planning Council, the South Florida Water Management District, and/or State

agencies having jurisdictional authority. The Village shall, when necessary, enter into interlocal agreements or develop joint resolutions in areas of mutual concern. When conflict resolution with other local governments is required, the Village shall consider utilizing the South Florida Regional Planning Council's informal mediation process. Issues to be pursued include but are not limited to the following:

1. Impacts of development proposed in the Islamorada Comprehensive Plan on Monroe County and its incorporated jurisdictions, the region and the State;
2. Land development activities within Islamorada impacting Monroe County and its incorporated jurisdictions;
3. Land development activities within Monroe County and its incorporated jurisdictions impacting the Village;
4. Potential annexation issues;
5. Area wide Stormwater Management Master Plan, proposed improvements and implementing programs;
6. Solid waste disposal, including recycling;
7. Strategies, including alternatives to road widening, for managing level of service impacts of new development and tourism on U.S. 1 within the Village, Monroe County and its incorporated jurisdictions;
8. Level of service standards for infrastructure system impacting the Village and adjacent areas;
9. Manage development impacts on natural coastal resources, including protecting and enhancing water quality, protecting living marine resources, wetland and mangrove preservation, seagrass protection and preservation of other environmentally sensitive lands;
10. Acquisition of land by the Monroe County Land Authority;
11. Conservation of historic resources;
12. Maintain the role of U.S. 1 as 'Main Street' Islamorada, including review of developments outside the Village limits that impact the level of service on U.S. 1 in Islamorada;
13. Coordination of hurricane evacuation plans, shelter space allocations and post disaster recovery management plans with Monroe County; and
14. Coordination with the Monroe County School Board in implementing a system of parks.

Policy 8-1.2.2: Coordinate With Adjacent Jurisdictions

Islamorada, Village of Islands shall continue to require that development applications be coordinated, as appropriate, with Monroe County, the Monroe County School Board, other special districts, the South Florida Regional Planning Council (SFRPC), the South Florida Water Management District (SFWMD), as well as applicable State and Federal agencies prior to issuance of a development order or permit.

Policy 8-1.2.3: Coordinate With The SFRPC

Islamorada, Village of Islands shall continue to coordinate with the SFRPC to determine appropriate mechanisms for meeting regional policies contained in the Regional Plan for South Florida. Thereafter, the Village shall coordinate with SFRPC on an annual basis to provide updates and coordination on subjects of mutual concern.

Policy 8-1.2.4: Coordinate With The SFWMD

Islamorada, Village of Islands shall continue to meet with representatives of SFWMD to discuss water-related issues on an annual basis and continue to refine the coordinated permit procedures to be consistent with the Lower East Coast Water Supply Plan and improve understanding of mutual concerns and long term goals.

Policy 8-1.2.5: Coordinate Transportation Improvements

The Village shall coordinate all transportation improvements proposed by new development with FDOT, DCA, SFRPC, Monroe County, and other State and regional agencies concerned with assessing traffic impacts of proposed development.

Policy 8-1.2.6: Coordinate With FDOT

Annually, Islamorada, Village of Islands shall continue to hold an annual workshop with FDOT to discuss issues related to the Village's policy to maintain U.S. 1 as a two-lane street by developing alternative transportation solutions, and other issues of mutual concern.

Policy 8-1.2.7: Coordinate Issues Related To Tourist Impacts

Islamorada, Village of Islands may coordinate with Monroe County, the Tourist Development Council and other appropriate agencies to reduce the negative impacts on the fragile coastal and natural resources, the Islamorada roadway network including U.S. 1, and other public facilities resulting from the influx of tourists.

Policy 8-1.2.8: Implement Intergovernmental Coordination

Islamorada, Village of Islands shall establish a multi-agency review as a part of the site plan review process for all large scale developments. The Village requests and hereby recommends that a reciprocal multi-agency review be carried out by Monroe County and all other public/semi-public entities responsible for infrastructure, community facilities or other developments that transcend the Village limits and/or impact roadway capacity, potable water supply, wastewater treatment, water quality or drainage within the Village. The multi-agency review process shall be structured and is intended to inform public officials of impending development and/or impending public decisions that may impact the infrastructure and/or service delivery systems of a municipality or other public entity. The multi-agency review shall be advisory to the Village Council.

OBJECTIVE 8-1.3: INTERGOVERNMENTAL COORDINATION OF LEVEL OF SERVICE STANDARDS

[Policy 8-1.3.1: Prevent Proliferation Of Urban Sprawl And Develop Efficient Systems For Coordinating The Timing And Staging Of Public And Private Development](#)

[Policy 8-1.3.2: Ensure Mutually Compatible LOS Standards](#)

[Policy 8-1.3.3: Achieve Equitable LOS Standards For Facility And Service Delivery Systems](#)

[Policy 8-1.3.4: Coordinate Capital Improvements Program](#)

Coordination shall be continued in the assessment of level of service standards for public facilities with any State, regional or local entity having operational and maintenance responsibility for such facility.

Policy 8-1.3.1: Prevent Proliferation Of Urban Sprawl And Develop Efficient Systems For Coordinating The Timing And Staging Of Public And Private Development

Islamorada, Village of Islands shall ensure that the location, scale, timing and design of development shall be coordinated with public facilities and services in order to prevent the proliferation of urban sprawl and achieve cost effective land development patterns. Performance standards shall direct future

development only to those areas where public facilities necessary to meet levels of service standards are available concurrent with the impacts of the development.

Policy 8-1.3.2: Ensure Mutually Compatible LOS Standards

Islamorada, Village of Islands shall continue to coordinate with state, regional or local entities having operational and maintenance responsibility for public facilities to ensure that the level of service standards are mutually compatible standards.

Policy 8-1.3.3: Achieve Equitable LOS Standards For Facility And Service Delivery Systems

Coordination activities with state, regional or local entities pursuant to the objectives and policies in this Element shall include consideration for equitable Level of Service standards for facility and service delivery systems consistent with the provisions of this plan.

Policy 8-1.3.4: Coordinate Capital Improvements Program

During preparation of the annual Capital Improvements Program, Islamorada, Village of Islands shall evaluate all applicable State, regional and local programs proposed for funding in order to promote consistency with the Comprehensive Plan.

OBJECTIVE 8-1.4: MULTI-JURISDICTIONAL ENVIRONMENTAL ISSUES

Policy 8-1.4.1: Liaise With Permitting Agencies

Policy 8-1.4.2: Manage Water Quality, Tidally Influenced Lands And Other Resource Management Issues Impacting The Village And Outstanding Florida Waters

Policy 8-1.4.3: Coordinate Cesspit Identification And Removal

Islamorada, Village of Islands shall maintain procedures for addressing development impacts on wetlands, mangroves, upland habitats or other coastal and natural resources under Federal and/or State jurisdiction. These procedures shall be based on timely coordination, exchange of information and appropriate follow-up by the Village and all agencies having jurisdiction over the issue. The Village shall also require the applicant to obtain jurisdictional determinations from all appropriate agencies and provide the Village with the same prior to the issuance of development orders or building permits for all sites within the Village. Appropriate agencies shall be defined as agencies having jurisdiction on matters surrounding preservation of natural and coastal resources and water quality, including, but not limited to Florida Fish and Wildlife Conservation Commission, US Fish and Wildlife Service, Florida Department of Environmental Protection and U.S. Army Corps of Engineers.

Policy 8-1.4.1: Liaise With Permitting Agencies

Islamorada, Village of Islands shall maintain formal liaison with County, State and Federal agencies having permitting responsibility within the Village.

Policy 8-1.4.2: Manage Water Quality, Tidally Influenced Lands And Other Resource Management Issues Impacting The Village And Outstanding Florida Waters

In order to effectively manage the impacts of development on natural resources, Islamorada, Village of Islands shall coordinate with the SFWMD to secure funds through available funding mechanisms. The Village shall also coordinate issues impacting the Florida Keys Area of Critical State Concern and Florida Keys National Marine Sanctuary programs.

Policy 8-1.4.3: Coordinate Cesspit Identification And Removal

Islamorada, Village of Islands shall coordinate with the other agencies involved in cesspit identification, removal, water quality, wastewater and public education on the dangers of cesspools. These agencies

include, but are not limited to the Monroe County Florida Keys Aqueduct Authority, Florida Department of Health, Florida Department of Community Affairs, Florida Department of Environmental Protection, South Florida Water Management District, Environmental Protection Agency and the National Marine Sanctuary Water Quality Protection Program Steering Committee.

Currently the Department of Health is identifying cesspools through Monroe County. Once the cesspools are identified, priorities for removal shall be established. Removal of cesspools shall be tied to the issuance of new residential building permits. Islamorada shall prepare a Wastewater Master Plan for the entire Village in an effort to prioritize cesspit replacement, determine funding requirements and sources and assess the potential alternatives solutions to providing wastewater systems in the Village.

GOAL 8-2: MONITORING AND EVALUATION

OBJECTIVE 8-2.1: ESTABLISH PROCEDURES FOR MONITORING AND EVALUATION

This section outlines the substantive components of the Village's monitoring program related to the Intergovernmental Coordination Element. The monitoring program will consist of periodic reviews of the measurable objectives. The scheduling for these reviews is as follows:

OBJECTIVE 8-2.1: ESTABLISH PROCEDURES FOR MONITORING AND EVALUATION

[Policy 8-2.1.1: Evaluate The Comprehensive Plan Every Seven \(7\) Years](#)

[Policy 8-2.1.2: Encourage Citizen Participation](#)

[Policy 8-2.1.3: Monitor Plan Progress](#)

[Policy 8-2.1.4: Record Plan Accomplishments](#)

[Policy 8-2.1.5: Identify Obstacles To Plan Implementation](#)

[Policy 8-2.1.6: Identify Necessary Amendments To Goals Or Policies](#)

[Policy 8-2.1.7: Continue Monitoring And Evaluation](#)

The comprehensive planning process is continuous and dynamic in nature. Maintaining the effectiveness of the plan requires its periodic review. This program, required under F.A.C. 9J-5.005(7), provides orderly procedures for monitoring, updating and evaluating the Comprehensive Plan and attendant Evaluation and Appraisal Report (EAR) (F.S. § 163.3191). For monitoring, evaluating and appraising implementation of the Comprehensive Plan, a Seven Year Program shall be followed, adhering to these general procedures:

Policy 8-2.1.1: Evaluate The Comprehensive Plan Every Seven (7) Years

All Elements of the Comprehensive Plan shall be evaluated and updated as necessary, at least every seven (7) years. The Capital Improvements Element shall be reviewed annually.

Policy 8-2.1.2: Encourage Citizen Participation

Village residents and property owners shall be encouraged to participate in the evaluation process. At least one (1) workshop shall be held during the preparation of the EAR, at which public comments and recommendations regarding the Comprehensive Plan shall be received for consideration. Notice of such workshop shall be by advertisement at least one (1) week prior to the date of such meeting. A minimum of one (1) advertised Public Hearing shall be held by the Local Planning Agency prior to the LPA recommending the EAR to the Village Council for their consideration, amendment and adoption. Prior to adoption of the EAR, the Village Council shall hold a minimum of two (2) advertised Public Hearings.

Policy 8-2.1.3: Monitor Plan Progress

Updates to appropriate baseline data and measurable objectives to be accomplished for each five (5) year period of the plan, and for long-term periods as necessary, shall be undertaken at intervals appropriate to the subject area of analysis, but no less than once every seven (7) years. However, capital improvements shall be reviewed annually, coincident with the Village budget review process. Population estimates should be maintained annually and utility systems capacity shall be annually monitored. Administrative procedures shall be adopted to define the local monitoring and data maintenance to be conducted.

Policy 8-2.1.4: Record Plan Accomplishments

Accomplishments in each seven-year period, describing the degree to which the goals, objectives and policies have been successfully reached shall be identified and reported.

Policy 8-2.1.5: Identify Obstacles To Plan Implementation

Obstacles or issues which result in under-achievement of goals, objectives or policies shall be identified and reported.

Policy 8-2.1.6: Identify Necessary Amendments To Goals Or Policies

New or modified goals or policies needed to correct discovered problems shall be identified and reported.

Policy 8-2.1.7: Continue Monitoring And Evaluation

A means of ensuring continuous monitoring and evaluation of the Comprehensive Plan during the seven-year period shall be identified and reported.

CHAPTER 9: CAPITAL IMPROVEMENTS ELEMENT

SECTION 9-1: CAPITAL IMPROVEMENTS GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

State Law reference— F.S. Ch. 163.3177(3).

SECTION 9-1: CAPITAL IMPROVEMENTS GOALS, OBJECTIVES AND IMPLEMENTING POLICIES

GOAL 9-1: PROGRAM CAPITAL IMPROVEMENTS TO ENSURE ADEQUATE FACILITIES AND SERVICES ARE PROVIDED

This section specifies goals, objectives, and implementing policies for the Capital Improvements Element pursuant to F.S. Ch. 163.3177(3).

GOAL 9-1: PROGRAM CAPITAL IMPROVEMENTS TO ENSURE ADEQUATE FACILITIES AND SERVICES ARE PROVIDED

OBJECTIVE 9-1.1: SCHEDULE CAPITAL IMPROVEMENTS

OBJECTIVE 9-1.2: IMPLEMENT A CONCURRENCY MANAGEMENT SYSTEM

OBJECTIVE 9-1.3: IMPLEMENT CAPITAL IMPROVEMENTS

OBJECTIVE 9-1.4: MONITOR AND EVALUATE THE CAPITAL IMPROVEMENTS ELEMENT

Islamorada, Village of Islands shall undertake actions necessary to ensure that adequate public facilities and services are provided within the Village jurisdiction, in keeping with the goals, objectives and policies contained within the Comprehensive Plan.

OBJECTIVE 9-1.1: SCHEDULE CAPITAL IMPROVEMENTS

Policy 9-1.1.1: Identify Needed Capital Improvements

Policy 9-1.1.2: Develop And Adopt A Five-Year Capital Improvement Program

Policy 9-1.1.3: Manage Growth Through The Capital Improvement Program And Budget

Policy 9-1.1.4: Meet Capital Facility Needs Of Developments Approved Prior To Plan Adoption, Replace And Renew Capital Facilities

Policy 9-1.1.5: Establish Priorities For Scheduling Capital Improvements

Policy 9-1.1.6: Pursue Grants

Based on the schedule in Table 9-1, Capital Improvement Program, Islamorada, Village of Islands shall commit necessary resources for capital improvements needed to implement goals, objectives, and policies of the Comprehensive Plan. The fiscal commitment stipulated in Table 9-1 is predicated on the analysis of capital improvement needs within the Transportation, Public Facilities and Recreation and Open Space Elements together with level of service (LOS) standards established and adopted as part of this element. Capital improvements will be provided to correct existing deficiencies, accommodate desired future growth, and replace obsolete or worn out facilities.

Policy 9-1.1.1: Identify Needed Capital Improvements

The Capital Improvement Program (CIP) presented herein identifies capital improvements needed by the existing population to satisfy level of service standards incorporated in the Comprehensive Plan. The Village shall consider performance criteria as well as legal and equitable impact fees, where appropriate, to ensure that new developments provide a sufficient level of public facilities and services (or fees in lieu thereof) in advance of development, to cover the costs of such facilities and services where the demand is specifically attributable to the new development.

This element shall provide a basis for estimating fiscal impacts required by capital improvements included in the Comprehensive Plan. The CIP and budgeting process provides an ongoing process for planning and review of Village capital outlays, including their location, timing, estimated cost, relative priority and potential funding sources. The Capital Improvement Program and budget process is an advisory planning function. Only the Village Council shall determine capital outlays.

Policy 9-1.1.2: Develop And Adopt A Five-Year Capital Improvement Program

The Village shall include within the program, all capital improvements identified in any of the elements of the Comprehensive Plan. In addition, the Capital Improvement Program and budget process shall be used to plan for infrastructure improvements needed to serve projects for which development orders were issued prior to plan adoption.

The fundamental purposes of the capital programming process shall be as follows:

1. To consolidate and coordinate all the various departmental requests by taxing district with the hope of reducing delays and coordinating individual improvement projects and programs;
2. To establish a system of procedures and priorities, by which each proposal can be evaluated in terms of public need, long range development plans, and short and long term fiscal management impacts.
3. To schedule future capital outlays pursuant to identified needs and priorities;
4. To coordinate joint projects involving participation by one (1) or more local governments, as well as regional, State, or Federal agencies; and
5. To set forth a financing program that identifies potential funding sources, including but not limited to:
 - a. Ad valorem taxes/general obligation bonds;
 - b. User fees/revenue of excise tax bonds;
 - c. Impact fees and/or special assessment districts;
 - d. Grant programs;
 - e. \$0.01 infrastructure tax; and
 - f. Sales tax.

Policy 9-1.1.3: Manage Growth Through The Capital Improvement Program And Budget

By providing a planned and reasonably reliable schedule of public projects, the Capital Improvement Program and budget shall guide both public and private capital investment decisions affecting community development patterns. The Capital Improvement Plan and budget shall be used as the primary tool for coordinating land use planning and fiscal management required to successfully implement the Comprehensive Plan.

Policy 9-1.1.4: Meet Capital Facility Needs Of Developments Approved Prior To Plan Adoption, Replace And Renew Capital Facilities

Annually, Islamorada, Village of Islands shall analyze public facility needs prior to adopting a Capital Improvement Plan and budget for the next fiscal year. The analysis shall include a review of the public facilities and infrastructure improvement needs identified in the Comprehensive Plan together with any new assessment of infrastructure components in order to identify needed replacements or renewals of capital facilities.

Policy 9-1.1.5: Establish Priorities For Scheduling Capital Improvements

On an annual basis the Village shall, identify and prioritize projects, and provide scheduling and funding for the identified capital improvement needs. The Village shall assign a higher priority to capital improvement projects in the five (5) year schedule of improvements designed to correct existing infrastructure and services deficiencies. Proposed revisions to the Program, including those addressing the replacement and renewal of capital facilities, shall be evaluated, updated, and ranked in accordance with the following considerations:

1. Consistency with the relevant elements of the Comprehensive Plan;
2. The elimination of public hazards;
3. The elimination of existing deficiencies;
4. Financial feasibility including the impact on the annual operating and capital budgets;
5. The location in relation to the Future Land Use Map;
6. Accommodation of the demands from development and redevelopment;
7. Consistency with the limited growth policies; and
8. The availability of other revenue sources.

Policy 9-1.1.6: Pursue Grants

Islamorada, Village of Islands shall pursue available grants as well as private funds in order to finance needed capital improvements.

OBJECTIVE 9-1.2: IMPLEMENT A CONCURRENCY MANAGEMENT SYSTEM

[Policy 9-1.2.1: Maintain A Concurrency Management System](#)

[Policy 9-1.2.2: Concurrency Monitoring System](#)

[Policy 9-1.2.3: Adopt And Maintain The Following Level Of Service Standards](#)

Pursuant to F.S. Ch. 163, the Village shall implement a Concurrency Management System, which shall ensure that facilities and services needed to support development are available concurrent with the impacts of new development and redevelopment.

Policy 9-1.2.1: Maintain A Concurrency Management System

Islamorada, Village of Islands hereby adopts a Concurrency Management System to ensure that facilities and services needed to support development are available concurrent with the impact of development. The Concurrency Management System shall ensure that no development order is issued that will result in a reduction in the level of service (LOS) below the adopted LOS standard for those public facilities that are subject to the system. The Concurrency Management System shall by reference, incorporate all the applicable concurrency mitigation options allowed by F.S. Ch. 163.3180. The following guidelines identify the stages in the development review process when the test for concurrency must be met:

1. **Preliminary Development Order Stage:** A preliminary development order is a development order that precedes the issuance of a building permit, such as subdivision plat, development plan, certificate of compliance, conditional use permit, or development of regional impact development order. A proposed development must receive a conditional concurrency determination prior to receiving a preliminary development order.

2. **Final Development Order Stage:** A final development order is a building permit or any other development permit authorizing the construction or expansion of a building, an increase in development intensity, or a change of use requiring a new certificate of occupancy. With the exception of development resulting from Policy 1-2.1.3 and the replacement of existing development, a proposed development must receive a final concurrency determination prior to receiving a final development order.

The following guidelines identify the effect of a concurrency determination:

1. **Conditional Concurrency Determination:** Such determination shall indicate that adequate public facilities are available at the time the determination is issued, but shall not guarantee the adequacy or availability of public facilities at subsequent stages of development review.
2. **Final Concurrency Determination:** Such determination shall indicate that adequate facilities will be available at all subsequent stages of development review, subject to certain limitations such as elapsed time and payment of fees.

The following guidelines identify the minimum criteria necessary to meet the concurrency requirements of each public facility type:

1. The concurrency requirements for potable water, solid waste, wastewater, and drainage facilities and services shall be satisfied if one (1) or more of the following conditions are met:
 - a. The necessary facilities and services are in place at the time a development permit is issued; or
 - b. The development permit is issued subject to the condition that the necessary facilities and services will be in place when the impacts of development occur; or
 - c. The necessary facilities are under construction at the time a permit is issued; or
 - d. An enforceable development agreement guarantees that the necessary facilities and services will be in place when the impacts of the development occur.
2. The concurrency requirements for recreational facilities shall be satisfied if one (1) or more of the following conditions are met:
 - a. Conditions 1.(a), 1.(b), or 1.(c) listed above; or
 - b. A binding executed contract is in place at the time the development permit is issued which provides for the commencement of the actual construction of the required facilities or provision of services within one (1) year of permit issuance; or
 - c. The payment of fees in lieu of dedication of land, to be used for the acquisition of lands for parks, conservation or open space, in an amount determined by Islamorada, Village of Islands, provided that the facilities to correct the deficiency in LOS must be in place or under construction not more than one (1) year after the issuance of a Certificate of Occupancy and that the improvement is included in the Capital Improvements Schedule or that such an improvement is required through an enforceable development agreement.
3. The concurrency requirements for roadways/transportation facilities and services shall be satisfied if one (1) or more of the following conditions are met:
 - a. The necessary facilities and services are in place at the time a development permit is issued; or

- b. The development permit is issued subject to the condition that the necessary facilities and services will be in place when the impacts of development occur; or
- c. The necessary facilities are under construction at the time a permit is issued; or
- d. An enforceable development agreement guarantees that the necessary facilities and services will be in place when the impacts of the development occur; or
- e. The applicant enters into a binding agreement to pay for or construct its proportionate share of the costs of providing the necessary transportation facilities to serve the proposed development; or
- f. The proportionate share contribution or construction is sufficient to accomplish one (1) or more mobility improvements that will benefit a regionally significant transportation facility.

Policy 9-1.2.2: Concurrency Monitoring System

Islamorada, Village of Islands shall maintain a concurrency monitoring system that ensures adherence to the adopted level of service standards, the schedule of capital improvements, and the availability of public facility capacity and shall include the following components:

- 1. An updated database of permitting data that includes the amount of development for which final development orders have been issued, development for which final development orders have expired, and development which has been constructed;
- 2. The database shall also include public facility data that incorporates the capacity of existing facilities, the additional capacity created by facility improvements, the impacts of existing development, and the impacts anticipated due to committed development; and
- 3. An annual report assessing the capacities of all public facilities within the Village subject to the Concurrency Management System.

Policy 9-1.2.3: Adopt And Maintain The Following Level Of Service Standards

Islamorada, Village of Islands shall adopt level of service standards for public facilities, for which concurrency is required, as set forth below. Prior to issuing a development order the Village shall review all proposed development to ensure consistency with adopted LOS standards. No development shall be approved that is projected to decrease the existing LOS below the adopted standard, unless mitigation by the developer is approved by the Village Council.

SUMMARY OF LEVEL OF SERVICE STANDARD

FACILITIES	LEVEL OF SERVICE STANDARDS
Wastewater	The Village, shall at a minimum, adopt the current level of service standards as provided in Federal and State regulations. The current LOS standards are as follows: FLORIDA STATUTORY TREATMENT STANDARDS in MG/L—BOD/TSS/TN/TP 1. Design flows less than or equal to 100,000 gpd (BAT) in MG/L—10/10/10/1 2. Design flows greater than 100,000 gpd (AWT) in MG/L—5/5/3/1
Wastewater Supply LOS	70 gal/capita/day

Potable Water	Residential LOS:	66.5 gal/capita/day
	Non-Residential LOS:	0.35 gal/sq.ft./day
	Overall LOS:	+ 171 gallons/capita/day
	ERU:	371.7 gal/day
Solid Waste	Residential Disposal Quantity:	5.44 pounds/capita/day
	Non-Residential:	6.37 pounds/acre/day
Stormwater	1. Post development runoff shall not exceed the pre-development runoff rate for a 25-year storm event, up to and including an event with a 24-hour duration. 2. Stormwater treatment and disposal facilities shall be designed to meet the design and performance standards established in F.A.C. 62-25.025 with treatment of the runoff from the first one inch of rainfall on-site to meet the surface water quality standards required by F.A.C. 62-302.500. 3. Stormwater facilities which directly discharge into 'Outstanding Florida Waters' (OFW) shall provide an additional treatment pursuant to F.A.C. 62-25.025(9). Stormwater facilities shall be designed so as to not degrade the receiving water body below the minimum conditions necessary to assure the suitability of water for the designated use of its classification as established in F.A.C. Ch. 62-302.	
Recreation and Open Space	3.79 acres per 1,000 population	
Roadways	U.S. 1 shall be maintained within 5% of LOS C as measured on an overall countywide basis not dependent on any single road segment, using the measured median travel speed from the annual report of public facilities capacity. All other roadways for which the Village is responsible shall have sufficient available capacity to operate at or above LOS D as measured by peak hour volumes at all intersections, including but not limited to all intersections with U.S. 1.	

Source: Islamorada, Village of Islands, Planning and Development Services Department

HISTORY

Adopted by Ord. [20-04](#) § 3 on 8/20/2020

OBJECTIVE 9-1.3: IMPLEMENT CAPITAL IMPROVEMENTS

[Policy 9-1.3.1: Update And Adopt A Five-Year Schedule Of Capital Improvements Annually](#)

[Policy 9-1.3.2: Update Revenue Projections For The Five-Year Schedule Of Capital Improvements Annually](#)

This section specifies a Five-Year Capital Improvements Program for Islamorada, Village of Islands, together with criteria for monitoring and evaluating the Capital Improvements Element of this Plan.

Policy 9-1.3.1: Update And Adopt A Five-Year Schedule Of Capital Improvements Annually

Table 9-1: Capital Improvement Program establishes the estimated projected cost and anticipated potential revenue sources for each of the capital improvement needs identified within the respective Comprehensive Plan elements. These capital improvements are prioritized and scheduled in order to

ensure that the goals, objectives and policies established in this Comprehensive Plan shall be met according to the appropriate timeframes.

TABLE 9-1: CAPITAL IMPROVEMENT PROGRAM

ISLAMORADA, VILLAGE OF ISLANDS FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM FY 2015-2016 through FY 2019-2020								
		Prior FY	FY 16-17	FY 17-18	FY 18- 19	FY 19- 20	FY 20- 21	TOTA L
TRANSPORTATION PROJECTS								
Funding Sources								
Local Option Gas Taxes		7,850	-	-	-	-	-	7,850
2013 Revenue Bond Proceeds		317,150	-	-	-	-	-	317,150
	Total Funding Sources	\$325,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$325,000
Expenditures								
Village-wide Public Road Asphalt Overlay Project		\$325,000	-	-	-	-	-	325,000
	Total Expenditures	\$325,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$325,000
WASTEWATER PROJECTS								
Funding Sources								
Non-Ad Valorem Assessment & Rate Revenue		-	340,000	-	-	-	-	340,000
Mayfield State Grant Proceeds		5,286,060	-	-	-	-	-	5,286,060
Stewardship Act Grant Proceeds		-	875,000	-	-	-	-	875,000
	Total Funding Sources	\$5,286,060	\$1,215,000	\$ -	\$ -	\$ -	\$ -	\$6,501,060
Expenditures								
Wastewater Collection and Treatment System		5,286,060	1,215,000	-	-	-	-	6,501,060
	Total Expenditures	\$5,286,060	\$1,215,000	\$ -	\$ -	\$ -	\$ -	\$6,501,060
STORMWATER PROJECTS								
Funding Sources								
Non-Ad Valorem Assessments		300,000	350,000	350,000	-	-	-	1,000,000

South Florida Water Management District Grant		-	-	150,000	-	-	-	150,000
	Total Funding Sources	\$300,000	\$350,000	\$500,000	\$ -	\$ -	\$ -	\$1,150,000
Expenditures								
Neighborhood Stormwater Projects		300,000	-	-	-	-	-	300,000
Venetian Shores Stormwater Project #1		-	350,000	500,000	-	-	-	850,000
	Total Expenditures	\$300,000	\$350,000	\$500,000	\$ -	\$ -	\$ -	\$1,150,000
CULTURE AND RECREATION PROJECTS								
Funding Sources								
Local Government Discretionary Sales Surtax for Infrastructure and/or Loan Proceeds		-	300,000	500,000	-	-	-	800,000
Tourist Development Council Bricks & Mortar Grant			300,000	300,000	-	-	-	600,000
DEP Recreational Trails Grant		-	-	200,000	-	-	-	200,000
	Total Funding Sources	\$ -	\$600,000	\$1,000,000	\$ -	\$ -	\$ -	\$1,600,000
Expenditures								
Replacement of Anne's Beach Boardwalk		-	600,000	600,000	-	-	-	1,200,000
Key Tree Cactus Boardwalk		-	-	400,000	-	-	-	400,000
	Total Expenditures	\$ -	\$600,000	\$1,000,000	\$ -	\$ -	\$ -	\$1,600,000
CANAL RESTORATION PROJECTS								
Funding Sources								
FDEP Grant Proceeds		-	50,000	-	-	-	-	50,000
Monroe County Grant Proceeds		-	50,000	-	-	-	-	50,000
Local Government Discretionary Sales Surtax for Infrastructure and/or Loan Proceeds		-	100,000	100,000	100,000	100,000	100,000	500,000
	Total Funding Sources	\$ -	\$200,000	\$100,000	\$100,000	\$100,000	\$100,000	\$600,000
Expenditures								
Canal Restoration Projects		-	200,000	100,000	100,000	100,000	100,000	600,000

	Total Expenditures	\$ -	\$200,000	\$100,000	\$100,000	\$100,000	\$100,000	\$600,000
GRAND TOTALS								
Funding Sources								
Transportation		325,000	-	-	-	-	-	325,000
Wastewater		5,286,060	1,215,000	-	-	-	-	6,501,060
Stormwater		300,000	350,000	500,000	-	-	-	1,150,000
Culture and Recreation		-	600,000	1,000,000	-	-	-	1,600,000
Canal Restoration		-	200,000	100,000	100,000	100,000	100,000	600,000
	Grand Total Funding Sources	\$5,911,060	\$2,365,000	\$1,600,000	\$100,000	\$100,000	\$100,000	\$10,176,060
Expenditures								
Transportation		325,000	-	-	-	-	-	325,000
Wastewater		5,286,060	1,215,000	-	-	-	-	6,501,060
Stormwater		300,000	350,000	500,000	-	-	-	1,150,000
Culture and Recreation		-	600,000	1,000,000	-	-	-	1,600,000
Canal Restoration		-	200,000	100,000	100,000	100,000	100,000	600,000
	Grand Total Expenditures	\$5,911,060	\$2,365,000	\$1,600,000	\$100,000	\$100,000	\$100,000	\$10,176,060
Source: Islamorada Finance Department, 2/3/2017								

Policy 9-1.3.2: Update Revenue Projections For The Five-Year Schedule Of Capital Improvements Annually

The sources for revenues for the CIP are the Special Revenue Funds. These sources are categorized by type of receipt and will be expended through the Capital Improvement Program as shown in Table 9-1. A summary of anticipated potential revenues for each category of funds versus the anticipated expenditures for each category of funds, identified within the respective Comprehensive Plan elements, are provided in Table 9-1 Capital Improvement Program.

OBJECTIVE 9-1.4: MONITOR AND EVALUATE THE CAPITAL IMPROVEMENTS ELEMENT

[Policy 9-1.4.1: Monitor And Evaluate CIP Annually](#)

The Capital Improvements Element shall be reviewed on an annual basis, prior to the preparation of the

budget, in order to ensure that the required fiscal resources are available to provide adequate public facilities, including transportation, stormwater, wastewater, solid waste, and recreation and open space, needed to support future land use consistent with adopted LOS standards. The annual review of the Capital Improvements Element shall take place on March of every year and be the responsibility of the Local Planning Agency. The findings and recommendations of the Local Planning Agency shall be considered by the Village Council in April of every year at a public hearing after which the Village Council shall take action as it deems necessary in order to refine/update the Capital Improvements Element.

Policy 9-1.4.1: Monitor And Evaluate CIP Annually

On an annual basis, the Director of Planning and Development Services, in concert with the Local Planning Agency, shall monitor and evaluate the procedures, criteria and data for the Capital Improvements Element. The annual monitoring and evaluation procedure shall incorporate the following considerations:

1. **Update and Refine Data:** Determine if any corrections, updates and/or modifications should be undertaken, such considerations shall include, but not be limited to the following:
 - a. Mandated infrastructure improvements;
 - b. Scheduled dates of improvement projects;
 - c. Estimated costs;
 - d. Revenue sources;
 - e. Dedications; or
 - f. Recently constructed capital improvements;
2. **Review the CIP for Consistency:** Determine whether changes to the Capital Improvements Element are necessary in order to maintain consistency with other elements of this Plan;
3. **Incorporate New Projects:** The five (5) year schedule of improvements shall be updated as necessary to reflect new projects identified in proposed improvements to public facilities; and
4. **Prioritize Improvements:** Capital improvements needed to address deficiencies for public facilities shall be assessed and a recommended schedule of priorities for public improvements established.

Annually, the Planning and Development Services Director, in concert with the Local Planning Agency shall:

5. **Establish Capital Improvement Evaluation Criteria:** Review the evaluation criteria and weightings used to prioritize capital improvement projects, and modify them to adapt to current mandates, as necessary;
6. **Evaluate Level of Service Standards:** Evaluate the Village's effectiveness at maintaining the adopted LOS standards and recommend actions to address problem areas;
7. **Coordinate with County, State and Regional Improvement Programs:** Review the effectiveness of program coordination to resolve multi-jurisdictional issues surrounding the plans and programs of Monroe County and its incorporated jurisdictions, Federal, State and regional agencies, and private entities which provide public facilities within Islamorada, Village of Islands;
8. **Mandate Private Sector Improvements, Dedications or Fees in Lieu Thereof:** Evaluate the effectiveness of provisions in this element requiring mandatory dedications or fees in lieu thereof, as well as progress toward incorporating other programs for assessing new

development a pro-rata share of the improvement costs generated by the respective developments;

9. **Assess the Impacts of Other Jurisdictions in Maintaining Level of Service Standards:** Coordinate with Monroe County and its incorporated jurisdictions, the Florida Keys Aqueduct Authority (FKAA), the South Florida Water Management District, the Florida Departments of Transportation (DOT) and the Department of Environmental Protection (DEP) as applicable, to evaluate the success and failure of intergovernmental coordination to achieve an area-wide approach to public facilities improvements, required to maintain levels of service standards;
10. **Evaluate Outstanding Indebtedness:** Evaluate the ratio of outstanding indebtedness to the property tax base;
11. **Pursue Grants:** Evaluate efforts made to secure available grants or private funds in order to finance the provision of capital improvements;
12. **Evaluate Fiscal Management:** Evaluate the Village's progress in implementing effective funding mechanisms for promoting public facilities improvements;
13. **Establish Evaluation Criteria:** Assess the usefulness of criteria used to evaluate plan amendments as well as requests for new development/redevelopment; and
14. **Update Schedule of Improvements:** Review the Village's progress in implementing the five (5) year Capital Improvement Program and refine the schedule to include any new projects required to support any development during the latter part of the five (5) year schedule.

CHAPTER 10: MONITORING AND REVIEW CRITERIA

GOAL 10-1: GENERAL MONITORING AND EVALUATION CRITERIA

State Law reference— F.A.C. 9J-5.005(7).

GOAL 10-1: GENERAL MONITORING AND EVALUATION CRITERIA

OBJECTIVE 10-1.1: ROLE OF THE LOCAL PLANNING AGENCY IN PLAN EVALUATION AND UPDATES

OBJECTIVE 10-1.2: CRITERIA FOR CONTINUING SEVEN-YEAR EVALUATION OF COMPREHENSIVE PLAN ELEMENTS

OBJECTIVE 10-1.3: ANNUAL EVALUATIONS OF LIMITED GROWTH OBJECTIVES AND POLICIES

This section specifies procedures for monitoring, updating and evaluating the Comprehensive Plan every seven (7) years pursuant to F.S. § 163.3191, and F.A.C. 9J-5.005(7). In addition, the section presents a summary of actions required to implement the Comprehensive Plan.

OBJECTIVE 10-1.1: ROLE OF THE LOCAL PLANNING AGENCY IN PLAN EVALUATION AND UPDATES

The Local Planning Agency shall monitor and oversee the effectiveness and status of the Comprehensive Plan and recommend to the Village Council such changes in the Comprehensive Plan as may from time to time be required.

1. **General Procedures:** The monitoring and evaluation of the Comprehensive Plan shall be a continuous and ongoing process. The Director of Planning and Development Services shall prepare periodic Evaluation and Appraisal Reports (EAR) on the Comprehensive Plan. These reports shall be reviewed and revised by the Local Planning Agency and sent to the Village Council at least once every seven (7) years after the adoption of the Comprehensive Plan. The preparation of the EAR shall comply with the procedures and contents set forth in F.S. § 163.3191 and F.A.C. 9J-5.005(7).
2. **Citizen Participation:** The process of Comprehensive Plan evaluation and update shall include public hearings before the Local Planning Agency and the Village Council, respectively, prior to adopting the final report. The public hearings shall be duly noticed and citizen input shall be encouraged through various forums designed to maximize participation.

OBJECTIVE 10-1.2: CRITERIA FOR CONTINUING SEVEN-YEAR EVALUATION OF COMPREHENSIVE PLAN ELEMENTS

When evaluating each element of the Comprehensive Plan for the purpose of an EAR, staff and the Local Planning Agency shall use the following general criteria as well as any more specific criteria contained in respective elements of the Plan.

1. **Review the Impacts of Changing Conditions:** Baseline data, including major shifts in the magnitude, distribution, and/or characteristics of the below stated items, shall be updated and reviewed to identify new or critical issues. These issues and shifts in conditions may serve as indicators of needed change in public policy included in the Comprehensive Plan. The policy implications of such changes shall be evaluated on a continuing basis. The baseline data update shall be predicated on the U.S. Census and/or other special census or significant new data that is deemed appropriate by the Village Council for inclusion in the Comprehensive Plan.
 - a. Affordable housing supply and demand:

- b. Land use;
- c. Land acquisitions;
- d. Transferable development rights;
- e. Natural resources;
- f. Fiscal management resources;
- g. Public facilities;
- h. Transportation system; and
- i. Recreation and open space system.

2. **Major Planning and Development Issues:** The Evaluation and Appraisal Report shall identify major planning and development issues such as physical deterioration, the location and distribution of land uses and related adverse physical, economic social or environmental impacts.
3. **Accomplishments:** The Evaluation and Appraisal Report shall describe the progress in achieving Comprehensive Plan objectives occurring since adoption of the Plan or the last evaluation report, whichever is most recent.
4. **Obstacles or Problems:** The Evaluation and Appraisal Report shall analyze and explain obstacles and problems that resulted in underachievement of goals, objectives and policies.
5. **Unanticipated Opportunities:** The Evaluation and Appraisal Report shall describe the nature and extent of unanticipated and previously unforeseen opportunities occurring since the Comprehensive Plan adoption or since the preparation of the latest EAR, whichever is most recent.
6. **Develop Adequate Response to Changes in State Requirements:** The monitoring and evaluation process shall inventory and consider the impacts of changes to F.S. Ch. 187, the State Comprehensive Plan; F.S. Ch. 163, Pt. II; the minimum criteria contained in Rule 9J-5, F.A.C.; and the South Florida Regional Planning Council Strategic Policy Plan. Similarly, the monitoring and evaluation process shall recommend revisions to the Comprehensive Plan required to incorporate the changes identified.
7. **Recommended Amendments:** The Evaluation and Appraisal Report shall recommend new or modified goals, objectives or policies to resolve issues identified during the Comprehensive Plan evaluation process.

OBJECTIVE 10-1.3: ANNUAL EVALUATIONS OF LIMITED GROWTH OBJECTIVES AND POLICIES

Islamorada, Village of Islands shall annually evaluate the policies set forth in the Future Land Use Element, and other elements, to monitor the effectiveness of the Comprehensive Plan towards managing development and redevelopment consistent with the Village's desired limited rate of growth.

1. **Annual Evaluation of Available Capacities for Public Facilities and Transportation:** By May 1 of each year, starting the second year following the adoption of the Comprehensive Plan, the Director of Planning and Development Services shall submit to the Village Council a report summarizing available capacities in transportation and public facilities. This report shall also include a summary of estimated growth, development and redevelopment occurring during the past year.
2. **Annual Evaluation of Plan Implementation Actions:** Islamorada, Village of Islands shall annually assess its progress in accomplishing adopted Comprehensive Plan objectives and

policies. Progress or activities implementing the Future Land Use Element shall be summarized and submitted to the Village Council regarding the following:

- a. Land Acquisition Program;
- b. Use of Transferable Development Rights;
- c. Redevelopment within the Mixed Use Activity Centers; and
- d. Building Permit Allocation System.

CHAPTER 11: PROPERTY RIGHTS ELEMENT

GOAL 11-1: PLANNING DEVELOPMENT DECISIONS

HISTORY

Adopted by Ord. [22-02](#) on 6/23/2022

GOAL 11-1: PLANNING DEVELOPMENT DECISIONS

OBJECTIVE 11-1.1: RESPECT PRIVATE PROPERTY RIGHTS

The Village of Islamorada will make planning and development decisions with respect for property rights and with respect for people's rights to participate in decisions that affect their lives and property.

OBJECTIVE 11-1.1: RESPECT PRIVATE PROPERTY RIGHTS

[Policy 11-1.1.1: Owner Possession And Control](#)

[Policy 11-1.1.2: Owner Maintenance, Development And Improvements](#)

[Policy 11-1.1.3: Owner Privacy](#)

[Policy 11-1.1.4: Owner Disposal Of Property](#)

The Village will respect judicially acknowledged and constitutionally protected private property rights. The following rights shall be considered in the Village's decision-making:

Policy 11-1.1.1: Owner Possession And Control

The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 11-1.1.2: Owner Maintenance, Development And Improvements

The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 11-1.1.3: Owner Privacy

The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

Policy 11-1.1.4: Owner Disposal Of Property

The right of a property owner to dispose of his or her property through sale or gift.

PLAN AMENDMENTS

LIST OF PLAN AMENDMENTS

Section(s)	Effective Date	Summary
Objective 1-1.1	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 1-1.2	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-1.2.1	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-1.2.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-2.1.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-2.1.3	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 1-2.1.4	12/2/2006	Amend Policy pursuant to Ord. 06-18, 9/14/2006 & DCA Notice of Intent Docket No. 06R-1-NOI-4405-(A)-(I).
Policy 1-2.1.4	12/11/2008	Amend Policy pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 1-2.1.4	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 1-2.1.4	7/25/2017	Amend Policy pursuant to Ord. 17-07, 6/22/2017 & DEO Notice of Intent Docket No. 17-3ACSC-NOI-4405-(A)-(I).
Policy 1-2.1.6	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-2.1.8	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-2.1.8	3/21/2016	Amend Policy pursuant to Ord. 16-02, 1/26/2016 & DEO Notice of Intent Docket No. 15-4ACSC-NOI-4405-(A)-(I)
Policy 1-2.1.10	6/28/2005	Amend Policy pursuant to Ord. 05-05, 4/28/2005 & DCA Notice of Intent Docket No. 05R1-NOI-4405-(A)-(I).
Policy 1-2.1.11	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-2.1.12	2/24/2009	New Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-2ER NOI-4405 (A)-(I).
Policy 1-2.1.12	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-2.1.13	1/25/2010	New Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 1-2.1.14	11/18/2010	New Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).

Policy 1-2.2.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-2.2.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-2.3.1	9/18/2009	Amend Policy pursuant to Ord. 09-14, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-2.3.3	7/25/2017	Amend Policy pursuant to Ord. 17-07, 6/22/2017 & DEO Notice of Intent Docket No. 17-3ACSC-NOI-4405-(A)-(I).
Policy 1-2.3.4	12/2/2006	Amend Policy pursuant to Ord. 06-18, 9/14/2006 & DCA Notice of Intent Docket No. 06R-1-NOI-4405-(A)-(I).
Objective 1-2.4	12/11/2008	Amend Objective pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 1-2.4.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I)
Policy 1-2.4.4	12/2/2006	Amend Policy pursuant to Ord. 06-18, 9/14/2006 & DCA Notice of Intent Docket No. 06R-1-NOI-4405-(A)-(I).
Policy 1-2.4.5	12/11/2008	Amend Policy pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 1-2.4.7	6/28/2005	Amend Policy pursuant to Ord. 05-05, 4/28/2005 & DCA Notice of Intent Docket No. 05R1-NOI-4405-(A)-(I).
Policy 1-2.4.7	2/4/2011	Amend Policy pursuant to Ord. 10-18, 11/18/2010 & DCA Notice of Intent Docket No. 10-2-NOI-4405-(A)-(I).
Policy 1-2.4.7	12/23/2013	Amend Policy pursuant to Ord. 13-23, 11/14/2013 & DEO Notice of Intent Docket No. 13-7ACSC-NOI-4405-(A)-(I)
Policy 1-2.4.7	11/18/2016	Amend Policy pursuant to Ord. 16-18, 10/13/2016 & DEO Notice of Intent Docket No. 16-5ACSC-NOI-4405-(A)-(I)
Policy 1-2.4.8	6/28/2005	Amend Policy pursuant to Ord. 05-05, 4/28/2005 & DCA Notice of Intent Docket No. 05R1-NOI-4405-(A)-(I).
Policy 1-2.4.9	6/28/2005	Amend Policy pursuant to Ord. 05-05, 4/28/2005 & DCA Notice of Intent Docket No. 05R1-NOI-4405-(A)-(I).
Policy 1-2.6.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 1-2.9	2/26/2005	Amend Objective pursuant to Ord. 04-17, 12/9/2004 & DCA Notice of Intent Docket No. 04-02-NOI-4405-(A)-(N).
Policy 1-2.9.1	2/26/2005	Amend Policy pursuant to Ord. 04-17, 12/9/2004 & DCA Notice of Intent Docket No. 04-02-NOI-4405-(A)-(N).
Policy 1-2.9.2	2/26/2005	Amend Policy pursuant to Ord. 04-17, 12/9/2004 & DCA Notice of Intent Docket No. 04-02-NOI-4405-(A)-(N).
Objective 1-2.11	9/20/2015	Establish Objective pursuant to Ord. 15-11, 8/20/2015 & DEO Notice of Intent Docket No. 15-1ACSC-NOI-4405-(A)-(1)
Policy 1-2.11.1	8/5/2016	Establish Policy pursuant to Ord. 16-13, 6/6/2016 & DEO Notice of Intent Docket No. 15-5ACSC-NOI-4405-(A)-(I)
Policy 1-2.11.2	9/20/2015	Establish Objective pursuant to Ord. 15-11, 8/20/2015 & DEO Notice of Intent Docket No. 15-1ACSC-NOI-4405-(A)-(1)

Policy 1-2.11.3	4/21/2016	Establish Policy pursuant to Ord. 16-04, 2/25/2016 & DEO Notice of Intent Docket No. 16-1ACSC-NOI-4405-(A)-(I)
Policy 1-2.11.4	5/27/2016	Establish Policy pursuant to Ord. 16-07, 4/7/2016 & DEO Notice of Intent Docket No. 16-4ACSC-NOI-4405-(A)-(I)
Policy 1-2.11.5	8/5/2016	Establish Policy pursuant to Ord. 16-11, 6/39/2016 & DEO Notice of Intent Docket No. 16-2ACSC-NOI-4405-(A)-(I)
Objective 1-3.1	2/26/2005	Amend Objective pursuant to Ord. 04-16, 12/9/2004 & DCA Notice of Intent Docket No. 04-02-NOI-4405-(A)-(N).
Policy 1-3.1.1	10/13/2004	Amend Policy pursuant to Ord. 04-09, 7/22/2004 & DCA Notice of Intent Docket No. 04-1-NOI-4405-(A)-(I).
Policy 1-3.1.1	2/26/2005	Amend Policy pursuant to Ord. 04-16, 12/9/2004 & DCA Notice of Intent Docket No. 04-02-NOI-4405-(A)-(N).
Policy 1-3.1.1	9/21/2007	Amend Policy pursuant to Ord. 07-18, 07-19, 7/12/2007 & DCA Notice of Intent Docket No. 07-1-NOI-4405-(A)-(I).
Policy 1-3.1.1	12/11/2008	Amend Policy pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 1-3.1.1	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 1-3.1.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-3.1.1	3/9/2012	Amend Policy pursuant to Ord. 12-02, 2/9/2012 & DEO Notice of Intent Docket No. 12-1ACSC-NOI-4405-(A)-(I).
Policy 1-3.1.1	5/5/2014	Amend Policy pursuant to Ord. 14-05, 3/13/14 & DEO Notice of Intent Docket No. 14-1ACSC-NOI-4405-(A)-(I)
Policy 1-3.1.1	9/15/2016	Amend Policy pursuant to Ord. 16-15, 7/21/2016 & DEO Notice of Intent Docket No. 16-3ACSC-NOI-4405-(A)-(I)
Policy 1-3.1.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-3.1.2	11/18/2010	Delete Policy "Provide for Workforce Housing" pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-3.1.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-3.1.3	11/18/2010	Renumbered to Policy 1-3.1.2 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-3.1.3	2/4/2011	Amend Policy pursuant to Ord. 10-17, 11/18/2010 & DCA Notice of Intent Docket No. 10-2-NOI-4405-(A)-(I).
Policy 1-3.1.3	12/13/2013	Amend Policy pursuant to Ord. 13-22, 9/26/2013 & DEO Notice of Intent Docket No. 13-6ACSC-NOI-4405-(A)-(I)
Policy 1-3.1.3	12/29/2014	Amend Policy pursuant to Ord. 14-15, 11/6/2014 & DEO Notice of Intent Docket No. 14-4ACSC-NOI-4405-(A)-(I).
Policy 1-3.1.4	2/3/2007	Amend Policy pursuant to Ord. 06-22, 11/21/2006 & DCA Notice of Intent Docket No. 06R-2-NOI-4405-(A)-(I).
Policy 1-3.1.4	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).

Policy 1-3.1.4	11/18/2010	Renumbered to Policy 1-3.1.3 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-3.1.5	11/18/2010	Renumbered to Policy 1-3.1.4 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-3.1.6	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 1-3.1.6	11/18/2010	Renumbered to Policy 1-3.1.5 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-3.1.7	11/18/2010	Renumbered to Policy 1-3.1.6 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-4.1.1	6/17/2009	New Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 1-4.1.1	9/21/2017	Amend Policy pursuant to Ord. 17-11, 8/24/2017 & DEO Notice of Intent Docket No. 17-2ACSC-NOI -4405-(A)-(I).
Objective 1-4.2	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-4.2.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-4.2.1	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Objective 1-4.3	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-4.3.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-4.3.2	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Objective 1-4.4	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 1-4.5	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-4.5.5	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 1-4.5.6	2/24/2009	New Policy pursuant to Ord. 08-09 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Objective 1-4.6	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 1-4.7	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-4.7.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 1-4.7.2	11/18/2010	Moved to Policy 6-1.13.5 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-4.7.3	11/18/2010	Moved to Policy 2-1.5.5 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).

Policy 1-4.7.4	11/18/2010	Moved to Policy 6-1.13.6 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 1-4.7.5	2/24/2009	New Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 1-4.7.5	11/18/2010	Moved to Policy 3-1.7.6 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Objective 1-4.8	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I)
Policy 1-4.8.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 1-4.9	12/11/2008	Amend Objective pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 1-4.9.1	12/11/2008	Amend Policy pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 1-4.9.2	12/11/2008	Amend Policy pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 1-4.9.3	12/11/2008	Amend Policy pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 1-4.9.4	12/11/2008	Amend Policy pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 1-4.9.4	2/4/2011	Amend Policy pursuant to Ord. 10-20, 11/18/2010 & DCA Notice of Intent Docket No. 10-2-NOI-4405-(A)-(I).
Policy 2-1.2.1	10/18/2013	Amend Policy pursuant to Ord. 13-20, 8/22/2013 & DEO Notice of Intent Docket No. 13-5ACSC-NOI-4405-(A)-(I)
Policy 2-1.2.2	1/25/2010	Delete Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 2-1.2.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.2.4	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 2-1.2.4	10/18/2013	Amend Policy pursuant to Ord. 13-20, 8/22/2013 & DEO Notice of Intent Docket No. 13-5ACSC-NOI-4405-(A)-(I)
Policy 2-1.2.5	10/18/2013	Amend Policy pursuant to Ord. 13-20, 8/22/2013 & DEO Notice of Intent Docket No. 13-5ACSC-NOI-4405-(A)-(I)
Policy 2-1.2.8	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.2.9	2/2/2006	Amend Policy pursuant to Ord. 05-21, 11/23/2005 & DCA Notice of Intent Docket No. 05R2-NOI-4405-(A)-(I).
Policy 2-1.2.10	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 2-1.3.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.3.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).

Policy 2-1.3.4	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.3.6	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.3.7	1/25/2010	Delete Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 2-1.3.9	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.3.10	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.3.11	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.3-.12	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 2-1.3.13	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.3.15	2/24/2009	New Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 2-1.4.1	1/25/2010	Delete Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 2-1.5.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 2-1.5.4	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.5.5	11/18/2010	Moved from Policy 1-4.7.3 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 2-1.6.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.6.3	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 2-1.6.7	9/18/2009	Delete Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.7.1	12/11/2008	Amend Policy pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 2-1.7.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 2-1.9.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 2-1.9.4	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 2-1.9.6	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.1.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)

Policy 3-1.1.3	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 3-1.1.4	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 3-1.1.5	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 3-1.1.7	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.1.8	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 3-1.1.10	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.2.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 3-1.3.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.3.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 3-1.3.4	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.3.5	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 3-1.3.6	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.5.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.5.4	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.5.5	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.6.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.7.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.7.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.7.4	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.7.4	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 3-1.7.5	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 3-1.7.6	11/18/2010	Moved from Policy 1-4.7.5 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).

Goal 4-1	6/17/2009	Amend Goal pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Objective 4-1.1	6/17/2009	Amend Goal pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-1.1.1	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 4-1.1.3	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-1.1.3	9/21/2017	Amend Policy pursuant to Ord. 17-11, 8/24/2017 & DEO Notice of Intent Docket No. 17-2ACSC-NOI -4405-(A)-(I).
Policy 4-1.1.5	6/17/2009	Amend Goal pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-1.1.6	6/17/2009	Amend Goal pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-1.1.6	9/21/2017	Amend Policy pursuant to Ord. 17-11, 8/24/2017 & DEO Notice of Intent Docket No. 17-2ACSC-NOI -4405-(A)-(I).
Policy 4-1.1.7	6/17/2009	Amend Goal pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-1.1.7	9/21/2017	Amend Policy pursuant to Ord. 17-11, 8/24/2017 & DEO Notice of Intent Docket No. 17-2ACSC-NOI -4405-(A)-(I).
Policy 4-1.1.10	6/17/2009	New Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-1.1.10	9/21/2017	Amend Policy pursuant to Ord. 17-11, 8/24/2017 & DEO Notice of Intent Docket No. 17-2ACSC-NOI -4405-(A)-(I).
Policy 4-1.1.11	6/17/2009	New Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-1.1.12	6/17/2009	New Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Objective 4-2.1	2/24/2009	Amend Objective pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 4-2.1.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 4-2.2.1	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 4-2.2.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 4-2.2.3	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Objective 4-2.3	11/18/2010	Amend Objective pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 4-2.3.1	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 4-2.3.2	2/24/2009	Original policy "Nutrient Reduction Credits" deleted pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I). Policy 4-2.3.2 currently titled "Require Connection to Wastewater Facilities."

Policy 4-2.3.3	2/24/2009	Policy renumbered to 4-2.3.2 pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 4-2.3.4	2/24/2009	Policy renumbered to 4-2.3.3 pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 4-2.3.4	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 4-2.3.5	2/24/2009	Policy renumbered to 4-2.3.4 pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 4-2.3.5	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 4-2.3.6	2/24/2009	Policy renumbered to 4-2.3.5 pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 4-2.3.6	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 4-2.3.7	2/24/2009	Policy renumbered to 4-2.3.6 pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 4-2.3.7	9/18/2009	Deleted Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I)
Policy 4-2.3.8	2/24/2009	Policy renumbered to 4-2.3.7 pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Objective 4-3.1	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I)
Objective 4-3.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 4-3.1.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 4-3.1.2	9/18/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 4-3.1.2	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 4-3.1.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 4-3.2.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 4-3.2.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 4-3.2.5	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 4-3.2.6	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 4-4.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 4-4.1.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).

Policy 4-4.1.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Goal 4-5	6/17/2009	Amend Goal pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Objective 4-5.1	6/17/2009	Amend Objective pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-5.1.1	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Objective 4-5.2	6/17/2009	Amend Objective pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Objective 4-5.2	9/21/2017	Amend Objective pursuant to Ord. 17-11, 8/24/2017 & DEO Notice of Intent Docket No. 17-2ACSC-NOI -4405-(A)-(I).
Policy 4-5.2.1	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-5.2.2	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-5.2.3	6/17/2009	New Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-5.2.4	6/17/2009	New Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 4-5.2.5	6/17/2009	New Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Objective 4-6.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Policy 4-6.1.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 5-1.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I)
Policy 5-1.1.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.1.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.1.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.1.4	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.1.8	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.1.9	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.1.9	2/4/2011	Amend Policy pursuant to Ord. 10-20, 11/18/2010 & DCA Notice of Intent Docket No. 10-2-NOI-4405-(A)-(I).
Objective 5-1.2	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).

Policy 5-1.2.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.2.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.2.5	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.2.6	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.2.7	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.2.7	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.2.8	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.2.9	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.2.9	2/4/2011	Amend Policy pursuant to Ord. 10-20, 11/18/2010 & DCA Notice of Intent Docket No. 10-2-NOI-4405-(A)-(I).
Policy 5-1.2.10	12/11/2008	Amend Policy pursuant to Ord. 08-07, 6/26/2008 & DCA Notice of Intent Docket No. 08-01-NOI-4405-(A)-(I).
Policy 5-1.2.11	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.2.12	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.2.13	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.3.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.3.5	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.3.6	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 5-1.3.7	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.4.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.5.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.5.1	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.5.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.5.2	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).

Policy 5-1.5.4	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.5.5	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.5.5	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.5.6	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.5.7	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.5.11	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 5-1.6	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.6.1	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 5-1.6.2	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.6.3	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.6.4	1/25/2010	Delete Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 5-1.6.7	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.6.9	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 5-1.7	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.7.5	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.7.7	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 5-1.8	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.8.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 5-1.9	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 5-1.10	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.10.2	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.10.3	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).

Policy 5-1.10.5	9/18/2009	Original Policy 5-1.10.5 "Examine the Feasibility of Providing Shelter(s) of Last Resort" deleted pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.10.6	9/18/2009	Original Policy 5-1.10.6 renumbered Policy 5-1.10.5 "Ensure A Quick Re-Entry Into the Following an Evacuation" pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Objective 5-1.11	11/18/2010	Amend Objective pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 5-1.11.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I)
Objective 5-1.13	9/18/2009	Amend Objective pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.13.2	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.14.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 5-1.15.1	9/18/2009	Amend Policy pursuant to Ord. 09-13, 8/6/2009 & DCA Notice of Intent Docket No. 09-1-NOI-4405-(A)-(I).
Policy 6-1.1.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.1.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 6-1.2	6/17/2009	Amend Objective pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 6-1.2.1	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 6-1.2.2	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 6-1.2.3	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 6-1.2.4	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 6-1.2.4	9/21/2017	Amend Policy pursuant to Ord. 17-11, 8/24/2017 & DEO Notice of Intent Docket No. 17-2ACSC-NOI -4405-(A)-(I).
Policy 6-1.2.6	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Objective 6-1.3	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.3.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 6-1.4	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.4.3	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).

Policy 6-1.4.6	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.4.11	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 6-1.4.17	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 6-1.4.18	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 6-1.5	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 6-1.6	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.6.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.6.3	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 6-1.7	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.7.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.7.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.7.3	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.7.6	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.7.8	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 6-1.8	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.8.4	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.8.4	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 6-1.8.5	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.8.7	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 6-1.9	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.9.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.9.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).

Policy 6-1.9.5	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.9.8	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 6-1.11.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 6-1.12	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.12.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.12.3	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.12.4	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 6-1.13	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.13.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 6-1.13.5	11/18/2010	Moved from Policy 1-4.7.2 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 6-1.13.6	11/18/2010	Moved from Policy 1-4.7.4 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.1.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 7-1.1.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 7-1.1.3	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.1.4	11/18/2010	Delete Policy "Develop a Recreation and Open Space Master Plan" pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.1.5	11/18/2010	Renumbered to Policy 7-1.1.4 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.1.6	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 7-1.1.6	11/18/2010	Renumbered to Policy 7-1.1.5 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.1.7	11/18/2010	Renumbered to Policy 7-1.1.6 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.1.8	11/18/2010	Renumbered to Policy 7-1.1.7 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.1.9	11/18/2010	Renumbered to Policy 7-1.1.8 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.1.10	11/18/2010	Renumbered to Policy 7-1.1.9 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).

Policy 7-1.1.11	11/18/2010	Renumbered to Policy 7-1.1.10 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.2.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 7-1.3	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 7-1.3.2	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.3.3	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 7-1.4	11/18/2010	Amend Objective pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.4.3	11/18/2010	Delete Policy "Require Private Recreation and Open Space Systems" pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.4.4	11/18/2010	Renumbered to Policy 7-1.4.3 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.4.5	11/18/2010	Renumbered to Policy 7-1.4.4 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.4.6	11/18/2010	Renumbered to Policy 7-1.4.5 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.4.7	11/18/2010	Renumbered to Policy 7-1.4.6 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.4.8	11/18/2010	Renumbered to Policy 7-1.4.7 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.4.9	11/18/2010	Renumbered to Policy 7-1.4.8 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 7-1.4.10	11/18/2010	Renumbered to Policy 7-1.4.9 pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 8-1.1.3	6/17/2009	New Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I). Original Policy 8-1.1.3 renumbered to 8-1.1.4 "Coordinate Technical Issues."
Policy 8-1.1.4	6/17/2009	Original Policy 8-1.1.4 renumbered to 8-1.1.5 "Require Findings to be Addressed in Development Review Process." pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 8-1.1.4	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 8-1.1.5	6/17/2009	Original Policy 8-1.1.5 renumbered to 8-1.1.6 "Coordinate Land and Water Management." pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 8-1.1.6	6/17/2009	Original Policy 8-1.1.6 renumbered to 8-1.1.7 "Coordinate with the Monroe County School Board." pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 8-1.1.7	6/17/2009	Original Policy 8-1.1.7 renumbered to 8-1.1.8 "Cooperate with the South Florida Regional Planning Council (SFRPC)." pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).

Policy 8-1.1.7	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 8-1.1.8	6/17/2009	Original Policy 8-1.1.8 renumbered to 8-1.1.9 "Consider Participation on the SFRPC." pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 8-1.1.9	6/17/2009	Original Policy 8-1.1.9 renumbered to 8-1.1.10 "Participate on the Governor's Task Force on Sustainable South Florida." pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 8-1.2.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 8-1.2.3	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 8-1.2.4	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 8-1.2.5	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 8-1.3	6/17/2009	Amend Objective pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 8-1.3.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 8-1.3.2	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 8-1.3.3	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Objective 8-1.4	1/25/2010	Amend Objective pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 8-2.1.1	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 8-2.1.4	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Policy 8-2.1.7	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).
Objective 9-1.1	2/24/2009	Amend Objective pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 9-1.1.2	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 9-1.2.1	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 9-1.2.1	10/18/2013	Amend Policy pursuant to Ord. 13-18, 8/22/2013 & DEO Notice of Intent Docket No. 13-1ACSC-NOI-4405-(A)-(I)
Policy 9-1.2.1	10/18/2013	Amend Policy pursuant to Ord. 13-20, 8/22/2013 & DEO Notice of Intent Docket No. 13-5ACSC-NOI-4405-(A)-(I)
Policy 9-1.2.2	1/25/2010	Amend Policy pursuant to Ord. 09-23, 11/19/2009 & DCA Notice of Intent Docket No. 09-2-NOI-4405-(A)-(I).

Policy 9-1.2.3	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 9-1.2.3	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 9-1.2.3	10/18/2013	Amend Policy pursuant to Ord. 13-20, 8/22/2013 & DEO Notice of Intent Docket No. 13-5ACSC-NOI-4405-(A)-(I)
Policy 9-1.2.3	9/21/2017	Amend Policy pursuant to Ord. 17-11, 8/24/2017 & DEO Notice of Intent Docket No. 17-2ACSC-NOI -4405-(A)-(I).
Policy 9-1.3.1	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Policy 9-1.3.1	6/17/2009	Amend Policy pursuant to Ord. 09-05, 4/9/2009 & DCA Notice of Intent Docket No. 09-RWSP1-NOI-4405-(A)-(I).
Policy 9-1.3.1	11/18/2010	Amend Policy pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).
Policy 9-1.3.1	11/4/2011	Amend Policy pursuant to Ord. 11-21, 9/22/2011 & DEO Notice of Intent Docket No. 11-1ACSC-NOI-4405-(A)-(I).
Policy 9-1.3.1	9/27/2012	Amend Policy pursuant to Ord. 12-11, 9/27/2012 & DEO Notice of Intent Docket No. 11-3ACSC-NOI-4405-(A)-(I).
Policy 9-1.3.1	11/26/2014	Amend Policy pursuant to Ord. 14-12, 10/8/2014 & DEO Notice of Intent Docket No. 14-3ACSC-NOI-4405-(A)-(I).
Policy 9-1.3.1	4/14/2017	Amend Policy pursuant to Ord. 17-04, 2/16/17 & DEO Notice of Intent Docket No. 16-7ACSC-NOI-4405-(A)-(I).
Policy 9-1.3.2	2/24/2009	Amend Policy pursuant to Ord. 08-09, 12/18/2008 & DCA Notice of Intent Docket No. 08-02-NOI-4405-(A)-(I).
Objective 10-1.2	11/18/2010	Amend Objective pursuant to Ord. 10-11, 8/26/2010 & DCA Notice of Intent Docket No. 10-1-NOI-4405-(A)-(I).