

Legislating Local Liberties: Human Rights Ordinances Across Florida

by Rosalia Contreras and Andrew P. Lannon, Esq., B.C.S.¹

On the evening of July 16, 2015 at a regular council meeting in Palm Bay, Florida, a prominent lesbian, gay, bisexual and transgender (hereinafter “LGBT”) activist approached the podium and spoke during the public comments portion of the meeting.² During the three minutes he was afforded, this activist encouraged the Mayor and City Council to adopt a “human rights ordinance” (hereinafter “HRO”) which would increase the

number of protected classes under Title VII of the Civil Rights Act of 1964,³ the Americans with Disabilities Act of 1990,⁴ and the Age Discrimination in Employment Act of 1967⁵ from: (1) race; (2) color; (3) religion; (4) sex; (5) national origin; (6) disability; and (7) age to: (8) marital status; (9) familial status; (10) sexual orientation; and (11) gender identity and expression. There are currently thirty HROs in both counties⁶ and municipalities⁷ in

the State of Florida.

Several months later, Palm Bay City Councilwoman Michele Paccione was provided a model HRO by Gina Leigh Duncan, the Transgender Inclusion Director for Equality Florida Action, Inc., a 501(c)(4) organization whose principal motto is “Securing Equality & Justice for Florida’s Lesbian, Gay, Bisexual & Transgender Community.”⁸ The model HRO was

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Chair’s Report

by Mark CS Moriarty

A colleague and I were trying a case. Opposing counsel was from well-known personal injury firm. He moved to restrict us during all parts of the trial from identifying or using his firm’s name, or his firm’s slogan – “For the People”.

Not wanting to waste an opportunity (or more likely not wanting to concede on any point) my colleague argued that he and I were the ones truly “For the People”, not opposing counsel. He reasoned we were the government’s lawyers. We represented “The People”. Our clients were “The People” and if we wanted to use “For the People” we should be able to do so!

As my term as Chair of the City County Local Government Section ends, I have become more convinced of my colleague’s argument. We are hired either directly by the people themselves

or by the people’s representatives. Whether representing plaintiffs or defendants, petitioners or respondents, appellants or appellees, the judgments we receive have the potential to affect people throughout the state.

Decisions and determination made in one community reverberate through and affect all communities.

The City County Local Government Section helps us stay ahead of the reverberations. It helps band together, to obtain information, to seek support, and to exchange Ideas. I have been humbled and honored to have served as your Chair of this great section. Hopefully I have continued the great efforts of our Immediate Past Chair Dana Crosby-Collier, and have paved a solid path for our Chair-Elect Jeannine Williams.

I am grateful for everybody’s work

this past year, especially Ricky Libbert, the section’s Administrator. Thank you for the previous members who had the foresight to begin this section. Thank you for the future members who will continue the work. In this regard I encourage everybody reading this to stay involved, get involved and encourage others to do so.

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2015-2016

CALENDAR

CITY, COUNTY AND LOCAL GOVERNMENT LAW SECTION

May 5, 2016

Land Use
Caribe Royale, Orlando

May 6-7, 2016

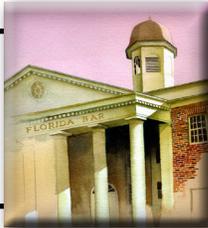
**39th Annual Local Government
Law in Florida**
Caribe Royale, Orlando

May 5, 2016

Executive Council Meeting
Caribe Royale, Orlando

June 17, 2016

**Executive Council Meeting
The Florida Bar
Annual Convention**
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Ethics Questions?



1/800/235-8619



Letter From the Editor Craig Leen, Coral Gables City Attorney, In Honor of Autism Awareness Month

April is National Autism Awareness Month. As a parent of two amazing children diagnosed with autism, one of whom is on the more severe part of the spectrum, the importance of this month touches me deeply. It gives all of us a moment to reflect on the principle of inclusion that is key to making our state and local governments more welcoming to individuals with disabilities, and to think about action that could be taken by local governments and their commissions and councils to support this principle.

I am proud to report on a Resolution Declaring Principles of Inclusion for Individuals with Autism and other Special Needs that was unanimously adopted this month by the Coral Gables City Commission. The Declaration references the United Nations Convention on the Rights of Persons with Disabilities, including the following core principles:

- a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b. Non-discrimination;
- c. Full and effective participation and inclusion in society;
- d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e. Equality of opportunity;
- f. Accessibility;
- g. Equality between men and women;
- h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

The resolution then contains numerous provisions demonstrating the City's commitment at all levels of its government – boards, staff, and officials – to look for ways to accommodate and serve individuals with disabilities and special needs. It calls on local businesses, developers and homeowners associations, universities and places of learning, as well as national, state, and local governments to take action in support of inclusion. It explains the City's present programs, as well as its future programs, to promote inclusion.

A resolution like this is not only the right thing to do, it is the wise one. Resolutions like this make it crystal clear that the local government is dedicated to fulfilling its obligations under the Americans with Disabilities Act, and provides the authority up front to boards and staff to do what is necessary to meet those legal requirements. In the event that the local government's commitment to these principles is ever challenged, the resolution can be pointed to in order to demonstrate the local government's commitment at the highest level to meeting the minimum requirements of the law, and exceeding them.

My favorite part of the resolution is where it states "inclusion is an attitude, an approach, and a mindset, which welcomes and facilitates participation by those with disabilities and special needs, and encourages accommodations beyond those required by law." These words are what I wish for each day for my children and for all those with disabilities and special needs.

Pocket Full of Sunshine (and Public Records Law) – An Update on Government in the Sunshine and the Public Records Act from January 1, 2015 - March 28, 2016

by Wendy L. Fisher, Esq., Junior Staff Attorney, City of Palm Bay

Working in Government Law, attorneys are always trying to make sure the Sunshine Laws and the Public Records Act are complied with. And because of that, government attorneys are always cognizant of the next public records request and work hard to ensure that each email, document, study or drawing are preserved if required by law. Not to mention ensuring everyone is trained on what they can delete to make space in their inbox and whether that funny cat video will be made public. A government attorney's job entails keeping up on the latest cases and opinions that are constantly evolving to ensure the transparency of the government for the public. This past year has seen many new cases and opinions that have continued to develop the Sunshine Law and the Public Records Act.

A. Government in the Sunshine

When it comes to having Government in the Sunshine, the courts give a lot of deference to the complaint. Recently, the courts have stressed this point. In a recent Second District Court of Appeals case, the court held when the allegations of a complaint under the Sunshine Law allege a potential violation, the court's ability to dismiss the complaint with prejudice should be very limited. *Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in the City of Tampa*, 162 So.3d 348 (Fla. 2d DCA 2015). The court stated further, if a violation of the Sunshine Law has occurred, any "resolution, rule, or formal action shall be considered [non]binding" unless it is cured by remedial action. *Id.* at 355.

While the courts did not have many cases this year on Sunshine Law, Florida's Attorney General received many questions on the Sunshine Law.

Two opinions addressed litigation in the Sunshine. One Attorney General Opinion stated settlement and/or litigation strategies that were closed to the public are open for inspection and copying when dismissal with prejudice of a case due to settlement is reached as it is the conclusion of the litigation, even if the court has continuing jurisdiction on the case to enforce the terms of the settlement agreement because the case is not able to be reopened on the same issue. The Honorable Bruce H. Colton, Fla. AGO 2015-03 (2015). The second stated that a voting member of city council, including the mayor, is not precluded from attending shade meetings with the council and attorney for council regarding pending litigation settlement negotiations or strategy sessions, even if the voting member is a named party to the suit in his/her individual capacity. Ms. Pam E. Booker, Fla. AGO 2015-13 (2015).

Today there are many new technologies available to communicate with each other and the law changes with each new technology. In two different opinions, the Attorney General addressed electronic means and the Sunshine Law. In one opinion, the Attorney General opined that a meeting of a local board, such as a pension or retirement board, does not comply with the Sunshine Law if it is held outside of the jurisdiction, even if public electronic access is provided. This is especially applicable when the information at such meetings will be an integral part of the decision-making process on an issue that will come before the board. Mr. Robert A. Sugarman, 2015 WL 4719034 (2015). And the Attorney General articulated that while boards or commissions may hold workshops and special meetings through electronic media technology,

the commission or board may not carry out official business without a quorum physically present. A vote to approve minutes would constitute an official action as the Sunshine Law requires minutes of public meetings to be taken and recorded and therefore would require an in-person quorum. Mr. Michael J. Stebbins, 2015 WL 8013022 (2015).

B. The Public Records Act

The Public Records Act has been developed extensively over the past year between case law, Attorney General Opinions, and informal opinions. Just like in Government in the Sunshine issues, the legal system has tried to keep up with modern technology when applying the Public Records Act. In one case, Florida's First District Court of Appeals held that a hospital placed unreasonable restrictions upon a patient's access to public records in the hospital's custody in violation of Public Records Act. *Lake Shore Hospital Authority v. Lilker*, 168 So.3d 332 (Fla. 1st DCA 2015). The court stated access to public records via electronic means is an *additional* means that can be used, but is insufficient if the person is asking for a traditional method of records, i.e. paper copies. *Id.* at 333. The court also held that restricting the hours in which a person can inspect and copy records to only between 8:30 a.m. and 9:30 a.m., Monday through Friday is unreasonable. *Id.* at 333. And requiring a delay in time, such as a 24 hours' notice, is not permissible. *Id.* at 333-334.

In a different case, the court decided that an email from a staff attorney about a proposed order is exempt and not a public record as it is "judicial decision-making." *Jacobs Keeley, PLLC v. Chief Judge of the*
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Seventeenth Judicial Circuit, 169 So.3d 192 (Fla. 4th DCA 2015). However, emails concerning the adoption of a proposed administrative order are not exempt unless it is “to protect a compelling governmental interest.” *Id.* at 194. And Facebook posts were brought up in the courts when the First District Court of Appeals held that while public records are exempt if they are concerning an active criminal investigation, there is an exception for “the time, date, location, and nature of a reported crime.” *Barfield v. City of Tallahassee*, 171 So.3d 239 (Fla. 1st DCA 2015). Therefore, a Facebook post that reports the alleged crime is not exempt and the portions pertaining to time, date, location, and nature of a crime must be disclosed. *Id.* at 241.

Cases involving the Public Records Act also gained a lot of media attention recently. There were two highly publicized cases in the Fifth District. *Economic Development Commission v. Ellis* held that a private entity was the county’s primary, not its sole agent for economic development activity and it did not take over the county’s role, it merely provided services to, not in place of, the county. 178 So.3d 118 (Fla. 5th DCA 2015). Therefore, there is not clear, compelling, complete delegation of governmental function to the private entity. *Id.* at 123. This means the totality of the factors or *Schwab* test (9 factors) should be used, and not the delegation of function test. *Id.* at 123. The second case held that student disciplinary records are considered education records and as such fall under the exception to the Public Records Act afforded by FERPA. *Knight News, Inc. v. University of Central Florida*, 2016 WL 438252 (Fla. 5th DCA 2016). FERPA does allow the disclosure of disciplinary records pertaining to a crime of violence or non-forcible offenses, but allegations of hazing do not fall under those exceptions. *Id.* at 1.

The courts have also determined issues involving public records in criminal law. The court distinguished that inmates’ recorded phone calls are not public records, but that does not mean that inmates have a right to privacy in such phone conversations.

It further distinguished that inmates’ calls that do not concern “investigative material so as to perpetuate or formalize knowledge in connection with official action” are not public record. The court also held that if a publisher lawfully obtains truthful information about a public concern, its right to publish is upheld even if the source of information obtained it unlawfully. *Palm Beach Newspapers, LLC v. State*, 2016 WL 239048 (Fla. 4th DCA 2016).

In another case, the First District Court of Appeals held there is no legal duty to require a custodian of criminal discovery to combine its ongoing discovery review with its public records request review. *Morris Pub. Group, LLC v. State*, 154 So.3d 528 (Fla. 1st DCA 2015). Therefore, the State Attorney’s Office that required a deposit before conducting review of recorded phone calls for an ongoing case was not an unlawful refusal to comply with Chapter 119. *Id.* at 534. The court stated it could find no legal duty, however it pointed out that it may be a good policy to keep in mind and also certified that the question of whether a custodian of criminal discovery should have a legal duty to combine its discovery efforts with public records review if doing so would be economically efficient and result in less delay is a question of great legal importance. *Id.* at 535-536.

And the Fifth District Court of Appeals held transcripts and record documents prepared at public expense on behalf of an indigent defendant must be provided to defendant at no cost. *Wharen v. State*, 170 So.3d 942 (Fla. 5th DCA 2015). However, the defendant does not have a right to the entire file without charge and any other documents other than the transcripts and record documents prepared at the public expense cannot be required to be provided without adequate compensation. *Id.* at 944.

Both the court and the Attorney General opined on issues concerning surveillance videos. The court held videos from a security surveillance of a bus is not a public record because the videos “reveal the capabilities – and as a corollary, the vulnerabilities – of the current system.” The Legislature’s intent was clear and unambiguous in the language of the statute,

which requires strict adherence and no need to look at legislative history. *Central Florida Regional Transp. Authority v. Post-Newsweek Stations, Orlando Inc.*, 157 So.3d 401 (Fla. 5th DCA 2015). And the Attorney General interpreted the recent case law in an opinion that stated that surveillance tapes from the cameras installed at the transit authority’s facilities are public record but are exempt under 119.071(3)(a)2. Mr. Alan S. Zimmet, Fla. AGO 2015-06 (2015) citing *Central Florida Regional Transp. Authority v. Post-Newsweek Stations, Orlando Inc.*, 157 So.3d 401 (Fla. 5th DCA 2015).

The court also addressed public records as applied to remedies and evidentiary issues. The court reaffirmed that Mandamus is an appropriate remedy to complete the timely production of public records requested under Chapter 119. *Williams v. State*, 163 So.3d 618 (Fla. 4th DCA 2015). It also stated “when a trial court receives a petition for a writ of mandamus, its initial task is assessing the petition to determine whether it is facially sufficient. If it is not facially sufficient, the court may dismiss the petition,” and a petition is facially insufficient if it does not acknowledge the obligation to pay for copying costs. *Williams v. State*, No. 2D15-2655, 2016 WL 1066217, at 1 (Fla. 4th DCA 2016). And in two cases, the court held that a court should conduct an evidentiary hearing when a governmental entity argues it does not possess some of the materials requested in a public records request. *Ferrier v. Public Defender’s Office, Second Judicial Circuit of Florida*, 171 So. 3d 744 (Fla. 1st DCA 2015). See also *Holley v. Bradford County Sheriff’s Dept.*, 171 So.3d 805 (Fla. 1st DCA 2015).

The Attorney General released formal and informal opinions on many issues concerning the Public Records Act. Two opinions addressed employment records and the Public Records Act. In one opinion, the Attorney General stated that job applications are considered personnel records. As such, an agency may not seal job applications to keep them exempt from public records. Therefore, all job applications are accessible through the Public Records Act. Mr. Hal A. Airth,

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SUNSHINE

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Fla. AGO 2015-10 (2015). In the second opinion, the Attorney General opined information regarding law enforcement officers assigned undercover whose names appear on personnel rosters or lists may be exempt under 119.071(4)(c) and by falling under an exemption the custodian should condition the release of the information on a determination of statutory or substantial policy need for disclosure. Mr. Jeffrey A. Chudnow, Fla. AGO 2015-02 (2015).

The Attorney General also stated draft settlement agreements from a federal agency to a state agency are public records. Furthermore, if a state settles a claim against a company for conspiracy to fix prices, the records prepared in anticipation of litigation are public records even if a related case is pending because the case is considered to be completed once settled. Mr. Raul Gastesi, Jr., 2015 WL 5227498 (2015).

The Public Records Act and the Legislature

Many times, an issue becomes so large that the legislature decides to take action to remedy. There have been two recent cases on attorneys' fees. In the First District Court of Appeals, the court interpreted that the condition precedent required by section 284.30 applies to the Public Records Act and to get attorney's fees, one must follow the condition precedent notification requirement. *State Dept. of Economic Opportunity v. Consumer Rights, LLC*, 181 So.3d 1239 (Fla. 1st DCA 2015). And in a case in the First District Court of Appeals, the court held that delay is not automatically a cause for liability for attorneys' fees. *Consumer Rights, LLC v. Union County, Fla.*, 159 So.3d 882 (Fla. 1st DCA 2015). Additionally, the government is required

to produce records to a "person." *Id.* at 886. However, the government is not required to produce records to a generic email until it is clear that the email address belongs to a person and is not a computer generated email address and/or request. *Id.* at 886. Therefore, a delay in verifying an email address belongs to a person is not an unlawful refusal to provide public records and does not warrant the awarding of attorneys' fees. *Id.* at 886.

After the Fifth District holding, new bills began being discussed in both the Florida House and Senate that could have a huge impact on public record requests that abuse the system and the people that bring bullying lawsuits over public records. Currently, section 119.12 of the Public Records Act states that the court "shall" award attorney fees if it determines the "agency unlawfully refused to permit a public record." Fla. Stat. § 119.12 (2015). HB 1021 would change

"shall" to "may," and SB 1220 would allow courts to refrain from awarding attorney fees if the court determines the request to inspect public records was made primarily to harass the governmental entity.¹ These bills will be watched closely, and we will make sure we are up to date on all Public Records Act to ensure the most open access for our public.

While the Public Records Act may seem clear cut to the public, government attorneys know better. It is constantly changing through the judicial and legislative branches and as attorneys it is our job to know about any amendments or clarifications. But don't worry, the government attorneys are keeping up with these changes and will make sure we are in the Sunshine and compliant with the Public Records Act.

Endnote:

1 As on March 11, 2016 SB 1220 died in Messages and HB 1021 died in State Affairs Committee.

InSession: Transforming Practices through Technology

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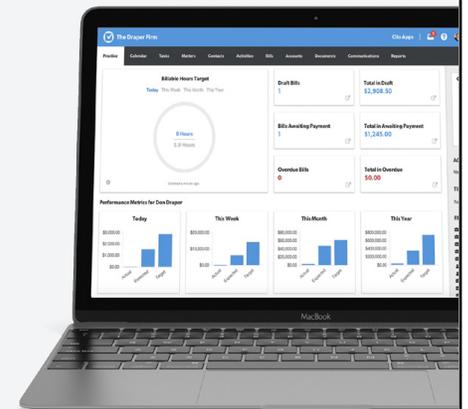
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Real Estate, Local Governments, and the Rough Seas Ahead

by Cullen Mahoney, University of Miami School of Law LLM in Real Property Development

March 2016

Venice is undeniably breathtaking. However, South Florida homeowners would likely be aghast if they knew that many in the climate prediction business have looked at the data and see that in the future, much of South Florida looks like Venice, without the charm. Their thinking is that the not-so-long-term effects of global warming and climate change will inevitably turn our way of life on its head. Climate change will forever alter real estate development in South Florida, and fundamentally change the perceived role of local governments. Indeed, over the next 100 years, many predict that some South Florida coastal communities may cease to exist.

The debate about whether global warming is caused by human activity is beyond the scope of this article. This article is not trying to settle that largely politicized debate. Rather, this article accepts that the current data about global warming and climate change are discouraging and implies that local governments cannot ignore such data.

Studies conducted by federal agencies, such as NASA, predict sea-levels to rise by as much as 48 inches by the year 2100.¹ The Southeast Florida Regional Climate Change Compact predicts sea levels to rise 6 to 10 inches by 2030, 14 to 26 inches by 2060, and 31 to 61 inches by 2100.² Even a modest increase in the sea level could have a substantial impact on South Florida communities (as well as communities along Tampa Bay, Charlotte Harbor, and others) which are generally flat with minimal elevation above sea level. A sea rise of just a couple of feet could reclaim most of the Everglades, many coastal communities, and a significant portion of the Keys. Many other communities, even if not overwhelmed by the rising sea, could suffer critical losses to water, sewer, electric, and other basic infrastructure services.

The economy of South Florida is based largely on tourism, international shipping, construction, and agriculture.³ Under current plausible scenarios, much of that activity would come to a halt, resulting in economic losses in the billions of dollars. Popular beaches would be underwater, airports would be shut down, and normally productive soil would be contaminated with saltwater. With more coastline than any other state except Alaska,⁴ Florida could lose hundreds of millions more in residential and commercial real estate.

Some scientists suggest that certain coastal areas cannot be saved, and we should begin planning for when these areas will need to be abandoned. Interestingly, while scientists are recommending retreat, or at least a wholesale re-evaluation of building and construction practices, South Florida is experiencing a surge in development with over 50,000 new units in the development pipeline from Miami to West Palm.⁵ Yet many in the scientific community are telling us that the significant and destructive effects of sea level rise might be seen within the next 25 to 30 years, or even sooner.

Over time, water sources and waste systems could eventually fail, sea level rise could impact gravity drainage systems and features in the water management canal system, and communities could face saltwater intrusion into the aquifer and local water supply wells, posing an undeniable health threat to all. At what point does the duty of local governments to maintain these public systems cease? This has been addressed in the context of a public road in *Jordan v. St Johns County*, which held that the county has a duty to reasonably maintain the road, as long as it is a public road dedicated to public use.⁶ Additionally, the county must provide a reasonable level of maintenance that affords meaningful

access, unless or until the county formally abandons the road.⁷

There are many things that local government can and should be doing. Some require only political will and modest amounts of money. Other efforts require significant costs as well as coordination between governments at every level. Other efforts require a level of honesty and political courage that is rare, if not unprecedented, as it will require governments to ultimately tell some residents that they can no longer serve or protect their land.

Local government can undertake other efforts, but they will be expensive, controversial, and we may not know if they will work, until it is too late. Some communities have elevated roads and raised sea walls to avoid some effects of sea level rise. Others have installed storm pumps, but this method is expensive, energy intensive, and can lead to pollution.

In the last year, millions of dollars have been spent to elevate roads, raise sea walls, and install pumps to direct water into Biscayne Bay. In the years to come, hundreds of millions more will be allocated to elevate several more miles of road and to install several more storm pumps.⁸ These efforts are effective, but may pose unintended consequences.

Raising the roads solves the problem of impassable thoroughfares, but may shift the floodwater burden to surrounding properties. While roads may be elevated, it is unlikely that most homes will be as well. Floodwaters could be redirected with devastating consequences for local landowners, potentially exposing local governments to financial liability.⁹

While many of these efforts may effectively deal with the immediate threat of sea level rise over the next couple of decades, many prominent engineers and scientists believe that these efforts are shortsighted and

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ROUGH SEAS AHEAD

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will make a nominal difference in years to come. "Rearranging the deck chairs on the Titanic" is a term some use to describe the situation of South Florida. "Hospice care" is another. Local governments face the dilemma of choosing among increasingly unattractive options: should they choose potentially costly, wasteful, and possibly destructive remedial efforts, or face being accused of doing nothing to save their communities?

Some communities and local governments may face even more hard choices than others. The City of Coral Gables is taking it upon itself to identify the best information available and to try to craft its response to rising seas based upon that information. Coral Gables' Mayor, Jim Cason, has concluded that if the predictions are correct, his city may have to start taking measures immediately to deal with the effects of rising seas as early as the next 30 years.

Before any destruction occurs, local governments may feel the pressure of mortgage and insurance companies conducting their own risk

assessments and potentially restricting their services in certain neighborhoods or requiring extremely high rates. Gayle Bainbridge, founding partner of Global Risk Insurance Solutions, compares this process to getting car insurance where several factors such as age and gender are used to determine insurance rates. Insurance companies will take factors like elevation and past flooding incidents into account, and mortgage companies may limit the length of mortgage loans. Certain areas in South Florida could become too risky to loan to or to insure all together.¹⁰ For these reasons, the private sector will be taking the lead on many issues relating to sea level rise.

What would happen to the market if a city began to limit rebuilding or expansion of existing homes in areas that had been determined to be highly likely to succumb to rising sea levels over the next 20 years? What would happen if a city drew a line, and informed the community in the event of rising seas that the city would stop providing basic services to those areas? These questions remain unanswered.

Local governments need to invest now in conducting studies to

determine how their communities will be impacted. Citizens need to obtain proper education about the dangers their communities face so they can make informed decisions. Residents and local governments need to make a collaborative effort to prepare for this unavoidable issue.

Endnotes:

- 1 Global Climate Change: Evidence." *NASA Global Climate Change and Global Warming: Vital Signs of the Planet*. Jet Propulsion Laboratory / National Aeronautics and Space Administration, 15 June 2008. Web. 14 Jan. 2015. <<http://climate.nasa.gov/evidence/>>.
- 2 <http://www.southeastfloridacclimatecompact.org/wp-content/uploads/2015/10/2015-Compact-Unified-Sea-Level-Rise-Projection.pdf>.
- 3 <http://www.stateofflorida.com/facts.aspx>.
- 4 <http://fas.org/sgp/crs/misc/RS21729.pdf>.
- 5 <http://www.politico.com/magazine/story/2016/03/what-works-miami-beach-sea-level-rise-213731>.
- 6 *Jordan v. St. Johns Cty.*, 63 So. 3d 835, 838 (Fla. Dist. Ct. App. 2011).
- 7 *Id.*
- 8 <http://www.politico.com/magazine/story/2016/03/what-works-miami-beach-sea-level-rise-213731>.
- 9 *Drake v. Walton County*, 6 So.3d 717 (Fla. 1st DCA 2009).
- 10 Phone interview with Gayle Bainbridge-March 13, 2016.



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Welcome

*Mark Moriarty, City Attorney, City of North Port
Chair; City, County and Local Government Law Sections*

8:20 a.m. – 9:00 a.m.

Public Finance

Grace E. Dunlap, Bryant Miller & Olive, P.A., Tampa

9:00 a.m. – 9:45 a.m.

Conflicts of Interest/Financial Disclosure

C. Christopher Anderson, III, Commission on Ethics, Tallahassee

9:45 a.m. – 10:20 a.m.

Ethics

Sheila M. Tuma, The Florida Bar, Tampa

10:20 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 11:15 a.m.

Public Sector Employment Liability

Nathan Paulich, Tampa

11:15 a.m. – 11:45 a.m.

Eminent Domain

Mary J. Dorman, HDR Engineering, Inc., Tampa

11:45 a.m. – 1:00 p.m.

Lunch (included in registration)

1:00 p.m. – 1:45 p.m.

Sunshine Law and Public Records Law

*Patricia R. Gleason, Special Counsel for Open Government
Attorney General's Office, Tallahassee*

1:45 p.m. – 2:15 p.m.

Procurements

*Susan Churuti, Bryant, Miller & Olive, P.A., Tampa
Fred Springer, Bryant, Miller & Olive, P.A., Tallahassee*

2:15 p.m. – 2:45 p.m.

Sovereign Immunity

Greg Stewart, Nabors, Giblin & Nickerson, Tallahassee

2:45 p.m. – 3:00 p.m. **Break**

3:00 p.m. – 3:45 p.m.

Home Rule and Allocation of Taxing Powers

Robert L. Nabors, Nabors, Giblin & Nickerson, Tallahassee

3:45 p.m. – 5:00 p.m.

**Land Use/Zoning and Practice & Procedures Before Local
Government Legislative and Quasi-Judicial Bodies**

*Mark P. Barnebey, Blalock Walters, Bradenton
Herbert W.A. Thiele, County Attorney, Leon County, Florida*

5:15 p.m. – 7:00 p.m.

**Chairs Reception - All section members, seminar attendees, and
guests are welcome (included in registration)**

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HOTEL RESERVATIONS: A block of rooms has been reserved at the Caribe Royale Orlando Hotel, at the rate of \$159 single/double occupancy. To make reservations, call the Caribe Royale Orlando Hotel directly at (888) 258-7501. Reservations must be made by 4/13/16 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

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the City, County and Local Government Law Section present

LAND USE 2016

Course Classification: Intermediate Level (2050R)

and

39TH ANNUAL LOCAL GOVERNMENT LAW IN FLORIDA

Course Classification: Intermediate Level (2052R)



THURSDAY - SATURDAY, MAY 5 - 7, 2016

Caribe Royale Orlando

8101 World Center Dr. • Orlando, FL 32821 • 407/238-8000

Course No. 2050R
2052R

SCHEDULE OF EVENTS

Land Use 2016 (2050R)

Thursday, May 5, 2016

9:00 a.m. – 9:05 a.m.

Welcome and Introduction

Nancy Stuparich, Program Co-Chair

9:05 a.m. – 9:55 a.m.

Code Enforcement Amnesty Programs

Kenneth Pope, Assistant County Attorney, Hillsborough County
Robert Sheehan, Executive Manager, Operations, Hillsborough County Code Enforcement

9:55 a.m. – 10:45 a.m.

Planning for Sector Planning

Aaron Dunlap, Village of Wellington

10:45 a.m. – 11:00 a.m.

Break

11:00 a.m. – 11:50 a.m.

Sustainable Land Use

Tim Center, Executive Director, Sustainable Florida

11:50 a.m. – 1:20 p.m.

Lunch (included in registration fee)

1:20 p.m. – 2:10 p.m.

Affordable Housing: A Crash Course

Mitchell Rosenstein, Green Mills Group

2:10 p.m. – 3:00 p.m.

The Intersection of Comprehensive Plans and Land Development Regulations

Vinette Godelia, AICP
Wendy Grey, AICP

3:00 p.m. – 3:15 p.m.

Break

3:15 p.m. – 4:05 p.m.

Marijuana and Other Health-Related Zoning

Jennifer Tschetter, COO, Department of Health

4:05 p.m. – 4:55 p.m.

Land Use and Associated Issues with High Speed Rail

Kimberly Rothenburg, City Attorney, City of West Palm Beach

4:55 p.m. – 5:00 p.m.

Closing Remarks

Michele Lieberman, Program Co-Chair

39th Annual Local Government Law in Florida (2052R)

Friday, May 6, 2016

8:15 a.m. – 8:30 a.m.

Late Registration and Continental Breakfast

8:30 a.m. – 8:40 a.m.

Welcome and Opening Remarks

Mark Moriarity, Chair, City, County and Local Government Section

Jeannine S. Williams, Chair-Elect, City, County and Local Government Section

8:40 a.m. – 9:30 a.m.

Looking for a Sign – *Reed v. Gilbert* Update

William D. Brinton, Rogers Towers, P.A., Jacksonville

9:30 a.m. – 10:20 a.m.

How Social is Your Media? - Technology and Public Employment

Gregory Hearing, Thompson, Sizemore, Gonzalez and Hearing, Tampa

10:20 a.m. – 10:35 a.m.

Break

10:35 a.m. – 11:35 a.m.

Where There's Smoke . . . Use of Non-Ad Valorem Assessments for Fire Service

Andrew P. Lannon, City Attorney, Palm Bay City Attorney's Office
Chris Roe, Bryant, Miller, Olive
Derek A. Schroth, Bowen & Schroth PA, Eustis
Jim Stables, Chief, Palm Bay Fire Rescue

11:35 a.m. – 1:30 p.m.

Lunch/Annual Meeting (included in registration fee)

1:30 p.m. – 2:15 p.m.

Wild, Wild, West . . . Can Local Governments Even Think About Gun Control?

Hans Ottinot, City Attorney, Sunny Isles Beach

2:15 p.m. – 3:00 p.m.

Everything's Coming Up Roses (Now) – Brownfield Development

Ralph Demeo, Hopping, Green & Sams, Tallahassee

3:00 p.m. – 3:15 p.m.

Break

3:15 p.m. – 4:05 p.m.

Made in the Shade? – An Update on Sunshine Law and Public Records

Jill Jacobs, Deputy City Attorney, Palm Bay City Attorney's Office

4:05 p.m. – 5:00 p.m.

Hot Topics: Alcohol Law and Government as Market Participant (Local Hire and More)

Luis Gonzalez, Holland & Knight, LLP, Orlando, FL
Craig Leen, City Attorney, Coral Gables

(continued, next page)

39th Annual Local Government Law in Florida (2052R) *(continued from previous page)*

Saturday, May 7, 2016

8:15 a.m. – 8:30 a.m.
Continental Breakfast

8:30 a.m. – 8:40 a.m.
Opening Remarks
Jeannine S. Williams, Chair-Elect, City, County and Local Government Section

8:40 a.m. – 9:40 a.m.
Ethically Speaking - Navigating Representing the Organization as Client
Marion Radson, Retired City Attorney, Gainesville
Patrick McCormack, County Attorney, St. Johns County

9:40 a.m. – 10:30 a.m.
Lights, Camera, Action – Red Light Camera and Police Body Camera Update
Kevin McCoy, Carlton Fields Jordan Burt, Tampa

10:30 a.m. – 10:45 a.m.
Break

10:45 a.m. – 12:00 p.m.
What Happens in Tally, Never Stays There – Local Government Legislative Update
Kraig Conn, Florida League of Cities, Tallahassee
Virginia “Ginger” Delegal, Florida Association of Counties, Tallahassee

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Land Use 2016 (2050R)

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Ethics: 0.0 hours

CERTIFICATION PROGRAM

(Max. Credit: 7.0 hours)

City, County & Local Government: 7.0 hours
State & Federal Gov’t & Administrative Practice: 7.0 hours

39th Annual Local Government Law in Florida (2052R)

General: 11.0 hours
Ethics: 1.0 hour

CERTIFICATION PROGRAM

(Max. Credit: 11.0 hours)

City, County & Local Government: 11.0 hours
State & Federal Gov’t & Administrative Practice: 11.0 hours

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- Persons attending under the policy of fee waivers: \$100

2052R - 39th Annual Local Government Law in Florida (5/6-7/16)

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- Non-section member: \$385
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drafted to prohibit discrimination against the eleven enumerated categories set forth *supra* in three specific areas: (1) employment; (2) housing; and (3) public accommodations. After conferring with me and incorporating my edits after exhaustive legal review, Councilwoman Paccione placed a revised version of the model HRO as New Business No. 1 on the Agenda for Regular Council Meeting No. 2016-03, held on February 4, 2016.⁹

Days before the Council Meeting was set to transpire, Duncan met with members of the media and advocated for passage of the HRO.¹⁰ At the same time, members of religious organizations throughout Brevard County gathered together to advocate against the HRO.¹¹ Hours before the Council Meeting started, hundreds of citizens organized in a line outside of the Council Chambers so as to preserve their opportunity to take part in the proceedings.¹² Before the meeting commenced, the City Clerk had gathered 80 public comment cards affording 80 persons 240 minutes of time to let their perspective on the proposed HRO be heard by the Palm Bay City Council before the vote was cast. After all 80 persons were done speaking, the Palm Bay City Council invited any other persons who were present but had not submitted a public comment card to speak if they so elected. In sum, approximately 500 people showed up to the meeting to be seen or heard, and the meeting lasted until nearly 2 a.m.¹³ The proposed HRO was defeated by a 4-1 vote.¹⁴ The reason behind the vote was succinctly stated by Mayor Capote, to wit: This matter should be addressed by either the United States Congress or the Florida Legislature instead of “Swiss cheese” legislation in pockets around the State of Florida by virtue of local ordinances.¹⁵

So, what have the federal and state governments done to address this matter? The federal executive branch has extended protections to persons based upon sexual orientation and gender identity and expression through Executive Order.¹⁶ Furthermore, the United States Equal Employment Opportunity

Commission, the arm of the federal executive branch responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee, has stated publicly that it interprets the discrimination provision set forth in Title VII of the Civil Rights Act of 1964 as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.¹⁷ Currently before the Florida Legislature are companion bills SB 120 and HB 45, entitled the “Florida Competitive Workforce Act”, filed on August 11, 2015. This proposed legislation would extend protections afforded under the Florida Civil Rights Act of 1992¹⁸ to persons based upon sexual orientation and gender identity and expression. Currently before the United States Congress are H.R. 590 and S. 302, entitled “International Human Rights Defense Act of 2015”, introduced on January 28 and 29, 2015, respectively. This proposed legislation would create a Bureau of Democracy, Human Rights and Labor (DRL) of the Department of State, a Special Envoy for the human rights of LGBT persons which would prevent and respond to discrimination against LGBT people globally. As for the judicial branch, there are two noteworthy federal decisions which provide protections for transgender persons. In *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011), the Eleventh Circuit held that “discrimination against a transgender individual because of her gender-nonconformity is sex discrimination, whether it’s described as being on the basis of sex or gender.” *Id.* at 1317. Similarly, in *Chavez v. Credit Nation Auto Sales, LLC*, 2016 WL 158820, at *1 (11th Cir. 2016), the Eleventh Circuit held that “[s]ex discrimination includes discrimination against a transgender person for gender nonconformity.”

In conclusion, for those local government attorneys who are called upon to draft or edit an HRO, there are several resources which will greatly assist you. First, read “Florida Human Rights Ordinances” by Marion J. Radson which was presented at the Florida Association of County Attorneys 2013 CLE Seminar in June 2013. It provides an excellent overview of the topic. Second, review the “Human Rights Ordinance Toolkit”

prepared by Equality Florida Action, Inc.¹⁹ Third, when drafting your jurisdiction’s HRO, do not create a local administrative board or agency which imposes civil or criminal penalties, for that procedural mechanism runs afoul of both Article I, section 22 (right to a jury trial) and Article II, section 3 (separation of powers) of the Florida Constitution.²⁰ This is a common mistake found in other HROs enacted throughout Florida. Rather, create a new cause of action for LGBT discrimination pursuant to your county or municipality’s home rule powers under section 95.11(3)(p), Florida Statutes (2015), which carries a four-year statute of limitations. Fourth, be sure to read the pertinent case law so that you are prepared to address all arguments related to the topic.²¹ Finally, and most importantly, thoroughly vet the proposed HRO through a public process such as a series of workshops that would allow public input and thereby alleviate concerns about transparency.

Endnotes:

1 Rosalia Contreras is currently the Assistant to the City Attorney of Palm Bay, Florida. Ms. Contreras is a former Student Body President & University Trustee of The Florida State University and a Fulbright Scholar. Andrew Patrick Lannon is the City Attorney of Palm Bay, Florida. Mr. Lannon is double board certified by the Florida Bar in Business Litigation and City, County & Local Government Law.

2 § 286.0114(2), Fla. Stat. (2015) (“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 decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.”).

3 42 U.S.C. § 2000e-2(a) (“It shall be an unlawful employment practice for an employer - - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.”).

4 42 U.S.C. § 12101(b) (“It is the purpose of this chapter - - (1) to provide a clear and comprehensive national mandate for the elimina-

continued, next page

LOCAL LIBERTIES

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tion of discrimination against individuals with disabilities”).

5 29 U.S.C. § 621(b) (“It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.”).

6 As of the date of this article, there are human rights ordinances in the following counties: (1) Alachua (Ch. 111); (2) Broward (Ch. 16 ½); (3) Hillsborough (Ch. 30); (4) Leon (Ch. 9); (5) Miami-Dade (Ch. 11A); (6) Monroe (Ch. 14); (7) Orange (Ch. 22); (8) Osceola (Ch. 27); (9) Palm Beach (Ch. 2, Art. VI; Ch. 15); (10) Pinellas (Ch. 70); and (11) Volusia (Ch. 36).

7 As of the date of this article, there are human rights ordinances in the following municipalities: (1) Atlantic Beach (Ch. 9); (2) Boynton Beach (Ch. 1, § 12); (3) Delray Beach (Ch. 137); (4) Dunedin (Ch. 42); (5) Gainesville (Ch. 8); (6) Greenacres (Ch. 1, § 25); (7) Gulfport (Ch. 26); (8) Key West (Ch. 38); (9) Lake Worth (Ch. 20); (10) Leesburg (Ch. 15, Art. II; Ch. 7, §§ 232-34); (11) Mascotte (Ch. 9); (12) Miami (Part 1, § 52); (13) Miami Beach (Ch. 62); (14) North Port (Ch. 16); (15) Orlando (Ch. 57); (16) Sarasota (Ch. 18); (17) Tampa (Ch. 12); (18) Venice (Ch. 2, Art. VII); and (19) West Palm Beach (Ch. 42).

8 <http://www.eqfl.org/>

9 The text of the proposed ordinance can be found in the Agenda packet for Regular Council Meeting No. 2016-03, <http://www.palmbayflorida.org/government/departments/mayor-city-council/city-council/meeting-agendas-and-minutes>.

10 Matt Reed, Matt Talks Human Rights with Equality Florida’s Gina Duncan, Fla. Today (Feb. 17, 2016), <http://www.floridatoday.com/videos/opinion/columnists/matt-reed/2016/02/17/80522354/>.

11 Palm Bay Christian Church, http://www.pbconline.org/hro_ord_info.html (last visited Feb. 23, 2016).

12 Rim Shortt, Gathering at Human Rights Meeting in Palm Bay, Fla. Today (Feb. 4, 2016), <http://www.floridatoday.com/videos/news/local/2016/02/05/79849922/>.

13 ‘Human Rights Ordinance’ Struck Down in Palm Bay, Fox Television Stations, Inc. (Feb. 5, 2016), <http://www.fox35orlando.com/home/84715295-story>.

14 R. Norman Moody, Palm Bay Mayor, Council Reject Human Rights Proposal, Fla. Today (Feb. 5, 2016), <http://www.floridatoday.com/story/news/2016/02/04/palm-bay-considers-human-rights-ordinance/79780040/>

15 Palm Bay City Council Rejects Human Rights Ordinance, Hearst Properties, Inc. (Feb. 5, 2016), <http://www.wesh.com/news/palm-bay-city-council-rejects-human-rights-ordinance/37836238>.

16 See Executive Order 13672, 79 Fed. Reg. 42971 (July 21, 2014) (amended both Executive Order 11478, which instituted a policy

to provide equal employment opportunity in Federal employment for all persons, and Executive Order 11246, which provides for non-discrimination in employment by government contractors and subcontractors, by extending the protections afforded to include sexual orientation and gender identity.)

17 What You Should Know: EEOC and Enforcement Protections for LGBT Workers, http://www1.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm (last visited Feb. 23, 2016).

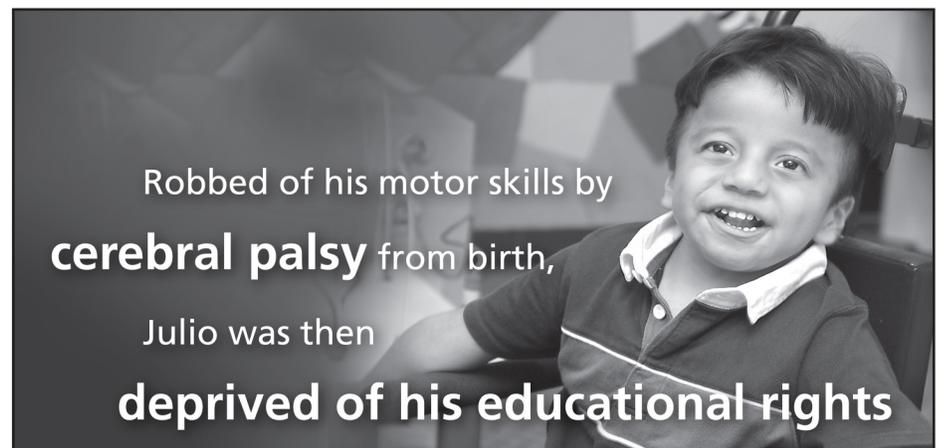
18 §§ 760.01-760.11 and 509.092, Fla. Stat. (2015).

19 Equality Florida Action, Inc.’s Human

Rights Ordinance Toolkit, <http://www.eqfl.org/node/55> (last visited Feb. 23, 2016).

20 See *Broward County v. La Rosa*, 505 So. 2d 422 (Fla. 1987).

21 See *Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati*, 128 F.3d 289 (6th Cir. 1997); *Romer v. Evans*, 517 U.S. 620 (1996); *New York State Club Ass’n Inc. v. City of New York*, 487 U.S. 1 (1988); *Broward County v. La Rosa*, 505 So. 2d 422 (Fla. 1987); *Metropolitan Dade County Fair Housing and Employment Appeals Bd. v. Sunrise Village Mobile Home Park, Inc.*, 511 So.2d 962 (Fla. 1987); *Laborers’ Intern. Union of North America, Local 478 v. Burroughs*, 541 So.2d 1160 (Fla. 1989).



Robbed of his motor skills by
cerebral palsy from birth,
Julio was then
deprived of his educational rights

when his school told him it couldn’t provide the

accommodations he needed

to function in the classroom.

... Almost

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