

Chapter VIII.

Local Government as Code Enforcer.

A. Types of local government regulations.

1. Land use and zoning.

Described in more detail in section IX infra.

2. Occupational regulation.

Note: Proposed revisions to Revision 7 to Article V of the Florida Constitution would prohibit the several State Attorneys from prosecuting county ordinances in accordance with Florida Statute Section 27.02.

- a. In Flores v. City of Miami, 681 So. 2d 803 (Fla. 3d DCA 1996), the court upheld regulatory scheme over street vendors which required the parties to pay fee for license, required the licenses to be issued by lottery, and required purchase of liability insurance. Number of vending carts in crowded public place could validly be limited and therefore, city could determine who received license by lottery.

- b. Section 166.221, Florida Statutes, provides,

Regulatory fees. A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

- (1) In Flores v. City of Miami, 681 So. 2d 803 (Fla. 3d DCA 1996), the court held fee paid by vendors to use public right-of-way was not regulatory fee pursuant to section 166.221, but was a franchise fee not subject to limitations imposed on regulatory fees (fee paid for use of public land).

- c. Specific cases.

- (1) In Metropolitan Dade County v. Mavco, Inc., 697 So. 2d 1283 (Fla. 3d DCA 1997), the court held that county was precluded from enforcing licensing requirement against party installing sound system for F.I. U. on basis of section 240.293, Florida Statutes (1995), which provides that universities may contract for certain services without municipal regulation.

- d. In Sciarriano v. City of Key West, 83 F.3d 364 (11th Cir. 1996), cert. denied, 519 U.S. 1092, 117 S. Ct. 768, 136 L.Ed.2d 714 (1997). The court held that ordinances which banned use of off-premises barkers for soliciting business in certain areas of the city, restricted practice in other areas and required permitting system for barkers working on public land was not violative of First Amendment. City justified by litter control, sidewalk congestion, and control of pedestrian traffic. Court laid out four-part test which was met (1) Ordinance not misleading; (2) city demonstrated substantial interest; (3) ordinance advances that interest; and (4) ordinance does not reach farther than necessary.

- e. In Metropolitan Dade County v. O'Brien, 660 So. 2d 364 (Fla. 3d DCA 1995), the court held that it was error to deny county injunction to close business where business knowingly began operations without necessary permits. Where county exercising police power, the requirement of harm is presumed.
- f. In Tamiami Trail Tours, Inc. v. City of Orlando, 120 So. 2d 170 (Fla. 1960), the court held it was well settled that the power to regulate includes the power to license as a means of regulating and that a reasonable license fee in an amount sufficient to offset the costs of regulation may be charged.
- g. In Snowman v. Contractor's Examining Bd., 704 So. 2d 717 (Fla. 3d DCA 1998), the court held that pursuant to section 489.114(4)(b), the county contractor's examining board did not have power to act against state certified contractor. The statute only allows action by local construction regulations board. Under building code, that board is the Construction Board of Adjustment and Appeals.

3. Adult entertainment.

There are two key United States Supreme Court cases in this area. In Young v. American Mini Theaters, Inc., 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed 2d 310 (1976), reh'g denied, 429 U.S. 873, 97 S. Ct. 191, 50 L. Ed. 2d 155 (1976), the court upheld an ordinance which prohibited the location of adult movie theaters within 1,000 feet of 10 other kinds of adult entertainment uses.

In City of Renton v. Playtime Theaters, Inc., 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986), reh'g denied, 475 U.S. 1132, 106 S. Ct. 1663, 90 L. Ed. 2d 205 (1986), the court upheld an ordinance which provided that certain adult uses could not take place within 1,000 feet of a residential zoning district, church, park, or school, provided that there were a reasonable number of alternative locations.

- a. T-marc, Inc. v. Pinellas County, 804 F. Supp. 1500 (M.D. Fla. 1992). County sufficiently showed that 123 alternate sites complied with distance requirement regardless of whether some of the sites were actually unavailable or economically unfeasible. County properly relied on studies from other cities in evaluating secondary effects, even if such effects were not experienced by this locality. One year amortization period for adult uses was reasonable.
- b. International Eateries of America, Inc. v. Broward County, 941 F.2d 1157 (11th Cir. 1991), 26 sites in unincorporated area of county where adult establishments could be located was sufficient to satisfy the "alternate avenues" requirements.
- c. Southern Entertainment Co. of Florida, Inc. v. City Boynton Beach, 736 F. Supp. 1094 (S.D. Fla. 1990). Despite passing muster, court on the number of sites allowed (11) (even where six of those sites were located within a city park, and surviving an attack on the intent of the commissioners in passing the ordinance), the ordinance was overturned because it was not adopted properly pursuant to Florida Statute 166.041.
- d. Function Junction, Inc. v. City of Daytona Beach, 705 F. Supp. 544 (M.D. Fla. 1987). Daytona Beach ordinance permitting 12 potential sites for nude dancing establishments found to allow sufficient alternative means of expression.

- e. International Eateries of America, Inc. v. Broward County, 726 F. Supp. 1556 (S.D. Fla. 1987). Requires that the adult use regulation be tested in the view of the entire zoning scheme of which they are a part. The court viewed a subsequently enacted special uses ordinance which restricted adult uses to a 3/4 acre plot of land was contrary to the intent of the original "dispersal" ordinance which established distance requirements.
- f. ATS Melbourne, Inc. v. City of Melbourne, 475 So. 2d 1257 (Fla. 5th DCA 1985). Although case upheld the zoning requirements, it questioned the use of a conditional use permit as method of controlling adult uses in zoning districts as such permitting usually confers a significant amount of discretion in the permitting authorities. Such discretion may violate the constitutional constraints of FW/PBS of Dallas, Inc. v. City of Dallas, 493 U.S. 215 (1990).

4. Adult use regulatory requirements.

Although not necessarily classified as Land Development Regulations (LDR), cases such as 3299 North Federal Highway, Inc. v. Board of County Comm'rs of Broward County, Florida, 646 So. 2d 215 (Fla. 4th DCA 1994), will provide guidance to LDR adoption, especially (1) where the LDR is utilizing definitions that have been reviewed in the regulatory cases; and (2) where a zoning ordinance establishing zoning requirements is combined with regulatory restrictions, i.e., T-Marc, Redner v. Dean, 29 F.3d 1495 (11th Cir. Aug. 26, 1994); Movie & Video World, Inc. v. Board of County Comm'rs of Palm Beach County, Florida, 723 F. Supp. 695 (S.D. Fla. 1989), and 3299 North Federal Highway, Inc.

- a. FW/PBS, supra, established the permitting requirements for adult use activities especially as they apply to the Freedman doctrine of prior restraints.
- b. 3299 North Federal Highway, Inc. v. Broward County Comm'rs of Broward County, Florida, 646 So. 2d 215 (Fla. 4th DCA 1994).
- c. Misty's Cafe, Inc. v. Leon County, 640 So. 2d 170 (Fla. 1st DCA 1994). County's ordinance prohibiting seminude entertainment, regardless of whether entertainers were "topless" or "bottomless" was not "in conflict" with city ordinance prohibiting only topless entertainment. In this case, the city ordinance did not address "bottomless" entertainment. The county filled the gap by adopting an ordinance which addressed both forms of nudity. Noncharter county issues decided this case.
- d. Barnes v. Glen Theater, Inc., 501 U.S. 560, 564 (1991). Generally, the regulation of adult uses either follows the concentration pattern of creating "red light" districts such as the one in Boston and near the Times Square theater district in New York, or they follow the more usual and more litigated "dispersal" pattern, as in Detroit, which pattern is designed to disperse the adult uses and thus avoid some of the unwanted secondary effects of adult uses. Distance requirements from otherwise sensitive uses (i.e., residential areas, churches, day care centers, public recreation areas) and from other adult uses is most commonly the zoning technique used.

- e. 3299 North Federal Highway Inc. v. Broward County Bd. of County Comm'rs, 646 So. 2d 215 (Fla. 4th DCA 1994). The court upheld denial of injunction against enforcement of adult entertainment ordinance restricting physical contact, tipping, distance between dancers and patrons, and structural requirement because ordinance not violative of First Amendment.
5. Public nudity.
- a. In Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed. 2d 504 (1991), the U.S. Supreme Court upheld an Indiana antinudity ordinance against a First Amendment challenge.
 - b. In Shetler v. State, 681 So. 2d 730 (Fla. 2d DCA 1996), the court held that Polk County's public nudity ordinance was not unconstitutionally vague. The ordinance was challenged by woman prosecuted for wearing a T-back bathing suit bottom while selling hot dogs.
6. Cable television.
- a. Franchise fees.
City of Dallas, Texas v. F.C.C., 118 F.3d 393 (5th Cir. 1997). Cable franchise fees are not a tax but essentially a form of rent; the price paid to rent use of public right-of-way. Therefore, all money collected from subscribers, including funds used to pay franchise fees, must be included in a cable operator's gross revenue for purposes of calculating the franchise fee due to the local % government.
 - b. In Denver Area Educational Telecommunications v. Federal Communications Comm's, 116 S. Ct. 2374 (1996), the court discussed regulation under cable TV act and First Amendment.
 - c. Franchise agreement.
Section 166.046, Florida Statutes, applicable to municipalities and counties, deals with appropriate provisions to be dealt with in franchise agreement.
7. Signs.
- a. Conflict with state and federal regulations.
 - (1) Sections 166.0425 and section 125.0102, Florida Statutes, recognize the ability of cities and counties to regulate signs but specifically provide that regulations shall not conflict with applicable state or federal laws.
 - (2) Section 479.15(2) and section 479.16, Florida Statutes, as well as 23 U.S.C. 131(g), limits local governments' ability to require removal of billboards along federally funded highways and the unincorporated areas without paying just compensation. See Lamar Advertising Assocs. v. City of Daytona ~ 450 So. 2d 1145 (Fla. 5th DCA 1984).
 - b. Dimmitt v. City of Clearwater, 985 F.2d 1565 (11th Cir. 1993). The decision by the 11th circuit in Dimmitt bore no relationship to the decision by the lower court. In Dimmitt, 782 F.Supp. 586 (M.D. Fla. 1991) the lower court decided that because of the failure to make distinctions on lot size and flag location,

Clearwater's regulation of flags was insufficiently related to the city's purposes in the elimination of visual clutter. The 11th circuit, however, never addressed the remaining questions finding that the regulation was content based in that it provided exemptions for governmental flags and denied such an exemption for other types of flags. For technical reasons, a very real result of the Dimmit decision was to invalidate all permitting requirements for all sign age in the city of Clearwater.

c. On-site versus off-site signs.

(1) In City of Lake Wales v. Lamar Advertising Ass'n, 414 So. 2d 1030 (Fla. 1982), the court held that city could more severely restrict off-site sign than on-sight signs on basis of aesthetics.

d. Portable signs.

In Lamar-Orlando Outdoor Advertising v. City of Ormond Beach, 415 So.2d 1312 (Fla. 5th DCA 1982), the court held, that county could prohibit portable signs.

e. Billboards.

(1) In Naegele Outdoor Advertising v. City of Jacksonville, 659 So. 2d 1046 (Fla. 1995), the court held it was error to enjoin enforcement of Jacksonville sign ordinance prior to full hearing on the merits.

(2) See Lamar Advertising v. City of Daytona Beach, 450 So. 2d 1145 (Fla. 5th DCA 1984).

8. Noise.

a. In Easy Way of Lee County, Inc. v. Lee County, 674 So. 2d 863 (Fla. 2d DCA 1996), the court found county noise ordinance to be over broad and vague. Failure to define terms such as "plainly audible" led the court to invalidate ordinance. Used strict scrutiny standard as ordinance conflicted with First Amendment.

b. In City of Sarasota v. Calhoun, 685 So. 2d 1338 (Fla. 2d DCA 1996), the court held owner of dogs who allowed them to go around barking and unrestrained lacked standing to attack ordinance as vague. Conduct clearly violative of ordinance. Ordinance did not threaten or interfere with any constitutional right.

9. Bingo.

a. F.Y.I. Adventures, Inc. v. City of Ocala, 698 So.2d 583 (Fla. 5th DCA 1997), the court upheld right of municipality to pass stricter bingo regulation than existing state statute. See § III on conflict with state legislation.

b. In M & A Management Corp. v. City of Melbourne, 653 So. 2d 1050 (Fla. 5th DCA 1995), the court held that city ordinance prohibiting structures from being used for bingo more than two days a week was regulatory rather than zoning "" ordinance. Not required to go through rezoning procedure.

10. Regulation by local government over its own land.
- a. Parks.
- In State v. Baal, 680 So. 2d 608 (Fla. 2d DCA 1996), the court upheld ordinance prohibiting entry to public park between dawn and dusk from vagueness attack. Distinguished overbreadth challenge which only deals with First Amendment. Said citizens of ordinary intelligence knew what ordinance meant, therefore, not unconstitutional.
- b. Streets.
- (1) In Flores v. City of Miami, 681 So. 2d 803 (Fla. 3d DCA 1996), the court upheld regulatory scheme over street vendors which required the parties to pay fee for license, and required purchase of liability insurance. Number of vending carts in crowded public place could validly be limited and licenses could be issued by lottery.
- (2) In Hernando County v. Franklin, 666 So. 2d 602 (Fla. 5th DCA 1996), the court held that county could provide more stringent notice requirement for abandonment of public street than what was required by section 336.10, Florida Statutes.
- (3) In Wyche v. State, 619 So. 2d 231 (Fla. 1993), the court held that ordinance making it unlawful to loiter in manner and under circumstances manifesting purpose of engaging in acts of prostitution was unconstitutional in violation of First Amendment. Also held to be vague.
- c. In City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 798, 104 S.Ct. 2118, 80 L. Ed. 2d 772 (1984), court held city ordinance prohibiting the posting of signs on public property did not violate First Amendment when applied to political campaign signs posted on public property.
- d. Sidewalks.
- (1) In Int'l Caucus of Labor Comm. v. City of Montgomery, 111 F.3d 1548 (11th Cir. 1997), the court held distribution of political literature from tables was a First Amendment right, but a limitation on the setting up of those tables was a reasonable time, place and manner restriction.
- (2) In Sciarriano v. City of Key West, 83 F.3d 364 (11th Cir. 1996), the court held that ordinances which banned use of off-premises barkers for soliciting business in certain areas of the city, restricted practice in other areas, and required permitting system for barkers working on public land was not violative of First Amendment. City justified ordinance because of litter control, sidewalk congestion, and control of pedestrian traffic. Court laid out four-part test which was met: (1) ordinance not misleading; (2) city demonstrated substantial interest; (3) ordinance advances that interest; and (4) ordinance did reach farther than necessary.

- (3) In Ledford v. State, 652 So. 2d 1254 (Fla. 2d DCA 1995), the court struck down city ordinance prohibiting begging upon any public way. Aim of protecting citizens from annoyance is not sufficiently compelling government interest to restrict speech in public forum.
- (4) In Wyche v. State, 619 So. 2d 231 (Fla. 1993), the court held that ordinance making it unlawful to loiter in manner and under circumstances manifesting purpose of engaging in acts of prostitution was unconstitutional in violation of First Amendment. Also held to be vague.

11. Environmental protection.

- a. In City of Jacksonville v. American Environmental Servs., Inc., 699 So. 2d 255 (Fla. 1st DCA 1997), the court held that state statute governing placement of hazardous waste facilities preempted counties' right to require a local certificate of need.
- b. In City of Oviedo v. Clark, 699 So. 2d 316 (Fla. 1st DCA 1997), the court held that public service commission did not err in expanding wastewater service area of privately held utility in unincorporated area despite alleged inconsistency with city's comprehensive plan which stated that goal of the wastewater element of comprehensive plan was "to provide cost effective environmentally acceptable wastewater treatment facilities to serve the existing and future development of city." Section 367.045(5)(b), Florida Statutes, states that upon timely objection "the commission shall consider but is not bound by the local comprehensive plan..." Order reflects commission considered plan.
- c. In City of Oviedo v. Alafaya Utilities, Inc., 704 So.2d 206 (Fla. 5th DCA 1998), the court upheld an injunction requiring city approval of sewer improvements. Court held city could not place conditions on use of right-of-way by utility pursuant to section 337.401, Florida Statutes, where it had not adopted rules or regulations laying out requirement. Section 337.401(2) allows city to condition use of right-of-way on reasonable rules and regulations.

12. Street vendors.

- a. In Flores v. City of Miami, 681 So. 2d 803 (Fla. 3d DCA 1996), the court upheld regulatory scheme over street vendors which required the parties to pay fee for license, required licenses to be issued by lottery, required purchase of liability insurance. Number of vending carts in crowded public place could validly be limited and issued by lottery.
- b. In Sciarriano v. City of Key West, 83 F.3d 364 (11th Cir.1996), the court held that ordinances which banned use of off-premises barkers soliciting business in certain areas of the city, restricted practice in other areas, and required permitting system for barkers working on public land was not violative of First Amendment. City justified ordinance because of litter control, sidewalk congestion, and control of pedestrian traffic. Court laid out four-part test which was met (1) Ordinance not misleading; (2) city demonstrated substantial interest; (3) ordinance advances that interest; and (4) ordinance did not reach farther than necessary.

- c. In Ledford v. State, 652 So. 2d 1254 (Fla. 2d DCA 1995), the court struck down city ordinance prohibiting begging on public streets. Aim of protecting citizens from annoyance is not compelling reason to restrict speech in public forum.
13. In times of emergency.
14. Nuisance abatement.
- a. In Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), the court determined that building restriction on beach front lot was a taking because restriction was not founded in established law of nuisance that restriction could constitute taking.
 - b. In City of St. Petersburg v. Bowen, 675 So. 2d 626, (Fla. 2d DCA 1996) rev. denied, 680 So. 2d 421 (1996), the city, through its nuisance abatement board, deprived property owner of all economic use of apartment building when the board ordered the building closed for one year to curtail drug use by tenants and other persons. The court rejected affirmative nuisance exception identified in Lucas v. South Carolina stating that exception only applied to common law nuisances. Court determined property owner entitled to fair market value for use of property for one year.
 - c. In Mesa v. City of Miami Nuisance: Abatement Bd., 673 So. 2d 500 (Fla. 3d DCA 1996), the court held one-year limitation on order of nuisance abatement board was tolled while judicial proceeding was pending as owner has received judicial stay of order until outcome of the case.
 - d. In Pasco County v. Tampa Farm Servs., Inc., 573 So. 2d 909 (Fla. 2d DCA 1990), the court overturned a final judgment which restrained the county from enforcing a nuisance ordinance against farm under Right to Farm Act. Subsection 5 of the act allows the enforcement of the nuisance ordinance if on March 15, 1982, the farm was next to a homestead and there is "any change to a more excessive farm operation with regard to noise, odor, dust or fumes." On remand, trial court to determine if odors caused by operation of a new process for turning manure into fertilizer involved an "excessive change" and if so, whether a common law nuisance was created.
 - d. In City of Venice v. Valente, 429 So. 2d 1241 (Fla. 2d DCA 1983), court held ordinance declaring building a public nuisance, authorizing removal and demolition of building, and authorizing imposition of lien on the property for cost of demolition together with costs incurred in nuisance abatement proceeding, including reasonable attorney's fees, served a valid municipal purpose and municipality's ordinance providing for costs and attorney's fees was not preempted by state law.
15. Building code.
- a. Chapter 553, Florida Statutes, requires that the counties and cities enforce certain minimum construction related codes.
 - b. Section 166.222, Florida Statutes, provides,

Building code inspection fees. The governing body of a municipality may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the provisions of its building code.

- c. Section 125.56, Florida Statutes, provides for county adoption of building code and for collection of inspection fees similar to section 166.222, Florida Statutes.
- d. In Williams v. City of Fort Lauderdale, 702 So. 2d 1301 (Fla. 4th DCA 1997), the court held it was error to place defendant on probation for eight violations of building code where both city ordinance and building code provided for fine or incarceration but not probation.
- e. In Kagan v. West, 677 So. 2d 905 (Fla. 4th DCA 1996), the court held that citizens who share private road with person alleged to have violated setback requirements of building code have proven special damages different from those suffered by community at large; thus, they have standing to bring private action to enforce code.
- f. As to liability for failure to enforce building codes, See Trianon Park Condominium Assoc. v. City of Hialeah, 468 So.2d 912 (Fla. 1985) in liability section.
- g. In Thomas v. City of West Palm Beach, 299 So. 2d 11 (Fla. 1974), the court held city ordinances, which delegated to building official discretion to determine if dwelling was unsafe or unfit for human habitation or if cost of repair exceeded 50 percent of value of dwelling after repair, were valid and constitutional exercise of city's police power where ordinances provided owner with written notice, order of condemnation, manner of service, opportunity to be heard, and administrative appeal procedure, and where discretion of building official in determining which buildings were unfit was limited by minimum standards contained in city building and plumbing code.
- h. In Storm v. The Town of Ponce Inlet, 2004 WL 19497 (Fla. App. 5th Dist. 2004) the court held although Ponce Inlet had a common law duty of care to the people who relied on the advice of the chief building official, sovereign immunity precluded a suit against the town because the decision of a government executive or legislative branch to hire or fire a top head of an agency is an exercise of governmental discretion into which courts must not intervene.

16. Animal control.

- a. Section 828.27, Florida Statutes, provides for the enactment of local ordinances relating to the possession, ownership, care and custody of animals, and relating to animal cruelty. Such ordinances are to be enforced by animal control officers who are given the authority to issue citations when they have probable cause to believe that an ordinance has been violated. Violations of such animal control ordinances constitute civil infractions.
- b. Types of regulation.
 - (1) Dog barking.
 - (a) In City of Sarasota v. Calhoun, 685 So. 2d 1338 (Fla. 2d DCA 1996), the court held that owner who let dog out without leash

and allowed dog to bark did not have standing to attack ordinance on vagueness grounds since conduct clearly violated ordinance. The ordinance made it unlawful for owners to keep dogs which, by loud, frequent, or habitual barking, caused annoyance to neighbors or persons passing by on street. There was also no overbreadth challenge available as no important constitutionally protected right was implicated.

(2) Dangerous animals.

(a) Chapter 767, Florida Statutes, governs dangerous dogs. Section 767.14, Florida Statutes, allows local governments to place more stringent restrictions or requirements on dog owners and to develop procedures and criteria for the implementation of the statute.

(b) Section 767.12, Florida Statutes, governs classifying dogs as dangerous, while section 767.13 governs the destruction of dangerous dogs.

Read together, these sections mandate that before a dangerous dog classification/restriction may be imposed or a dangerous dog may be destroyed, the animal control authority must notice the dog's owner and give the owner an opportunity to be heard in a quasi judicial hearing.

Under the statute, a party may "appeal" the animal control authority's decision to the county court. Please note that as a general rule, county courts are not vested with appellate jurisdiction. Also note that the statute does not specify whether the "appeal" is a review of the record or a de novo review.

(c) In Metropolitan Dade County Public Works v. Browd, 679 So. 2d 1260 (Fla. 3d DCA 1996), the court held animal control officer's decision not to declare animal a dangerous animal was a discretionary one not subject to judicial review. Therefore, third party bitten by dog on two prior occasions could not force designation through court proceeding.

(d) In Young v. Broward County, 570 So. 2d 309 (Fla. 4th DCA 1990), the court upheld ordinance allowing county to destroy two pit bulls after they attacked two people where ordinance contained definition of vicious dog and certiorari review to circuit court was available.

c. Liability.

(1) In Carter v. City of Stuart, 4E8 So. 2d 955 (Fla. 1985), the court held that a city could not be held liable for failure to enforce an animal control ordinance.

17. Curfew ordinance.

a. The Florida courts appear to be split on the validity of curfew ordinances.

- b. Upholding constitutionality.
 - (1) In Metropolitan Dade County, Pred, 665 So. 2d 252 (Fla. 3d DCA 1996), the court upheld Dade County curfew ordinance. Court said well being of children is within state's constitutional power to regulate and that children do not have same quantum or quality of rights as adults. The exact language of ordinance is not in opinion.
 - (2) In Sansbury v. City of Orlando, 654 So. 2d 965 (Fla. 5th DCA 1995), the court per curiam affirmed a trial court's ruling upholding an Orlando curfew ordinance.
 - c. Finding unconstitutional.
 - (1) In KL.J. v. State, 581 So. 2d 920 (Fla. 1st DCA 1991), the court found a Jacksonville curfew ordinance for minors which contained an exception for minors on "legitimate business" to be vague and over broad. The court relied on W.J.W. v. State, 356 So. 2d 48 (Fla. 1st DCA 1978).
 - (2) In W.J. W. v. State, *supra*, the court struck down a Pensacola curfew ordinance finding that restriction of movement by persons on a public street (absent an emergency) was inconsistent with basic First Amendment freedoms.
 - (3) In S.W. v. State, 431 So. 2d 339 (Fla. 2d DCA 1983), the court struck down a Palmetto ordinance providing for a curfew on persons 17 years old or younger unless accompanied by an adult or having written permission of the chief of police. The court found that the ordinance prohibited minors from participating in a myriad of legitimate activities and bristled with the potential for selective enforcement. Struck down as being vague and over broad.
18. Charitable solicitation.
 In Ledford v. State, 652 So. 2d 1254 (Fla. 2d DCA 1995), the court struck down city ordinance prohibiting begging on public streets. Aim of protecting citizens from annoyance is not compelling reason to restrict speech in public forum.
19. Endangered species.
 a. In Department of Community Affairs v. Moorman, 664 So. 2d 930 (Fla. 1995), the court upheld an ordinance banning all fencing in an area of critical state concern when ordinance was passed to protect endangered species. Challenges based on denial of equal protection and right of privacy rejected.
20. Housing discrimination.
 a. In Metropolitan Dade County Fair Housing and Employment Appeals Bd. v. Sunrise Village Mobile Homes, 511 So. 2d 963 (Fla. 1987), the court held county had broad home rule police powers, including ability to adopt ordinance prohibiting age discrimination in housing.
21. Prostitution.

- a. In Wyche v. State, 619 So. 2d 231 (Fla. 1993), the court held that ordinance making it unlawful to loiter in manner and under circumstances manifesting purpose of engaging in acts of prostitution was unconstitutional in violation of First Amendment. Also held to be vague.
22. Electrical utilities.
- a. In Florida Power Corp. v. Seminole County, 579 So. 2d 105 (Fla. 1991), the court held that county was precluded from requiring electrical utility to place wires underground as a result of the Public Service Commission's exclusive authority to regulate public electric company's rates and services.
 - b. In Santa Rosa County v. Gulf Power Co., 635 So. 2d 96 (Fla. 1st DCA 1994), the court held that state statute allowing Public Service Commission to grant territorial jurisdictions to electric companies did not preempt right of counties to charge franchise fees to electric companies for use of rights of way and franchise fee constituted consideration for contractual grant to use right of way and was not impermissible tax.
 - c. In Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000), the court affirmed the ruling in City of Dania v. Florida Power & Light Co., 718 So. 2d 813 (Fla. 4th DCA 1998) that the circuit court improperly substituted its evaluation of the evidence for that of the city, but quashed the ruling that flowed from the DCA's findings that the record contained substantial competent evidence to support the denial of the special exception. DCA's job ended after it determined the circuit court applied the wrong law.
23. Flood insurance and flood zones.
- a. In City of Tarpon Springs v. Garrison, 510 So. 2d 1198 (Fla. 2d DCA 1987), the court held that furnishing the plaintiffs with incorrect information regarding flood insurance program is indistinguishable from a city's mistake or omission in enforcing its building code. Both are discretionary functions peculiar to government, and there can be no liability imposed upon a city because of the manner of performance of these functions.
24. Lot clearing.
- a. In Mahon v. County of Sarasota, 177 So. 2d 665 (Fla. 1965), the court held ordinances providing for elimination, as nuisance, of accumulations of trash and of heavy growth of weeds and underbrush or other vegetation constituting health, fire, or traffic hazard was unconstitutionally vague, indefinite, arbitrary, and subject to selective enforcement.
 - b. In Flesch v. Metropolitan Dade County, 240 So. 2d 504 (Fla. 3d DCA 1970), the court held "lot clearing" ordinance outlining manner in which county manager performed duties in protecting general welfare of public under police power when nuisance existed, and allowing action by county manager for benefit of community as a whole, did not allow unlawful invasion of private property nor confiscation thereof, and was not unconstitutional on theory that no standards were provided to govern county manager in performing duties.

25. Waste water utilities.
- a. In City of Oviedo v. Clark, 699 So. 2d 316 (Fla. 1st DCA 1997), the court held that public service commission did not err in expanding wastewater service area of privately held utility in unincorporated area despite alleged inconsistency with city's comprehensive plan which stated that goal of the wastewater element of comprehensive plan is "to provide cost effective environmentally acceptable wastewater treatment facilities to serve the existing and future development of city." Section 367.045(5)(b), Florida Statutes, states that upon timely objection "the commission shall consider but is not bound by the local comprehensive plan..." Order reflects commission considered plan.
 - b. In City of Oviedo v. Alafaya Utilities, Inc., 704 So.2d 206 (Fla. 5th DCA 1998), the court upheld an injunction requiring city approval of sewer improvements. Court held city could not place conditions on use of right-of-way by utility pursuant to section 337.401, Florida Statutes, where it had not adopted rules or regulations laying out requirement. Section 337.401(2) allows city to condition use of right-of-way on reasonable rules and regulations.
26. Age discrimination.
- In Metropolitan Dade County Fair Housing and Employment Appeals Board v. Sunrise Village Mobile Home Park, Inc., 511 So. 2d 962 (Fla. 1987), court upheld application of ordinance prohibiting age discrimination in housing to a mobile home park's exclusion of residents other than retirees.
27. Bicycles.
- In Thomas v. State, 614 So. 2d 468 (Fla. 1993), the court held city could not enact ordinance imposing criminal penalties for failure to have safety equipment on bicycle ridden in city limits as conduct was essentially identical to conduct which had been decriminalized by state law.
28. Anti-graffiti.
- In D.P. v. State, 705 So.2d 593 (Fla. 3d DCA 1997), the court upheld county ordinance (anti-graffiti ordinance) prohibiting sale of spray paints to minors and prohibiting the possession of spray paint under certain circumstances. Court upheld ordinance finding that the due process and equal protection clauses were not violated. The court said juveniles could be treated differently than adults, and that the ordinance did not impose a criminal penalty for normally innocent behavior. Cites to State v. Saiez, 489 So. 2d 1125 (Fla. 1986), which upheld statute making it illegal to have credit card embossing machine.
29. Regulation of taxicabs.
- In City of Miami v. Metropolitan Dade County, 407 So. 2d 243 (Fla. 3rd DCA 1981), the court upheld an ordinance which regulated taxicabs throughout the county. The court found that a county may amend its charter to expand the power of the Board of County Commissioners to regulate taxicabs throughout the cities within the county.
30. Alcoholic beverages.
- In Ivey v. Bacardi Imports, Co., 541 So. 2d. 1129 (Fla. 1989), the court held tax scheme that provided an exemption from import tax for intoxicating beverages made in Florida from produce of land inspected by Florida's agricultural inspectors is a violation of the

commerce clause because it unconstitutionally discriminates against out-of-state manufacturers.

31. Price controls.
Sections 125.0103 and 166.043, Florida Statutes, contain procedures for imposing and limitations on ordinance imposing price controls.
32. Guns and ammunition.
Sections 166.044 and 125.0107, Florida Statutes, preclude municipalities and counties from passing ordinance relating to possession or sale of ammunition.
33. Family day care centers.
Section 166.0445, Florida Statutes, states that a family day care home is a valid residential use for all zoning codes and limits special fees to \$50.

B. Administrative enforcements .

1. Warrants.

Section 933.20, et seq., Florida Statutes, deals with search and inspection warrants.
2. In See v. City of Seattle, 387 U.S. 541 (1967), the court held that administrative searches were subject to Fourth Amendment.

C. Prosecution in county court.

1. Authority.
 - a. Section 162.21, Florida Statutes, authorizes a supplemental code enforcement method in county court for municipalities. Section 162.22 authorizes fines of up to \$500 and 60 days in jail for municipal ordinance violations where not otherwise authorized by law.
 - b. Section 125.69, Florida Statutes, provides a similar procedure and penalties for counties.
2. Limitations on penalties.
 - a. In F.Y.I. Adventures, Inc. v. City of Ocala, 698 So. 2d 583 (Fla. 5th DCA 1997), the court upheld right of city to impose criminal penalties of up to 60 days in jail and a \$500 fine. See, City of Ocala Ordinance 2474 Section 1.
 - b. In Thomas v. State, 614 So. 2d 468 (Fla. 1993), court held municipal ordinance penalties may not exceed state penalties for similar or identical offenses under state law.

- c. In Williams v. City of Fort Lauderdale, 702 So. 2d 1301 (Fla. 4th DCA 1997), the court held it was error to place defendant on probation for eight violations of building code where both city ordinance and building code provided for fine or incarceration but not probation.
3. Practical limitations.
 - a. Rule 2.110(c), Florida Rules of Judicial Administration, provides that outstanding fines will be collected through summary claims procedure.

D. Injunction.

1. Jurisdiction.

In Sea Breeze Video, Inc. v. Federico, 648 So. 2d 226 (Fla. 2d DCA 1994), video company sued county in circuit court challenging ordinances which regulated adult- use businesses, and circuit court transferred action to county court. Video company petitioned for writ of mandamus, alleging that county court's jurisdiction did not extend to providing injunctive relief. The district court of appeal held that constitution did not limit jurisdiction to issue injunction to circuit courts only and therefore denied the writ of mandamus.

2. Requirements.

- a. In Metropolitan Dade County v. O'Brien, 660 So. 2d 364 (Fla. 3d DCA 1995), the court held that it was error to deny county injunction to close business where business knowingly began operations without necessary permits. Where county exercising police power, harm is presumed.
- b. In Cosmic Corp. v. Miami-Dade County, 706 So. 2d 347 (Fla. 3d DCA 1998), the court held that when local government seeks temporary injunction against violation of local code, must still meet requirements of injunction. In this case, city did not demonstrate substantial likelihood of success on the merits.

3. Bonds.

E. Code enforcement boards and other administrative regulatory boards. (See also) quasi judicial functions of municipalities).

1. Code enforcement boards.

- a. Code enforcement board procedures are authorized by part I, chapter 162, Florida Statutes.
- b. In Verdi v. Metropolitan Dade County, 684 So. 2d 870 (Fla. 3d DCA 1996), the court upheld the county code provisions allowing an administrative hearing officer to assess fines for past code violations.
- c. In Holiday Inns, Inc. v. City of Jacksonville, 678 So. 2d 528 (Fla. 1st DCA 1996), the court held that administrative res judicata and collateral estoppel applied to code enforcement boards and other administrative bodies.

- d. In re: Estate of Jacobsen v. Attorney's Title Fund, 685 So. 2d 19 (Fla. 3d DCA 1996), the court held code enforcement lien not valid where contrary to code enforcement statute, notice of lien was mailed regular rather than certified mail.
- e. In Micheal Jones, P.A. v. Seminole County, 670 So. 2d 95 (Fla. 5th DC.A 1996), the court held that code enforcement board did not have power to impose criminal penalties and therefore, did not constitute an illegal court, but rather was an authorized quasi judicial body. Court, therefore, upheld fine against lawyer who failed to pay occupational license fee.
- f. F.S. 162.09(3) was amended in 2000 to allow the CEB to foreclose on the lien or sue for money judgment.

F. Responsibility for violation.

- 1. Monroe County v. Whispering Pines Associates, 697 So. 2d 873 (Fla. 3d DCA 1997). Subsequent purchaser may be held responsible for existing zoning violation on property.
- 2. In Holiday Inns, Inc. v. Cty of Jacksonville, 678 So. 2d 528 (Fla. 1st DCA 1996), the court held that once one person was found liable for violation and second person was exonerated for same violation. If the original decision was not appealed, city could not attempt to hold second person liable for same violation in subsequent code enforcement proceeding.
- 3. In Easy Way of Lee County.Inc. v. Lee County. 674 So. 2d 863 (Fla. 2d DCA 1996), the court found county noise ordinance too over broad and vague. Failure to define terms such as "plainly audible" led the court to invalidating ordinance. Used strict scrutiny standard as ordinance conflicted with First Amendment.

G. Code enforcement liens.

- 1. In Miskin v. City of Fort Lauderdale, 661 So. 2d 415 (Fla. 4th DCA 1995), the court held that article X, section 4, Florida Constitution (homestead), did not invalidate city's code enforcement lien, but rendered it presently unenforceable.
- 2. F.S. 162.09(3) - A 2000 amendment to this section allows the CEB to foreclose on the lien or sue for money judgment.
- 3. In Hoyt v. St. Lucie County, Bd. of County Comm'rs. 705 So. 2d 119 (Fla. 4th DCA 1998), the court overturned a summary judgment of foreclosure of county's code enforcement lien where it appeared that affidavit of code enforcement secretary did not reflect personal knowledge of length of violation or the condition of appellants' property.
- 4. In Sarasota County v. Andrews, 573 So. 2d 113 (Fla. 2d DCA 1991), the court held county ordinance giving code enforcement liens a priority superior to all others except tax liens was an unconstitutional impairment of contractual

relationship when applied to a properly recorded mortgage lien that predated the effective date of the ordinance.

H. Private enforcement.

1. In City of Dania v. Broward County, 658 So. 2d 163 (Fla. 4th DCA 1995), the court held that city's alleged loss of tax base and expenditure for infrastructure improvements did not constitute a valid basis for intervention in county's eminent domain proceeding for expansion of the airport.

I. Selective enforcement.

1. In U.S. v. Johnson, 577 F.2d 1304 (5th Cir. 1978), the court observed that defendants have a heavy burden in making a prima facie showing of selective enforcement.
 - a. One must show:
 - (1) Object of the enforcement was treated differently from others in the same position. Owen v. Wainwright, 806 F.2d 1519 (11th Cir. 1986), cert. denied, 481 U.S. 1071, 107 S. Ct. 2466, 95 L. Ed. 2d 875 (1987).
 - (2) Authorities must be aware of other similarly situated violators.
 - (3) Purpose of diverse treatment was the intent of the decision-maker to take a particular course of action based on impermissible motives. It is not sufficient to merely allege discriminatory result. Fillingim v. Boone, 835 F.2d 1389, 1399 (11th Cir. 1988).
 - b. See also Thomas v. State, 583 So. 2d 336, 340 (5th DCA 1991), decision approved, 614 So. 2d 468 (Fla. 1993); Oyler v. Boles, 368 U.S. 448, 82 S. Ct. 501 (1962).

J. Equitable estoppel.

1. In Alachua County v. Cheshire, 603 So. 2d 1334 (Fla. 1st DCA 1992), while the court held that there were affirmative intentional misrepresentations by the governmental agents and therefore applied equitable estoppel, the court recognized (1) Estoppel is rarely applied against government; and (2) in addition to the usual elements of estoppel, a party seeking to invoke estoppel against government must establish affirmative conduct by the government going beyond mere negligence.
2. In Council Bros. v. City of Tallahassee, 634 So. 2d 264 (Fla. 1st DCA 1994), the court recognized rarity of applying equitable estoppel, but applied it to preclude city from enforcing impact fee regulations where person specifically designated by city to interpret unclear ordinance represented project not subject to impact

fees and developer relied on representation to submit bid on governmental construction project.

3. In Martin County v. Indiantown Enterprises, Inc., 658 So. 2d 1144 (Fla. 4th DCA 1995), the court determined that purchaser of a building that was subject to demolition under ordinances had no right to rely on building official's oral representation of extension of time to fix up building. No action under negligence or estoppel. Ordinance enumerated specific procedure for obtaining extension. Informed accommodation by county official in enforcement of building regulations cannot create enforceable duties.

K. Arrests.

1. In Thomas v. State, 614 So. 2d 468 (Fla. 1993), the court held full custodial arrests for violation of municipal ordinance was unlawful where ordinance prohibited conduct that was essentially identical to conduct that had been decriminalized by state law.

2000 SUPPLEMENT

Chapter VIII Local Government as Code Enforcer

A. Types of local government regulations.

1. Land use and zoning.

Described in more detail in section IX infra.

- a. Smith v. City of West Palm Beach, 756 So. 2d 166 (Fla. 4th DCA 2000). Circuit court properly upheld the denial of a variance where supported by competent substantial evidence. Competent substantial evidence standard in quasi judicial proceedings is similar to fairly debatable standard used in review of legislative decisions.

2. Occupational regulation.

- h. Hunnewell v. PalIn Beach County, 723 So. 2d 353 (Fla. 4th DCA 1998). Neither Consumer Product Safety Act nor Federal Hazardous Substance Act preempt state from regulating or prohibiting sale of fireworks.
- i. Ammons v. Okeechobee County Code Enforcement Bd., 710 So. 2d 641 (Fla. 4th ! DCA 1998). County was not estopped from enforcing residential zoning code against commercial home business when zoning official had erroneously issued an occupational license in clear violation of county ordinances.

3. Adult Entertainment.

- i. P.M. Realty and Investments. Inc. v. City of Tampa, 25 Fla. L. Weekly D2041 (Fla. 2d DCA August 25, 2000). City was granted preliminary injunction against adult entertainment establishment that violated city ordinance. Violation of city ordinance irreparable harm per se. Ordinance survived challenge based on free speech, equal protection on unconstitutional taking challenge.
- j. Solitary, Inc. v. Seminole County, 720 So. 2d 292 (Fla. 5th DCA 1998). Provision of land use code stating that adult entertainment ordinance shall not be construed to regulate or control constitutionally protected expression or speech simply means the code should not be applied in a way that would interfere with constitutionally protected rights of expression.

4. Adult use regulatory requirements.

- f. P.M. Realty and. Investments. Inc. v. City of Tampa, 25 Fla. L. Weekly D2041 (Fla. 2d DCA August 25, 2000). City was granted preliminary injunction against adult entertainment establishment that violated city ordinance. Violation of city ordinance irreparable harm per se. Ordinance survived challenge based on free speech, equal protection on unconstitutional taking challenge.
8. Noise.
- c. Daley v. City of Sarasota, 752 So. 2d 124 (Fla. 2d DCA 2000). City noise ordinance that prohibits all amplified sound during certain hours in business district is overbroad.
 - d. Davis v. State, 710 So. 2d 635 (Fla. 5th DCA 1998). Noise ordinance that prohibited playing car radio such that it is plainly audible at 100 feet or more from vehicle was not unconstitutionally vague, nor did it violate free speech.
10. Regulation by local government over its own land.
- b. Streets.
 - (4) City of Chicago v. Morales, 119 S.Ct. 1849 (1999). City ordinance that defined loitering as remaining in one place with no apparent purpose, and which authorized police officer to issue dispersal order to group of two or more persons in public place if officer reasonably believes one of them is a street gang member, failed to provide adequate guidelines for enforcement as required by the Fourteenth Amendment due process clause and was, therefore, void for vagueness.
11. Environmental protection.
- d. Florida Rock Indus. Inc. v. Alachua County, 721 So. 2d 741 (Fla. 1st PCA 1998). Trial court properly rejected the challenge to placement on the ballot of a clean air ordinance which set standards more stringent than state or federal law. In order to prevail, plaintiff must show the proposed ordinance is unconstitutional on its face and in its entirety. Fact that ordinance would not be effective until approved by the Department of Environmental Protection did not render it invalid.
 - e. Department of Environmental Protection v. Allied Scrap Processors Inc., 724 So. 2d 151 (Fla. 1st DCA 1998). Legislature intended that collection provisions of Water Quality Assurance Act were to apply retroactively for persons or entities whose actions contributed to hazardous waste contamination.
 - f. Metropolitan Dade County v. Chase Federal Housing Co., 737 So. 2d 494 (Fla. 1999). Subsections of the Dry Cleaning Contamination Cleanup Act which provide immunity from certain administrative and judicial actions by state and local government were intended to be applied retroactively, thus

precluding actions against immunized entities for recovery of enforcement and rehabilitation costs expended prior to the effective date of the act.

14. Nuisance abatement.

- f. Keshbro, Inc. v. City of Miami, 801 So.2d 864 (Fla. 2001). The closing of a motel and apartment complex by the Nuisance Abatement Board was a taking, but only the apartment complex closing was a compensable taking because there was no showing that drug activity was so intertwined in the legitimate operation of the apartment complex such that the closing of the complex was specifically tailored to abate the drug nuisance.

15. Building code.

- h. C.E. Huffman Trucking, Inc. v. Red Cedar Corp., 723 So. 2d 296 (Fla. 2d DCA 1998). Summary judgment in inverse condemnation action precluded by issue of fact of whether demolition contractor acted as agent of county when it demolished building pursuant to code enforcement action. While claim of inverse condemnation may lie when property has been destroyed through unwarranted governmental action, the timing and manner of this theory's injection into case severely prejudiced county.
- i. Nevada Interstate Properties Corp. v. City of West Palm Beach, 747 So. 2d 447 (Fla. 4th DCA 1999). Mortgagee's lien on property was a compensable property interest within meaning of Fifth Amendment, and mortgagee was entitled to bring suit against city for violation of due process arising from destruction of property under building code.
- j. Sosa v. City of West Palm Beach, 762 So. 2d 981 (Fla. 4th DCA 2000). Trial court properly dismissed complaint under Harris Act where property owner failed to comply with prerequisites of statute by giving 180-day notice in writing with bonafide appraisal.

16. Animal control.

- b. Types of regulation.
 - (3) Hodges v. Marion County, 730 So. 2d 786 (Fla. 5th DCA 1999). County not entitled to summary judgment in declaratory judgment action over whether property owner must get a special use permit to keep exotic birds in cages in out-buildings on property because a genuine issue of material fact existed. The term "household pets" in ordinance does not necessarily mean pets must be kept in house, it just means that pets are domesticated. A building is not an aviary where birds kept in cages within building.
 - (4) Metropolitan Dade County v. Hernandez, 708 So. 2d 1008 (Fla. 3d DCA 1998). County's separate scheme for animal control violations, which provided for de novo review in county court, was

constitutional. County is not limited to exact procedures set forth in Chapter 162.

17. Curfew ordinance.

b. Upholding constitutionality.

(3) T.M. v. State of Florida, 784 So.2d 442 (Fla. 2001). Strict scrutiny is the appropriate level of scrutiny to use on juvenile curfew ordinances. The constitutionality of the ordinance was not reviewed.

(4) Hutchins v. District of Columbia, 188 F.3d 531 (D.C. Cir. 1999). Juvenile curfew ordinance upheld on grounds that: (1) juveniles had no fundamental right to free movement; (2) parents' right to direct and control childrens' upbringing not implicated by curfew statute; (3) curfew reviewed under intermediate, not strict scrutiny standard; (4) statute was substantially related to important governmental interests; (5) defenses to statute not unconstitutionally vague; and (6) statute did not on its face violate First or Fourth Amendment.

25. Waste water utilities.

c. Flagler County v. Palm Coast Community Servo Corp., 712 So. 2d 1131 (Fla. 5th DCA 1998). County had no basis in either contracts at hand or law to prohibit developer from turning drainage system over to property owners' association after developer completed sale of lots.

30. Alcoholic beverages.

a. State v. Folks, 723 So. 2d 369 (Fla. 4th DCA 1998). Police officer had probable cause to arrest defendant for violation of municipal ordinance prohibiting consumption of alcoholic beverages in public place when defendant was in a car in a public parking lot.

B. Administrative Enforcements.

3. AGO 2002-27 – Ability of code inspector to enter private property: A local government code inspector is not authorized to enter onto any private, commercial or residential property to assure compliance with, or to enforce the various technical codes, or to conduct any administrative inspections or searches without the consent of the owner or the operator or occupant of such premises, or without a duly issued search or administrative inspection warrant.

4. Florida Statues, §§27.02 and 27.34 were amended to prohibit the state attorney from appearing in circuit or county court to prosecute special laws and county or municipal ordinances punishable by incarceration, unless (1) the prosecution is ancillary to the state's criminal case, or (2) the county or municipality has contracted with state attorney for such prosecution services.

5. Florida Statutes, §125.69(2) has been amended to require each county to pay a court-appointed attorney or public defender to represent a defendant charged with a criminal violation of a special law or county ordinance if the violation is not ancillary to a state charge. If the county is the prevailing party, the county may recover the fees and expenses paid to the attorney as part of the county's judgment.

D. Injunction.

3. Bonds.

- a. Provident Management Corp. v. City of Treasure Island, 796 So. 2d 481 (Fla. 2001). Municipality that sought an injunction without bond was subject to action for damages sustained as a result of wrongfully issued preliminary injunction. Recovery not precluded by doctrine of sovereign immunity.

E. Code enforcement boards and other administrative regulatory boards. (See also quasi judicial functions of municipalities).

1. Code enforcement boards.

- g. Goodman V. County Court In Broward County, 711 So. 2d 587 (Fla. 4th DCA 1998). City's decision to confer jurisdiction upon its code enforcement board to hear housing code cases did not preclude the city from choosing to prosecute violation of housing code in county court. The city may elect either method of prosecution.
- h. Pearson V. Miami-Dade County, 741 So. 2d 635 (Fla. 3d DCA 1999). County not required to give courtesy warning where there has been a repeat violation or a violation presents a serious threat to public health, safety, or welfare.

G. Code enforcement liens.

5. City of Tampa v. Brown, 711 So. 2d 1188 (Fla. 2d DCA 1998). Trial court erred in invalidating code enforcement lien for failure to send certified copy of notice of continuing violation. No requirement to send a second notice after hearing is held and violator was found to have failed to comply with previous order. Case acknowledges conflict with In re: Estate of Jacobsen v. Attorney's Title Ins. Fund, 685 So. 2d 19 (Fla. 3d DCA 1996).
6. Little v. D'Aloia, 759 So. 2d 17 (Fla. 2d DCA 2000). Owner's due process rights violated where city had property owner's correct address but only posted notice of code enforcement lien at city hall and on property.
7. Massey v. Charlotte County, 842 So.2d 142 (Fla. 2d DCA 2003). Property owners have a compelling interest in maintaining their real and personal property free from undue

interference and improper clouds on their title. Thus, a governmental interest, such as Charlotte County's interest in protecting the safety and welfare of its citizens by ensuring compliance with building codes and the expeditious enforcement of its orders, must be narrowly tailored to achieve its objectives through the least restrictive means. Property owners must be provided with notice and the opportunity to be heard regarding any factual determinations necessary for the imposition of a fine or lien. Such procedural due process may be pre-deprivation or post-deprivation.

8. Fong v. Town of Bay harbor Islands, 864 So.2d 76 (Fla. 3DCA 2003). The significance of Fong comes in the DCA's interpretation of Florida Statutes, §162.09(3), which reads, in pertinent part, "A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first." The DCA found that although the trial court determined the original code violations remained uncorrected, the daily fines could not continue to run against Fong's property; it must stop on the date the trial court made the Summary Final Judgment on the matter.