

**TUESDAY,  
OCTOBER 10, 2023**

**REGULAR  
CITY COMMISSION MEETING**

**@ 6:00 PM**



# City of Indian Rocks Beach

1507 Bay Palm Boulevard, Indian Rocks Beach, Florida 33785

[www.indian-rocks-beach.com](http://www.indian-rocks-beach.com)

Administrative  
727/595-2517

Library  
727/596-1822

Public Works  
727/595-6889

## AGENDA

### CITY OF INDIAN ROCKS BEACH REGULAR CITY COMMISSION MEETING TUESDAY, OCTOBER 10, 2023 @ 6:00 P.M. CITY COMMISSION CHAMBERS

1507 BAY PALM BOULEVARD INDIAN ROCKS BEACH, FLORIDA 33785

CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
ROLL CALL

1. **PRESENTATIONS.**

- A. **REPORT OF** Pinellas County Sheriff's Office.
- B. **REPORT OF** Pinellas Suncoast Fire & Rescue District.

2. **PUBLIC COMMENTS. [3-minute time limit per speaker.]**

(Any member of the audience may come forward, give their name and address, and state any comment or concern that they may have regarding any matter over which the City Commission has control, EXCLUDING AGENDA ITEMS. All statements made to the City Commission shall be made to the City Commission as a whole, not directed to any individual City Commission Member, and no personal, impertinent, or slanderous remarks shall be permitted. No speaker shall be interrupted, and no debate shall take place between the speaker and the City Commission.)

3. **REPORTS OF:**

- A. **City Attorney.**
- B. **City Manager.**
- C. **City Commission.**

**[3-minute time limit per City Commission Member.]**

4. **ADDITIONS/DELETIONS.**

5. **CONSENT AGENDA:**

- A. **APPROVAL** of the September 6, 2023, Special City Commission Meeting Minutes.

- B. **APPROVAL** of the September 12, 2023, Regular City Commission Meeting Minutes.
  - C. **APPROVAL** of the September 20, 2023, Special City Commission Meeting Minutes.
  - D. **AUTHORIZING** the City Manager to award Bid Number I.R.B.P.W.D.2023-01 and enter into a contract with Harbor Contracting, LLC. for the 2<sup>nd</sup> Street and 16th Avenue BMP's (Q341) in the amount of \$419,827.00.
6. **PUBLIC HEARINGS: None.**
7. **OTHER LEGISLATIVE MATTERS:**
- A. **ORDINANCE NO. 2023-06- FIRST READING**  
 An Ordinance of the City of Indian Rocks Beach, Florida, providing for an amendment to Section 74-63 of the Code of Ordinances pertaining to the operation of vessels within the City's coastal waters in the Gulf of Mexico; providing for the incorporation of recitals; providing for approval of an amendment to the City's Code to establish a public bathing beach area limited to manually propelled vessels only to conform to Florida's Statutes and Administrative Code; providing for severability; providing for the repeal of all ordinances in conflict herewith; and providing for an effective date.
8. **WORK SESSION ITEMS [DISCUSSION ONLY]:**
- A. **DISCUSSION OF Motorized Bikes.**
9. **OTHER BUSINESS. None.**
10. **ADJOURNMENT.**
- 

**APPEALS:** Any person who decides to appeal any decision made, with respect to any matter considered at such hearing, will need a record of the proceedings and, for such purposes, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based, per s. 286.0105, F.S. Verbatim transcripts are not furnished by the City of Indian Rocks Beach, and should one be desired, arrangements should be made in advance by the interested party (i.e., Court Reporter).

In accordance with the Americans with Disability Act and s. 286.26, F.S., any person with a disability requiring reasonable accommodation to participate in this meeting should contact the City Clerk's Office with your request, telephone 727/595-2517 [lkornijtschuk.com](http://lkornijtschuk.com), no later than FIVE (5) days before the proceeding for assistance.  
 POSTED: October 6, 2023

**NEXT REGULAR CITY COMMISSION MEETING: TUESDAY, NOVEMBER 14, 2023 @ 6:00 p.m.**

**AGENDA ITEM NO. 1A**

**REPORT OF  
Pinellas County Sheriff's Office**

**AGENDA ITEM NO. 1B**

**REPORT OF**  
**Pinellas Suncoast Fire & Rescue District**

**AGENDA ITEM NO. 2**

**PUBLIC COMMENTS**

**AGENDA ITEM NO. 3A**  
**REPORTS OF City Attorney**

**AGENDA ITEM NO. 3B**  
**REPORTS OF City Manager**



**AGENDA ITEM NO. 3C**  
**REPORTS OF City Commission**

**AGENDA ITEM NO. 4**  
**ADDITIONS/DELETIONS**

**AGENDA ITEM NO. 5A**

**CONSENT AGENDA**

**APPROVAL OF the  
September 6, 2023  
Special City Commission  
Meeting Minutes.**

**MINUTES  
CITY OF INDIAN ROCKS BEACH  
SPECIAL CITY COMMISSION MEETING  
WEDNESDAY, SEPTEMBER 6, 2023- 6:00 PM  
1507 BAY PALM BOULEVARD INDIAN ROCKS BEACH, FL 33785**

Mayor-Commissioner Kennedy called the meeting to order at 6:00 p.m., FOLLOWED BY THE Pledge of Allegiance and a moment of silence.

**MEMBERS PRESENT:** Mayor-Commissioner Joanne Kennedy, Vice-Mayor Jude Bond, Commissioner Denise Houseberg, Commissioner Joe McCall, and Commissioner Lan Vaughan.

**OTHERS PRESENT:** City Manager Gregg Mims, Finance Director Daniel A. Carpenter, CGFO, City Clerk Lorin A. Kornijtschuk, Acting City Attorney Thomas Trask.

For continuity, items are listed in agenda order, although not necessarily discussed in that order.

**FISCAL YEAR 2023-2024 BUDGET PUBLIC HEARINGS:**

**1 A. ORDINANCE NO. 2023-04-PUBLIC HEARING/FIRST READING.**

Adopting the final levying of ad valorem taxes for the City of Indian Rocks Beach, Pinellas County, Florida Fiscal Year 2023/2024; providing for notification of requisite government authorities: and providing for an effective date.

[Beginning of Staffing Report.]

**BACKGROUND:**

The City Commission previously established the proposed millage rate for Fiscal Year 2023/24 at 1.7300 mills, a reduction of the previous fiscal year millage rate of 1.8326. This is the third mill rate reduction since 2017.

**ANALYSIS:**

With a millage rate of 1.7300, the total estimated tax collection is \$3,171,800 based on a 97% collection rate. For Fiscal Year 2023/24, a mill rate of 1.7300 is 6.67% higher than the roll back rate of 1.6219. The proposed mill rate of 1.7300 remains one of the lowest in Pinellas County. Currently, mill rates in Pinellas County range from 0.5950 to 6.5250.

[End of Staffing Report.]

Acting City Attorney Thomas Trask read Ordinance No. 2023-04 in its entirety for first reading.

Mayor-Commissioner Kennedy opened the public hearing. Seeing no one in the audience and/or hearing no one wishing to speak, the public hearing was closed.

**MOTION made by Commissioner Vaughan, seconded by Commissioner McCall, to approve Ordinance No. 2023-04, on First Reading, adopting the final levying of ad valorem taxes for the City of Indian Rocks Beach, Pinellas County, Florida, FY 2023/2024 at 1.7300 mills.**

**ROLL CALL VOTE:**

**AYES: McCALL, HOUSEBERG, VAUGHAN, BOND, KENNEDY**

**NAYS: NONE**

**Motion to approve Ordinance No. 2023-04, on first reading, carried unanimously.**

**1 B. ORDINANCE NO. 2023-05-PUBLIC HEARING/FIRST READING.**

**Appropriating funds for operating expenses and adopting a budget for the City of Indian Rocks Beach, Florida, for Fiscal Year 2023/24.**

[Beginning of Staffing Report.]

**BACKGROUND**

The City Commission reviewed the City Manager’s proposed budget for Fiscal Year 2023/24 at a Budget Workshop on July 25, 2023. Prior to the budget work session, the City Manager and Finance Director met with each member of the City Commission to brief them on the proposed budget. In addition, the City of Indian Rocks Beach Finance and Budget Committee met on July 12, 2023, and unanimously endorsed the proposed budget.

The City Manager and Finance Director made presentations, which provided an overview of the Fiscal Year 2023/24 Program Budget, and together, the City Commission and staff reviewed all aspects of the proposed budget in detail. The Final Budget for Fiscal Year 2023/24 is the result of a consensus by the City Commission from the July Budget Workshop.

**ANALYSIS**

The final budget is balanced in all funds and presents a comprehensive plan for providing services during the coming fiscal year. With the approval of the Final Budget for Fiscal Year 2023/24, the City will establish a spending plan for Fiscal Year 2023/24 and provide approval for the City Manager to implement the plan. Attached to this agenda memorandum is the City Manager’s June 30th, 2023, budget transmittal correspondence.

[End of Staffing Report.]

Acting City Attorney Thomas Trask read Ordinance No. 2023-05 in its entirety for first reading.

City Manager Mims introduced Ordinance No. 2023-05 and provided highlights of the FY 2023/2024 Budget and the 5-Year Capital Improvement Projects.

City Manager Mims stated he appreciated the contributions each commissioner made, the input of all the department heads and the time City Attorney Mora and Finance Director Dan Carpenter spent on the budget.

**MOTION made by Commissioner McCall and seconded by Vice-Mayor Bond to approve Ordinance No. 2023-05, on first reading, adopting a budget for FY 2023/2024; making appropriations and operating expenditures for FY 2023-2024.**

**ROLL CALL VOTE:**

**AYES: McCALL, HOUSEBERG, VAUGHAN, BOND, KENNEDY**

**NAYS: NONE**

**Motion to approve Ordinance No. 2023-05, on first reading, carried unanimously.**

Mayor-Commissioner Kennedy opened the public hearing. Seeing no one in the audience and/or hearing no one wishing to speak, the public hearing was closed.

**2. OTHER LEGISLATIVE MATTERS. None.**

**3. ADJOURNMENT.**

**Motion was made by Commissioner Houseberg and seconded by Commissioner McCall to adjourn at 6:15 p.m. Unanimous approval by acclamation.**

\_\_\_\_\_  
Date Approved

\_\_\_\_\_  
Joanne Moston Kennedy, Mayor-Commissioner

Attest: \_\_\_\_\_  
Lorin A. Kornijtschuk, City Clerk

/lak

**AGENDA ITEM NO. 5B**

**CONSENT AGENDA**

**APPROVAL OF the  
September 12, 2023  
Regular City Commission  
Meeting Minutes.**

## MINUTES

**CITY OF INDIAN ROCKS BEACH  
REGULAR CITY COMMISSION MEETING  
TUESDAY, SEPTEMBER 12, 2023- 6:00 PM  
1507 BAY PALM BOULEVARD INDIAN ROCKS BEACH, FL 33785  
(MEETING CAN BE VIEWED AT WWW.INDIAN-ROCKS-BEACH.COM)**

Mayor-Commissioner Kennedy called the meeting to order at 6:02 p.m., FOLLOWED BY THE Pledge of Allegiance and a moment of silence.

**MEMBERS PRESENT:** Mayor-Commissioner Joanne Kennedy, Vice-Mayor Jude Bond, Commissioner Joe McCall, Commissioner Denise Houseberg, and Commissioner Lan Vaughan.

**OTHERS PRESENT:** City Attorney Randy Mora, City Manager Gregg Mims and City Clerk Lorin A. Kornijtschuk.

For continuity, items are listed in agenda order, although not necessarily discussed in that order.

**1 A. REPORT OF** Pinellas County Sheriff's Office.  
A PCSO representative reviewed the monthly report.

**1 B. REPORT OF** Pinellas Suncoast Fire & District.  
Fire Chief Jeffrey Davidson reviewed the fire district's monthly report.

**1 C. PRESENTATION** Florida League of Cities.  
Scott Dudley from the Florida League of Cities did a presentation on Local Voices United.

### **2. PUBLIC COMMENTS.**

John Phanstiel, 448 Harbor Drive South, thanked the Florida League of Cities and Scott Dudley for the presentation. He asked the City Commission to reconsider hiring a lobbyist regarding short term vacation rentals and requested a referendum be placed on the ballot regarding short term vacation rentals.

Phil Wrobel, 112 13<sup>th</sup> Avenue, thanked the city for acting so fast in installing steps at the 12<sup>th</sup> Avenue beach access. He is aware that the city has received lawsuits regarding short term vacation rentals and inquired about how much money did the city have to fund the lawsuits and where is the additional money going to come from.

Scott Shapiro, 2032 20<sup>th</sup> Avenue Parkway- stated people came together during the hurricane disaster. There were missed opportunities on the beach renourishment project. He asked that some kind of lift gate be installed on the storm drains to prevent back flow into the streets. He also asked the City Commission to bring back citizen advisory boards.

Robert Johnson, 1206 Beach Trail, stated the City needs to have a plan to capture the sand that is out there right now. He brought in a copy of the City Beach Management Plan that was put together by an advisory board in 2004.



Jerry Newton, 438 Harbor Drive North, requested a referendum be put on the ballot regarding short term vacation rentals.

Doug Valery, 207 10<sup>th</sup> Avenue, thanked the City Commission on the short-term rental ordinance and liked the idea of placing a referendum regarding short term vacation rentals on the ballot.

House Representative Kimberly Berfield introduced herself.

### **3 A. REPORT OF the City Attorney.**

City Attorney Mora stated there are currently seven filed lawsuits against the city challenging the validity of the short-term vacation ordinance. The city is being represented by the insurance carrier and he is collaborating closely with them at their request.

Commissioner Vaughn asked the City Attorney his opinion regarding citizens request to place a referendum regarding short-term vacation rentals on the ballot.

City Attorney Mora replied he would suggest against the referendum for a few legal issues.

There are a number of statutory doctrines prohibiting this. Doing so would not only likely be a legal nullity, but also likely invite additional legal challenges with direct exposure to attorneys' fees, in a posture where the City is unlikely to prevail. Further, a referendum process is not used for surveying the community, but instead to amend the charter of a community, implement a new tax, or implement some other rule or regulation.

**Fla. Stat. 163.3167 (8) - Ref: Senate Bill 718 (2023)**

**Fla. Stat 509.032 (7) (b) Duties**

**Fla. Stat. 57.112 - Attorney fees and costs and damages; arbitrary, unreasonable, or expressly preempted local ordinances.**

**Senate Bill 250 (2023)**

### **3 B. REPORT OF the City Manager.**

City Manager Mims read the Code Enforcement Report for August 2023.

City Manager Mims reported 121 tons of hurricane debris was removed by the city. Out of 28 beach accesses 10 are currently closed, the city is working to finalize an estimate with a preapproved contractor to get those repaired. Pinellas County is working on an emergency beach renourishment program paid for by Pinellas County. During the preparation for the hurricane, staff gave out about 4,500 sandbags.

Commissioner Vaughan stated that a citizen asked through an email that the commission make a resolution to protect the sea oats and keep people from walking on them.

City Manager Mims replied there is a state law that has language in place not to damage the area along the beach such as sea oats.

City Manager Mims thanked everyone in City Hall for their efforts in the preparation for the hurricane.

**3 C. REPORT OF the City Commission.**

Commissioner McCall provided an update on the IRB Homeowners Association.

Commissioner Houseberg thanked the city for the amazingly quick cleanup.

Mayor-Commissioner Kennedy reported there will be a Women's Tea on November 11<sup>th</sup> at the Church of Isles from 1:00 p.m. until 3:00 p.m. She thanked the City staff and the City Manager for all the work done during the hurricane.

Commissioner Vaughan thanked the City Staff, City Manager and the residents for their action after the hurricane.

Commissioner Vaughan provided an update on Action 2000.

Vice-Mayor-Commissioner Bond agreed with resident Robert Johnsons comments on having a long-term strategy to maintain the beach on a regular basis.

**4. ADDITIONS/DELETIONS.** None.

**5. CONSENT AGENDA.**

**5 A. APPROVAL of the August 8, 2023, Regular City Commission Meeting Minutes.**

**5 B. CONFIRMING ACTION** taken during the September 6, 2023, Special City Commission Meeting

**5 C. RESOLUTION NO. 2023-07.** A resolution of the City Commission of the City of Indian Rocks Beach, Florida, calling for a general election for the purpose of electing, at large, qualified candidates to fill the vacancies of the Mayor-Commissioner Seat and two City Commissioner Seats for two-year terms; establishing a candidate qualifying period; authorizing the City Manager to enter into a contract with the Pinellas County Supervisor of Elections; establishing a polling place for the March 19, 2024 Election; authorizing the Pinellas County Supervisor of Elections to verify candidate petition cards and facilitate the election process

**5 D. APPROVAL OF** the FY 2023-24 Law Enforcement Contract with the Pinellas County Sheriff's Office.

**5 E. AUTHORIZING** the City manager to sign a one-year agreement to renew property/casualty/workers compensation & flood insurance with the Public Risk Management (PRM) Group Health Trust for FY 2023-24.

City Attorney Mora read the Consent Agenda, consisting of Agenda Item 5 A through 5 E, by title only.

**MOTION** was made by Commissioner Vaughan and seconded by Vice-Mayor-Commissioner Bond to approve the Consent Agenda, consisting of Agenda item nos. 5 A through 5 E. **Motion to approve carried unanimously.**

**6. PUBLIC HEARING.**

**6 A. BOA CASE NO. 2023-07-2116 1<sup>st</sup> Street-** Considering a variance request from Sec.110-344(4) of the Code of Ordinances to encroach three feet into the seven foot side yard setback resulting in a side yard setback of four feet for the installation of a pool for property

located at 2116 1<sup>st</sup> Street Indian Rocks Beach, Florida, and legally described as Lot 10, Block 49, RE-Revised Map of Indian Beach recorded in Plat Book 5 Page 6 of the Public Records of Pinellas County, Florida.  
Parcel#:01-30-14-42030-049-0100.

[Beginning of Staff Report]

**SUBJECT: BOA CASE NO. 2023-07-2116 1<sup>st</sup> Street-** Considering a variance request from Sec.110-344(4) of the Code of Ordinances to encroach three feet into the seven foot side yard setback resulting in a side yard setback of four feet for the installation of a pool for property located at 2116 1<sup>st</sup> Street Indian Rocks Beach, Florida, and legally described as Lot 10, Block 49, RE-Revised Map of Indian Beach recorded in Plat Book 5 Page 6 of the Public Records of Pinellas County, Florida. Parcel#:01-30-14-42030-049-0100.

**OWNER** Greenhouse Real Estate  
**LOCATION of PROPERTY:** 2116 1<sup>st</sup> Street  
**ZONING:** RM-2 – Medium Density Multifamily Residential

Direction	Existing Use	Zoning Category
North	Residential	RM-2
East	Residential	RM-1
South	Residential	RM-2
West	Office	P-1

**BACKGROUND:**

The applicant is requested to install a pool in the side yard of the duplex and encroach 3 ft into the 7 ft side yard setback.

The duplex faces 21<sup>st</sup> Avenue but the 25 ft front yard setback is shown from 1<sup>st</sup> Street and measures 31.5 ft from the property line. A pool cannot be located in the 25 feet front yard setback and a pool cannot fit into the remaining 6 feet in front of the duplex.

**Sec. 2-152. - Variances.**

(a) *Generally; criteria for granting variances from the terms of subpart B.*

(1) The board of adjustments and appeals shall make recommendations on, and the city commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the board or the city commission shall consider each of the following.

a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

*The original home was built in 1940 and a duplex was added in 1987 and maintains the 25 ft front yard setback on 1<sup>st</sup> Street.*

b. The special conditions and circumstances do not result from the actions of the applicant.

*The applicant did not create any special conditions or circumstances.*

c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district.

*Granting the variance would confer special privileges to the applicant.*

d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant.

*The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*

e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building; and

*This is the minimum variance to allow the owner to install the pool.*

f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare.

*Granting the variance will not be in harmony with the general intent and purpose of subpart B.*

**NOTICE:** A public notice was mailed by first class mail to property owners within 150 feet in any direction of the subject property and posted on subject property on July 31, 2023, (Sec. 2-149 of the Code of Ordinances.)

**LEGAL NOTICE:** A legal notice was published in the July 26, 2023-Edition, of the St. Pete Times Section of the Tampa Bay Times. For a public hearing that has been scheduled for August 15, 2023, for BOA Case No. 2023-07.

**CORRESPONDENCE:** Two letters of approval and one letter of objection (sent twice).

**STAFF RECOMMENDATION:** Based on the variance review criteria of Section 2-152, staff recommends denial of the request.

**MOTION:**

I move to recommend to the City Commission APPROVAL/DENIAL of BOA CASE NO 2023-07 2116 1<sup>st</sup> Street -Variance request from Sec.110-344(4) of the Code of Ordinances to encroach three feet into the seven foot side yard setback resulting in a side yard setback of four feet for

the installation of a pool for property located at 2116 1<sup>st</sup> Street Indian Rocks Beach, Florida, and legally described as Lot 10, Block 49, RE-Revised Map of Indian Beach recorded in Plat Book 5 Page 6 of the Public Records of Pinellas County, Florida.

[End of Staff Report]

City Attorney Mora inquired of the City Commission Members if they had any ex-parte communications with the applicant or their agent, with all members responding negatively. City Attorney Mora inquired of the City Commission Member if any of them had conducted a site visit for the limited purpose of evaluating the application before them, with all members responding negatively.

City Attorney Mora duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

City Manager Mims presented the Agenda Item, BOA Case No. 2023-07- 2116 1<sup>st</sup> Street.

Joseph Cirafici, 2116 1<sup>st</sup> Street, stated that his property consists of 2 structures, one is on piers and directly to the west is a small cottage on grade. The city acknowledges that the front of the house is on 1<sup>st</sup> Street and both homes face 22<sup>nd</sup> Avenue. This means that what is considered the back yard is considered a side yard by the city code. The space behind the cottage is the only space to be used for privacy. No adjacent neighbors object.

Mayor- Commissioner Kennedy read the one objection letter and asked the applicant if he could respond. He rents the cottage out but has never received a violation notice or complaints.

**MOTION** was made by Commissioner Vaughan and seconded by Commissioner McCall to **deny** BOA CASE No. 2023-07- 2116 1<sup>st</sup> Street- Variance request from Sec.110-344(4) of the Code of Ordinances to encroach three feet into the seven foot side yard setback resulting in a side yard setback of four feet for the installation of a pool for property located at 2116 1<sup>st</sup> Street Indian Rocks Beach, Florida, and legally described as Lot 10, Block 49, RE-Revised Map of Indian Beach recorded in Plat Book 5 Page 6 of the Public Records of Pinellas County, Florida. **Motion to deny carried unanimously.**

7. **OTHER LEGISLATIVE MATTERS. None.**

8. **WORK SESSION ITEMS. None.**

9. **OTHER BUSINESS. None.**

10. **ADJOURNMENT.**

**Motion** was made by Commissioner Houseberg and seconded by Commissioner McCall to adjourn at 8:20 p.m. Unanimous approval by acclamation.

\_\_\_\_\_  
Date Approved

\_\_\_\_\_  
Joanne Moston Kennedy, Mayor-Commissioner

Attest: \_\_\_\_\_  
Lorin A. Kornijtschuk, City Clerk

/lak

**AGENDA ITEM NO. 5C  
CONSENT AGENDA**

**APPROVAL OF the  
September 20, 2023  
Special City Commission  
Meeting Minutes.**

**MINUTES**  
**CITY OF INDIAN ROCKS BEACH**  
**SPECIAL CITY COMMISSION MEETING**  
**WEDNESDAY, SEPTEMBER 20, 2023 @ 6:00 P.M.**  
**1507 BAY PALM BOULEVARD INDIAN ROCKS BEACH, FL. 33785**

The City of Indian Rocks Beach Special City Commission Meeting was held on Wednesday, September 20, 2023.

Mayor-Commissioner Kennedy called the meeting to order at 6:00 p.m., followed by the Pledge of Allegiance and a moment of silence.

**PRESENT:** Mayor-Commissioner Joanne Kennedy, Vice Mayor-Commissioner Jude Bond, Commissioner Joseph McCall, and Commissioner Denise Houseberg.

**ABSENT:** Commissioner Lan Vaughan.

**OTHERS PRESENT:** City Attorney Randy Mora, City Manager Gregg Mims, Finance Director Dan Carpenter and City Clerk Lorin Kornijtschuk.

(To provide continuity for research, items are listed in agenda order although not necessarily discussed in that order.)

**FISCAL YEAR 2023-2024 BUDGET PUBLIC HEARINGS:**

**1 A. ORDINANCE NO. 2023-04 — PUBLIC HEARING / SECOND AND FINAL READING.**

Adopting the final levying of ad valorem taxes for the City of Indian Rocks Beach, Pinellas County, Florida, Fiscal Year 2023/2024; providing for notification of requisite government authorities; and providing for an effective date.

[Beginning of Staff Report]

**BACKGROUND**

Pursuant to Florida Statutes, the City has received Form DR-420, Certification of Taxable Value from the Pinellas County Property Appraiser.

In order for the Property Appraiser to mail out TRIM notices the City Commission is required to set a proposed millage rate.

The proposed millage rate is recommended to be 1.7300 mills. The Finance Director advises that the current rolled back rate would be 1.6219 based on the proposed valuation of \$ 1,894,393,810 for the City of Indian Rocks Beach. With an adopted millage rate of 1.7300 for FY 2023/2024, an additional \$208,740 ad valorem tax revenue will be collected over current year collections.

**ANALYSIS**

Pursuant to Chapter 200.065 (4) (d) F.S., once the proposed millage rate is set, in no event may the final millage rate that is adopted in September exceed the millage rate tentatively adopted, however it may be lower.



[End of Staff Report]

City Attorney Mora read Ordinance No. 2023-04 in its entirety.

There were no staff or City Commission comments.

Mayor-Commissioner Kennedy opened the public hearing.

John Pfanstiehl, 448 Harbor Drive South, stated it is an unfair comparison to say that Indian Rocks Beach has one of the lowest millage rates because the city's property values are so high.

Mayor-Commissioner Kennedy closed the public hearing.

**Motion made by Commissioner McCall, seconded by Commissioner Houseberg, to approve Ordinance No. 2023-04, on second reading, adopting the final levying of ad valorem taxes at 1.7300 for the City of Indian Rocks Beach, Pinellas County, Florida, for the Fiscal Year 2023/2025.**

**ROLL CALL VOTE:**

**AYES: MCCALL, HOUSEBERG, BOND, KENNEDY**

**NAYES: NONE**

**ABSENT: VAUGHAN**

**Motion to approve Ordinance No. 2023-04, on second and final reading, carried unanimously.**

**1 B. ORDINANCE NO. 2023-05 — PUBLIC HEARING / SECOND AND FINAL READING.**

Adopting a budget for Fiscal Year 2023/2024; making appropriations and operating expenditures for Fiscal Year 2023/2024; providing for notification of requisite government authorities; and providing for an effective date.

[Beginning of Staff Report]

**BACKGROUND**

The City Commission reviewed the City Manager's proposed budget for Fiscal Year 2023/24 at a Budget Workshop on July 25, 2023. Prior to the budget work session, the City Manager and Finance Director met with each member of the City Commission to brief them on the proposed budget. In addition, the City of Indian Rocks Beach Finance and Budget Committee met on July 12, 2023, and unanimously endorsed the proposed budget.

The City Manager and Finance Director made presentations, which provided an overview of the Fiscal Year 2023/24 Program Budget, and together, the City Commission and staff reviewed all aspects of the proposed budget in detail. The Final Budget for Fiscal Year 2023/24 is the result of a consensus by the City Commission from the July Budget Workshop.

**ANALYSIS**

The final budget is balanced in all funds and presents a comprehensive plan for providing services during the coming fiscal year. With the approval of the Final Budget for Fiscal Year 2023/24, the City will establish a spending plan for Fiscal Year 2023/24 and provide approval for the City Manager to implement the plan. Attached to this agenda memorandum is the City Manager's June 30th, 2023, budget transmittal correspondence.

[End of Staff Report]

City Attorney Mora read Ordinance No. 2023-05 in its entirety.

Mayor-Commissioner Kennedy opened the public hearing. Seeing/hearing no one wishing to speak, the public hearing was closed.

**Motion made by Vice-Mayor-Commissioner Jude Bond and seconded by Commissioner Houseberg, to approve Ordinance No. 2023-05, on second and final reading, adopting a budget for the Fiscal Year 2023/2024: making appropriations and operating expenditures for the Fiscal Year 2023/2024.**

**ROLL CALL VOTE:**

**AYES: MCCALL, HOUSEBERG, BOND, KENNEDY**

**NAYES: NONE**

**ABSENT: VAUGHAN**

**Motion to approve Ordinance No. 2023-05, on second and final reading, carried unanimously.**

**2. RESOLUTION NO. 2023-08.** A resolution of the City of Indian Rocks Beach, Florida, enumerating the different types of residential and commercial solid waste collection methods and amending the schedule of fees for the collection, and disposal of garbage, trash and solid waste in the City of Indian Rocks Beach, pursuant to Chapter 50- "Solid Waste", Article II- "Collection and Disposal", Division 3- "Fees and Charges", Section 50-91- "Fee Schedule", and providing for an effective date.

[Beginning of Staff Report]

**BACKGROUND**

The City continues to maintain a high service level residential and commercial solid waste program that benefits all citizens. Services include a recycling program, curbside pick-up, and yard waste disposal. The fee schedule for the collection and disposal of solid waste of the City is addressed in the City Code, Section 50-91 (attached). The goal or emphasis of any solid waste rate increase is to adjust rates to allow for the solid waste fund to generate adequate income to satisfy annual cost requirements and provide for minimal operating reserves of 3 months within the fund.

**ANALYSIS**

A review of the solid waste fund revenue and expenditures was performed at the July 25<sup>th</sup>, 2023, City Commission budget workshop. Based upon the most up to date data and economic factors, available adjustments were recommended to the current solid waste fees. Key areas include the generation of adequate annual operating income, significant increases in costs associated with curbside recycling, future capital equipment replacement costs, and the accumulation of operating reserves within the fund.

The Tentative Budget for FY 2024 reflects increases in monthly residential and commercial solid waste rates of 7.00%. The current \$34.37 per month charge for residential solid waste is recommended to increase to \$36.78. For commercial solid waste customers, rates are recommended to increase 7% in the tentative FY 2024 budget.

[End of Staff Report]

City Attorney Mora read Resolution No. 2023-08 by title only.

Mayor-Commissioner Kennedy opened the public hearing. Seeing/hearing no one wishing to speak, the public hearing was closed.

**Motion made by Commissioner McCall and seconded by Commissioner Houseberg to approve Resolution No. 2023-08, enumerating the different types of residential and commercial solid waste collection methods and amending the schedule of fees for the collection, and disposal of garbage, trash and solid waste in the City of Indian Rocks Beach, pursuant to Chapter 50- "Solid Waste", Article II- "Collection and Disposal", Division 3- "Fees and Charges", Section 50-91- "Fee Schedule", and providing for an effective date.**

**ROLL CALL VOTE:**

**AYES: MCCALL, HOUSEBERG, BOND, KENNEDY**

**NAYES: NONE**

**ABSENT: VAUGHAN**

**Motion to approve carried unanimously.**

### **3. ADJOURNMENT.**

**Motion made by Commissioner Houseberg and seconded by Commissioner McCall, to adjourn the meeting at 6:14 p.m. Unanimous Approval by Acclamation.**

\_\_\_\_\_  
Date Approved

\_\_\_\_\_  
Joanne Kennedy, Mayor-Commissioner

Attest: \_\_\_\_\_  
Lorin A. Kornijtschuk- City Clerk


/lak


**AGENDA ITEM NO. 5D  
CONSENT AGENDA**

**Authorizing the City Manager to award Bid number I.R.B.P.W.D.2023-01 and enter into a contract with Harbor Contracting, LLC. For the 2<sup>nd</sup> Street and 16<sup>th</sup> Avenue BMP's (Q341) in the amount of \$419,827.00.**

**INDIAN ROCKS BEACH CITY COMMISSION  
AGENDA MEMORANDUM**

**MEETING OF:** October 10, 2023 **AGENDA ITEM:** 5D

**ORIGINATED BY:** Dean A. Scharmen, Public Works Director 

**AUTHORIZED BY:** Brently Gregg Mims, City Manager 

**SUBJECT:** Authorizing the City Manager to award Bid Number I.R.B.P.W.D. 2023-1 and enter into a contract with Harbor Contracting, LLC for the 2<sup>nd</sup> Street and 16<sup>th</sup> Avenue BMP's (Q341) in the amount of \$419,827.00

---

**BACKGROUND:**

On July 26, 2023 and August 9, 2023, the staff issued a request for bids for the City of Indian Rocks Beach – Bid Number I.R.B.P.W.D. 2023-1 – 2<sup>nd</sup> Street and 16<sup>th</sup> Avenue BMP's (Q341).

**ANALYSIS:**

On August 28, 2023 at 2:00 P.M. in the Auditorium, the Bids were opened with the following tabulations:

<u>BIDDER NAME</u>	<u>ADDRESS</u>	<u>PRICE</u>
Kamminga & Roodvoets, Inc.	5219 Cone Road Tampa, FL 33610	\$581,570.00
Harbor Contracting, LLC	175 Irwin Street West Safety Harbor, FL 34695	\$419,827.00

After a review and examination of the subject Bids, staff and the City's consulting engineer CivilSurv Design Group are seeking the City Commission's consideration in authorizing the City Manager to award Bid Number I.R.B.P.W.D. 2023-1 and enter into a contract with Harbor Contracting, LLC for the 2<sup>nd</sup> Street and 16<sup>th</sup> Avenue BMP's (Q341) in the amount of \$419,827.00

**FISCAL IMPACT:**

Within the 5 Year Capital Improvement Program Budget, the City has appropriated funding for Stormwater Reconstruction.

This Project expenditures are as follows:

Design/Bid/CEI	= \$ 65,865.00
SWFWMD Permitting	= \$ 100.00
Bid Advertisement	= \$ 280.80
Construction	= \$ <u>419,827.00</u>
<b>Total</b>	<b>= \$ 486,072.80</b>

**The City has obtained grant funding through SWFWMD, which will provide for reimbursement of the project costs up to a maximum amount of \$197,500.00.**

**MOTION:**

To authorize the City Manager to award Bid Number I.R.B.P.W.D. 2023-1 and enter into a contract with Harbor Contracting, LLC for the 2<sup>nd</sup> Street and 16<sup>th</sup> Avenue BMP's (Q341) in the amount of \$419,827.00.

**AGENDA ITEM NO. 6**

**PUBLIC HEARINGS**

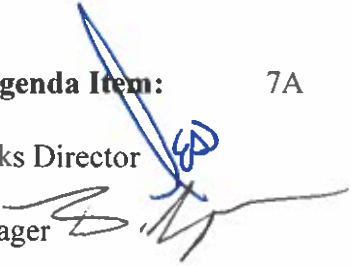
**AGENDA ITEM NO. 7A**  
**OTHER LEGISLATIVE MATTERS**  
**Ordinance No. 2023-06**  
**First Reading**



**INDIAN ROCKS BEACH CITY COMMISSION  
AGENDA MEMORANDUM**

**MEETING OF:** October 10, 2023 **Agenda Item:** 7A

**ORIGINATED BY:** Dean A. Scharmen, Public Works Director

**AUTHORIZED BY:** Brently Gregg Mims, City Manager 

**SUBJECT:** Ordinance No. 2023-06  
IRB Buoy System / Waterway Markers Ordinance

---

**BACKGROUND:**

During the December 13, 2022 Commission Meeting, the City Commission passed Ordinance 2022-07 designating a section of the coastal beach frontage as a Swim Zone and a Boating Restricted area to bring it's local regulations into alignment with State Statues and regulations while continuing to balance the interests of vessel operators and the beachgoing public.

Subsequent to the adoption of Ordinance 2202-07, the Florida Fish and Wildlife Conservation Commission reviewed and provided additional legal insights concerning The Ordinance's consistency with its administrative and legal guidelines relation to Anchoring within a Public Bathing Beach.

The attached Ordinance on this matter is being presented for the 1<sup>st</sup> Reading.

**FISCAL IMPACT:**

Within the FY 23/24 Operational Budget, funding has been requested to accomplish the tasks of removing and re-installing the Buoy System.

"Estimated" costs are as follows:

Permitting/Engineering	\$ 3,500
Equipment/Hardware	\$ 26,500
Boating Services	\$ 8,500
Contingency	<u>\$ 1,500</u>
Total	\$ 40,000

**MOTION:**

To approve Ordinance 2023-06 on 1<sup>st</sup> Reading.

**ORDINANCE NO. 2023-06**

**AN ORDINANCE OF THE CITY OF INDIAN ROCKS BEACH, FLORIDA, PROVIDING FOR AN AMENDMENT TO SECTION 74-63 – “PUBLIC BATHING BEACH” OF THE CITY’S CODE OF ORDINANCES PERTAINING TO THE OPERATION OF VESSELS WITHIN THE CITY’S COASTAL WATERS IN THE GULF OF MEXICO; PROVIDING FOR THE INCORPORATION OF RECITALS; PROVIDING FOR AN AMENDMENT TO THE CITY’S CODE TO REMOVE THE RESTRICTION ON ANCHORING TO CONFORM WITH ADMINISTRATIVE GUIDANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 166.021, Florida Statutes acknowledges the City’s governmental, corporate, and proprietary powers enabling it to conduct municipal government, perform municipal functions, and render municipal services, and that the City may exercise those powers for municipal purposes except when expressly prohibited by law; and

**WHEREAS**, in order to bring its local regulations into alignment with state statutes and regulations, while continuing to balance the interests of vessel operators and the beachgoing public the City amended its code in 2022 by adopting Ordinance 2022-07; and

**WHEREAS**, subsequent to the adoption of Ordinance 2022-07, Florida’s Fish and Wildlife Conservation Commission reviewed and provided additional legal insights concerning the Ordinance’s consistency with its administrative and legal guidelines relating to anchoring within a public bathing beach; and

**WHEREAS**, the City Commission finds that this Ordinance is in the best interests of the City’s residents and property owners and furthers the public interest in protecting life, safety and property values.

**NOW, THEREFORE BE IT ORDAINED** by the City Commission of the City of Indian Rocks Beach, Florida, that:

**SECTION 1.** The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2.** That Section 74-63 (“Public Bathing Beach Area”) of the Indian Rocks Beach City Code, is amended to read as follows:

Section 74-63. Public Bathing Beach Area.

- (a) *Purpose.* This section is enacted for the purpose of protecting public bathers from dangers caused by increased and accelerated vessel operations along the beaches and shorelines of the City of Indian Rocks Beach. The purpose of this Section is to protect

public bathers that bathe, wade, lounge, congregate, and engage in recreational activities in and on the shallow waters of the city. The city desires to ensure that such activities are conducted in a manner that is safe for any residents and visitors that engage in such activities, with protection from potential boating accidents, vessel congestion, and other navigational hazards. The city intends to designate the entire area from its northern corporate boundary to its southern corporate boundary and extending three hundred feet (300') from the city's shoreline and into the Gulf of Mexico, as a public bathing beach.

**(b) Definitions.** For purposes of this Section, the following terms, phrases, words, and derivations shall have the meaning given herein.

- 1) *Boating restricted area.* An area of the city's waters within which the operation of vessels is subject to specified restrictions or from which vessels, or certain classes of vessels, are excluded.
- 2) *Buoy.* Any device designed to float which is anchored in the water and used to convey a message, carry a sign, or support a mooring pennant.
- 3) *Manually Propelled Vessels Only.* All vessels other than those propelled by oars, paddles, or poles are prohibited from entering the marked area. Vessels equipped with sails or a mechanical means of propulsion may enter the marked area only if the sails or mechanical means of propulsion is not in use and, if possible to do so, the mechanical means of propulsion is tilted or raised out of the water.
- 4) *Regulatory Marker.* A device used to alert mariners to various regulatory matters such as permissible horsepower, speed, wake, or entry restrictions.
- 5) *Vessel-Exclusion Zone.* An area from which all vessels or certain classes of vessels are excluded.

**(c) Public Bathing Beach Permitting Manually Propelled Vessel Only.**

- 1) *Public Bathing Beach Established.* There is created a boating restricted area designated as a public bathing beach, wherein only manually propelled vessels are permitted. This area shall extend three hundred feet (300') from the city's shoreline into the Gulf of Mexico, and run parallel along the entirety of the city's shoreline abutting the Gulf of Mexico.
- 2) *Public Bathing Beach Markers.* This boating restricted area shall be designated by regulatory markers affixed to buoys, which shall be designed, installed, replaced, and maintained in conformity with any applicable state and federal regulatory requirements. The City may install, replace, and maintain the requisite regulatory markers and buoys, or cause such activity to occur.

**(d) Violations.**

- 1) Any operator or person in command of any motorized, wind-powered, or other artificially propelled vessel who intentionally or negligently navigates into the designated public bathing beach shall be deemed to have violated the restrictions set forth in this Section, which shall constitute a noncriminal infraction as set forth in F.S. § 327.73. Such restriction shall not apply to any watercraft entering the vessel-exclusion zone as a result of an emergency or to any official emergency vessels.
- 2) The mooring of any vessel, watercraft, or other foreign object to markers or buoys placed by the city or other authorized governmental body shall be prohibited and punishable by a fine pursuant to Section 1-15 of the city's code of ordinances.
- ~~3) It shall be unlawful for any person to anchor a watercraft within the public bathing beach, which area shall be marked by buoys and permitted regulatory markers.~~

**(e) Enforcement.** Enforcement of the restrictions relating to the operation of any motorized, wind-powered or other artificially propelled vessel shall be by law enforcement officers from the Florida Fish and Wildlife Conservation Commission or County Sheriff Department, using the Uniform Boating Citation as provided for by applicable Florida law. Any other violations of this Section may be enforced by a city code enforcement inspector.

**SECTION 3.** If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full effect.

**SECTION 4.** All other ordinances of the City of Indian Rocks Beach, Florida, or portions thereof, which conflict, with this or any part of this Ordinance are hereby repealed.

**SECTION 5.** This Ordinance shall become effective upon adoption by the City Commission of the City of Indian Rocks Beach, Florida.

**ADOPTED ON FIRST READING** on the \_\_\_ day of \_\_\_\_\_, 2023, by the City Commission of the City of Indian Rocks Beach, Florida.

**PUBLISHED** the \_\_\_ day of \_\_\_\_\_ 2023 in the Tampa Bay Times newspaper.

**ADOPTED ON SECOND AND FINAL READING** on the \_\_\_ day of \_\_\_\_\_, 2023, by the City Commission of the City of Indian Rocks Beach, Florida.

**ATTEST:**

\_\_\_\_\_  
Lorin A. Kornijtschuk, City Clerk

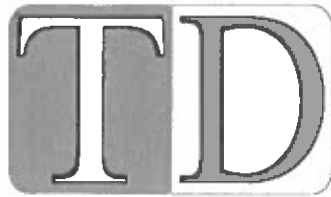
\_\_\_\_\_  
Joanne "Cookie" Kennedy  
Mayor-Commissioner

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Randol D. Mora, City Attorney

**AGENDA ITEM NO. 8A**

**WORK SESSION ITEMS  
DISCUSSION OF  
Motorized Bikes**



T R A S K  
D A I G N E A U L T  
—LLP—  
A T T O R N E Y S

THOMAS J. TRASK, B.C.S.\*  
JAY DAIGNEAULT, B.C.S.\*  
ERICA F. AUGELLO, B.C.S.\*  
RANDY D. MORA, B.C.S.\*  
ROBERT ESCHENFELDER, B.C.S.\*  
NANCY S. MEYER, B.C.S.\*  
JEREMY SIMON  
MEGAN R. HAMISEVICZ

*\* Board Certified by the Florida Bar in  
City, County and Local Government Law*

## MEMORANDUM

TO: City Commission, City of Indian Rocks Beach

CC: Brently Gregg Mims, City Manager

FROM: Randy Mora, City Attorney

DATE: August 4, 2023

RE: HB 949: Operation of a Golf Cart

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In March 2020, I provided the City Commission with a memorandum analyzing state law relating to low-speed vehicles and golf carts (the “Memo”).<sup>1</sup> The Memo detailed the substantive legal differences between golf carts, low speed vehicles, and other mobility devices. The Memo observed that pursuant to the then-operative version of § 316.212 (7), Fla. Stat., a golf cart could lawfully be operated on public roads and streets by any person over the age of 14. (the “Statute”)

In November 2020, the City enacted Ordinance No. 2020-06 (the “Ordinance”), amending Section 62-40 of the City’s Code of Ordinances to regulate golf carts and low speed vehicles.<sup>2</sup> The Ordinance, mirroring the restrictions in the Statute, provided that “[a]ny person operating a golf cart within the jurisdictional boundaries of the City must be at least 14 years old.”<sup>3</sup>

On May 12, 2023, the Governor signed HB 949, amending the statute governing the requirements to lawfully operate a golf cart.<sup>4</sup> For the City’s purposes the most important changes concern amendments to § 316.212 (7), Fla. Stat., governing who may lawfully operate a golf cart. Pursuant to this amendment a golf cart *cannot* be operated on public roads or streets by a person who:

- (a) is under **18** years of age, *unless* he or she possesses a valid learner’s driver license or valid driver license; or

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<sup>1</sup> A copy of the March 2020 memorandum is attached here as **Exhibit 1**.

<sup>2</sup> A copy of Ordinance No. 2020-06 is attached here as **Exhibit 2**.

<sup>3</sup> § 62-40 (2), IRB Code of Ordinances

<sup>4</sup> Fla. Legis. Chp. 2023-67; CS/CS/HB 949 (2023). A copy of the enactment is attached here as **Exhibit 3**.

(b) is over **18** years of age, *unless* he or she possesses a valid form of government-issued photographic identification.<sup>5</sup>

Said differently, anyone under 18 *can* lawfully operate a golf cart if they have their driver license or learner's license. Similarly, anyone over 18 *can* lawfully operate a golf cart if they have valid government-issued photo-ID. Though this amendment does not take effect until October 1, 2023, it was most likely intended to resolve the administrative challenges for law enforcement trying to determine and objectively establish the age of golf cart operators.

Considering this statutory amendment, I recommend the City amend its code to align it with state law.

A handwritten signature in black ink, appearing to read "Randy D. Mora", with a stylized flourish at the end.

Randy D. Mora, Esq.

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<sup>5</sup> Fla. Legis. Chp. 2023-67 at 2:43-47.



# EXHIBIT 1



THOMAS J. TRASK, B.C.S.\*  
JAY DAIGNEAULT  
ERICA F. AUGELLO  
RANDY D. MORA, B.C.S.\*  
ROBERT M. ESCHENFELDER, B.C.S.\*  
PATRICK E. PEREZ  
DAVID E. PLATTE  
JEREMY SIMON

*\* Board Certified by the Florida Bar in  
City, County and Local Government Law*

## MEMORANDUM

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DATE: March 24, 2020

TO: Gregg Mims

FROM: Randy Mora, Esq., City Attorney

RE: Municipal Authority to Regulate Golf Carts, Low Speed Vehicles,  
and Micromobility Scooters

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You have asked for a review and analysis of current Florida statutory restrictions and regulatory limits regarding golf carts. As to better understand and analyze the issues raised by this inquiry, this memorandum also analyzes municipal authority relative to, Low Speed Vehicles ("LSV"), Micromobility scooters ("MM") and other alternative transportation.

### I. EXECUTIVE SUMMARY

As detailed below, this seemingly easy inquiry is complicated by the patchwork tapestry of statutes used to regulate and make fine distinctions which are socially treated as being functionally the same.

Golf Carts are motorized four-wheeled vehicles with a maximum speed of 20 mph, do not require insurance, and do not require a driver's license to operate. Low speed vehicles are four-wheeled vehicles, which in some cases resemble golf carts, but are capable of a maximum speed of 25 mph, require insurance and registration, and require the operator to have a driver's license. Municipalities are limited in their ability to regulate golf cart operation, as they can only regulate unlicensed drivers and may not require anything further than state statute permits. Municipalities are empowered to regulate and prohibit LSVs. The City Code presently regulates golf carts, but aspects of the provision are likely invalid and unenforceable.

While the City Code is currently silent as to LSVs and MMs, the City does have statutory authority to enact ordinances that prohibit or regulate the operation of LSVs and MMs.

## **II. GOLF CARTS**

Golf carts are motorized four-wheeled vehicles with a maximum speed of 20 miles per hour that are allowed to travel on certain roads with a posted speed limit of 30 miles per hour or less. By statute, golf cart operators must be at least 14 years old, but are not required to have a driver's license. Golf carts are not required to be registered or insured. State statute and Florida Attorney General opinions hold that while municipalities may regulate some operations of golf carts, these regulations may only apply to unlicensed drivers. Further, as there is no requirement that a golf cart operator have a driver's license, a municipality may not enact an ordinance that requires a driver's license to operate a golf cart, or even a seat belt.

### **A. FLORIDA STATUTE**

Florida statute defines golf carts as, “[a] motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes.”<sup>1</sup> Another section of Florida's Statutes also define golf carts as, “[a] motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 MPH.”<sup>2</sup>

A separate statutory provision addressing the operation of golf carts on certain roadways and general prohibitions and regulations of the operation of golf carts also offers relevant insight.<sup>3</sup> While generally the operation of golf carts on public roadways is prohibited, “[a] golf cart may be operated only upon a county road that has been designated by a county, a municipal street that has been designated by a municipality, or a two-lane county road located within the jurisdiction of a municipality designated by that municipality, for use by golf carts.”<sup>4</sup> Further, golf carts may only be operated on roads with a posted speed limit of 30 mph or less.<sup>5</sup> According to Florida's statutes, golf carts may only operate on sidewalks under the following conditions: if provided by municipal ordinance, the sidewalks are eight feet wide, and if the top speed of golf carts on the sidewalk is 15 miles per hour.<sup>6</sup>

While golf carts are not required to be licensed or insured, a golf cart may not be operated on public roads or streets by any person under the age of 14.<sup>7</sup>

Continuing, golf carts may only be operated between sunrise and sunset, unless the county or municipality has determined that golf carts may be safely operated outside those hours **AND** the golf cart has headlights, brake lights, turn signals, and a windshield.<sup>8</sup> Local governments may enact an ordinance relating to golf cart operation and equipment that is more restrictive than statute, but the ordinance may only apply to unlicensed drivers and the municipality must post signs regarding the more restrictive golf cart ordinance.<sup>9</sup>

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<sup>1</sup> § 316.003 (26), Fla. Stat.

<sup>2</sup> § 320.01 (22), Fla. Stat. (emphasis added).

<sup>3</sup> § 316.212, Fla. Stat.

<sup>4</sup> § 316.212 (1), Fla. Stat.

<sup>5</sup> § 316.2126 (1) (c), Fla. Stat.

<sup>6</sup> § 316.212 (8), Fla. Stat.

<sup>7</sup> § 316.212 (7), Fla. Stat.

<sup>8</sup> § 316.212 (5), Fla. Stat. (emphasis added).

<sup>9</sup> § 316.212 (8) (a), Fla. Stat.

Violations of Sec. 316.212, Fla. Stat. (golf cart operating statute) are considered noncriminal traffic infractions punishable as a moving violation.<sup>10</sup> Violations of golf cart ordinances enacted pursuant to Sec. 316.212, Fla. Stat. are also punishable by local ordinance.

## **B. PERSUASIVE AUTHORITY: ATTORNEY GENERAL OPINIONS**

Attorney General opinions are not binding legal precedent, but can offer valuable insight into how the executive branch of the state has interpreted the enforcement of various statutory provisions.

In Florida Attorney General Opinion 2016-07, the Attorney General's office responded to a series of inquiries on behalf of the City of Winter Garden. The Attorney General opined on several issues regarding the operation of golf carts within a municipality. Among other things, the Attorney General has held that a municipality may not prohibit the operation of a golf cart by an unlicensed driver. AGO 16-07.

As explained in AGO 16-07, Sec. 316.212, Fla. Stat. previously had language that authorized local governments to enact more restrictive golf cart equipment and operation regulations than state law provides. However, during the 2005 Florida Legislative Session, House Bill 1697 (2005) was amended on the floor to add the term, "must apply only to an unlicensed driver." This limiting language was added on the floor without debate. Without much legislative history, the plain language of the amended statute indicates that any regulations imposed by municipal ordinance on the operation or equipping of a golf cart on municipal streets is limited to unlicensed drivers operating golf carts. AGO 16-07.

AGO 16-07 further interprets Sec. 316.212, Fla. Stat. by opining that state statute clearly authorizes unlicensed drivers to operate golf carts pursuant to Sec. 322.04(1)(e), Fla. Stat., and therefore precludes a municipality from enacting an ordinance prohibiting the operation of golf carts by an unlicensed driver.

The attorney general opinion does state that a person with a suspended or revoked driver's license would be considered an unlicensed driver under Florida statute. AGO 06-17, and therefore able to lawfully operate a golf cart.

In Attorney General Opinion 2003-58, the Attorney General's office responded to an inquiry from the City of Cedar Key regarding equipment and operation of golf carts on municipal streets. The Attorney General opined that the City could not require additional safety equipment, or require mandatory inspection of golf carts. AGO 03-58. The opinion further clarifies that municipalities are preempted from requiring a licensed adult to accompany operators under the age of 16, or from enacting more restrictive age or licensure requirements. AGO 03-58.

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<sup>10</sup> § 316.212 (9), Fla. Stat.

### C. CITY CODE PROVISIONS

Presently, City Code regulates golf carts in Chapter 62, Article III, of the Code of Ordinances of the City of Indian Rocks Beach ("City Code"). City Code states that golf carts must be equipped with headlamps, stop lamps, turn signals, tail lamps, reflectors, brakes, rearview mirrors, windshields, and standard hip restraints. Sec. 62-40(1), City Code. Because the City allows golf carts to be operated between the hours of sunset and sunrise, this additional required equipment language is likely permissible under the City's authority found in Sec. 316.212(5), Fla. Stat.

City Code also requires that golf cart operators must possess a valid driver's license. Sec. 62-40(2), City Code. This section is preempted by state statute and likely unenforceable as noted above. AGO 16-07 in conjunction with Sec. 316.212, Fla. Stat. would prohibit the City from requiring driver's licenses or raising the minimum age of golf cart operators. It would be advisable to amend this section of City Code in light of statutory language and secondary legal authority.

### III. LOW SPEED VEHICLES

Low Speed Vehicles are motorized four-wheeled vehicles with a maximum speed of 25 miles per hour that can often look very similar to golf carts. LSVs require a driver's license to operate, must be registered and insured, and may only operate on streets with a posted speed limit of 35 mph or less (and therefore not on sidewalks). Municipalities currently have the authority to prohibit operation of LSVs on any road under their jurisdiction.

#### A. FLORIDA STATUTE

Florida Statute defines a Low Speed Vehicle (LSV) as "any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 (federal safety standards) and Sec. 316.2122."<sup>11</sup>

Section 316.2122, Fla. Stat., deals with the safety standards and operations of LSVs or mini trucks. Operations of LSVs are authorized on any road with the following restrictions:

- (1) A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour. (emphasis added).
- (2) A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.
- (3) A low-speed vehicle or mini truck must be registered and insured in accordance with Sec. 320.02 and titled pursuant to Chapter 319.

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<sup>11</sup> Sec. 320.01(41), Fla. Stat. (emphasis and internal parenthetical added).  
Trask Daigneault LLP

**(4) Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license. (emphasis added).**

**(5) A county or municipality may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.**

**(6) The Department of Transportation may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.**

As Sec. 316.2122, Fla. Stat. only authorizes the operation of LSVs on certain public roads, LSVs are not permitted to operate on sidewalks. The Florida Department of Highway Safety and Motor Vehicles also permits the conversion of golf carts to LSVs by allowing golf cart owners to modify their golf carts to comply with LSV statute restrictions, via the TL-63 procedure (enclosed).

## **B. ADDITIONAL LEGAL AUTHORITY**

While there have been no AGOs interpreting the LSV statute, one Appellate Decision from the Eleventh Circuit has stated that, under Florida law, LSVs are not “cars” for purposes of automobile insurance. In State Farm Mut. Auto. Ins. Co. v. Baldassini, 545 Fed. Appx. 842 (11th Cir. 2013), an insurer brought action seeking declaration that an automobile policy did not cover accidents that occurred while the insured’s daughter was operating an LSV. The Eleventh Circuit held that, under Florida law, LSVs (and four-wheel electric vehicles) are not designed for main use on public roads and thus did not fall within the definition of “car” covered by insured’s automobile insurance policy.

## **C. CITY CODE PROVISIONS**

Presently, the City Code does not define, regulate, or prohibit LSVs within the City.

As LSVs are separate and distinct from golf carts, it would be advisable for the City to amend City Code or enact a new ordinance to define, regulate, and enforce LSV operation. The City has the authority to outright ban LSVs on municipal roads, or it could regulate them within the confines of the statute by requiring a driver’s license to operate, requiring registration and insurance, and prohibiting their operation on any roads with a posted speed limit greater than 35 miles per hour.

#### **IV. ALTERNATIVE TRANSPORTATION**

##### **A. MICROMOBILITY DEVICES & MOTORIZED SCOOTERS**

The 2019 Florida Legislature passed House Bill 453 (2019) which was a comprehensive bill related to Micromobility devices (“MM”) and motorized scooters. Once signed into law, HB 453 created Chapter 2019-109, Laws of Florida, which amended various sections of Chapter 316, Florida Statutes, (the Florida State Uniform Traffic Control laws) that deal with MMs and scooters.

MMs are defined as: “[a]ny motorized transportation device made available for private use by reservation through an online application, website, or software for point-to-point trips and which is not capable of traveling at a speed greater than 20 miles per hour on level ground. This term includes motorized scooters and bicycles as defined in this chapter.”<sup>12</sup>

Section 316.003(45), Fla. Stat. By comparison, the statutory definition of a “motorized scooter,” includes MMs within its scope, encompassing : “[a]ny vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.”

HB 453 also amended section 316.2128, Fla. Stat. which is now titled “Micromobility devices, motorized scooters, and miniature motorcycles, requirements.” Section 316.2128, Fla. Stat. states that MM and scooter operators have all the rights and duties of bicycle riders except those found in Sec. 316.2128(1), Fla. Stat. (child safety restraint requirements). Further, local governments are expressly authorized to adopt ordinances governing the operation of MM and motorized scooters on, “streets, highways, sidewalks, and sidewalk areas under the local government’s jurisdiction.”<sup>13</sup>

Similar to golf carts, MMs and scooters are not required to be registered or insured.<sup>14</sup> Operators of MMs and scooters are not required to have a driver’s license.

The First District Court of Appeal recently issued an opinion regarding MMs in Panama City Beach, holding that a City may prohibit the daily rental of MM without outright banning all MMs. In Classy Cycles, Inc. v. Panama City Beach, 44 Fla. L. Weekly D2729 (Fla. 1st DCA Nov. 13, 2019), a Motorized scooter vendor brought action against the City, challenging the validity of the City’s ordinances which prohibited motorized scooter rentals. The Circuit Court granted summary judgment in favor of city and the vendor appealed. The First District affirmed the lower court’s ruling holding that the municipal ordinances which prohibited night rentals of motorized scooters, and which imposed a general prohibition against all motorized scooter rentals after a certain date, were not arbitrary or unreasonable for only prohibiting rental rather than operation of scooters, and therefore the ordinances were valid pursuant to rational basis analysis. Id.

The City Code does not presently define, regulate, or prohibit micromobility devices or scooters. It may be advisable for the City to address MM or scooters, whether generally or in the daily rental scheme.

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<sup>12</sup> § 316.003 (38), Fla. Stat.

<sup>13</sup> § 316.2128(1), Fla. Stat

<sup>14</sup> § 316.2128(2), Fla. Stat.

## **B. MOTOR ASSISTED BIKES & ELECTRIC BICYCLES**

Currently, electric bicycles (“e-bikes”) fall under the statutory definition of a bicycle. State statute defines a bicycle as: “[e]very vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.”<sup>15</sup>

Recently, the 2020 Florida Legislature passed House Bill 971 related to Electric Bicycles. HB 971 separately defines e-bikes as a “bicycle or tricycle equipped with fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts.” If signed into law, HB 971 would create regulations governing the operation of e-bikes and provide that an e-bike or an operator of an e-bike must be afforded all the rights and privileges of a bicycle. The bill authorizes an e-bike to operate where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, and bicycle lanes. However, local governments are authorized to regulate the operation of e-bikes on the prescribed areas. The bill is now awaiting the Governor’s signature. Its effective date, if signed, is October 1, 2020.

## **V. CONCLUSION**

While golf carts and LSVs are similar in look and design, state statute treats them distinctly and municipal authority over each is varied. Municipalities are limited in their ability to regulate golf cart operation, as they can only regulate unlicensed drivers and may not require anything further than statute permits. Municipalities are empowered to regulate and prohibit LSVs and MMs. The City Code presently regulates golf carts, but aspects of the provision are likely invalid and unenforceable. The City Code is currently silent as to LSVs and MMs, but the City does have authority to prohibit LSVs and MMs, or regulate them within the confines of state statute.

Encl:

Florida Department of Highway Safety and Motor Vehicles Low Speed Vehicles guide  
Florida Department of Highway Safety and Motor Vehicles TL-63 LSV conversion procedure

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<sup>15</sup> § 316.003(3), Fla. Stat.



# EXHIBIT 2

**CITY OF INDIAN ROCKS BEACH  
ORDINANCE NO. 2020-06**

**AN ORDINANCE OF THE CITY OF INDIAN ROCKS BEACH, FLORIDA, AMENDING CHAPTER 62 – TRAFFIC AND VEHICLES, ARTICLE III – OPERATION OF GOLF CARTS, SECTION 62-40 – GOLF CARTS; AMENDING THE TITLE OF THE SECTION TO INCLUDE LOW-SPEED VEHICLES AND MICROMOBILITY DEVICES; AMENDING THE SECTION TO ALIGN IT WITH STATE STATUTES; PROVIDING DEFINITIONS FOR TERMS TO BE USED IN THE SECTION; PROVIDING FOR REGULATION OF GOLF CARTS AND LOW-SPEED VEHICLE OPERATION ON SIDEWALKS; PROVIDING FOR THE PROHIBITION OF MICROMOBILITY SCOOTERS; PROVIDING FOR LEGISLATIVE FINDINGS, AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.**

**WHEREAS**, the City of Indian Rocks Beach currently regulates golf carts in Section 62-40 of the Code of Ordinances of the City of Indian Rocks Beach; and

**WHEREAS**, recent updates, revisions, and amendments in Florida Statutes require amendments to the City Code to align it with state law; and

**WHEREAS**, Section 320.01, Florida Statutes, defines a “golf cart” as a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreation purposes and that is not capable of exceeding 20 miles per hour; and

**WHEREAS**, Section 316.212, Florida Statutes, states that a golf cart may only be operated on a designated roadway with a posted speed limit of 30 miles per hour or less; and

**WHEREAS**, per Section 316.212, Florida Statutes, a golf cart may not be operated on public roads or streets by any person under the age of 14 years old; and

**WHEREAS**, per Section 316.212, Florida Statutes, golf carts may only be operated between the hours of sunrise and sunset, unless the golf cart has headlights, brake lights, turn signals, and a windshield; and

**WHEREAS**, violations of Section 316.212, Florida Statutes, are considered noncriminal traffic infractions punishable as moving violations; and

**WHEREAS**, municipalities are preempted by the State to regulate unlicensed operators of golf carts, per Attorney General Opinion 2016-07, and municipalities are unable to restrict or prohibit an unlicensed driver from operating a golf cart; and

**WHEREAS**, the City Commission finds that, pursuant to Florida Statutes, golf carts should be regulated in terms of where they may be operated within the City, by whom they

may be operated, at what hours they may be operated within the City, and particular equipment golf carts should possess; and

**WHEREAS**, to effectuate that regulation, the City Code should be amended to reflect those regulations of golf carts; and

**WHEREAS**, Section 316.212(8), Florida Statutes permits local governments to regulate the operation of golf carts on sidewalks within the local government's jurisdiction; and

**WHEREAS**, the City Commission finds that, based on the intended and actual use of sidewalks by pedestrians, and the dimensions of sidewalks within the City, the operation of golf carts on sidewalks within the City's jurisdiction would have a negative effect on pedestrian safety and welfare; and

**WHEREAS**, pursuant to Section 316.212, Florida Statutes, the operation of golf carts on sidewalks within the City should be prohibited; and

**WHEREAS**, Section 320.01, Florida Statutes, defines a "low-speed vehicle" as any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles and must comply with federal safety standards as found in 49 C.F.R. s. 571.500; and

**WHEREAS**, Section 316.2122, Florida Statutes, only authorizes low-speed vehicles to be operated on streets with a posted speed limit of 35 miles per hour or less; and Whereas, pursuant to Section 316.2122, Florida Statutes, a low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers; and

**WHEREAS**, pursuant to Section 316.2122, Florida Statutes, a low-speed must be registered and insured in accordance with Section 320.02, Florida Statutes, and titled pursuant to Chapter 319; and

**WHEREAS**, pursuant to Section 316.2122, Florida Statutes, any person operating a low-speed vehicle must have in his or her possession a valid driver's license; and Whereas, Section 316.2122, Florida Statutes only authorizes the operation of low-speed vehicle on certain public roads, therefore low-speed vehicles are not permitted to operate on sidewalks; and

**WHEREAS**, the City Commission finds that, pursuant to Florida Statutes, low-speed vehicles should be regulated in terms of where they me operated within the City, by whom they may be operated by, and particular equipment low-speed vehicles should possess; and

**WHEREAS**, to effectuate that regulation, the City Code should be amended to reflect those regulations of low-speed vehicles; and

**WHEREAS**, Chapter 2019-109, Laws of Florida, was the enactment of Florida House Bill 453 (2019) which was the comprehensive bill related to micromobility devices and motorized scooters signed into law in 2019 that amended various sections of Chapter 316, Florida Statutes; and

**WHEREAS**, Section 316.003, Florida Statutes, defines micromobility devices as any motorized transportation device made available for private use by reservation through an online application, website, or software for point-to-point trips and which is not capable of traveling at a speed greater than 20 miles per hour on level ground; and

**WHEREAS**, Section 316.2128, Florida Statutes, expressly authorizes local governments to adopt ordinances governing the operation of micromobility devices on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction; and

**WHEREAS**, pursuant to Section 316.2128, Florida Statutes, the City Commission finds it in the best interest of the general health, safety, and welfare to prohibit the operation of micromobility scooters in the jurisdiction boundaries of the City; and

**WHEREAS**, the City Commission finds this Ordinance benefits public health, safety, and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF INDIAN ROCKS BEACH, FLORIDA, THAT:**

**Section 1.** Section 62-40 of Article III (Operation of Golf Carts) of Chapter 62 (Traffic and Vehicles) of the City of Indian Rocks Beach Code of Ordinances is hereby amended as follows:

**Sec. 62-40. Golf carts, low-speed vehicles, and micromobility devices.**

Golf carts and ~~low-speed vehicles~~ equipped in the manner prescribed by ~~as defined in this section~~ may travel on or cross the public roads or streets within the ~~geographic boundaries~~ designated areas described in this section, considering factors including the speed, volume, and character of motor vehicle traffic using these roads or streets, and the use of golf carts ~~and low-speed vehicles~~ is ~~are~~ hereby permitted in the City with the stipulations to include the following provisions:

(1) ~~*Required equipment.* A golf cart shall include headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, a rearview mirror, a windshield, and~~

~~standard hip restraints for all passengers.~~ Definitions. The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(a) Golf cart shall mean a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreation purposes, and that is not capable of exceeding 20 miles per hour and that may only be operated on designated roadways with a posted speed limit of 30 miles per hour or less.

(b) Low-speed vehicle shall mean any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles and must comply with federal safety standards as found in 49 C.F.R. s. 571.500. Low-speed vehicles may only be operated on designated roadways with a posted speed limit of 35 miles per hour or less, must be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking breaks, rearview mirrors, windshields, seat belts, vehicle identification numbers, and must be registered and insured with in accordance with § 320.02, Florida Statutes, and titled pursuant to Chapter 319, Florida Statutes.

(c) Micromobility device shall mean any motorized transportation device made available for private use by reservation through an online application, website, or software for point-to-point trips and which is not capable of traveling at a speed greater than 20 miles per hour on level ground.

(2) Golf cart and low-speed vehicle operators. ~~The golf cart operators must possess a valid driver's license pursuant to F.S. § 322.03.~~ Any person operating a golf cart within the jurisdictional boundaries of the City must be at least 14 years old. Any person operating a low-speed vehicle within the jurisdictional boundaries of the City must have in his or her possession a valid driver's license.

(3) Designated areas. The "designated areas" encompassed by this authorization are the municipal streets of the city and the following Gulf Boulevard intersections:

- 8th Avenue
- 12th Avenue
- 15th Avenue
- 16th Avenue
- 17th Avenue
- 18th Avenue
- 19th Avenue
- 20th Avenue
- 21st Avenue
- 22nd Avenue
- 23rd Avenue

24th Avenue  
25th Avenue  
26th Avenue  
27th Avenue

Legally conforming golf carts may traverse the above intersections as described in the designated areas, but may not travel north or south on or alongside Gulf Boulevard.

(4) ~~*Golf cart defined.* The golf carts authorized for use are incapable of exceeding 20 miles per hour.~~ *Sidewalks.* Golf carts and low-speed vehicles may not be operated on any sidewalks with the jurisdictional boundaries of the city.

(5) ~~*Hours of operation.* Golf carts may only be operated during the hours between the sunset and sunrise and sunset well as during daylight hours~~ in the designated areas only. Golf carts may be operated after sunset if the golf cart is equipped with headlights, brake lights, turn signals, and a windshield.

(6) *Penalties.* Violations of this article shall be enforced pursuant to or otherwise consistent with the provisions of F.S. § 316.212, F.S. § 322.03, and cCity ordinances by a law enforcement officer or city code enforcement officer as such officer's legal authority and jurisdiction allows. Code enforcement officers shall have the right to enforce all matters having to do with golf cart required equipment, the streets upon which golf carts may be operated, and all other matters not exclusively within the jurisdiction of and lawful authority of law enforcement officers.

(7) *Territory embraced.* This section shall apply only to the designated municipal-owned streets and Gulf Boulevard intersections identified in subsection 62-40(3) within the territorial jurisdiction of the city.

(8) *Pinellas County approval.* The city shall obtain the advance approval of Pinellas County for all golf cart crossings on Gulf Boulevard under county jurisdiction and any related traffic control devices needed for safety purposes. No golf cart travel shall be allowed along Gulf Boulevard.

(9) *Prohibition on micromobility devices.* Micromobility devices may not be operated on streets, sidewalks, or sidewalk areas within the jurisdictional boundaries of the city.

**Section 2.** For purposes of codification of any existing section of the Indian Rocks Beach Code herein amended, words underlined represent additions to original text, words stricken are deletions from the original text, and words neither underlined nor stricken remain unchanged.

**Section 3.** If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and

the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Commission would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

**Section 4.** The Codifier shall codify the substantive amendments to the Indian Rocks Beach City Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

**Section 5.** Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon its adoption.

**ADOPTED ON FIRST READING** on the 13<sup>th</sup> day of October 2020, by the City Commission of the City of Indian Rocks Beach, Florida.

**PUBLISHED** on this 28<sup>th</sup> day of October 2020 in the Tampa Bay Times.

**ADOPTED ON SECOND AND FINAL READING** on the 10<sup>th</sup> day of November 2020, by the City Commission of the City of Indian Rocks Beach, Florida.

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Joanne Moston Kennedy, Mayor-Commissioner

Attest: \_\_\_\_\_  
Deanne B. O'Reilly, MMC, City Clerk

Approved as to form:

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Randy Mora, City Attorney

RM/dor

# EXHIBIT 3



## CHAPTER 2023-67

### Committee Substitute for Committee Substitute for House Bill No. 949

An act relating to operation of a golf cart; amending s. 316.212, F.S.; authorizing a water control district to designate certain roads for use by golf carts; requiring county approval before making such a designation; prohibiting a person under 18 years of age from operating a golf cart on certain roadways unless he or she possesses a valid learner's driver license or valid driver license; prohibiting a person 18 years of age or older from operating a golf cart on certain roadways unless he or she possesses a valid form of government-issued photographic identification; providing a penalty; amending s. 322.04, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsections (1) and (7) of section 316.212, Florida Statutes, are amended, and subsection (9) of that section is republished, to read:

316.212 Operation of golf carts on certain roadways.—The operation of a golf cart upon the public roads or streets of this state is prohibited except as provided herein:

(1) A golf cart may be operated only upon a county road that has been designated by a county, a municipal street that has been designated by a municipality, ~~or a two-lane county road located within the jurisdiction of a municipality designated by that municipality, or a road that is owned and maintained by a water control district and has been designated by that water control district,~~ for use by golf carts. ~~Before~~ Prior to making such a designation, the responsible local governmental entity must first determine that golf carts may safely travel on or cross the public road or street, considering factors including the speed, volume, and character of motor vehicle traffic using the road or street, and if such designation is to be made by a water control district, the district must also receive approval from the county in which the road to be designated is located. Upon a determination that golf carts may be safely operated on a designated road or street, the responsible governmental entity shall post appropriate signs to indicate that such operation is allowed.

(7) A golf cart may not be operated on public roads or streets by ~~a~~ any person:

(a) Who is under 18 years of age unless he or she possesses a valid learner's driver license or valid driver license.

(b) Who is 18 years of age or older unless he or she possesses a valid form of government-issued photographic identification ~~the age of 14.~~

(9) A violation of this section is a noncriminal traffic infraction, punishable pursuant to chapter 318 as a moving violation for infractions of subsections (1)-(5) or a local ordinance corresponding thereto and enacted pursuant to subsection (8), or punishable pursuant to chapter 318 as a nonmoving violation for infractions of subsection (6), subsection (7), or a local ordinance corresponding thereto and enacted pursuant to subsection (8).

Section 2. Paragraph (e) of subsection (1) of section 322.04, Florida Statutes, is amended to read:

322.04 Persons exempt from obtaining driver license.—

(1) The following persons are exempt from obtaining a driver license:

(e) A Any person 18 years of age or older operating a golf cart, as defined in s. 320.01, which is operated in accordance with ~~the provisions of s. 316.212.~~

Section 3. This act shall take effect October 1, 2023.

Approved by the Governor May 11, 2023.

Filed in Office Secretary of State May 11, 2023.

# PEDESTRIAN SAFETY

*A presentation on legal and policy issues associated with pedestrian safety, including solicitation at intersections and the proliferation of micro-mobility options*

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RANDY D. MORA, ESQ., B.C.S.



# LEGAL PRINCIPLES GOVERNING PEDESTRIAN SOLICITATION



Source [alerttodayflorida.com/Pedestrian](http://alerttodayflorida.com/Pedestrian)



Source: [dorisaveslives.org](http://dorisaveslives.org)

## Pedestrians

Defined as “any person afoot”

A pedestrian shall obey the instructions of any official traffic control device specifically applicable to the pedestrian unless otherwise directed by a police officer.

Where sidewalks are provided, no pedestrian shall, unless required by other circumstances, walk along and upon the portion of a roadway paved for vehicular traffic.

No person shall stand in the portion of a roadway paved for vehicular traffic for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

## SOLICITATION: CONSTITUTIONAL CONCERNS

- Solicitation is traditionally considered protected speech under First Amendment
- Public streets are the archetypal “public forum”
- Municipal laws regulating speech in these fora are subjected to strict scrutiny
- Time, Place, & Manner restrictions must:
  1. Be content neutral
  2. Be narrowly tailored to serve a significant government interest
  3. Leave open “ample alternative channels for communication of the information”





## PEDESTRIAN SOLICITATION: CS/HB 1 (2021) – A CHANGE IN FLORIDA LAW

- Historically, Fla. Stat. 316.2045 contained provisions for local governments to permit solicitation activity on roadways, with legislative carve outs for non-profits and political campaigns



- After twice being held unconstitutional as violating the Equal Protection Clause, the Legislature amended the statute in 2021 as part of the Anti-Riot Act

## **PEDESTRIAN SOLICITATION:** **CS/HB 1 (2021) – A CHANGE IN FLORIDA LAW**

- A person may not willfully obstruct the free, convenient, and normal use of a public street, highway, or road by:
  1. Impeding, hindering, stifling, retarding, or restraining traffic or passage thereon
  2. Standing on or remaining in the street, highway, or road;
  3. Endangering the safe movement of vehicles or pedestrians traveling thereon.
- A person who violates paragraph (a) shall be cited for a pedestrian violation, punishable as provided in Chapter 318
- This subsection does not prohibit a local government entity from issuing a special event permit as authorized by law



# MULTIMODAL TRANSPORTATION



Source: CoMo UK, 2021 & Forward Pinellas. "Micromobility in Pinellas County"

# BICYCLE

Propelled solely by human power

Must wear a helmet if under 16

Absence of a helmet cannot be considered evidence of negligence or contributory negligence

Certain equipment required for operation between sunset and sunrise

Must be equipped with brakes

Must ride in bicycle lane or close to right-hand curb



## E-BIKES

Separated into different classes based on when the motor provides assistance, and at what speed






No driver's license required

A vehicle to the same extent as a bicycle, and a person operating an E-bike is afforded all of the rights, privileges, and be subject to all of the duties of a bicycle

Local governments can regulate their operation on streets, highways, sidewalks, bicycle paths, multiuse paths, trails, a beach or a dune



# MICROMOBILITY & SCOOTERS

	Electric Standing or Sitting Scooters	Electric Bicycles Class 1 (pedal assist)	Electric Bicycles Class 2 (throttle assist)	Electric Bicycles Class 3 (pedal assist at higher speed)	Other Small Electric Devices (electric skateboards)
Weight	Typically < 50 pounds	Typically < 100 pounds with multiple passenger versions near 200 pounds.	Typically < 100 pounds	Typically < 100 pounds with multiple passenger versions near 200 pounds.	Typically < 50 pounds
Motor	Typically electric motor with less than 750 watts.	Typically electric motor with less than 750 watts.	Typically electric motor with less than 750 watts.	Typically electric motor with less than 750 watts.	Typically electric motor with less than 750 watts.
Power Supply	Motor propels scooter with minimal assistance by rider. Most cease to assist when e-scooter reaches 20 miles per hour.	Motor provides assistance only when rider is pedaling and ceases to assist when e-bike reaches 20 miles per hour.	Motor exclusively propels bike and ceases to assist when e-bike reaches 20 miles per hour.	Motor provides assistance only when rider is pedaling and ceases to assist when e-bike reaches 28 miles per hour.	
Speed	20 miles per hour or less; some cities apply additional restrictions.	20 miles per hour or less.	20 miles per hour or less.	28 miles per hour or less.	Most are 20 miles per hour or less with some models up to 30 miles per hour.
					

“[a]ny motorized transportation device made available for private use by reservation through an online application, website, or software for point-to-point trips and which is not capable of traveling at a speed greater than 20 miles per hour on level ground.” That term includes “motorized scooters” and “bicycles” as defined in F.S. 316.003, to the extent they are reserved for private use “through an online application, website, or software for point-to-point trips.

local governments are expressly authorized to adopt ordinances governing the operation of micromobility devices and motorized scooters on, “streets, highways, sidewalks, and sidewalk areas under the local government’s jurisdiction.”



# SMALL MOTOR VEHICLES THAT ARE NOT MICROMOBILITY DEVICES



Low-Speed Vehicles (Golf Carts)	Motorcycle	Moped
<p>Low-speed vehicle means any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles.</p> <p>Golf cart means a motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.</p>	<p>A motorcycle is any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.</p>	<p>A moped is a vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground, and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged.</p>

# AUTONOMOUS VEHICLES



In Florida, fully autonomous vehicles may operate themselves on Florida roadways without any human operator at all

There are no testing or inspection requirements for a fully autonomous vehicle to be operated on a Florida roadway

Local governments are *prohibited* from imposing any other requirements on ADSs or autonomous vehicles

local government may not impose any tax, fee, for-hire vehicle requirement, or other requirement on automated driving systems or autonomous vehicles or on a person who operates an autonomous vehicle, including, but not limited to, a person who operates an autonomous vehicle for purposes of providing passenger transportation services

**RANDY D. MORA, ESQ., B.C.S.**

***Pedestrian Safety***

*A presentation on legal and policy issues associated with pedestrian safety, including solicitation at intersections and the proliferation of micro-mobility options such as e-bikes and scooters.*

**I. OVERVIEW**

Historically, solicitation and panhandling have been considered protected speech under the First Amendment of the U.S. Constitution. Even so, governmental entities can still impose time, place, and manner restrictions on solicitation activity. Time, place, and manner restrictions on constitutionally protected speech must meet three requirements to withstand a constitutional challenge. They must (i) be content-neutral; (ii) be narrowly tailored to serve a significant governmental interest; and (iii) must leave open ample alternative channels for communication of the information. Where courts have overturned solicitation ordinances on streets and sidewalks, which are traditional public fora, their rationale has typically turned on one of two factors in their strict scrutiny analysis. The first is that, in some cases, a city may not even be able to articulate the “compelling” interests that animated its decision to enact a panhandling prohibition. Second, even where municipalities can rely on public safety as the “compelling government interest,” they fail to meet their burden to establish the correlation between the challenged ordinance and the public safety concerns it purportedly seeks to address.

Though, in Florida, §316.2045, Fla. Stat. has historically provided for restrictions on solicitation on or near roadways, and a framework for local governments to permit such activities, recent judicial holdings and a 2021 legislative amendment have stripped away this process. In its current form, the statute generally prohibits the following activities on a public street, highway, or road: (1) “[i]mpeding, hindering, stifling, retarding, or restraining traffic or passage;” (2) “[s]tanding on or remaining in the street, highway, or road;” or (3) “[e]ndangering the safe movement of vehicles or pedestrians traveling thereon.” The statute does preserve a carve-out allowing local governments to issue a special event permit as authorized by law. Even so, this statute is untested in the courts and may likely present new challenges for local governments. Having stripped away the unconstitutional local government permitting framework for roadside solicitation by charities and political entities, the plain language of the statute may now be interpreted to prevent any form of solicitation on roadways and streets if an enforcing entity deems the activity to “impede[] or stifle[]” traffic, or if the soliciting activity results in someone “standing on or remaining in the street, highway, or road.” Municipalities who have traditionally accommodated or encouraged such activity may wish to consider a “special event permit” regime to accommodate such activity within the parameters of the statute, administrative code, and municipal authority. Even so, any special event permitting program established by a local jurisdiction will need to navigate the nuances of the constitutional challenges directed to prior iterations of this statute.

In addition to these constitutional and statutory issues surrounding roadway solicitation by pedestrians, as Florida embraces new multi-modal technologies local governments will need to be aware of the statutory framework and informal guidance concerning these new platforms. In general terms, this memorandum addresses some of the legal restrictions and issues presented by (1) golf carts and low speed vehicles, (2) micromobility devices and low speed vehicles, (3) electric bicycles, and (4) autonomous vehicles, personal delivery devices, and mobile carriers. Each of these established and emerging technologies present new issues

relating to regulatory compliance, their operation on municipal roadways, sidewalks, parks and beaches, and the permissible scope of local regulation.

## **II. CONSTITUTIONAL & STATUTORY ISSUES PRESENTED BY SOLICITATION ORDINANCES<sup>1</sup>**

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws “abridging the freedom of speech.”<sup>2</sup> Historically, solicitation and panhandling have been considered protected speech under the First Amendment.<sup>3</sup> This is, in part, because the Supreme Court has “repeatedly referred to public streets as the archetype of a traditional public forum” and “‘time out of mind,’ public streets and sidewalks have been used for public assembly and debate, the hallmarks of a traditional public forum.”<sup>4</sup> Therefore, the streets and sidewalks of municipalities are generally understood to function as traditional public fora, and must be evaluated against the standards established for restrictions of speech in this type of forum.

The judicial analysis in these cases centers on these ordinances as content-based restrictions that are subject to strict scrutiny.<sup>5</sup> Laws subject to strict scrutiny are “presumptively unconstitutional,” which means that the government must prove that they are “narrowly tailored to serve compelling state interests.”<sup>6</sup> Consequently, “the application of strict scrutiny *usually* sounds the death knell for a challenged ordinance, particularly in the arena of the First Amendment.”<sup>7</sup>

“Even when protected speech in a public forum is involved, the government may impose reasonable restrictions on the time, place, or manner of protected speech.”<sup>8</sup> Time, place, and manner restrictions on speech must meet three requirements to withstand a constitutional challenge.<sup>9</sup> They must be content-neutral; they must be narrowly tailored to serve a significant governmental interest; and they must leave open “ample alternative channels for communication of the information.”

Where courts have overturned solicitation ordinances, their rationale has typically turned on one of two factors in the strict scrutiny analysis. The first is that, in some cases, a city may not even be able to articulate the “compelling” interests that animated its decision to enact a panhandling prohibition. See, e.g., Homeless Helping Homeless, 2016 WL 4162882, at

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<sup>1</sup> This portion relies extensively on the judicial analysis in Cosac Foundation Inc. v. City of Pembroke Pines, 2013 WL 5345817 (S.D. Fla. Sept. 21, 2013) (granting City’s motion for partial summary judgment and upholding constitutionality of city ordinance declaring it unlawful for any person to act as a right-of-way canvasser on various roads and highways within a specified proximity of a lateral cur or boundary line of an intersection on city roadways), and Messina v. City of Ft. Lauderdale, 546 Supp. 3d 1227 (S.D. Fla. 2021) (granting preliminary injunction in § 1983 action challenging constitutionality of panhandling ordinance).

<sup>2</sup> U.S. Const. amend I.

<sup>3</sup> See generally Vill. of Schaumburg v. Citizens for a Better Env’t, 444 U.S. 620, 632, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980) (holding that a request for charity or gifts, whether “on the street or door to door,” is protected First Amendment speech); Smith v. City of Fort Lauderdale, 177 F.3d 954, 956 (11th Cir. 1999) (“Like other charitable solicitation, begging is speech entitled to First Amendment protection”).

<sup>4</sup> Frisby v. Schultz, 487 U.S. 474, at 480 (1988); see also Int’l Caucus of Labor Comms., 111 F.3d at 1550 (“A sidewalk, although specifically constructed for pedestrian traffic, also constitutes a public forum”).

<sup>5</sup> Id. at 45.

<sup>6</sup> Id.

<sup>7</sup> Messina at 1239 (emphasis in original).

<sup>8</sup> See Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989).

<sup>9</sup> Cosac Found., Inc. v. City of Pembroke Pines, 12-62144-CV, 2013 WL 5345817, at \*11 (S.D. Fla. Sept. 21, 2013).



\*2 (government conceding that it lacked any compelling interest in passing the panhandling law). A city may try to justify its ordinance by invoking a general interest in making its residents and tourists *feel* more “comfortable.” But the Supreme Court has explained that a state has no compelling interest in banning uncomfortable (or unpleasant) speech. Indeed, as the Court has pointed out, allowing “uncomfortable message[s]” is a “virtue, not a vice” of the First Amendment.<sup>10</sup>

Second, even where municipalities can rely on public safety as the “compelling government interest,” they fail to meet their burden to establish the correlation between the challenged ordinance and the public safety concerns it purportedly seeks to address. “When a city attempts to justify a panhandling ordinance by reference to public safety, it still has a steep hill to climb—even where . . . the ordinance targets so-called “aggressive panhandling,” which (at the very least) sounds dangerous.”<sup>11</sup> That’s because “aggressive panhandling” ordinances often sweep in much more speech than is necessary to promote public safety—including speech that is entirely innocuous—while omitting conduct that’s genuinely threatening. “Where that’s true—*viz.*, that the law is both under- and over-inclusive—then it’s not narrowly tailored to accomplish the state’s compelling interests, however provocatively it’s titled.”<sup>12</sup> *See, e.g., Blich*, 260 F. Supp. 3d at 670 (“Panhandling may be annoying to the residents of Slidell, but that does not establish that all panhandling is a threat to public safety. And at best, the City’s summary judgment evidence demonstrates that the City is presently having some difficulty identifying aggressive panhandlers and the ordinance would aid Slidell in enforcing its law. That is an insufficient showing to justify such a sweeping registration requirement on prospective panhandlers.”); *Browne*, 136 F. Supp. 3d at 1293–94 (“[T]he problem in this case is that Grand Junction has taken a sledgehammer to a problem that can and should be solved with a scalpel. In attempting to combat what it sees as threatening behavior that endangers public safety, Grand Junction has passed an ordinance that sweeps into its purview non-threatening conduct that is constitutionally protected.”).

#### **A. TIME, PLACE, & MANNER RESTRICTIONS ON PUBLIC STREETS**

As noted above, time, place, and manner restrictions on speech must meet three requirements to withstand a constitutional challenge. They must (i) be content-neutral; (ii) be narrowly tailored to serve a significant governmental interest; and (iii) must leave open “ample alternative channels for communication of the information. This section will demonstrate how courts have generally evaluated these criteria when analyzing solicitation ordinances.

##### **i. CONTENT NEUTRAL RESTRICTIONS**

Since the Supreme Court’s decision in *Reed v. Town of Gilbert, Arizona* clarified the Constitutional analysis for content neutral regulation of speech, several courts have found that panhandling ordinances—especially general bans on panhandling in large swaths of a city, such as commercial zones or historic districts, or near bus stops and sidewalk cafés—are content based and thus unconstitutional.<sup>13</sup> *See Rodgers v. Bryant*, 942 F.3d 451, 456 (8th Cir. 2019) (affirming a preliminary injunction barring enforcement of an anti-loitering law because

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<sup>10</sup> *McCullen v. Coakley*, 573 U.S. 464, at 476 (2014); *see also McLaughlin*, 140 F. Supp. 3d at 189 (noting that “the promotion of tourism and business has never been found to be a compelling government interest for the purposes of the First Amendment” and that the First Amendment “does not permit a city to cater to the preference of one group, in this case tourists or downtown shoppers, to avoid the expressive acts of others, in this case panhandlers, simply on the basis that the privileged group does not like what is being expressed”).

<sup>11</sup> *Id.* at 1240.

<sup>12</sup> *Id.*

<sup>13</sup> *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015)

the law was “a content-based restriction [insofar as] ... it applie[d] only to those asking for charity or gifts, not those who are, for example, soliciting votes, seeking signatures for a petition, or selling something”—*i.e.*, “its application depend[ed] on the ‘communicative content’ of the speech”); Ind. C.L. Union Found., Inc. v. Superintendent, Ind. State Police, 470 F. Supp. 3d 888, 895, 908 (S.D. Ind. 2020) (preliminarily enjoining an ordinance that banned panhandling (1) at various locations—including bus stops, parking facilities, and within 50 feet of ATMs or entrances to certain buildings; (2) while touching another without consent; and (3) while blocking another’s path); Blitch v. City of Slidell, 260 F. Supp. 3d 656, 673 (E.D. La. 2017) (permanently enjoining an ordinance that required panhandlers to register with the chief of police and to wear identification before asking for money); Homeless Helping Homeless, Inc. v. City of Tampa, Fla., 2016 WL 4162882, at \*6 (M.D. Fla. Aug. 5, 2016) (permanently enjoining a general ban on panhandling in front of sidewalk cafés, within 15 feet of ATMs, and in other designated areas); Browne v. City of Grand Junction, Colo., 136 F. Supp. 3d 1276, 1288–94 (D. Colo. 2015) (permanently enjoining a panhandling ban to the extent it (1) limited the times during which a person could panhandle; (2) prevented solicitation after a first refusal; and (3) banned panhandling on public buses or in parking garages, parking lots, or similar facilities); McLaughlin v. City of Lowell, 140 F. Supp. 3d 177, 182 (D. Mass. 2015) (declaring unconstitutional (1) a ban on panhandling in certain areas of the city and (2) a ban on “aggressive panhandling”).

A regulation of speech is content based if it “applies to particular speech because of the topic discussed or the idea or message expressed.”<sup>14</sup> In so holding, Reed explained that courts must take the “crucial first step” of determining “whether the law is content neutral *on its face*,” which means evaluating whether the law “expressly draws distinctions based on ... communicative content.”<sup>15</sup> If it does, the law will be subject to strict scrutiny “*regardless* of the government’s benign motive, content-neutral justification, or lack of animus towards the ideas contained in the regulated speech.”<sup>16</sup> Id. Some facial distinctions will be “obvious” insofar as they define speech “by particular subject matter,” whereas others “are more subtle, defining regulated speech by its function or purpose.”<sup>17</sup> But “[b]oth are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.”<sup>18</sup> A separate category of laws may be facially neutral—but still content based—if they can’t be “justified without reference to the content of the regulated speech” or if they were “adopted by the government ‘because of disagreement with the message [the speech] conveys.’”<sup>19</sup>

“In some cases, the underbreadth of a law—that is, the failure of the regulation to eliminate all conduct posing the threat that the government purports to address—may indicate that the government is in fact discriminating on the basis of content or that its asserted government interest is not truly pressing.”<sup>20</sup> See City of Ladue v. Gilleo, 512 U.S. 43, 52–53, (1994) (“Exemptions from an otherwise legitimate regulation of a medium of speech may be noteworthy for a reason quite apart from the risks of viewpoint and content discrimination: They may diminish the credibility of the government’s rationale for restricting speech in the first place.”); see also Brown v. Entm’t Merchs. Ass’n, 564 U.S. 786, 802 (2011) (“Underinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.”)

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<sup>14</sup> Reed, 576 U.S. at 163

<sup>15</sup> Id. at 165.

<sup>16</sup> Id.

<sup>17</sup> Id. at 163.

<sup>18</sup> Id.

<sup>19</sup> Id. (quoting Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989))

<sup>20</sup> Costas at \*13.

Even where an ordinance may overcome the content neutrality portion of a court's scrutiny, it still must be narrowly tailored to a significant government interest.

## ii. NARROW TAILORING OF SIGNIFICANT GOVERNMENTAL INTEREST

### 1. Significant Government Interest

In order to demonstrate the significance of its interest in the context of a First Amendment challenge, “the City is not required to present detailed evidence.”<sup>21</sup> Rather, “the City is entitled to advance its interests by arguments based on appeals to common sense and logic.” *Id.* (citation and internal quotation marks omitted). As long as legislative judgment on the significance of the government's safety concerns is “not manifestly unreasonable ... [it] should not be set aside.” *Metromedia*, 453 U.S. at 509.

In *Cosac*, the U.S. District Court for the Southern District of Florida explained that:

It is firmly established that a city's interest in protecting its citizens and ensuring that its streets and sidewalks are safe for everyone is constitutionally significant. See, e.g., *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 508–09, (1981) (plurality opinion) (finding that ensuring “traffic safety” is a “substantial government goal[ ]” and noting that “[i]t is far too late to contend otherwise,” based on early Supreme Court precedents) (citing *Ry. Express Agency, Inc. v. New York*, 336 U.S. 106, (1949)); see also *Cox v. New Hampshire*, 312 U.S. 569, 574, 61 S.Ct. 762, 85 L.Ed. 1049 (1941) (“The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need.”). Moreover, the Supreme Court has recognized the substantial risk of disruption in crowd and traffic control that may be presented by solicitation and literature sales, as compared to other forms of expression. See *Heffron v. Int'l Soc. Fo Krishna Consciousness, Inc.*, 452 U.S. 640 at 653 (1981) (noting that solicitation and selling require “stopping [individuals] momentarily or for longer periods as money is given or exchanged for literature.”) [ . . . ] “[w]hen the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply posit the existence of the disease sought to be cured. It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.” *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 654 (1994) (citations and internal quotation marks omitted); see also *id.* (“[A] regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.”) (citation and internal quotation marks omitted). This standard, however, has never required scientific or statistical proof of the wisdom of the legislature's course. *Ginsberg v. New York*, 390 U.S. 629, 642 (1968) (“We do not demand of legislatures ‘scientifically certain criteria of legislation.’”) (quoting *Noble State Bank v. Haskell*, 219 U.S. 104, 110, (1911)).<sup>22</sup>

In what the Southern District has since described as *obiter dictum*<sup>23</sup>, the *Costas* court added that: “even if the City had not introduced such detailed evidence into the record, ‘common sense and logic’ would still support the City's determination that canvassing and soliciting drivers on heavily trafficked streets presents substantial traffic flow and safety hazards both to pedestrians and motorists. As one court considering a very similar ordinance observed, [i]t requires neither towering intellect nor an expensive ‘expert’ study to conclude that mixing pedestrians and temporarily stopped motor vehicles in the same space at the same time is dangerous.”<sup>24</sup>

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<sup>21</sup> *Int'l Caucus of Labor Comm.*, 111 F.3d at 1551 (holding, in the context of a First Amendment challenge to a city policy banning tables from city sidewalks that it was not necessary for the city “to present detailed evidence of pedestrian or traffic flow on or around specific sidewalks” in order to prove its interest was significant).

<sup>22</sup> *Id.* at 16.

<sup>23</sup> *Messina* at 1250-51

<sup>24</sup> *Costas* at \*18 (internal citations and quotations omitted).

In Messina, issued eight years after Cosac and six years after Reed, conducting a similar analysis the Southern District of Florida distinguished the Costas holding by explaining:

In any event, in the years since Cosac, the Supreme Court has held that a governmental entity bears the evidentiary burden of demonstrating that it “seriously undertook to address the problem with less intrusive tools readily available to it.” McCullen, 573 U.S. at 494. That evidentiary requirement, it goes without saying, supersedes Judge Rosenbaum's *obiter dictum*, such as it is, that an ordinance can survive intermediate scrutiny on “common sense and logic” alone. And the City here has only common sense to go on. It explicitly admits, in fact, that it operated only under certain “premises” (read: assumptions); and it points to *no* evidence that it investigated, studied, or even solicited reports on the issue—any one of which might have shown that it seriously undertook to address the problem by less intrusive means.<sup>25</sup>

Instead, the Messina court characterized the municipality's determination as being based “on what amounts to speculation,” and therefore insufficient.<sup>26</sup>

## 2. Narrow Tailoring

A restriction is narrowly-tailored “so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.”<sup>27</sup> To be “narrowly tailored,” a regulation “need not be the least restrictive or least intrusive means” of accomplishing its purpose.<sup>28</sup> Rather, a content-neutral regulation may be considered narrowly tailored when it does not “entirely foreclose any means of communication,” “even though it is not the least restrictive or least intrusive means of serving the statutory goal.”<sup>29</sup> The City “bears the burden of demonstrating [only] a ‘logical and practical relationship between the restriction and [its] interests, so that [the Court] may determine whether the restriction is substantially broader than is necessary to achieve those ends.’”<sup>30</sup>

The Supreme Court has held that a governmental entity bears the evidentiary burden of demonstrating that it “seriously undertook to address the problem with less intrusive tools readily available to it.”<sup>31</sup> In Reed, for example, the Court held the government failed to meet its burden where the municipality offered only the preservation of its aesthetic appeal and traffic safety as the compelling government interest at issue, but the underinclusive scope of its sign ordinance distinguishing between temporary directional signs and political signs was deemed to inadequately tailored to further that interest.<sup>32</sup> The Court reasoned that the ordinance failed strict scrutiny because, “a law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited.”<sup>33</sup>

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<sup>25</sup> Messina at 1251 (emphasis in original) (internal citations omitted).

<sup>26</sup> Id. at 1250.

<sup>27</sup> Ward, 491 U.S. at 798.

<sup>28</sup> Id.

<sup>29</sup> Hill v. Colorado, 530 U.S. 703, 726 (2000) (citing Ward, 491 U.S. at 798).

<sup>30</sup> Coalition for Abolition of Marijuana Prohibition v. City of Atlanta, 219 F.3d 1301, 1318 (11<sup>th</sup> Cir. 2000) (quotation omitted).

<sup>31</sup> McCullen, 573 U.S. at 494.

<sup>32</sup> Id. at 172.

<sup>33</sup> Id. citing Republican Party of Minn. v. White, 536 U.S. 765, 780 (2002)

### iii. ALTERNATIVE CHANNELS FOR COMMUNICATION

Finally, a reasonable time, place, or manner restriction of protected speech must “leave open ample alternative channels for communication of the information.”<sup>34</sup> Admittedly, analyses of this prong of solicitation ordinances tend to be truncated in comparison to the preceding two elements. See Frisby, 487 U.S. at 483 (“[T]he limited nature of the prohibition [here] makes it virtually self-evident that ample alternatives remain .... Plaintiff may distribute its newspaper and solicit contributions by going door-to-door, by seeking out people on sidewalks, or distributing [the publication] via the mail, email, and news boxes.”); Costas at \*20 (“The Ordinance easily satisfies this prong. As stated, the Ordinance bans right-of-way canvassing and solicitation on less than 10% of the City’s total miles of public roadways”); The Contributor v. City of Brentwood, 2013 WL 4081905, at \*4 (6th Cir. Aug.14, 2013) (upholding city’s ban on the distribution and sale of literature on all city streets, as challenged by distributors of a newspaper dedicated to covering issues of homelessness and poverty)

### B. FLORIDA STATUTE GOVERNING THE OBSTRUCTION OF PUBLIC STREETS, HIGHWAYS, AND ROADS

Section 316.2045, Fla. Stat. has historically regulated pedestrian solicitation. As elaborate upon below, in 2021, the Florida Legislature removed the statutory provisions governing municipal permitting and regulation of pedestrian solicitation.

Historically, Fla. Stat. 316.2045 contained provisions for local governments to permit solicitation activity on roadways, with legislative carve outs for non-profits and political campaigns. In 2003, in Bischoff v. Florida, the U.S. District Court for the Middle District of Florida issued a permanent injunction against enforcement of § 316.2045, F.S. The Court held that the then-operative version of the statute violated the Equal Protection Clause of the Fourteenth Amendment and the First Amendment.<sup>35</sup> In Bischoff, the Middle District found the statute to be content-based because it facially preferred speech by registered charities and those who are engaged in political speech by allowing ubiquitous and free dissemination of their views, but restricted discussion of all other issues and subjects.<sup>36</sup> The court also held that the statute was void for vagueness, finding that several ambiguous terms in the statute did not “convey sufficiently definite warning as to the unlawful conduct when measured by common understanding.”<sup>37</sup> The Bischoff court also held that the statute was unconstitutionally overbroad because it was not narrowly tailored to meet the compelling state interest in ensuring public safety on roads. The Court found that the defendants failed to sufficiently address the conclusion that the statute’s permit scheme for solicitation on roadways served as a prior restraint on speech, and did not point to anything in the record to convince the Court “that there are procedural safeguards in place to prevent the undue suppression of speech.”<sup>38</sup> In a footnote, the Court declined to sever the unconstitutional parts, but noted that “standing alone, Fla. Stat. § 316.2045 (1) appears to be facially content-neutral.”<sup>39</sup> In 2006, in Chase v. City of Gainesville, the U.S. District Court for the Northern District of Florida issued a permanent injunction against enforcement of s. 316.2045, F.S., after the parties agreed to its permanent enjoinder and facial unconstitutionality.<sup>40</sup>

<sup>34</sup> Cosac, citing Ward, 491 U.S. at 791

<sup>35</sup> Bischoff v. Florida, 242 F.Supp.2d 1226 (M.D. Fla. 2003).

<sup>36</sup> Id. at 1236.

<sup>37</sup> Id.

<sup>38</sup> Id. at 1237, 1257-58.

<sup>39</sup> Id. at 1258, n. 21

<sup>40</sup> Chase v. City of Gainesville, No. 1:06-CV-44-SPM/AK, 2006 WL 3826983 (N.D. Fla. Dec. 28, 2006).

In response to these holdings the Legislature amended section 316.2045 in 2007, adopting the “Iris Roberts Act.”<sup>41</sup> The Iris Roberts Act substantially amended subsection 3 of section 316.2045 to delineate various processes for parties to secure permits for the use of any street, road, right-of-way from a local government. The Act provided, in relevant part, that while permits for the use of any street or right of way not maintained by the State “may be issued by the appropriate local government,” charitable corporations found by the IRS to be tax exempt under § 501(c)(3) of the Internal Revenue Code were “exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets. . . .” However, to qualify for the permit exemption, the statute provided that the charity must demonstrate to the local government that it had done a list of things, including disclosing who will get the funds collected, providing a safety plan, detailing the location of the proposed solicitation, providing proof of insurance and registration with the Department of Agriculture and Consumer Services, and the like.

In 2020, in Vigue v. Shoar, the U.S. District Court for the Middle District of Florida found that in adopting the Iris Roberts Act in 2007, the Legislature had not addressed the constitutional infirmities identified in Bischoff.<sup>42</sup> The Vigue Court stated:

In 2007, the Florida Legislature amended § 316.2045(3) to exempt certain 501(c)(3) organizations from the permit requirements for charitable solicitation and to establish conditions with which the organizations must comply to take advantage of that exemption. Fla. Att’y Gen. Op. 2007-50 (2007). On November 7, 2007, Florida Attorney General Bill McCollum issued an opinion that the amendments did not address the constitutional infirmities identified in Bischoff and recommended that the Florida Legislature address those issues. To date, the Legislature has not done so.<sup>43</sup>

In 2021, the Florida Legislature adopted CS/HB 1, colloquially referred to as the Anti-Riot Act. In addition to the more widely discussed provisions within this legislative enactment, it also amended Fla. Stat. 316.2045, entitled “Obstruction of public streets, highways, and roads.”<sup>44</sup> This version of the statute amended this section, in pertinent part<sup>45</sup>, as follows:

(1)(a) ~~It is unlawful for any person may not or persons willfully to obstruct the free, convenient, and normal use of a any public street, highway, or road by:~~  
1. Impeding, hindering, stifling, retarding, or restraining traffic or passage thereon; ~~by~~  
2. Standing on or remaining in the street, highway, or road; or approaching motor vehicles thereon, or by  
3. Endangering the safe movement of vehicles or pedestrians traveling thereon.  
(b) ~~A ; and any person or persons who violates paragraph (a) violate the provisions of this subsection, upon conviction,~~ shall be cited for a pedestrian violation, punishable as provided in chapter 318.  
(c) This subsection does not prohibit a local governmental entity from issuing a special event permit as authorized by law.<sup>46</sup>

<sup>41</sup> HB 99 (2007); Fla. Leg. Chapter 2007-43

<sup>42</sup> Vigue v. Shoar, 494 F.Supp.3d 1204 (M.D. Fla. 2020), Vigue v. Shoar, Case No. 20-14285 (11<sup>th</sup> Cir. 2021) (appeal voluntarily dismissed Sept. 1, 2021).

<sup>43</sup> Id. at 1217 (internal footnotes omitted) (internal citations omitted),

<sup>44</sup> CS/HB 1 (2021); Chapter 2021-6 (2021)

<sup>45</sup> This version of the statute also includes an exception for commercial vehicles collecting solid waste or recyclables. Even so, “[l]ocal governments may establish reasonable regulations governing the standing and stopping of such commercial vehicles, provided that such regulations are applied uniformly and without regard to the ownership of the vehicles.” Fla. Stat. 316.2045 (2) (2021).

<sup>46</sup> CS/HB 1 (2021); Chapter 2021-6 (2021)

The legislative history for CS/HB 1 (2021) reflects that the Legislature deliberately removed the intricate permitting scheme in the Iris Roberts Act based on the aforementioned case law holding the permitting provisions in prior versions of § 316.2045, Fla. Stat. had been held unconstitutional.<sup>47</sup>

As of the transmission of this draft, there is a pending action before the U.S. District Court for the Northern District of Florida challenging the validity of Chapter 2021-6 on various Constitutional grounds.<sup>48</sup> As it relates to the amendments to § 316.2045, Plaintiffs contend that the amendment's language "is broad enough to criminalize standing on the street and hindering any traffic, even temporarily."<sup>49</sup> Plaintiffs argue "this will make it easier for law enforcement to use their discretion to arrest and ticket peaceful protesters who temporarily block a street."<sup>50</sup> Plaintiffs seek to invalidate this provision on the basis that would-be protesters "have already been and will continue to be discouraged from exercising their First Amendment rights for fear of arrest."<sup>51</sup>

As amended, § 316.2045 may likely present new challenges for local governments. Having stripped away the unconstitutional permitting regime for solicitation, the plain language of the statute may be interpreted to prevent any form of solicitation on roadways and streets if an enforcing entity deems the activity impedes or stifles traffic, or if the soliciting activity results in someone "standing on or remaining in the street, highway, or road."<sup>52</sup> Municipalities who have traditionally accommodated or encouraged such activity, especially by local community charitable organizations, may wish to consider the legal viability of a "special event permit" regime to accommodate such activity within the parameters of the Florida's statutes and administrative code.<sup>53</sup> Even so, any special event permitting program established by a local jurisdiction will need to navigate the nuances of the constitutional challenges directed to prior iterations of this statute.

### **LEGAL ISSUES PRESENTED BY TECHNOLOGY IN TRANSPORTATION**

In addition to these constitutional and statutory issues surrounding roadway solicitation by pedestrians, as Florida embraces new multi-modal technologies local governments will need to be aware of the statutory framework and informal guidance concerning these new platforms. In general terms, this memorandum addresses some of the legal restrictions and issues presented by (1) bicycles and electric bicycles (2) micromobility devices and scooters, (3) golf carts and low speed vehicles, and (4) autonomous vehicles, personal delivery devices, and mobile carriers. Each of these established and emerging technologies present new issues relating to regulatory compliance, their operation on municipal roadways, sidewalks, parks and beaches, and the permissible scope of local regulation.

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<sup>47</sup> CS/HB 1 (2021), Florida Senate Bill Analysis and Fiscal Impact Statement at pp. 8-10 (April 8, 2021).

<sup>48</sup> Dream Defenders v. Desantis, Case No. 4:21-cv-00191-MW-MAF (2021). On September 9, 2021 the Northern District issued a preliminary injunction enjoining Defendants from enforcing Section 15 [Amending Section 870.01 Affrays and riots.] (Dkt. 137). Some of the Defendants noticed this matter for appeal to Eleventh Circuit. See USCA Case No. 21-13489-J. On December 10, 2021, the Northern District issued an order (Dkt. 180) staying the litigation deadlines during the pendency of the appellate proceedings. The appeal has been fully-briefed and oral argument took place on March 17, 2022. As of this writing, the Eleventh Circuit's ruling on appeal has not yet issued.

<sup>49</sup> Id. at Dkt. 1 ¶ 75.

<sup>50</sup> Id. at Dkt. 1 ¶ 76.

<sup>51</sup> Id. at Dkt. 1 ¶ 77.

<sup>52</sup> § 316.2045 (1), Fla. Stat.

<sup>53</sup> See e.g., FAC Chapter 14-65. (This rule chapter specifies procedures for obtaining a prior written approval from the Department when necessary to conduct a special event resulting in the closure of a state road, and the requirements for filming on a state road.)

### **III. BICYCLES & ELECTRIC BICYCLES**

#### **A. BICYCLES GENERALLY**

State statute defines a bicycle as: “[e]very vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.”<sup>54</sup> With some exceptions, a person may not drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway.<sup>55</sup>

A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger’s head by a strap and that meets the federal safety standard for bicycle helmets, final rule, 16 C.F.R. part 1203.<sup>56</sup> Even so, the failure of a person to wear a bicycle helmet or the failure of a parent or guardian to prevent a child from riding a bicycle without a bicycle helmet may not be considered evidence of negligence or contributory negligence.<sup>57</sup> Additionally, every bicycle in use between sunset and sunrise shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear.<sup>58</sup> Moreover, “[e]very bicycle must be equipped with a brake or brakes which will enable its rider to stop the bicycle within 25 feet from a speed of 10 miles per hour on dry, level, clean pavement”<sup>59</sup> A person who sells bicycles at retail may not sell a bicycle that does not have an identifying number permanently stamped or cast on its frame.<sup>60</sup>

Ordinarily, a person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing must ride in the bicycle lane or, if there is no bicycle lane on the roadway, as close as practicable to the right-hand curb or edge of the roadway.<sup>61</sup>

#### **B. ELECTRIC BICYCLES**

An electric bicycle is defined as “a bicycle or tricycle equipped with fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts,” which meets one of three classifications.<sup>62</sup> The first class captures electric bicycles equipped with “a motor that provides assistance *only when* the rider is pedaling and that ceases to provide assistance” when it reached 20 miles per hour.<sup>63</sup> The second class captures electric bicycles equipped with “a motor that may be used exclusively to propel the electric bicycle” and ceases to provide assistance when it reaches 20 miles per hour.<sup>64</sup> The third and final class refers to an

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<sup>54</sup> § 316.003 (4), Fla. Stat.; Cf §§ 316.003 (44) (defining “moped”), (47) (defining “motorcycle”), and (48) (defining “motorized scooter”).

<sup>55</sup> § 316.1995, Fla. Stat.

<sup>56</sup> § 316.2065 (3) (d), Fla. Stat.

<sup>57</sup> § 316.2065 (18), Fla. Stat.

<sup>58</sup> § 316.20065 (7), Fla. Stat.

<sup>59</sup> § 316.2065 (13), Fla. Stat.

<sup>60</sup> § 316.2065 (14), Fla. Stat.

<sup>61</sup> § 316.2065 (5) (a), Fla. Stat.

<sup>62</sup> § 316.003 (23), Fla. Stat.

<sup>63</sup> § 316.003 (23) (a), Fla. Stat. (emphasis supplied).

<sup>64</sup> § 316.003 (23) (b), Fla. Stat.



electrical bicycle “equipped with a motor that provides assistance *only when the rider is pedaling*,” but ceased to provide assistance when it reaches a maximum speed of 28 miles per hour.<sup>65</sup>

Electric bicycles do not require a driver’s license, vehicle registration, title certificate, or other similar requirements.<sup>66</sup> Manufacturers and distributors of electric bicycles must apply a label, permanently affixed in a prominent location for each bicycle, containing the classification number, top assisted speed, and motor wattage of the electric bicycle.<sup>67</sup> It is a violation of Florida law to tamper with or modify an electric bicycle so as to change the motor-powered speed capability or engagement of an electric bicycle, unless the required label is replaced after the modification.<sup>68</sup> In addition to these requirements, an electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission under 16 C.F.R. part 1512.<sup>69</sup>

Regardless of the permissible technical features of an electric bicycle, an electric bicycle is a vehicle to the same extent as a bicycle.<sup>70</sup> A person operating an electric bicycle must be afforded all of the rights, privileges, and be subject to all of the duties of a bicycle.<sup>71</sup> Consequently, an electric bicycle may operate wherever “bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths.”<sup>72</sup> An electric bicycle *must* operate in a manner so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.<sup>73</sup> Notwithstanding these provisions, local governments still possess the power to adopt an ordinance governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk area, bicycle path, multiuse path, trail network, or a “beach,” or “dune,” as those terms are defined by statute.<sup>74</sup>

#### **IV. MICROMOBILITY DEVICES & MOTORIZED SCOOTERS**

Throughout the country municipalities have seen the proliferation of micromobility platforms and their corresponding devices, presenting various legal and safety issues.<sup>75</sup>

In 2019, the Florida Legislature passed House Bill 453, a comprehensive bill related to micromobility devices and motorized scooters. Once signed into law, HB 453 created Chapter 2019-109, Laws of Florida, which amended various sections of Chapter 316, Florida Statutes, (the Florida State Uniform Traffic Control laws).

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<sup>65</sup> § 316.003 (23) (c), Fla. Stat.

<sup>66</sup> § 316.20655 (2), Fla. Stat.

<sup>67</sup> § 316.20655 (3), Fla. Stat.

<sup>68</sup> § 316.20655 (4), Fla. Stat.

<sup>69</sup> § 316.20655 (5), Fla. Stat.

<sup>70</sup> § 316.20655 (1), Fla. Stat.; Cf. § 316.1995 (Except as provided in s. 316.008, s. 316.20655, s. 316.212(8), or s. 316.2128, a person may not drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway).

<sup>71</sup> § 316.20655 (1), Fla. Stat.

<sup>72</sup> § 316.20655 (7), Fla. Stat.

<sup>73</sup> § 316.20655 (6), Fla. Stat.

<sup>74</sup> § 316.20655 (1), Fla. Stat.

<sup>75</sup> See, e.g., Austyn Geffney, “Micromobility operators expand their footprint in small and midsized cities.” *available at* <https://www.smartcitiesdive.com/news/micromobility-bird-lime-scooters-bikes-small-cities/625206/> (June 9, 2022); see also Jason Plautz, “Sidewalk detection and safety monitoring are creating ‘watershed moment’ for micromobility,” *available at* <https://www.smartcitiesdive.com/news/superpedestrian-sidewalk-detection-safety-monitoring-cities-micromobility/618433/> (Feb. 8, 2022).

A “micromobility device” is defined as “[a]ny motorized transportation device made available for private use by reservation through an online application, website, or software for point-to-point trips and which is not capable of traveling at a speed greater than 20 miles per hour on level ground.”<sup>76</sup> That term includes “motorized scooters” and “bicycles” as defined in F.S. 316.003, to the extent they are reserved for private use “through an online application, website, or software for point-to-point trips.” *Id.*

By comparison, the statutory definition of a “motorized scooter,” includes MMs within its scope, encompassing : “[a]ny vehicle or **micromobility device** that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.”<sup>77</sup>

HB 453 also amended section 316.2128, Fla. Stat. which is now titled “Micromobility devices, motorized scooters, and miniature motorcycles, requirements.” Section 316.2128, Fla. Stat. states that micromobility device operators have all the rights and duties of bicycle riders except those found in Sec. 316.2128(1), Fla. Stat. (child safety restraint requirements). Further, local governments are expressly authorized to adopt ordinances governing the operation of micromobility devices and motorized scooters on, “streets, highways, sidewalks, and sidewalk areas under the local government’s jurisdiction.”<sup>78</sup> Similar to golf carts, micromobility devices and scooters are not required to be registered or insured.<sup>79</sup> Operators of micromobility devices and scooters are not required to have a driver’s license.<sup>80</sup> A person who offers micromobility devices or motorized scooters to the public must secure them “in any area of the state where an active tropical storm or hurricane warning has been issued by the National Weather Service.”<sup>81</sup> Florida Statute § 316.2128 expressly provides that any person who engages in the selling of motorized scooters must prominently display a notice that such scooters are, “not legal to operate on public roads. . . and may not be operated on sidewalks unless authorized by an ordinance.”<sup>82</sup>

In 2020, the First District Court of Appeal issued an opinion regarding micromobility devices in Panama City Beach, based on the state of the law before the adoption of HB 453. The court held that, at the time, a City could prohibit the daily rental of MMs without outright banning all MMs.<sup>83</sup> In *Classy Cycles*, a motorized scooter vendor brought action challenging the validity of the City’s ordinances prohibiting motorized scooter rentals. The trial court granted summary judgment in favor of city and the vendor appealed. The First DCA affirmed the lower court’s ruling. In doing so, it held that the municipal ordinances prohibiting night rentals of motorized scooters, and imposing a general prohibition against all motorized scooter rentals after a certain date, were not arbitrary or unreasonable for only prohibiting rental rather

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<sup>76</sup> § 316.003 (41), Fla. Stat.

<sup>77</sup> § 316.003 (48), Fla. Stat. (emphasis supplied)

<sup>78</sup> § 316.2128 (1), Fla. Stat; *Cf.* 316.19995 Driving Upon Sidewalk or Bicycle Path (“Except as provided in s. 316.008, s. 316.20655, s. 316.212(8), or s. 316.2128, a person may not drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway).

<sup>79</sup> § 316.2128 (2), Fla. Stat.

<sup>80</sup> § 316.2128 (3), Fla. Stat.

<sup>81</sup> § 316.2128 (4), Fla. Stat.; see generally Melissa Goldin, “Micromobility companies use Google augmented reality technology to target scooter litter, *available at* <https://www.smartcitiesdive.com/news/bird-lime-google-scooter-litter-augmented-reality-parking/624129/> (May 20, 2022)

<sup>82</sup> § 316.2128 (5), Fla. Stat.

<sup>83</sup> *Classy Cycles, Inc. v. Panama City Beach*, 301 So.3d 1046 (Fla. 1st DCA Nov. 13, 2019), *rev. denied* 2020 WL 3525947 (Fla. Case. No. SC20-118 June 29, 2020).

than operation of scooters, and therefore the ordinances were valid pursuant to rational basis analysis. *Id.*

## V. GOLF CARTS AND LOW-SPEED VEHICLES

While golf carts and LSVs are similar in look and design, state statute treats them distinctly and municipal authority over each is varied. Golf Carts are motorized four-wheeled vehicles with a maximum speed of 20 mph, do not require insurance, and do not require a driver's license to operate. Low speed vehicles are four-wheeled vehicles, which in some cases resemble golf carts, but are capable of a maximum speed of 25 mph, require insurance and registration, and require the operator to have a driver's license. Municipalities are limited in their ability to regulate golf cart operation, as they can only regulate unlicensed drivers and may not require anything further than state statute permits. Municipalities are empowered to regulate and prohibit LSVs.

### A. GOLF CARTS

#### i. FLORIDA STATUTES REGULATING GOLF CARTS

Florida statute defines golf carts as, “[a] motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes.”<sup>84</sup> Another section of Florida's Statutes also define golf carts as, “[a] motor vehicle that is designed and manufactured for operation on a golf course for sporting or recreational purposes and **that is not capable of exceeding speeds of 20 MPH.**”<sup>85</sup>

A separate statutory provision addressing the operation of golf carts on certain roadways and general prohibitions and regulations of the operation of golf carts also offers relevant insight.<sup>86</sup> While generally the operation of golf carts on public roadways is prohibited, “[a] golf cart may be operated only upon a county road that has been designated by a county, a municipal street that has been designated by a municipality, or a two-lane county road located within the jurisdiction of a municipality designated by that municipality, for use by golf carts.”<sup>87</sup> Further, golf carts may only be operated on roads with a posted speed limit of 30 mph or less.<sup>88</sup> According to Florida's statutes, golf carts may only operate on sidewalks under the following conditions: if provided by municipal ordinance, the sidewalks are eight feet wide, and if the top speed of golf carts on the sidewalk is 15 miles per hour.<sup>89</sup>

While golf carts are not required to be licensed or insured, a golf cart may not be operated on public roads or streets by any person under the age of 14.<sup>90</sup>

Continuing, golf carts may only be operated between sunrise and sunset, unless the county or municipality has determined that golf carts may be safely operated outside those hours **AND** the golf cart has headlights, brake lights, turn signals, and a windshield.<sup>91</sup> Local governments may enact an ordinance relating to golf cart operation and equipment that is more

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<sup>84</sup> § 316.003 (29), Fla. Stat.

<sup>85</sup> § 320.01 (22), Fla. Stat. (emphasis added).

<sup>86</sup> § 316.212, Fla. Stat.

<sup>87</sup> § 316.212 (1), Fla. Stat.

<sup>88</sup> § 316.2126 (1) (c), Fla. Stat.

<sup>89</sup> § 316.212 (8), Fla. Stat.

<sup>90</sup> § 316.212 (7), Fla. Stat.

<sup>91</sup> § 316.212 (5), Fla. Stat. (emphasis added).

restrictive than statute, but the ordinance may only apply to unlicensed drivers and the municipality must post signs regarding the more restrictive golf cart ordinance.<sup>92</sup>

Violations of Sec. 316.212, Fla. Stat. (golf cart operating statute) are considered noncriminal traffic infractions punishable as a moving violation.<sup>93</sup> Violations of golf cart ordinances enacted pursuant to Sec. 316.212, Fla. Stat. are also punishable by local ordinance.

## ii. PERSUASIVE AUTHORITY: ATTORNEY GENERAL OPINIONS

Attorney General opinions are not binding legal precedent, but can offer valuable insight into how the executive branch of the state has interpreted the enforcement of various statutory provisions.

In Florida Attorney General Opinion 2016-07, the Attorney General's office responded to a series of inquiries on behalf of the City of Winter Garden. The Attorney General opined on several issues regarding the operation of golf carts within a municipality. Among other things, the Attorney General has held that a municipality may not prohibit the operation of a golf cart by an unlicensed driver. AGO 16-07.

As explained in AGO 16-07, Sec. 316.212, Fla. Stat. previously had language that authorized local governments to enact more restrictive golf cart equipment and operation regulations than state law provides. However, during the 2005 Florida Legislative Session, House Bill 1697 (2005) was amended on the floor to add the term, "must apply only to an unlicensed driver." This limiting language was added on the floor without debate. Without much legislative history, the plain language of the amended statute indicates that any regulations imposed by municipal ordinance on the operation or equipping of a golf cart on municipal streets is limited to unlicensed drivers operating golf carts. AGO 16-07.

AGO 16-07 further interprets Sec. 316.212, Fla. Stat. by opining that state statute clearly authorizes unlicensed drivers to operate golf carts pursuant to Sec. 322.04(1)(e), Fla. Stat., and therefore precludes a municipality from enacting an ordinance prohibiting the operation of golf carts by an unlicensed driver.

The attorney general opinion does state that a person with a suspended or revoked driver's license would be considered an unlicensed driver under Florida statute. AGO 06-17, and therefore able to lawfully operate a golf cart.

In Attorney General Opinion 2003-58, the Attorney General's office responded to an inquiry from the City of Cedar Key regarding equipment and operation of golf carts on municipal streets. The Attorney General opined that the City could not require additional safety equipment, or require mandatory inspection of golf carts. AGO 03-58. The opinion further clarifies that municipalities are preempted from requiring a licensed adult to accompany operators under the age of 16, or from enacting more restrictive age or licensure requirements. AGO 03-58.

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<sup>92</sup> § 316.212 (8) (a), Fla. Stat.

<sup>93</sup> § 316.212 (9), Fla. Stat.

## **B. LOW SPEED VEHICLES**

Low Speed Vehicles are motorized four-wheeled vehicles with a maximum speed of 25 miles per hour that can often look very similar to golf carts. LSVs require a driver's license to operate, must be registered and insured, and may only operate on streets with a posted speed limit of 35 mph or less (and therefore not on sidewalks). Municipalities currently have the authority to prohibit operation of LSVs on any road under their jurisdiction.

### **i. FLORIDA STATUTES REGULATING LOW-SPEED VEHICLES**

Florida Statute defines a Low Speed Vehicle (LSV) as “any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 (federal safety standards) and Sec. 316.2122.”<sup>94</sup>

Section 316.2122, Fla. Stat., deals with the safety standards and operations of LSVs or mini trucks. Operations of LSVs are authorized on any road with the following restrictions:

- (1) A low-speed vehicle or mini truck **may be operated only on streets where the posted speed limit is 35 miles per hour or less**. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour. (emphasis added).
- (2) A low-speed vehicle **must be equipped with** headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.
- (3) A low-speed vehicle or mini truck **must be registered and insured** in accordance with Sec. 320.02 and titled pursuant to Chapter 319.
- (4) Any person operating a low-speed vehicle or mini truck **must have in his or her possession a valid driver license**. (emphasis added).
- (5) A county or **municipality may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction** if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.
- (6) The Department of Transportation may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.

As Sec. 316.2122, Fla. Stat. only authorizes the operation of LSVs on certain public roads. LSVs are not permitted to operate on sidewalks. The Florida Department of Highway Safety and Motor Vehicles also permits the conversion of golf carts to LSVs by allowing golf cart owners to modify their golf carts to comply with LSV statute restrictions.<sup>95</sup>

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<sup>94</sup> Sec. 320.01(41), Fla. Stat. (emphasis and internal parenthetical added).

<sup>95</sup> See, e.g., Fla. Dep't of Highway Safety and Motor Vehicles, Division of Motorist Services, Form HSMV 86-64 "Affidavit for Golf Cart Modified to a Low Speed Vehicle." available at <https://www.flhsmv.gov/pdf/forms/86064.pdf>

## ii. CASELAW DISCUSSING LOW-SPEED VEHICLES

While there have been no AGOs interpreting the LSV statute, one Appellate Decision from the Eleventh Circuit has stated that, under Florida law, LSVs are not “cars” for purposes of automobile insurance. In *State Farm Mut. Auto. Ins. Co. v. Baldassini*, 545 Fed. Appx. 842 (11th Cir. 2013), an insurer brought action seeking declaration that an automobile policy did not cover accidents that occurred while the insured’s daughter was operating an LSV. The Eleventh Circuit held that, under Florida law, LSVs (and four-wheel electric vehicles) are not designed for main use on public roads and thus did not fall within the definition of a “car” covered by insured’s automobile insurance policy.

## VI. AUTONOMOUS VEHICLES & PERSONAL DELIVERY DEVICES<sup>96</sup>

### A. AUTONOMOUS VEHICLES

As an emerging technological advancement, automated vehicles have begun to present a new challenge to municipal regulation and pedestrian safety. Florida was among the first states in the nation to authorize autonomous vehicles on its roadways.<sup>97</sup>

Florida law governing autonomous vehicles, like that of many regulators, derives its taxonomy and regulatory framework from SAE International, *Surface Vehicle Recommended Practice J3016* (June 2018).<sup>98</sup> Florida law defines an “autonomous vehicle” as “any vehicle equipped with an automated driving system.”<sup>99</sup> An “automated driving system” (ADS) refers to hardware and software that is “collectively capable of performing the entire dynamic driving task of an autonomous vehicle on a sustained basis, regardless of whether it is limited to a specific operational design domain.”<sup>100</sup> The “dynamic driving task” (DDT) means “all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within its specific operational design domain, if any, excluding strategic functions such as trip scheduling and selection of destinations and waypoints.”<sup>101</sup> The “operational design domain” (ODD) is the “specific operating domain in which an automated driving system is designed to properly operate.”<sup>102</sup> That may include things like roadway types, speed ranges, and environmental conditions such as weather and time of day. Although any vehicle with an ADS can be considered “autonomous,” a vehicle is only “fully autonomous” if it is “equipped with an automated driving system designed to function without a human operator.”<sup>103</sup> Within this framework, SAE recognizes six different levels of automation, from no automation and driver assistance, through full driving automation, where the vehicle can perform all driving functions under all conditions, though the driver may have the option to control the vehicle.<sup>104</sup>

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<sup>96</sup> For a comprehensive discussion and analysis of the legal issues presented by autonomous vehicles, see Brent Steinberg, “Autonomous Vehicles and Transportation Network Companies,” AIN FL-CLE 9-1(2020), which is relied upon extensively in this section.

<sup>97</sup> § 316.85, Fla. Stat. (2012).

<sup>98</sup> *Id.* at § 9.2.A.; SAE International, formerly named the Society of Automotive Engineers, is a United States-based, globally active professional association and standards developing organization for engineering professionals in various industries.

<sup>99</sup> § 316.003 (3) (a), Fla. Stat.

<sup>100</sup> § 316.003 (3), Fla. Stat.

<sup>101</sup> § 316.003 (3) (b), Fla. Stat.

<sup>102</sup> § 316.003 (3) (d), Fla. Stat.

<sup>103</sup> § 316.003 (3) (c), Fla. Stat.

<sup>104</sup> SAE International, *Surface Vehicle Recommended Practice J3016*

In Florida, fully autonomous vehicles may operate themselves on Florida roadways without any human operator at all.<sup>105</sup> Autonomous vehicles must be registered like any other vehicle operated on Florida roads.<sup>106</sup> However, there are no additional registration requirements specific to autonomous vehicles. There are no testing or inspection requirements for an fully autonomous vehicle to be operated on a Florida roadway. All autonomous vehicles registered (rather than operated) in Florida must “be capable of being operated in compliance with the applicable traffic and motor vehicle laws of this state, regardless of whether the vehicle is operating with the automated driving system engaged.”<sup>107</sup>

There are a few exceptions when, by statute, an autonomous vehicle need not comply with the same traffic laws as human drivers. For example, fully autonomous vehicles that are involved in a collision while the ADS is enabled are generally exempt from the statutory duties to (1) give information and render aid, (2) locate or leave a note for the owner of an unattended vehicle after a collision, or (3) notify authorities of a crash resulting in injury or property damage of \$500 or greater.<sup>108</sup> Instead, the owner or owner’s agent may “promptly” contact law enforcement to report the crash, or the vehicle itself may alert law enforcement if it has that capability.<sup>109</sup>

Notably, local governments are prohibited from imposing any other requirements on ADSs or autonomous vehicles.<sup>110</sup> The statute explicitly provides that “A local government may not impose any tax, fee, for-hire vehicle requirement, or other requirement on automated driving systems or autonomous vehicles or on a person who operates an autonomous vehicle, including, but not limited to, a person who operates an autonomous vehicle for purposes of providing passenger transportation services.”<sup>111</sup> Similarly, the statute provides that traffic or motor vehicle laws of this state “*may not* be construed to: (1) [p]rohibit the automated driving system from being deemed the operator of an autonomous vehicle operating with the automated driving system engaged, or (2) [r]equire a licensed human operator to operate a fully autonomous vehicle.”<sup>112</sup>

## **B. PERSONAL DELIVERY DEVICES AND MOBILE CARRIERS**

In addition to autonomous vehicles on Florida’s roadways, pedestrians are increasingly likely to encounter personal delivery devices on sidewalks.

A “personal delivery device” (PDD) is an electrically powered device, designed to operate on sidewalks and crosswalks for the purpose of transporting property.<sup>113</sup> A PDD must not have a weight that exceeds the maximum weight established by Department of Transportation Rule, have a maximum speed of 10 miles per hour, and be equipped with technology that will allow for operation of the device without or without the active control and monitoring of a natural person.<sup>114</sup> “A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle.”<sup>115</sup> A mobile carrier is not considered a personal delivery

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<sup>105</sup> § 316.85 (1)-(2), Fla. Stat.

<sup>106</sup> § 320.02, Fla. Stat.

<sup>107</sup> § 319.145 (1) (b), Fla. Stat.

<sup>108</sup> §§ 316.062 (5), 316.063 (4), and 316.065(5) Fla. Stat.

<sup>109</sup> *Id.*

<sup>110</sup> § 316.85 (6), Fla. Stat.

<sup>111</sup> *Id.*

<sup>112</sup> § 316.85 (3) (b), Fla. Stat. (emphasis supplied)

<sup>113</sup> § 316.003 (58)

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

device.”<sup>116</sup> Although not considered a personal delivery device, a “mobile carrier” is essentially the same thing as a personal delivery device except that it is equipped with technology to transport personal property with the active monitoring of a property owner, has a maximum speed of 12.5 miles per hour, and is primarily designed to remain within 25 feet of the property owner.<sup>117</sup>

Florida law allows personal delivery devices and mobile carriers to operate on sidewalks and at crosswalks so long as they do not “unreasonably interfere with pedestrians or traffic” and “yield the right-of-way to pedestrians.”<sup>118</sup> They must also obey all official traffic and pedestrian signals and devices and be equipped with a braking system that enables the device to come to a controlled stop.<sup>119</sup>

Although a personal delivery device may have the capability to operate autonomously, a “personal delivery device operator” — defined as an “entity or its agent that exercises direct physical control over or monitoring of the navigation system and operation of a personal delivery device,” — must actively control or monitor the navigation and operation of the device while it is operating on a sidewalk or crosswalk.<sup>120</sup> Personal delivery devices and mobile carriers may not operate on a public highway (except at a crosswalk) or transport hazardous materials.<sup>121</sup> Mobile carriers may not transport persons or animals either.<sup>122</sup>

A person who owns and operates a personal delivery device in Florida must maintain an insurance policy, which provides general liability coverage of at least \$100,000 “for damages arising from the combined operations of personal delivery devices under the entity's or agent's control.”<sup>123</sup>

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<sup>116</sup> *Id.*

<sup>117</sup> § 316.003 (43).

<sup>118</sup> § 316.2071, Fla. Stat.

<sup>119</sup> § 316.2071 (2) (a) & (c), Fla. Stat.

<sup>120</sup> §§ 316.003 (59) & 316.2071 (3) (b).

<sup>121</sup> §§ 316.2071(3) (a), (c); 316.003 (31).

<sup>122</sup> § 316.2071 (3) (d).

<sup>123</sup> § 316.2071(4).



**AGENDA ITEM NO. 9**

**OTHER BUSINESS**

**None.**

**AGENDA ITEM NO. 10**

**ADJOURNMENT.**