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MEMORANDUM

Date: January 13, 2026 OPI 2026-0106
To: Board of County Commissioners
Through: Janette S. Knowlton, County Attorney *JK*
From: Thomas M. David, Deputy County Attorney *TD*
Subject: Punta Gorda Utility Service Area Codification

Question presented:

Representative Vanessa Oliver provided a proposed bill that originally contained the following provision in section 2(1)¹: "The boundaries of the Punta Gorda Utility District should be codified to accurately reflect the existing corporate limits of the City of Punta Gorda." The board discussed this bill at a special meeting on December 16, 2025, at which time the board asked the county attorney to opine on whether the proposed codification is necessary.

Brief answer:

The City of Punta Gorda adopted Ordinance No. 1860-16 on November 2, 2016, which deleted the term "exclusive provider" from the city's powers to provide water/wastewater in its Utility Service Area. The city amended its provision of services to its Utility Service Area deleting its status as "exclusive provider." By doing so, the county may reasonably consider the city as no longer assuming the legal duty to provide reasonably adequate services for reasonable compensation to all of the public in Utility Service Area and does not amount to an affirmative expression of intent to serve all potential customers in the area.

¹ The bill may have been amended subsequently to read in pertinent part as follows: "The boundaries of the Punta Gorda Utility District (the "District") must be established."

The proposed legislation would, if enacted in its original form, establish the city's Utility Service Area as lying within the city's municipal boundaries excluding any unincorporated areas.²

The authorities granted to the county under Chapters 125, and 153, Florida Statutes, and to the city under Chapters 166 and 180, Florida Statutes, along with inherent powers under the Florida constitution, appear to be sufficient to provide water/wastewater services in the unincorporated areas of Charlotte County. That is not to say, however, that the county and city have enacted ordinances or entered into interlocal agreements to delineate the areas where each entity may provide such services to the exclusion of the other. The county retains authority under Chapters 125 and 153, Florida Statutes, to provide water/wastewater services in the unincorporated areas and elsewhere, absent statutory conflicts.

Discussion:

The Florida Statutes, as amended from time to time, grant authority to counties and municipalities to provide water/wastewater services within and without their jurisdictions.

COUNTY AUTHORITY

Under Chapter 125, Florida Statutes, a county may “[p]rovide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs.”³

Under the County Water System and Sanitary Sewer Financing Law, any of the several counties of the state which may hereafter come under the provisions of Chapter 153, Fla. Stat., is authorized and empowered:

To purchase and/or construct and to improve, extend, enlarge, and reconstruct a water supply system or systems or sewage disposal system or systems, or both, within such county and any adjoining county or counties and to purchase and/or construct or reconstruct water system improvements or sewer improvements, or both, within such county and any adjoining county or counties and to operate, manage and control all such systems so purchased and/or constructed and all properties pertaining thereto and to furnish and supply water and sewage collection and disposal services to any of such counties and to any municipalities and any persons, firms or corporations, public or private, in any of such counties; provided, however, that none of the facilities provided by this chapter may be constructed, owned, operated or maintained by the county on property located within the corporate limits of any municipality without the consent of the council, commission or body having

² The city's current Utility Service Area includes specified lands in unincorporated Charlotte County.

³ § 125.01(k)(1), Fla. Stat., also see Crandon v. Hazlett, 26 So. 2d 638, 642 (Fla. 1946) (Counties have powers expressly vested in them by statute, or that must be necessarily implied to carry into effect expressly vested powers).

general legislative authority in the government of such municipality unless such facilities were owned by the county on such property prior to the time such property was included within the corporate limits of such municipality. **No county shall furnish any of the facilities provided by this chapter to any property already being furnished like facilities by any municipality⁴ without the express consent of the council, commission or body having general legislative authority in the government of such municipality.**⁵

(emphasis added.)

MUNICIPAL AUTHORITY

The city's general powers are as follows:

As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

"Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.

The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

- (a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- (b) Any subject expressly prohibited by the constitution;
- (c) Any subject expressly preempted to state or county government by the constitution or by general law; and
- (d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.⁶

⁴ Section 2 of Ord. No. 1363-03 authorizes the city to "establish special assessments for specially benefited property within the [Utility Service Area]." However, a review of the tax records in the area does not indicate that the city imposed any such assessments. A properly imposed special assessment could subject unincorporated properties to this provision.

⁵ § 153.03(1), Fla. Stat.

⁶ § 166.021, Fla. Stat.

The following specific powers have been available to municipalities since at least 1995:

Any municipality may extend and execute all of its corporate powers applicable for the accomplishment of the purposes of this chapter outside of its corporate limits, as hereinafter provided and as may be desirable or necessary for the promotion of the public health, safety and welfare or for the accomplishment of the purposes of this chapter; provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality.⁷

In the event any municipality desires to avail itself of the provisions or benefits of this chapter, it is lawful for such municipality to create a zone or area by ordinance and to prescribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect, when available, with any sewerage system or alternative water supply system, including, but not limited to, reclaimed water, aquifer storage and recovery, and desalination systems, constructed, erected and operated under the provisions of this chapter; provided, however, in the creation of said zone the municipality shall not include any area within the limits of any other incorporated city or village, nor shall such area or zone extend for more than 5 miles from the corporate limits of said municipality.⁸

When it is proposed to exercise the powers granted by this chapter, a resolution or ordinance shall be passed by the city council, or the legislative body of the municipality, by whatever name known, reciting the utility to be constructed or extended and its purpose, the proposed territory to be included, what mortgage revenue certificates or debentures if any are to be issued to finance the project, the cost thereof, and such other provisions as may be deemed necessary.⁹

To provide water and alternative water supplies, including, but not limited to, reclaimed water, and water from aquifer storage and recovery and desalination systems for domestic, municipal or industrial uses.¹⁰

To provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes.¹¹

EXPANSION OF WATER AND SEWER SERVICES AND ANNEXATION

The Florida Supreme Court considered the following question posed in Allen's Creek Properties, Inc. v. City of Clearwater, 679 So. 2d 1172, 1175 (Fla. 1996):

⁷ § 180.02(2), Fla. Stat.

⁸ § 180.02(3), Fla. Stat.

⁹ § 180.03(1), Fla. Stat.

¹⁰ § 180.06(3), Fla. Stat.

¹¹ § 180.06(4), Fla. Stat.

MAY A MUNICIPALITY REFUSE TO PROVIDE SEWER SERVICE, OR CONDITION THE PROVISION OF SEWER SERVICE ON ANNEXATION, AS TO NONRESIDENTS LOCATED WITHIN ITS EXCLUSIVE SEWER SERVICE TERRITORY ESTABLISHED PURSUANT TO INTER-LOCAL AGREEMENTS WITH NEIGHBORING MUNICIPAL SEWER SERVICE PROVIDERS?¹²

The court found that "a municipal corporation has no duty or responsibility to supply services to areas outside its municipal boundaries."¹³ The court reasoned that there were two exceptions to this general rule. The first is when a city has agreed to supply services pursuant to a contract,¹⁴ such as the interlocal between the county and city that reportedly expired or was terminated prior to 1984. The second is when a city assumes the legal duty or otherwise manifests an intent to supply services in a specified area or territory.¹⁵ It is important to note, however, that the court determined that "providing service outside municipal boundaries in only limited situations does not amount to an affirmative expression of intent to serve all in an area."¹⁶

The court's analysis in Allen's Creek should be viewed in the context of its primary holding, which is that a municipality "may condition upon annexation the landowner's receipt of sewer services" so long as the annexation condition is applied "consistently" and that "a reasonable justification for the condition" exists.¹⁷ In other words, the court's analysis of the nature of a municipality's extraterritorial utility service may be dictum¹⁸ instead of a holding of precedential value.

For purposes of this memorandum, it is enough to note that the court found it necessary to determine the nature of a city's intent to supply services in a specified area or territory; therefore, this memorandum investigates this question in the next section.

CITY'S EXTENSION OF WATER/WASTEWATER SERVICES

A. The 1984 ordinances (composite Exhibit "1")

Pursuant to Chapter 180, Florida Statutes, the City of Punta Gorda ("city") adopted Ord. No. 759-84 on August 15, 1984, extending potable water service outside its municipal boundaries. The ordinance stated that the county and city mutually agreed to terminate an

¹² Allen's Creek Properties at 1173-4 (Fla. 1996).

¹³ Allstate Ins. Co. v. City of Boca Raton, 387 So. 2d 478, 479 (Fla. 4th DCA 1980).

¹⁴ Allen's Creek Properties at 1175 (Fla. 1996) (internal citations omitted) ("[A] municipality may be required to extend its services if it has agreed to do so by contract. [] In such cases the municipality will be required to serve all the public in that area at the lowest possible cost with the most efficiency...") (emphasis added.)

¹⁵ Id at 1176 ("[T]hrough its conduct a municipality may assume the legal duty to provide reasonably adequate services for reasonable compensation to all of the public in an unincorporated area. ... We add however that the conduct must expressly manifest the municipality's desire or intent to assume that duty. A municipality's decision to provide service without restriction in an area outside its boundaries would meet this requirement.")

¹⁶ Id.

¹⁷ Id at 1176-77.

¹⁸ See Pedroza v. State, 291 So. 3d 541, 547 (Fla. 2020) (Any statement of law in a judicial opinion that is not a holding is dictum.)

interlocal agreement for the provision of potable water service. The purpose included serving "the demand equivalent of 18 single family homes" subject to specific rules.¹⁹ The ordinance continued:

The City agrees to take all reasonable and diligent actions necessary to supply a sufficient quantity of potable water, as that term may from time to time be defined by the statutes and regulations of the State of Florida, to meet the needs of present users both within the corporate limits of the City, and the above described portion of Charlotte County without the corporate limits of the City and to allow new connections to the system to whatever extent will not injure or jeopardize those persons whose premises are now and shall be connected to said system.

(emphasis added.)

Injury to the system was defined as exceeding the service to the specified demand equivalent. The ordinance contained additional details describing the extent of the service it intended to provide.

Also pursuant to Chapter 180, Florida Statutes, the city adopted Ord. No. 775-84 on November 7, 1984, extending wastewater collection and disposal service outside its municipal boundaries.

B. The 2003 ordinance (Exhibit "2")

The city adopted Ord. No. 1363-03 on December 3, 2003, to update Ordinance Nos. 759-84 and 775-84 and to incorporate their provisions "into a single ordinance with a revised service area."

The ordinance provided as follows:

Under the provisions of Chapter 180, [Florida Statutes], there is hereby created an area outside the corporate limits of the City of Punta Gorda wherein ***the City will be the exclusive provider of potable water supply, treatment and distribution, and wastewater collection, transmission, treatment and disposal for domestic, municipal and industrial uses...***²⁰

(emphasis added.)

Section 2 of the ordinance enacted "rules governing the provision of potable water" and section 3 enacted "rules governing the provision of wastewater collection, transmission, treatment, and disposal." The ordinance contained a legal description and map of the city's "Utility Service Area."²¹ Following are notable provisions of the ordinance:

¹⁹ Ord. No. 775-84 at Sec. (2)(a).

²⁰ Ord. No. 1363-03, Sec. 1.

²¹ See Ord. No. 1363-03 at ordinance exhibits "A" and "B."

The City shall, subject to its discretion and in the best interest of utility ratepayers, take reasonable and diligent actions necessary to develop sufficient water supply, treatment and distribution facilities, as these terms may from time to time be defined by statutes and regulations of the State of Florida, ***to meet the needs of present users both within the corporate limits of the City and the described portion of Charlotte County outside the corporate limits of the City and to allow new connections to the system to whatever extent will not injure or jeopardize those persons whose premises are now and shall be connected to said water system.***²²

The City may establish special assessments by ordinance to specially benefited properties within the described portion of Charlotte [County] to accomplish construction, extension, or improvements to the water system.²³

No water treatment plant or other facility for the distribution of water shall be constructed within the described portion of Charlotte County unless the City Council or its designee shall give its consent thereto and approve the plans and specifications therefor.²⁴

(emphasis added.)

C. The 2016 ordinance (Exhibit "3")

Most notably, the city then substantially amended Sec. 1 of Ord. No. 1363-03 when it adopted Ord. No. 1860-16 on November 2, 2016, to provide as follows (strikethroughs are deleted, underlines are added):

Section 1. Under the provisions of Chapter 180, F.S., there is hereby created an area outside the corporate limits of the City of Punta Gorda ~~wherein the City will be the exclusive provider of the City may, subject to its discretion and in the best interest of the City, provide~~ potable water supply, treatment and distribution, and wastewater collection, transmission, treatment and disposal for domestic, municipal and industrial uses, said area being described in Exhibits "A" and "B" attached ~~hereto and incorporated herein to Ordinance No. 1363-03~~. Said area and the corporate limits of the City of Punta Gorda shall be considered the "Utility Service Area" for water and wastewater service provided by the City of Punta Gorda. Prior to providing any utility services to real property within the 'Utility Service Area' but outside of the territorial limits of the City, the City shall have the right to require the property owner applying for utility service to enter into an agreement to annex into the City if the subject property is contiguous to the City and is reasonably compact at the time of application. If, at the time of application the subject real property is not contiguous to the City, or is contiguous but not reasonably compact, the City shall have the right to

²² Ord. No. 1363-03, Sec. 2(a).

²³ Ord. No. 1363-03, Sec. 2(i).

²⁴ Ord. No. 1363-03 at Sec. 2(j).

require the property owner applying for utility service to enter into an agreement to annex into the City when the subject property becomes contiguous to the City and reasonably compact. The terms 'contiguous' and 'reasonably compact' shall be as defined in Section 171.031, Florida Statutes, as the same may from time to time be amended.

CONCLUSION

County and municipal authority overlaps under the statutes. For example, the county is "authorized and empowered" under Chapter 153, Florida Statutes "to purchase and/or construct and improve, extend, enlarge, and reconstruct a water supply system or systems or sewage disposal system or systems, or both, within such county..." sec. 125.01(k)(1), Fla. Stat.

At the same time, "it is lawful for any municipality to create a zone or area by ordinance and to prescribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect, when available, with any sewerage or alternative water supply system..."

The statutory scheme does not address conflicts between these jurisdictional statutes, but the Florida Supreme Court has interpreted certain aspects of the statutory scheme.

When the city deleted "wherein the City will be the exclusive provider of "water and wastewater services," from its powers to provide the enumerated utility services in its Utility Service Area, the city, through its conduct, was no longer assuming "the legal duty to provide reasonably adequate services for reasonable compensation to all of the public in an unincorporated area."²⁵ By doing so, the county may fairly conclude the city is no longer assuming the legal duty to provide reasonably adequate services for reasonable compensation to all of the public in the designated unincorporated area, which does not amount to an affirmative expression of intent to serve all in the area.

The county thus retains its Chapter 125 and 153 powers to provide utility services in that unincorporated area, subject to the restrictions described in those chapters.

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²⁵ Allen's Creek Properties at 1175 (Fla. 1996).