

5941 Greenwood Lane
Pensacola, FL 32504
March 26, 2020

The Honorable Jewel Cannada-Wynn
Council President
Pensacola City Council
The City of Pensacola
222 West Main Street
Pensacola, FL 32502

Dear Council President Cannada-Wynn:

The City of Fort Walton Beach, City of Milton and City of Gulf Breeze have all recently declared states of emergency. I do not know if their actions were preceded by declarations of a state of emergency by Okaloosa County and Santa Rosa County or if a county declaration is a prerequisite for a municipality to declare a state of emergency. It may be a relevant question to ask because in Florida counties exercise countywide emergency powers. As example, if Escambia County imposed a countywide curfew, the city would be subject to it.

In Fort Walton Beach, Mayor Dick Ryneanson is a member of the city council. The city council declared the state of emergency. Pensacola's Assistant City Attorney Heather Lindsay is the Mayor of Milton. She is not a member of the Milton City Council. In Milton, the city council declared the state of emergency. On March 19, Gulf Breeze declared a local state of emergency. Gulf Breeze's city code expressly vests the power to take this action in the city council or the mayor. The mayor is a member of the city council. When the mayor declares a state of emergency as was done by Mayor Cherry Fitch, it remains in effect until rescinded by the mayor or until the next city council meeting, whichever occurs first.

In today's Pensacola News Journal reporter Jim Little's story about tonight's meeting included these two paragraphs:

The top item on the council agenda is extending the city's state of emergency because of the coronavirus to May 28.

Robinson declared a state of emergency in the city on March 18, which unlocked emergency powers to hire workers, suspend ordinances or policies and make other emergency management management decisions. Under the city charter, the mayor can only unilaterally declare an emergency for 30 days, and the council must approve any extension.

Mr. Little's reporting includes several statements perhaps told to him by city hall officials that may not be true. First, no provision in state law or the city code expressly or implicitly infers upon the mayor a power unilaterally to declare a state of emergency let alone to do so without

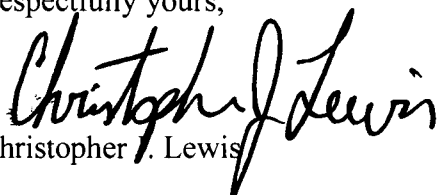
even the knowledge of the city council. Second, the mayor's emergency powers described in Section 2-4-8 *Authority of Mayor During State of Emergency* were not "unlocked" by him but activated by city law when Governor Ron DeSantis issued his Executive Order Number 20-52. Third, there is no provision in the Charter for the City of Pensacola ("Charter") mentioned by Mr. Little that is expressly or implicitly related to the exercise of emergency powers or other powers of the governing body that a mayor may seek to unilaterally usurp on his own authority.

The Florida League of Cities' Florida Municipal Officials Manual explains that a "[M]ayor must look to the charter and specific delegations of authority by the council for most of his [or her] formal powers." In the City of Pensacola, the power to declare a state of emergency is by default in the absence of a specific statutory delegation reserved to the city council exercising its broad grant of municipal powers provided by Section 166.021 *Powers*, Florida Statutes. This view is reinforced by the long list of emergency powers granted to the mayor in Section 2-4-8. A review of its legislative history shows also that the city council that adopted it in 2005 and amended it in 2010 did not appear to intend to grant the mayor vast, unchecked unilateral powers unrelated to implementing the very specific tasks described in Section 2-4-8. Three current Councilmembers P.C. Wu, John Jerralds and Jewell Cannada-Wynn were on the city council in 2005 and 2010.

In my view, Mayor Robinson's two declarations were issued without apparent legal authority. Further, the effective date authorizing Mayor Robinson's exercise of the emergency powers described in Section 2-4-8 is not March 18 as he claims but March 9 the date when Governor Ron DeSantis issued Executive Order Number 20-52. On March 9, Mayor Robinson or in his absence his designee should have requested a special meeting of the city council but did not. The city council was that same day gathered for an agenda conference. It also held a regular meeting on March 12 attended by Mayor Robinson. As the first sentence of Section 2-4-8 explains in unambiguous language it is only made effective, "Upon declaration of a state of emergency by the president of the United States, by the governor of the State or Florida or by Escambia County for any area that includes the City of Pensacola...." The operative word in that sentence is "or." The first of these events on March 9 activated Section 2-4-8. There is no provision for its activation upon the unilateral declaration of a state of emergency by the mayor.

I have enclosed four documents that may be helpful when discussing Mayor Robinson's request: 1) Review of Emergency Management Authorities; 2) Ordinance 08-05 adopted on August 11, 2005; 3) the Section 2-4-8 changes made by Ordinance 16-10 adopted on September 9, 2010; and 4) Section 252.38 Emergency Management Powers of Local Subdivisions, Florida Statutes.

Respectfully yours,


Christopher J. Lewis

Enclosures (4)

Copy to:
Pensacola City Council

Enclosure (1)

REVIEW OF EMERGENCY MANAGEMENT AUTHORITIES

Review of Emergency Actions Taken After Hurricane Ivan

Hurricane Ivan hit Pensacola on September 16, 2004. The city council held a special meeting on September 21, 2004 at which time it adopted two emergency ordinances. The power to adopt emergency ordinances is regulated by state law specifically Section 166.041 *Procedures for the Adoption of Ordinances and Resolutions*, Florida Statutes, part of Chapter 166 *Municipalities*, Florida Statutes better known as the *Municipal Home Rule Powers Act*. The most important part of Chapter 166 is Section 166.021 *Powers* describing the powers exercised by the governing body of a municipality that in the City of Pensacola is its city council. In 2011, the mayor was removed from the city council and exercises no powers of the city's governing body. The mayor mostly assumed the duties of the prior city manager with a net loss in administrative authority because the city manager was subject to removal by the city council at any time for any or no reason. The first emergency ordinance gave City Manager Tom Bonfield temporary powers to take necessary steps for the reconstruction and repair of the city. The second emergency ordinance prohibited the sale or serving of alcohol during curfew hours; prohibited burning yard trash; made it illegal to trespass at City Hall, Sanders Beach Recreational Center, Bayfront Auditorium; and closed-off portions of Bayfront Parkway and Main Street, Corrine Jones Center and Wayside Park, and the concession stand and fishing pier at Wayside Park.

Section 2-4-8 Authority of City Manager During State of Emergency, Code of Ordinances

Based on lessons learned from Hurricane Ivan, City Attorney Don Caton recommended that the city council adopt an ordinance as it did on August 11, 2005 "Granting Certain Emergency Powers to the City Manager." Use of the word "certain" emphasizes that the legislative intent was limited and not intended to grant expansive powers to the city manager. Current Councilmembers P.C. Wu, John Jerralds and Jewell Cannada-Wynn were on the city council at the time of the adoption of this ordinance. The practical intent of the ordinance was for the city council to pre-authorize the city manager to exercise certain temporary emergency powers prior to the city council meeting after the commencement of an emergency. The City Council Memorandum in support of adoption of Section 2-4-8 summarized the need for the ordinance this way, "The City Attorney has suggested that an ordinance be developed to codify the long-time practice of granting certain emergency powers to the City Manager during declared emergencies. The attached ordinance outlines the conditions and time frame by which these powers could be granted."

Section 2-4-8 Authority of Mayor During State of Emergency, Code of Ordinances

On September 9, 2010, the city council amended Section 2-4-8 replacing nine references to "city manager" with "mayor." There were no substantive changes at all made to the ordinance. Current Councilmembers Wu, Jerralds and Cannada-Wynn were on the city council at the time of amendment of the ordinance.

Change from Appointed City Manager to Elected Mayor as Chief Administrative Officer

On November 24, 2009, voters approved a new Charter for the City of Pensacola ("Charter") that effective January 10, 2011 changed the city's chief administrative officer from an appointed city manager who could be removed at any time for any or no reason by the city council to an elected mayor who could only be replaced by voters once every four years. The mayor is required "to attend all meetings of the city council." Whereas the old city manager was appointed after a nationwide search of professional administrators, the new chief administrative officer was a politician who had to be living within the city limit more than 16 months prior to the election date and was not required to have prior administrative experience.

Although the position of city administrator originally was to be an optional appointment, the final version of the new Charter proposed on August 25, 2009 by the Pensacola Charter Review Commission (CRC) mandated the assignment to assist the mayor. During the administration of Mayor Ashton Hayward, seven persons served as city administrator in name, in an acting capacity or by functional equivalent during eight years with all but one of the persons assuming the position with no prior city manager or county administrator experience.

The Charter proposed by the CRC provided for a separation of powers and checks and balances as described by its Chairwoman Crystal Spencer and Legal Counsel Margaret Stopp in a joint August 10, 2009 letter to the city council, "As I recall the discussion of the CRC, the intent was to create a balance of powers within a Mayor-Council form of government (not "strong" mayor form of government)." They later added, "As Margaret and I recall the discussions of the CRC, this is another example of creating a balance of power (check and balances)."

Mayor Hayward who holds a B.S. degree in Political Science from Florida Statute University claimed that he exercised the ultimate power to decide what the Charter meant and claimed also that the city council exercised only a few and very limited powers and he exercised all the rest of the power. This is contrary to the intent of the *Municipal Home Rule Powers Act* that grants expansive powers to the governing body of a municipality.

Mayor Hayward's vision of his role was also contrary to what is described in the Florida League of Cities' Florida Municipal Officials Manual, "The office of mayor has all the powers designated to it by the city charter, or delegated to it by the council, provided that these designated or delegated powers are not inconsistent with the charter or state and federal constitutions and laws. The mayor must look to the charter and specific delegations of authority by the council for most of his formal powers; in addition, some powers are assigned to mayors by state and federal law. In general, the mayor should claim and should attempt to exercise only those powers for which explicit authorization is found in one or another of these sources."

Chapter 252 *Emergency Management*, Florida Statutes

Chapter 252 cited by both Governor Ron DeSantis and Mayor Grover Robinson in various declarations of a state of emergency is 42-pages long. The terms "municipal," "municipality" and "municipalities" appear 18 times in Chapter 252. The term "governing body" appears seven times. The term "chief administrative officer of the county" appears once. The term "mayor" does not appear at all.

Certain key aspects of Chapter 252 are important to an objective review of Section 2-4-8:

1. Section 252.34 *Definitions* defines a "political subdivision" as "any county or municipality created pursuant to law."
2. Section 252.38 *Emergency Management Powers of Political Subdivisions* provides in part:
 - (a) "Safeguarding the life and property of its citizens is an innate responsibility of the governing body (*emphasis added*) in each political subdivision of the state."
 - (b) "Except as otherwise provided in ss. 252.31-252.90, each local emergency management agency shall have jurisdiction over and serve an entire county."
 - (c) "Each county emergency management agency shall perform emergency management functions within the territorial limits of the county within which it is organized...."
 - (d) Municipalities are not required to have an emergency management plans but may adopt one "consistent with and subject to the applicable county emergency management plan."
 - (e) "[E]ach municipality must coordinate requests for state and federal emergency management response with its county."
 - (f) "Municipalities without emergency management programs shall be served by their respective county agencies."

The City of Pensacola does not appear to have its own emergency management program, emergency management plan, emergency management agency or emergency management director as those terms are used in Chapter 252. Escambia County's countywide Comprehensive Emergency Management Plan (CEMP) assigns specific responsibilities and tasks to the City of Pensacola and its departments and advises that the city has "formally adopted" the National Incident Management System (NIMS) as its disaster operational management system.

COVID-19 Response

On March 1, Governor DeSantis issued Executive Order Number 20-51 directing the State Health Officer and Surgeon General Dr. Scott Rivkees to declare a public health emergency in the State of Florida.

On March 9, Governor DeSantis issued Executive Order Number 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19.

On March 9, the Pensacola City Council held an agenda conference meeting. Mayor Robinson did not attend.

On March 12, the Pensacola City Council held a regular meeting. Mayor Robinson did attend.

On March 13, President Donald Trump issued Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak retroactive to March 1.

On March 16, the Board of County Commissioners adopted resolution R2020-24 declaring a state of emergency for Escambia County for seven days to include all of the City of Pensacola.

On March 18, Mayor Robinson issued Declaration of State of Emergency 20-01 for thirty days from March 18 making it effective until April 8. It essentially did little more than restate the text of Section 2-4-8 *Authority of Mayor During State of Emergency*.

On March 19, Mayor Robinson issued Declaration of State of Emergency 20-02 imposing certain restrictions on private businesses within the city limit but exempting some to include restaurants at the city-owned airport. It is not known if these restricts imposed upon private businesses was coordinated with the State of Florida or Escambia County responsible for emergency management within the city limit during the COVID-19 emergency response.

On March 19, Mayor Robinson held a press conference to announce issuance of his second declaration adding also that under consideration by him was imposition of a possible future curfew from 10 p.m. to 6 a.m. that would affect both city and non-city residents.

Section 877.20-25, Florida Statutes, pertains to local juvenile curfew ordinances.

On March 20, Governor DeSantis issued Executive Order Number 20-71 that among its measures prohibited restaurants and food service establishments from providing on-premises food consumption.

On March 20, Mayor Robinson testified at a Board of County Commissioner's special meeting and described why he took his actions on March 18 and 19 his comments seeming to suggest that he did so at the urging of local hospital senior executives who wanted to shut down local businesses in response to COVID-19.

Mayor Robinson previously served on the board of directors of Baptist Health Care Foundation.

On March 23, Mayor Robinson's Declaration of State of Emergency 20-02 became effective at midnight and may be in conflict with Governor DeSantis' Executive Order Number 20-71. Mayor Robinson granted certain unexplained exemptions to emergency measures imposed by Governor DeSantis on March 20 to include with respect to on-premise restaurant operations at the city-owned airport, secure facilities and at hospitals. The airport and hospital cafeterias would seem to be communal areas of high risk for the contraction of COVID-19. Mayor Robinson has not since amended his Declaration of State of Emergency 20-02 to conform it to the measures described in Governor DeSantis' Executive Order Number 20-71.

Potential Questions With Respect to Emergency Management Authorities

1. What is the authority of the City of Pensacola to issue a declaration of a state of emergency absent its own emergency management program, emergency management plan, emergency management agency and emergency management director?

Escambia County's Declaration of a Local State of Emergency as described in its Code of Ordinances specifically Section 37-35 Declarations of Emergency; Local; Special activates the county's Comprehensive Emergency Management Plan that assigns specific responsibilities and tasks to the City of Pensacola. Must Escambia County first declare a state of emergency?

2. If the City of Pensacola does have the authority to issue its own declaration of a state of emergency in a national, statewide or countywide emergency, is approval of the declaration of a state of emergency a function of the city's governing body ("city council") or its chief administrative officer ("mayor")?

Nothing in the Charter, Code of Ordinances, Policies of the City Council or legislative history of Section 2-4-8 even infers that the city council intended to relinquish its power to the mayor.

3. If the City of Pensacola has authority to issue its own declaration of a state of emergency may it be for a period of 30 days as done by Mayor Robinson in his Declaration of State of Emergency 20-01?

The Board of County Commissioner's Resolution R2020-24 providing for a Declaration of State of Local Emergency is for a period of seven days.

4. If the City of Pensacola may issue a declaration of a state of emergency, must it be coordinated with or approved by the Board of County Commissioners of Escambia County?

5. What is Mayor Robinson's claimed administrative authority for issuing Declarations of State of Emergency 20-01 and 20-02 without the approval of the city council the governing body of the city's municipal corporation?

Mayor Robinson appears to assert on the advice of City Attorney Susan Woolf that the Section 2-4-8 phrase "to take such emergency measures as he determines necessary to protect the health, safety and welfare of the citizens" refers to the closure of some private businesses but not others and grants him an expansive set of undefined powers to include the unilateral imposition of a curfew, prospectively the confiscation of private property to include firearms or imposition of martial law wholly unrelated to the narrowly defined legislative purpose of Section 2-4-8 "to ensure the timely reconstruction and repair of structural damage caused by the emergency event" [none reported to date] and the continuing functioning of local government."

6. What is the Mayor Robinson's administrative authority for taking actions not approved by the city council and not coordinated with Escambia County to restrict the operations of private businesses, all of which operate with an Escambia County business license, and prospectively restricting personal civil liberties through imposition of a citywide curfew affecting city residents all of whom are county residents and county residents who are not city residents but have a need to move within the city to include for commerce or to get home?

The legislative history of Section 2-4-8 cited by Mayor Robinson suggests that the authority granted is narrowly limited to what City Attorney Caton called "certain emergency powers" as enumerated in the ordinance. The burden of proof to prove an alternate interpretation rests with Mayor Robinson. City Attorney Caton would know what he intended. With respect to the generic phrase "to protect the health, safety and welfare of the citizens" this may refer to city residents. In Advisory Legal Opinion 75-30 Residency and Municipal Board, Assistant Attorney General Gerald L. Knight advised City Attorney Caton, "Thus, within the context of such description, it would appear that the word citizen means a member of the political body of the City of

Pensacola; and since, by definition, membership in that political body cannot be obtained unless residence within the city is acquired, I am of the opinion that members of the City Planning Board of the City of Pensacola must be residents of that city." In sum, the term "the citizens" in the context of the City Code should probably be read to refer only to "the city residents."

7. Does state law give Mayor Robinson the authority to order the arrest of a person who complies with the measures described in declarations of a state of emergency issued by President Trump, Governor DeSantis or the Board of County Commissioners but violates additional measures imposed by him to regulate privately owned businesses or other measures also imposed only by him to include when his action is taken without approval of the city council?

In Section 9 of his Declaration of State of Emergency 20-02, Mayor Robinson directs, "This Order is enforceable by police pursuant to Florida Statute §252.47 as a second degree misdemeanor pursuant to Florida Statute §252.50." There is no dispute that with or without the existence of Section 2-4-8, Mayor Robinson has a duty to enforce measures enacted by President Trump, Governor DeSantis and the Board of County Commissioners of Escambia County. However, it is problematic if Mayor Robinson exercises such sweeping and unchecked law enforcement powers to, for example, arrest the owner or employees of Cordova Lanes a bowling alley that he directed be shut down on his own authority not supported in any way by declarations of a state of emergency issued by President Trump, Governor DeSantis or the Board of County Commissioners? That specific business closure seems arbitrary and capricious abuse of power. Ironically, Mayor Robinson closed down the privately owned Cordova Lanes bowling alley used a diverse cross-section of people to include its snack bar but did not close down the city-owned Roger Scott Tennis Center operated under contract by a private vendor near his home and where he and other dues paying members play tennis. Mayor Robinson's claim that the tennis center must remain open to provide him an athletic outlet is unpersuasive.

Enclosure (2)

PROPOSED
ORDINANCE NO. 08-05

ORDINANCE NO. 08-05

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE CREATING SECTION 2-4-8 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; GRANTING AUTHORITY TO THE CITY MANAGER DURING PERIODS OF EMERGENCY; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 2-4-8 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Sec. 2-4-8. Authority of city manager during state of emergency.

(a) Upon declaration of a state of emergency by the president of the United States, by the governor of the State of Florida or by Escambia County for any area which includes the City of Pensacola, the city manager shall be authorized and directed to take such emergency measures as he determines necessary to protect the health, safety and welfare of the citizens and to ensure the timely reconstruction and repair of structural damage caused by the emergency event and the continued functioning of local government. The city manager shall further be authorized to exercise such emergency management powers granted to political subdivisions by Florida law and may alter normal work schedules and grant the non-essential work force time off with pay. The City Manager will make the determination of which employees are deemed essential during each emergency. The City Manager is authorized to pay essential employees, both non-exempt and certain ranges of exempt under the Fair Labor Standards Act, at overtime rates when required to report for duty during the time the remaining work force is not required to report. The city manager shall further be authorized to waive or suspend all ordinances, policies, procedures or customs of the city as the city manager determines necessary for purchase of commodities and services, for contracts of no more than one year duration, for the

assignment of employees and for the facilitation of reconstruction and repair, both public and private, as the city Manager determines necessary. The city Manager is authorized to delegate such powers to staff as determined necessary to the effective administration of the government of the City of Pensacola. This authorization is subject to the limits of the Constitution and Laws of the United States and the State of Florida.

(b) The city manager's exercise of authority pursuant to this section shall exist for a period of thirty (30) days following declaration of a state of emergency unless extended or shortened by action of the city council.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall take effect immediately upon its passage by the City Council.

Passed: August 17, 2005

Approved: _____
Mayor

Attest:

Shirley F. White
City Clerk


Legal in form and valid
if enacted:

Doug Cohen
City Attorney

CITY COUNCIL MEMORANDUM

ITEM 12-A

TO: Mayor and City Council

FROM: Thomas J. Bonfield, City Manager 

DATE: August 11, 2005

SUBJECT: Proposed Ordinance No. 08-05 – Granting Certain Emergency Powers to the City Manager.

RECOMMENDATION: That City Council approve Proposed Ordinance No. 08-05 on second reading.

SUMMARY: The City Attorney has suggested that an ordinance be developed to codify the long-time practice of granting certain emergency powers to the City Manger during declared emergencies. The attached ordinance outlines the conditions and time frame by which these powers could be granted.

PRIOR ACTION: July 21, 2005, City Council approved Proposed Ordinance No. 08-05 on first reading.

CURRENT ACTION:

FUNDING: None Required.

ATTACHMENTS: Proposed Ordinance No. 08-05

STAFF CONTACT: Thomas J. Bonfield, City Manager; Don J. Caton, City Attorney.

PRESENTATION: No.

City of
Pensacola



Published Daily-Pensacola, Escambia County, FL

PROOF OF PUBLICATION

State of Florida
County of Escambia:

Before the undersigned authority personally appeared Kay Chastain, who on oath, says that she is a personal representative of the Pensacola News Journal, a daily newspaper published in Escambia County, Florida; that the attached copy of advertisement, being a Legal in the matter of :

NOTICE OF PROPOSED ORDINANCES

Was published in said newspaper in the issue(s) of:
JULY 31, 2005

Affiant further says that the said Pensacola News Journal is a newspaper published in said Escambia County, Florida, and that the said newspaper has heretofore been published in said Escambia County, Florida, and has been entered as second class matter at the Post Office in said Escambia County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this 5 day of AUGUST, 2005, by Kay Chastain, who is personally known to me.

Kay Chastain

Affiant

Nikki E. Nichols

Notary Public

NIKKI E. NICHOLS
Notary Public-State of FL
Comm. Exp. Aug. 01, 2009
Comm. No. DD 427341

NOTICE OF PROPOSED ORDINANCES

Please be advised that Proposed Ordinance Nos. 08-05 and 09-05 were presented to the City Council of the City of Pensacola for the first reading on Thursday, July 21, 2005, and will be presented for final reading and adoption on Thursday, August 11, 2005, at 7:00 p.m. in the Council Chambers on the First Floor of City Hall, 180 Governmental Center, Pensacola, Florida.

The titles of the proposed ordinances are as follows:

P.O. #08-05:
AN ORDINANCE CREATING SECTION 2-4-B OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; GRANTING AUTHORITY TO THE CITY MANAGER DURING PERIODS OF EMERGENCY; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

P.O. #09-05:
AN ORDINANCE CLOSING, ABANDONING AND VACATING A PORTION OF THE "A" STREET RIGHT-OF-WAY IN PENSACOLA, ESCAMBIA COUNTY, STATE OF FLORIDA; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

A copy of the proposed ordinances may be inspected by the public in the City Clerk's office located in the Fire Administration Building, 475 E. Strong Street, Pensacola, Florida. Interested parties may appear at the Council meeting and be heard with respect to the proposed ordinances.

If any person desires to appeal any decision made with respect to any matter considered at this meeting or public hearing, such person may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and any evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans With Disabilities Act and will make reasonable modifications for access to city services, programs and activities. Please call 435-1806 for further information. Requests must be made at least 48 hours in advance of the event in order to allow the city time to provide the requested services.

CITY OF PENSACOLA, FLORIDA
By: Shirley A. White, City Clerk

Visit www.ci.pensacola.fl.us to learn more about City activities. Council agendas posted on-line before meetings.

Legal No. 58100

TT

July 31, 2005

Enclosure (3)

SECTION 15. Section 2-4-7 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 2-4-7. Authority of mayor ~~city manager~~ and council president ~~city attorney~~ to conform regulations and procedures.

The mayor ~~city manager~~ and the ~~city attorney~~ city council president are hereby jointly conferred the authority to ~~administratively~~ conform the provisions of any regulation or procedure mandated by any provision of the Code of the City of Pensacola, Florida, to the requirements of law as may be determined by statute, regulation or by applicable judicial determination. Upon the recommendation of the city attorney, ~~When the~~ mayor ~~city manager~~ and the ~~city attorney~~ council president concur that a practice or procedure should be altered or amended ~~administratively~~ to conform to the current state of the law as reflected by statute, regulation or controlling judicial precedent, they shall exercise that authority in writing and shall notify the city clerk and the city council. This authority shall continue in effect until such time as the city council shall have an opportunity to address the matter.

SECTION 16. Section 2-4-8 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 2-4-8. Authority of mayor ~~city manager~~ during state of emergency.

(a) Upon declaration of a state of emergency by the president of the United States, by the governor of the State of Florida or by Escambia County for any area which includes the City of Pensacola, the mayor ~~city manager~~ shall be authorized and directed to take such emergency measures as he determines necessary to protect the health, safety and welfare of the citizens and to ensure the timely reconstruction and repair of structural damage caused by the emergency event and the continued functioning of local government. The mayor ~~city manager~~ shall further be authorized to exercise such emergency management powers granted to political subdivisions by Florida law and may alter normal work schedules and grant the non-essential work force time off with pay. The mayor ~~city manager~~ will make the determination of which employees are deemed essential during each emergency. The mayor ~~city manager~~ is authorized to pay essential employees, both non-exempt and certain ranges of exempt under the Fair Labor Standards Act, at overtime rates when required to report for duty during the time the remaining work force is not required to report. The mayor ~~city manager~~ shall further be authorized to waive or suspend all ordinances, policies, procedures or customs of the city as the mayor ~~city manager~~ determines necessary for purchase of commodities and services, for contracts of no more than one year duration, for the assignment of employees and for the facilitation of reconstruction and repair, both public and private, as the mayor ~~city manager~~ determines necessary. The mayor ~~city manager~~ is authorized to delegate such powers to staff as determined necessary to the effective administration of the government of the City of Pensacola. This authorization is subject to the limits of the Constitution and Laws of the United States and the State of Florida.

(b) The ~~mayor city manager's~~ exercise of authority pursuant to this section shall exist for a period of thirty (30) days following declaration of a state of emergency unless extended or shortened by action of the city council.

SECTION 17. Section 2-4-21 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 2-4-21. Qualifications and duties of city attorney.

~~The city attorney shall be an attorney-at-law who shall have practiced in the state for at least five (5) years or who shall have a minimum of three (3) years' experience in municipal law practice by virtue of previous employment by an incorporated municipality in the state. He shall be appointed by the council and be the chief legal advisor of and attorney for the city and all departments and offices thereof in matters relating to their official powers and duties. It shall be his duty, either personally or by such assistants as he may designate, to perform all services incident to the department of law; to attend all meetings of the council; to give advice in writing, when so requested, to the council, the city manager or the director of any department; to prosecute or defend, as the case may be, all suits or cases to which the city may be a party; to prosecute all offenses against the ordinances of the city and for such offenses against the laws of the state as may be required of him by law; to prepare all contracts, bonds and other instruments in writing in which the city is concerned, and to endorse on each his approval of the form and execution thereof; and to perform such other duties of a legal nature as the council may by ordinance require. In addition to the duties imposed upon the city attorney by this section or required of him by ordinance or resolution of the council, he shall perform any duties imposed upon the chief legal officers of municipalities by law.~~

The City Attorney shall serve as the chief legal adviser to, and shall represent, elected or appointed officials, boards and commissions, and employees in the course and scope of their official duties or employment, respectively. The City Attorney shall represent the City in legal proceedings and shall perform any other duties prescribed by State law, by the Charter, or by ordinance or resolution. The Mayor shall appoint the City Attorney, with the consent of the City Council by an affirmative vote of a majority of City Council Members. The City Attorney may be removed from office with the concurrence of the Mayor and a majority of the City Council.

SECTION 18. Section 2-4-36 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 2-4-36. West Florida Public Library.

Subject to the provisions of sec. 1-1-1(c), ~~There~~ is hereby created a department of the city to be known as the West Florida Public Library. The administration control of the department shall be the responsibility of the director of the West Florida Library. The director shall report to the ~~mayor city manager~~.

Enclosure (4)

The 2019 Florida Statutes

Title XVII

Chapter 252

[View Entire Chapter](#)

MILITARY AFFAIRS AND RELATED MATTERS

EMERGENCY MANAGEMENT

252.38 Emergency management powers of political subdivisions.—Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state.

(1) COUNTIES.—

(a) In order to provide effective and orderly governmental control and coordination of emergency operations in emergencies within the scope of ss. 252.31-252.90, each county within this state shall be within the jurisdiction of, and served by, the division. Except as otherwise provided in ss. 252.31-252.90, each local emergency management agency shall have jurisdiction over and serve an entire county. Unless part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3)(b) which is recognized by the Governor by executive order or rule, each county must establish and maintain such an emergency management agency and shall develop a county emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program. Counties that are part of an interjurisdictional emergency management agreement entered into pursuant to paragraph (3)(b) which is recognized by the Governor by executive order or rule shall cooperatively develop an emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program.

(b) Each county emergency management agency created and established pursuant to ss. 252.31-252.90 shall have a director. The director must meet the minimum training and education qualifications established in a job description approved by the county. The director shall be appointed by the board of county commissioners or the chief administrative officer of the county, as described in chapter 125 or the county charter, if applicable, to serve at the pleasure of the appointing authority, in conformance with applicable resolutions, ordinances, and laws. A county constitutional officer, or an employee of a county constitutional officer, may be appointed as director following prior notification to the division. Each board of county commissioners shall promptly inform the division of the appointment of the director and other personnel. Each director has direct responsibility for the organization, administration, and operation of the county emergency management agency. The director shall coordinate emergency management activities, services, and programs within the county and shall serve as liaison to the division and other local emergency management agencies and organizations.

(c) Each county emergency management agency shall perform emergency management functions within the territorial limits of the county within which it is organized and, in addition, shall conduct such activities outside its territorial limits as are required pursuant to ss. 252.31-252.90 and in accordance with state and county emergency management plans and mutual aid agreements. Counties shall serve as liaison for and coordinator of municipalities' requests for state and federal assistance during postdisaster emergency operations.

(d) During a declared state or local emergency and upon the request of the director of a local emergency management agency, the district school board or school boards in the affected area shall participate in emergency management by providing facilities and necessary personnel to staff such facilities. Each school board providing transportation assistance in an emergency evacuation shall coordinate the use of its vehicles and personnel with the local emergency management agency.

(e) County emergency management agencies may charge and collect fees for the review of emergency management plans on behalf of external agencies and institutions. Fees must be reasonable and may not exceed

the cost of providing a review of emergency management plans in accordance with fee schedules established by the division.

(2) **MUNICIPALITIES.**—Legally constituted municipalities are authorized and encouraged to create municipal emergency management programs. Municipal emergency management programs shall coordinate their activities with those of the county emergency management agency. Municipalities without emergency management programs shall be served by their respective county agencies. If a municipality elects to establish an emergency management program, it must comply with all laws, rules, and requirements applicable to county emergency management agencies. Each municipal emergency management plan must be consistent with and subject to the applicable county emergency management plan. In addition, each municipality must coordinate requests for state or federal emergency response assistance with its county. This requirement does not apply to requests for reimbursement under federal public disaster assistance programs.

(3) **EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.**—

(a) In carrying out the provisions of ss. 252.31-252.90, each political subdivision shall have the power and authority:

1. To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.

2. To appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers.

3. To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

4. To assign and make available for duty the offices and agencies of the political subdivision, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the political subdivision for employment within or outside the political limits of the subdivision.

5. To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments. Further, the political subdivision has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

- a. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.

- b. Entering into contracts.

- c. Incurring obligations.

- d. Employment of permanent and temporary workers.

- e. Utilization of volunteer workers.

- f. Rental of equipment.

- g. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.

- h. Appropriation and expenditure of public funds.

(b) Upon the request of two or more adjoining counties, or if the Governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate emergency management agencies and services, the Governor may delineate by executive order or rule an interjurisdictional area adequate to plan for, prevent, mitigate, or respond to emergencies in such area and may direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint emergency plan, a provision for mutual aid, or an area organization for emergency planning and services. A finding of the Governor pursuant to this paragraph shall be based on one or more factors related to the difficulty of maintaining an efficient and

effective emergency prevention, mitigation, preparedness, response, and recovery system on a unijurisdictional basis, such as:

1. Small or sparse population.
2. Limitations on public financial resources severe enough to make maintenance of a separate emergency management agency and services unreasonably burdensome.
3. Unusual vulnerability to emergencies as evidenced by a past history of emergencies, topographical features, drainage characteristics, emergency potential, and presence of emergency-prone facilities or operations.
4. The interrelated character of the counties in a multicounty area.
5. Other relevant conditions or circumstances.

History.—s. 1, ch. 74-285; s. 1, ch. 77-174; s. 22, ch. 81-169; s. 21, ch. 83-334; s. 102, ch. 92-279; s. 55, ch. 92-326; s. 14, ch. 93-211; s. 132, ch. 95-148; s. 5, ch. 2000-140; s. 34, ch. 2001-61.