

Index of Sustainable Development Provisions in Florida Municipal Codes

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This index contains excerpts from Florida municipal codes that address sustainable development through green building, low impact development, and renewable energy, including Property Assessed Clean Energy (PACE) programs. This index was originally compiled in 2009 and updated yearly, most recently 2013, for informational purposes only. Please check with the applicable local government for current information.

"Sustainable development is development that meets the needs of the present without compromising the ability of further generations to meet their own needs." —World Commission on Environment and Development, Our Common Future, 1987 *"Achieving sustainable development is perhaps one of the most difficult and one of the most pressing goals we face. It requires on the part of all of us commitment, action, partnerships and, sometimes, sacrifices of our traditional life patterns and personal interests". —Mostafa Tolba, Chairman of the Commission on Sustainable Development*

Introduction The major environmental challenges that the world faces—including global climate change and generally unsustainable natural resource consumption rates—have fundamentally altered the economic and legal landscapes for building and development in the twenty-first century.[i] In response, the building and development industries, spurred by consumer demand and government incentives, have increasingly been exploring ways to make our built environments more efficient and healthy, while also increasing the bottom line. Today's "triple bottom line" includes not only profits, but also two other components—people and planet. Ultimately, sustainable development practices offer a multitude of potential benefits and have been adopted by industry leaders to meet growing client demand, enhance marketing opportunities, take advantage of government incentive programs, lower operating costs, and, most importantly, protect the viability of our future on this planet. Green Building is poised for persistent growth in Florida. While the economy emerges from the recession, the green building trend continues to gain momentum and is projected to achieve robust gains for the foreseeable future.[ii] With this opportunity for growth,

however, come the hurdles of untested legal obstacles. Navigating these uncharted waters can be challenging as a multitude of governmental entities converge to regulate an area of law still in its infancy. It is critical to understand the underlying legal and technical issues associated with green building and sustainable development as this market segment expands. This index contains excerpts from Florida municipal codes and ordinances that address sustainable development through green building initiatives, low impact development, and renewable energy programs. New to the 2013 edition are those ordinances and resolutions that commit local governments to green building and other sustainability practices. The purpose of this index is to assemble these provisions in one place to compare the numerous approaches being implemented around the state and to monitor trends in the industry. This index was originally compiled in 200 and is updated annually using the most accurate information available. However, the index is intended for informational purposes only. For the most current and accurate information, please verify provisions with the applicable local government.

Florida's Sustainable Development Landscape Florida's growth management legislative landscape experienced a tectonic shift in 2011. After the passage of the 1985 Local Government Comprehensive Planning and Land Development Regulation Act, Florida experienced top-down environmental leadership from the state executive and legislative branches. In 2011, Florida legislators and Governor Scott fundamentally transformed Florida's land use and growth management structure by effectively decentralizing growth management oversight and shifting the responsibility to local governments. Specifically, 2011 growth management and government reorganization legislation terminated the Department of Community Affairs ("DCA") and transferred the surviving growth management functions to the newly created Division of Community Development within the new Department of Economic Opportunity ("DEO"). Since October 1, 2011, DEO, instead of DCA, has operated as the state land planning agency to administer Florida's local government comprehensive planning, DRI, and other growth management programs. While similar regimes of state oversight of local planning are still mandated in select areas, most comprehensive plan amendments only receive comments and can be challenged by the new division when proposed plan amendments adversely impact important state resources and facilities. Additionally, the burden of proof has changed in most plan amendment cases. Third-party challengers must prevail over a "fairly debatable" test, which means if the issue is subject to fair debate, the decision of the local government is upheld. The legislation also repeals state concurrency mandates for transportation, education, and parks and recreation, making these optional with local governments. Most local governments have indicated a desire to continue using some form of concurrency, while others have indicated a desire to abandon concurrency. Any analysis at this point, however, is premature and speculative since it is unknown how local governments will really act in the future. Ultimately, the 2011 Florida legislative session marked a shift away from top-down state regulation of growth and sustainability issues and toward empowering local governments to make their own decisions. In fact, local governments—particularly the League of Cities—testified that the existing process stifled their creativity in dealing with issues such as sustainable development. Today, there is a sense of local government empowerment characterized by innovative and comprehensive sustainable development provisions to regulate growth management. Nationwide, between 2003 and 2007,

there was a 418-percent increase in the number of county-level green building programs.[iii] Since 2009, local municipalities in Florida have enacted an increasing number of green development initiatives. As of the 2013 update to this index, 123 out of the 324 (38 percent) Florida local governments surveyed have enacted some form of sustainable development legislation. This represents a 30 percent increase since the index was updated in 2012. The most frequently implemented initiative is a green building program with nearly 55 percent of local governments establishing criteria for mandatory or voluntary participation. To encourage green development, these municipalities offer varying types of incentives to developers constructing new buildings or retrofitting existing buildings to make them more sustainable. The most commonly used programs take the form of financial incentives (30 percent), density bonuses (28 percent), and expedited approval processes (26 percent). The most innovative programs integrate other low-cost inducements such as marketing and publicity incentives to encourage adoption (16 percent). Even where such incentives have not yet been codified, increasing emphasis on such values is apparent. Some local governments have incorporated definitions of green building terms in preparation of future legislation. Additionally, numerous local governments have appointed “green task forces” or promised green initiatives in their comprehensive plans. This trend has continued because of the appeal of rating systems by organizations such as the Florida Green Building Coalition and the United States Green Building Council that help to make “green” entities more attractive to work with as local governments spearhead sustainability efforts. **Definitions** *Sustainable Development* The most oft-quoted definition of sustainable development characterizes it as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.” Three principles are found at the core of sustainable development:

1. Developing in a targeted, compact, and balanced manner;
2. Promoting energy and resource-efficient development and operations; and
3. Preserving and protecting natural resources.

Green Building Fla. Stat. § 255.253(6) defines a “sustainable building” as “a building that is healthy and comfortable for its occupants and is economical to operate while conserving resources, including energy, water, and raw materials and land, and minimizing the generation and use of toxic materials and waste in its design, construction, landscaping, and operation.” The Environmental Protection Agency defines “green building” as “the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building’s lifecycle.”[iv] Accordingly, such “green buildings” are designed, built, operated, renovated, and disposed of using ecological principles promoting occupant health and resource efficiency while minimizing any harmful effects upon the natural environment.[v] Green buildings are resource efficient and consume far less energy and water than their predecessors. They are respectful of the site where they are placed, minimizing impacts on land, and to the ecosystems in which they reside. There is an emphasis on promoting alternative means of transportation such as bicycling, high-efficiency automobiles, and rapid transit by addressing where the buildings are built. Renewable

energy, recyclable materials, restoration of existing buildings, and the impact of the building on the health of its occupants are themes common to green buildings. *Low Impact Development (LID)* LID is a site-design strategy to enhance community stormwater management and water quality by allowing stormwater to percolate in place using the biophysical characteristics of a property.[vi] The use of LID practices offers both economical and environmental benefits. The appropriate LID technique for a specific community will depend upon the site-specific characteristics of the community and any special ecological needs. Because most local governments and applicable regulatory agencies adopted their stormwater guidelines long ago and have not updated their requirements, LID is often not permitted without a variance from traditional stormwater requirements. Nevertheless, as the index demonstrates, an increasing number of local governments have implemented low-impact requirements into their current building codes. *Renewable Energy* Fla. Stat. § 377.803 provides that “renewable energy” means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, as defined in § 366.91, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power. *Green Local Government Designation* Fla. Stat. § 255.2575 commits local governments to the construction of energy-efficient and sustainable public buildings. The Florida legislature declared that government leadership is vital to the “state interest in promoting the construction of energy-efficient and sustainable buildings.” The Florida Green Building Coalition is a nonprofit Florida corporation that established a voluntary certification program to designate local counties and municipalities that are committed to furthering local sustainability efforts. As of May 14, 2013, there were 57 local governments registered to participate in the program. Of those registered governments, 46 had achieved certification, but only 43 are currently certified. There are four certification levels: Bronze, Silver, Gold, and Platinum. To earn certification, a government must attain a minimum level of points based on performance in areas such as land and environmental practices such as ordinances. A list of local governments that have achieved certification is available at <http://www.floridagreenbuilding.org/local-governments>. *Invitation to Collaborate* Do you know of a Florida local government with an applicable code provision not listed here? Please email pertinent information to Nicole Kibert at nkibert@carltonfields.com.

[i] See Jonathan E. Furr, et al., *Green Building and Sustainable Development*, IX (2009). [ii] Green Building Market to hit \$173.5 Billion by 2015,” June 1, 2011, <http://sbainstitute.org/green-building-market-to-hit-173-5-billion-by-2015/>. [iii] See J. Cullen How, et al., *The Law of Green Buildings* 71 (2010). [iv] US Environmental Protection Agency, “Green Building: Basic Information” (January 11, 2011), available at <http://www.epa.gov/greenbuilding/pubs/about.htm>. [v] See Note i, at 1. [vi] See Nicole C. Kibert, “Status of Low Impact Development in Florida and Legal Considerations for Operation and Maintenance of LID Systems,” 85 Fla. Bar J. 22, 22 (2011).

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