PREEMPTION OF COUNTY AUTHORITY IN FLORIDA

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I. INTRODUCTION

The state is able to restrict the home rule powers of counties and municipalities through preemption. State preemption precludes a city or county from exercising authority in a particular area. The Florida courts have recognized two types of preemption: express and implied.[1] Express preemption "requires that the statute contain specific language of preemption directed to the particular subject at issue;" while, "[i]mplied preemption occurs if a legislative scheme is so pervasive that it occupies the entire field, creating a danger of conflict between local and state laws."[2]

Although preemption is typically associated with an express state legislative declaration of preemption—i.e. a statute will prescribe that a local government "shall not adopt" an ordinance altering the language of the statute—home rule power can also be preempted by the legislature if the local government action is found to be (1) conflicting with state law, (2) inconsistent with a pervasive regulatory scheme, or (3) attempting to exercise control over an area in which the Legislature has assigned contrary responsibility among governmental units.

This whitepaper will focus on express statutory preemption and implied preemptions that have been identified by the courts in Florida.

II. HISTORY OF COUNTY AND MUNICIPAL HOME RULE AUTHORITY

"Home rule" is the ability of a county or municipality to act without legislative authorization. Prior to the 1968 Florida Constitution, the majority of counties and municipalities had only those powers granted by the Legislature. Home rule authority was first adopted and given equal access to all counties and cities as one of the major constitutional revisions ratified in the 1968 Florida Constitutional Amendment.[3]

A. Counties.

The Florida Constitution of 1885 provided Dade County (Miami-Dade) the "power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body."[4]

The 1968 revision created two forms of county government structures: charter counties and counties not operating under a charter. Currently, "non-charter counties" are provided:

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[1] Santa Rosa County v. Gulf Power Co., 635 So. 2d 96, 101 (Fla. 1st DCA 1994).
[2] *Id.*; *see also* Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc., 681 So. 2d 826, 831 (Fla. 1st DCA 1996).
[3] *See generally* FLA. CONST. art. VIII.
[4] Fla. Const. art. VIII, § 6(e), n. 3 (originally in Section 11 of Article VIII of the 1885 Florida Constitution).

> [The] power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.[5]

"Charter counties" are provided:

> [A]ll powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.[6]

A county may adopt a home-rule charter, which is a local constitution and can modify the structure of county government and can also deal with specific issues. The county charter prevails in the event of a conflict between a county and a municipal ordinance. In non-charter counties, a municipality may void a county ordinance within its boundaries simply by passing its own ordinance that conflicts with the county ordinance.

The constitutional home rule powers were subsequently statutorily recognized for charter counties and implemented for non-charter counties in Section 125.01 of the Fla. Stat.[7]

B. Municipalities.

Currently, Article VIII of the Florida Constitution gives municipalities the "governmental, corporate and proprietary powers . . . to conduct municipal government."[8] This considerably broad power sharply contrasts the limited powers

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[5] FLA. CONST. art. VIII, § 1(f).
[6] FLA. CONST. art. VIII, § 1(g).
[7] Fla. Stat. § 125.01 (3)(a)-(b) (2014) ("The enumeration of powers herein may not be deemed exclusive or restrictive, but is deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated, including, specifically, authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property. . . . The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.").
[8] *Id.*

expressed in the 1885 Florida Constitution, which stated that "[t]he Legislature shall have the power to establish, . . . municipalities . . . to prescribe their jurisdiction and powers, and to alter or amend the same at any time."[9]

The 1968 revision's home rule powers were first tested in 1972, when the Florida Supreme Court ruled that the City of Miami had no power to enact a rent control ordinance, absent a legislative enactment authorizing the exercise of such power by a municipality.[10] The narrow construct of the *Fleetwood Hotel* decision led the legislature to enact the Municipal Home Rules Powers Act (MHRPA) the next year. With practically the same language found in the Constitution, the MHRPA guarantees municipalities the power to conduct government. The MHRPA specifically states that local governments should be able to act unless otherwise provided by law. The Florida courts have interpreted this to mean that local government action should only be prohibited if the action is either preempted by state law or in conflict with state law.

III. PREEMPTIVE AREAS OF LAW

A. Budgeting Processes.

The Florida Legislature established a budget system for the finances of every county's board of county commissioners, as well as the exclusive method for county budget amendments.[11] Moreover, chapter 200 of the Florida Statutes prescribes the procedures for the adoption of a millage rate for the levy of taxes by the county, which each county commission must follow.[12] The courts of Florida have continuously struck down attempts by the county to impose modifications inconsistent with the general laws providing for the establishment of a county budget and imposition of ad valorem taxes.[13]

In *Ellis v. Burk*, the Fifth District Court of Appeal decided whether a tax cap provision by Brevard County was inconsistent with Chapters 129 and 200, Florida Statutes.[14] The appellate court first opined that "[u]nder our state constitution and statutory scheme, the power to limit a county commission's ability to raise revenue

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[9] FLA. CONST. of 1885, art. VIII, § 8.
[10] *See* City of Miami Beach v. Fleetwood Hotel, 261 So. 2d 801, 803 (Fla. 1972).
[11] Chapter 129, Florida Statutes; 2001-04, Fla. Op. Att'y Gen. (2001) ("[T]he courts of this state have previously struck down attempts by a county to impose a tax cap as inconsistent with the general laws providing for the establishment of a county budget and imposition of ad valorem taxes contained in Chapters 129 and 200, Florida Statutes.").
[12] Chapter 200, Florida Statutes, 2001-04, Fla. Op. Att'y Gen. (2001)
[13] *See, e.g.*, Board of County Comm'rs of Marion County v. McKeever, 436 So. 2d 299 (Fla. 5th DCA 1983), *pet. for rev. den.*, 446 So. 2d 99 (Fla. 1984) (concluding "that a county ordinance imposing a millage cap on ad valorem taxes for a period of up to ten years unconstitutionally conflicted with the statutory scheme set forth in Chapters 129 and 200, Florida Statutes"); Board of County Comm'rs of Dade County v. Wilson, 386 So. 2d 556 (Fla. 1980) (holding that the Florida Supreme Court has held that Chapters 129 and 200, FLA. STAT., are the exclusive manner by which countywide millage rates are to be set).
[14] 866 So. 2d 1236 (Fla. 5th DCA 2004).

for the county's operating needs by way of ad valorem taxation is effectively and exclusively lodged in the legislature."[15] Thus, although Brevard County argued that its home rule charter authorized its ad valorem revenue cap, the court held that the tax cap conflicted with the statutory schemes of Chapters 129 and 200, Florida Statutes, and then noted that requiring a referendum to override the tax cap violated the referendum provision of Chapter 125.01(1)(r), Fla. Stat.[16]

B. Contracting, Purchasing and Sale of County Property.

The state has established several bidding procedures that counties are required to follow, including: voting machines and equipment purchases,[17] sale of any real property,[18] drainage projects,[19] community development projects,[20] and public construction works.[21]

The Consultants' Competitive Negotiation Act requires an agency, including counties and municipalities, to follow certain procedures and requirements for procuring and contracting certain professional services, such as: architects, professional engineers, landscape architects, registered land surveyors, and design-builders.[22]

Although a county may purchase or sell a water, sewer, or wastewater reuse utility for service to the public and compensation, it must first hold a public hearing considering several different factors and prepare a statement including a summary of the purchase.[23]

Licensing and regulation of real estate salesmen and brokers is preempted to the state by chapter 475, Fla. Stat.; counties and municipalities, therefore, are

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[15] *Id*. at 1237.

[16] Fla. Stat. § 125.01(1)(r) (2014) ("There shall be no referendum required for the levy by a county of ad valorem taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit.").

[17] Fla. Stat. § 101.293(2) (2014) ("The Division of Elections of the Department of State shall establish bidding procedures for carrying out the provisions and the intent of ss. 101.292-101.295, and each governing body shall follow the procedures so established.");

[18] Fla. Stat. § 125.35(1)(c) (2014) ("No sale of any real property shall be made unless notice thereof is published once a week for at least 2 weeks in some newspaper of general circulation published in the county, calling for bids for the purchase of the real estate so advertised to be sold.").

[19] Fla. Stat. § 157.03 (2014) ("[T]he board of county commissioners shall advertise once a week for 3 weeks, in a newspaper published in the said county, for bids for the construction of said ditch, drain or canal, and the same shall be given to the lowest responsible bidder.").

[20] Fla. Stat. § 190.033 (2014) ("Any board seeking to construct or improve a public building, structure, or other public works shall comply with the bidding procedures of s. 255.20 and other applicable general law.").

[21] Fla. Stat. § 255.20(1) (2014) ("A county, . . . seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $300,000.").

[22] Fla. Stat. § 287.055 (2014); AGO 86-57, June 19, 1986, http://www.myfloridalegal.com/ago.nsf/Opinions/A13B3A5F8862B7888525657500661F5E.

[23] Fla. Stat. § 125.3401 (2014).

precluded by this section from licensing and regulation of the real property activities or services of persons already licensed as real estate salesmen and brokers by the state.[24]

Chapter 274 governs tangible personal property owned by local governments. Surplus property is prescribed a method by which a local government is allowed to sell, and the county or city shall accept the highest bid and pay for the transferring of property.[25]

Section 723.004(2), Fla. Stat., stipulates that all regulations, control, and matters related to the landlord-tenant relationship of mobile home lots are expressly preempted to the state.

C. Emergency Medical.

"A county may not impose a fee or seek reimbursement for any costs or expenses that may be incurred for services provided by a first responder, including costs or expenses related to personnel, supplies, motor vehicles, or equipment in response to a motor vehicle accident, <u>except for</u> costs to contain or clean up hazardous materials in quantities reportable to the Florida State Warning Point at the Division of Emergency Management <u>and costs for transportation and treatment provided by ambulance services licensed</u> pursuant to Sec. 401.23(4) and (5)"[26]

D. Eminent Domain.

The counties are delegated the power of eminent domain through Chapter 127 of the Florida Statutes for any county purpose. This power excludes state and federal property, and is limited to within its own County boundaries for parks, playgrounds, recreational centers or other recreational purposes.[27]

E. Environmental Management.

Chapter 403 of the Florida Statutes prescribes how the Florida Legislature plans to ensure the beauty and quality of the state's environment, including environmental management. Under section 403.7031, Fla. Stat., "[a] county or a municipality *shall* not adopt by ordinance any definition that is inconsistent with the definitions in s. 403.703." Sec. 403.703, Fla. Stat., defines forty-three (43) different terms dealing with environmental control.

Under section 403.510(2), Fla. Stat, "[t]he state hereby preempts the regulation and certification of electrical power plant sites and electrical power plants as defined in this act."

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[24] Fla. Op. Atty. Gen., 081-5 (1981).
[25] Fla. Stat. § 274.05 (2014).
[26] Fla. Stat. § 125.01045(1) (2014) (emphasis added).
[27] Fla. Stat. §127.01(1)(a) and 127.01(2) (2014).

Under section 405.536(2), Fla. Stat., "[t]he state hereby preempts the certification of transmission lines and transmission line corridors."

Under section 403.942(2), Fla. Stat., "[t]he state preempts the certification and regulation of natural gas transmission pipelines and natural gas transmission pipeline corridors."

The Florida Water Resources Act of 1972 declared that all waters in the state are subject to regulation under the provisions of Chapter 373, Fla. Stat., unless specifically exempted by general or special law. "No state or local government agency may enforce, except with respect to water quality, any special act, rule, regulation, or order affecting the waters in the state controlled under the provisions of this act."[28]

Under the Mangrove Trimming and Preservation Act, the state preempts the regulation and licensing of mangrove trimming, unless the local government is delegated the department's authority under the Act.[29]

The Right to Farm Act and the Agricultural Land Use and Practices Act both preempt regulation of bona fide farming activities on property classified as agricultural under Florida Statute 193.461, where the farming activity is regulated through implemented best management practices, interim measures, or regulations adopted under Florida Statutes, Chapter 120, by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district as part of a statewide, or regional program, or if the activity is expressly regulated by the U.S. Department of Agriculture, the U.S. Army Corps of Engineers, or the U.S. Environmental Protection Agency.

Nonresidential farm buildings, farm fences, and farm signs are exempt from the Florida Building Code, and any county or municipal code or fee, except for floodplain management regulations.[30] However, a farm sign that is located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the following standards of Florida Statutes 479.11:

> (4) which limits signs within 100 feet of a church, school, cemetery, public park, reservation, playground, or a state or national forest;
> (5)(a) which limits signs that display intermittent lights not embodied in the sign or any rotating or flashing lights within 100 feet of a rightway for certain highways, or which causes glare that impairs the vision of or distracts motorists;
> (6) which limits signs using the word stop or danger;
> (7) which limits signs that obstructs the view of approaching vehicles; and (8) which limits signs on certain highways.[31]

[28] Fla. Stat. § 373.023(1)-(2) (2014).
[29] Fla. Stat. §403.9321-403.9334 (2014).
[30] Fla. Stat. §604.50 (2014).
[31] Fla. Stat. §604.50(1) (2014).

Regulation of waters in the state are controlled under Chapter 373 (except with respect to water quality) – § 373.023(2), Fla. Stat.

F. Voting Regulations, Ethics, Public Records, Meetings and Procedure.

"All matters set forth in chapters 97-105 [covering elections, voting methods, candidates] are preempted to the state, except as otherwise specifically authorized by state or federal law."[32] There are, however, certain responsibilities and powers delegated to local authorities, including choice of voting systems—as local governments are in the best position to make such decisions.[33]

The Legislature has provided a code of ethics which covers the official conduct of all public officials and employees in Florida.[34] While there is no express preemption of this area to the state which would preclude legislation by a county consistent with the Code of Ethics[35], Florida's Attorney General has stipulated that "the county commission of a charter county has the authority to enact a code of ethics for county officers and employees, a county ethics code may not conflict with the provisions of Chapter 112, Fla. Stat."[36]

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[32] Fla. Stat. § 97.0115 (2014). *See* Fla. Op. Atty. Gen. 074-263 (1974) (finding campaign financing applying to candidates for elective municipal office is preempted by section 106.08, Florida Statutes); *see also* Fla. Op. Atty. Ge. 077-109 (1077) (finding that legislature has preempted the field of voter registration). "However, municipal elections may be altered if there is an applicable special act, charter, or ordinance." *See id.* § 100.3605

[33] *See* Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880 (2010). In a proposed amendment to Sarasota's county charter sponsored by political action committee (PAC) setting forth detailed election requirements was not expressly preempted by election code, as there was no specific language in the code expressly setting forth preemption, however because the amendment conflicted with election code—it was found to be unconstitutional. Browning v. Sarasota Alliance for Fair Elections, Inc., 968 So.2d 637 (Fla. 2d DCA 2007), *decision approved in part, quashed in part* 28 So.3d 880.

[34] *See* Fla. Stat. §112.311(5) (2014) ("[N]o officer or employee of a state agency or of a county, city, or other political subdivision of the state . . . shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees . . . in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.").

[35] Fla. Stat. §112.326 states: "Additional requirements by political subdivisions and agencies not prohibited. – Nothing in this act shall prohibit the governing body of any political subdivisions, by ordinance, or agency, by rule, from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of this part."

[36] Fla. Op. Atty. Gen. 91-89 (1991). However, in CEO 75-20, wherein the Florida Commission on Ethics recognizes that a municipality may enact a municipal code of ethics more stringent than, or with provisions differing from, Part III, Ch. 112, FLA. STAT., as long as it does not conflict with the state statute.

Chapter 119 of the Florida Statutes, relating to records management, constitutes a state preemption of the field of public records and, therefore, such field is not a proper or valid subject of attempted local regulation or legislation.[37] "The requirements of Chapter 119 have been made mandatory by the Legislature at the local as well as the state level and hence do not vest in any local agency any discretion whatsoever to change, alter or condition the provisions of the chapter."[38] Moreover, Florida courts have also recognized that Legislature has made the Chapter 119 requirements mandatory at the local level.[39]

G. Growth Management and Zoning.[40]

The local government comprehensive plan is a document that is prepared and adopted pursuant to Chapter 163, Florida Statutes, which is intended to be a guide for making land use decisions for future development and redevelopment within the locality.[41] In section 163.3194, Fla. Stat., the Legislature mandated that once a comprehensive plan has been adopted in conformity with the Community Planning Act, there may be no variance from the plan granted to development activities adopted afterward.[42]

In the 1985 Local Government Comprehensive Planning and Land Development Regulation Act, local government plans and plan amendments were required to be reviewed and approved by the state—a process that was formerly under the local government's authority.[43]

Zoning of family day care homes is restricted. "The operation of a residence as a family day care home, as defined by law, registered or licensed with the Department of Children and Families shall constitute a valid residential use for purposes of any local zoning regulations, and no such regulation shall require the owner or operator of such family day care home to obtain any special exemption or

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[37] Section 24 of Article 1 of the Florida Constitution grants to the public the right of access to public records and to public meetings of collegial bodies, and authorizes the Legislature to enact general laws, passed by a 2/3 vote of each house, establishing exemptions to these rights. Each such law must state the public necessity for the exemption and be no broader than necessary to accomplish the law's stated purpose. The Legislature is also directed to enact laws governing the enforcement of these provisions.

[38] 1985 Fla. Op. Atty. Gen. 45 (Fla.A.G.), Fla. AGO 85-19, 1985

[39] Tribune Company v. Cannella, 438 So.2d 516 (Fla. 2nd DCA 1983), quashed, 458 So.2d 1075 (Fla.1984).

[40] See also, preemptions identified in Section III, E, "Environmental Management"

[41] Florida County Government Guide, Page 126

[42] Fla. Stat. § 163.3194(1)(a) (2014) ("After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.").

[43] 1985 Fla. Op. Atty. Gen. 158 (Fla.A.G.), Fla. AGO 85-56, 1985 ("[I]t is my opinion that all land development regulations and actions including permits for the construction and use of property issued by a municipality must be in accordance with the local government's comprehensive plan.").

use permit or waiver, or to pay any special fee in excess of $50, to operate in an area zoned for residential use."[44]

Zoning of community residential homing is restricted. "State law on community residential homes controls over local ordinances, but nothing in this section prohibits a local government from adopting more liberal standards for siting such homes."[45]

"A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals."[46]

Section 552.30 of the Florida Statutes expressly states that the State Fire Marshall has sole and exclusive authority to promulgate standards, rules and regulations regarding the use of explosives in conjunction with construction material mining activities.

H. Health and Human Services.

Part III of Chapter 401, Florida Statutes (§§ 401.2101-401.465), the "Raymond H. Alexander M.D. Emergency Medical Transportation Services Act," establishes a statewide regulatory scheme for emergency and nonemergency medical transportation services. Counties and municipalities may not enact any local ordinance that may prohibit or contradicts any law provided by the state.[47]

I. Public Safety and Animal Control.

"No county may adopt any ordinance relating to the possession or sale of ammunition."[48]

"PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void."[49]

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[44] Fla. Stat. § 166.0445 (2014).
[45] Fla. Stat. § 419.001 (2014).
[46] Fla. Stat. § 509.032(7)(b) (2014).
[47] Rinzler v. Carson, 262 So.2d 661, 668 (Fla. 1972).
[48] Fla. Stat. § 125.0107 (2014).
[49] Fla. Stat. § 790.33(1) (2014). The statute goes on to stipulate that if a county or municipality is found to be "knowing and willful" of its violation of the firearm and ammunition preemption, "the court shall assess a civil fine of up to $5,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred." *Id.* § 790.33(3)(c).

Section 791.001, Fla. Stat. expressly states that Chapter 791, which concerns the sale of fireworks, "shall be applied uniformly throughout the state."[50]

"No local government or political subdivision of the state may enact or enforce an ordinance that regulates pest control," with a few exceptions.[51]

Art. IV, §9, Fla. Const. specifically preempts the regulation of wild animal life and fresh water aquatic life to the state. §379.2412, Fla. Stat. (2014), preempts the regulation of "the taking or possession of saltwater fish" to the state.

The "fence law" contained in Chapter 588, Fla. Stat. (2014), governing the impoundment of stray livestock is intended to be uniform throughout the state. Regulation of dangerous dogs is set forth in Chapter 767, Florida Statutes.[52] Chapter 767, Fla. Stat. (2014), establishes minimum procedures governing the investigation, certification, notice and hearing, confinement, and appellate remedies related to dangerous dogs.[53] There is a statutory definition of a "dangerous dog." The law requires that a dog that has been "declared dangerous attacks or bites a person or a domestic animal without provocation" shall be "destroyed in an expeditious and humane manner."[54] In all cases, the law requires that a dog that "causes severe injury or death of any human" shall be euthanized.[55] No local government may adopt dangerous dog regulations "specific to breed."[56]

In Hoesch v. Broward County, 53 So. 3d 1177 (Fla. 4th DCA 2011), the court invalidated a county ordinance that required euthanasia of dogs that kill or cause the death of a domestic animal on only one occasion finding it conflicted with Chapter 767 that required at least two such incidents.

If counties elect to provide local animal control, state law establishes minimum criteria and responsibilities.[57] There are minimum criteria governing the civil citation process for local ordinances "relating to animal control or cruelty."[58] While the law states "no county or municipal ordinance relating to animal control or cruelty shall conflict with the provisions of this chapter or any other state law", it also proclaims that it is still "an additional, supplemental, and alternative means of

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[50] Counties' can regulate more stringently. "This does not mean that the county cannot legislate concerning fireworks to the extent such does not conflict with the provisions of chapter 791. See, Phantom of Brevard, Inc. v. Brevard County, 3 So. 3d 309 (Fla. 2008); *see also* Florida Statute Section 791.012; "Any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations for the outdoor display of fireworks, but in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of firework."

[51] Fla. Stat. § 482.242(1) (2014).

[52] See Fla. Stat. § 767.10-.15 (2014) ("Nothing in this act shall limit any local government from placing further restrictions or additional requirements on owners of dangerous dogs or developing procedures and criteria for the implementation of this act, provided that no such regulation is specific to breed and that the provisions of this act are not lessened by such additional regulations or requirements.").

[53] § 767.12, Fla. Stat. (2014).

[54] § 767.13(1), Fla. Stat. (2014).

[55] § 767.13(2), (3), Fla. Stat. (2014).

[56] §767.14, Fla. Stat. (2014).

[57] In areas not served by an animal control authority, the sheriff shall carry out the duties of the animal control authority. § 767.11(5), Fla. Stat. (2014).

[58] § 828.27, Fla. Stat. (2014).

enforcing county or municipal codes or ordinances."[59] Local governments may not "mandate revaccination of currently vaccinated animals except in instances involving postexposure treatment for rabies."[60]

Municipalities and counties have no home rule powers in the area of examining into or certifying the competency of fire protection systems contractors; such regulation is preempted to the state.[61]

Regulation, compensation and operation of the National Guard has been preempted to the state, and is primarily a state, and not a municipal, purpose.[62]

State law does not expressly preempt the subject of juvenile detention. Chapter 985, Fla. Stat. (2014), establishes procedures to ensure due process governing the control, discipline, punishment, and treatment of children alleged to have committed a violation of law. Counties may operate their own secure juvenile detention centers or share the costs of state-run facilities.[63]

J. Sanitation and Food.

Florida Statutes § 381.00315(6) provides that rules adopted by the state department of health pursuant to Fla. Stat. Ch. 381 supersede municipal regulations and ordinances and public health rules of other state departments.[64]

The regulation and permitting of food manufacturing, processing, packing, transporting and preparing, or selling at retail is preempted to the state.[65]

The provisions of Fla. Stat. Ch. 502 and state rules preempt all municipal regulations relating to milk or milk products, or frozen desserts for wholesale.[66]

The regulation, identification, and packaging of meat, poultry, and fish are preempted to the state.[67]

K. Taxes and Other Revenue Sources.

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[59] § 828.27(7)(8), Fla. Stat. (2014).
[60] § 828.30(7), Fla. Stat. (2014).
[61] Fla. Op. Atty. Gen. 080-46 (1980).
[62] Fla. Op. Atty. Gen. 078-81 (1978).
[63] § 958.686(10), Fla. Stat. (2014)
[64] Fla. Stat. § 381.00315(6) (2014) ("The rules adopted under this section and actions taken by the department pursuant to a declared public health emergency or quarantine shall supersede all rules enacted by other state departments, boards or commissions, and ordinances and regulations enacted by political subdivisions of the state.").
[65] Fla. Stat. § 500.12(5) (2014) ("Regulatory and permitting authority over any food establishment is preempted to the department.").
[66] Fla. Stat. § 502.232 (2014) ("All special or local acts, general laws of limited application, county ordinances or resolutions, municipal ordinances or resolutions, and municipal charter provisions that authorize the regulation of milk or milk products, or frozen desserts for wholesale, are superseded by this chapter and the rules adopted pursuant to this chapter.").
[67] Fla. Stat. § 500.60 (2014) ("Notwithstanding any other law or local ordinance to the contrary and to ensure uniform health and safety standards, the regulation, identification, and packaging of meat, poultry, and fish is preempted to the state and the Department of Agriculture and Consumer Services.").

"The authority of a public body to require taxes, fees, charges, or other impositions from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state because of unique circumstances applicable to communications services dealers."[68]

Regulatory fees imposed to regulate competing uses of public rights-of-way are characterized as franchise fees. Utilities have historically bargained for and entered into franchise agreements with counties and municipalities. The holding in Santa Rosa County v. Gulf Power Co., that the authority to grant a franchise and impose a fee on telephone utilities was preempted was based upon the provisions of sections 364.32 through 364.37, Florida Statutes, which granted the Florida Public Service Commission the exclusive jurisdiction to grant certificates to telephone companies.[69]

Besides the local government's ability to levy ad valorem taxes, "[a]ll other forms of taxation shall be preempted to the state except as provided by general law."[70]

No tax on the manufacture, distribution, exportation, transportation, importation, or sale of alcoholic beverages may be imposed by way of license, excise, or otherwise by any municipality.[71]

No municipality or county may levy or collect any excise tax on cigarettes.[72]

Cases in which the courts have found express state preemption are rare. Taxation is one of the areas in which there has been an explicit finding of express preemption. See City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1 (Fla. 1972).

"All matters relating to the operation of the state lottery are preempted to the state, and no county, municipality, or other political subdivision of the state shall enact any ordinance relating to the operation of the lottery."[73]

L. Transportation.

Chapter 316 covers the State Uniform Traffic Control which is used to make uniform traffic laws apply throughout the state. "[N]o local authority shall enact or enforce any ordinance on a matter covered by [Chapter 316] unless expressly authorized."[74] For example, city ordinances allowing use of cameras to monitor and enforce red light infractions were expressly preempted by state law,[75] city

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[68] Fla. Stat. § 202.24(1) (2014).
[69] 635 So. 2d 96 (Fla. 1st DCA 1994), review denied, 645 So. 2d 457 (Fla. 1994).
[70] Fla. Const. art. VII, § 1.
[71] Fla. Stat. § 561.342 (2014) ("No tax on the manufacture, distribution, exportation, transportation, importation, or sale of such beverages shall be imposed by way of license, excise, or otherwise by any municipality, anything in any municipal charter or special or general law to the contrary notwithstanding.").
[72] Fla. Stat. § 210.03 (2014) ("No municipality shall, after July 1, 1972, levy or collect any excise tax on cigarettes.").
[73] Fla. Stat. § 24.122(3) (2014).
[74] Fla. Stat. § 316.007 (2014).
[75] Fla. Stat. § 316.0076 (2014); *see also* Masone v. City of Aventura, 147 So. 3d 492 (Fla. 2014).

ordinances that allowed city to use automated cameras to catch and fine drivers who ran red lights was expressly preempted by the Florida Uniform Traffic Control Law,[76] city ordinance regulating motor-propelled bicycles are preempted to the state,[77] regulation of skateboards on streets within the city's jurisdiction is preempted to the state,[78] regulation of commercial mobile radio services within a motor vehicle is expressly preempted to the state,[79] and child or truck bed restraint are preempted to the Legislature's Uniform Traffic Control Law.[80]

Any matter covered by Chapter 316 (Florida Uniform Traffic Control Law) – § 316.007, Fla. Stat.

Establishment of State roads and bridges – *Department of Transportation v. Lopez-Torres*, 526 So.2d 674 (Fla. 1988)

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[i] On behalf of Florida Association of Counties, the primary research and writing was conducted by Mr. David Heedy, at the time a law clerk for the Florida Association of Counties.

[ii] On behalf of Florida Association of County Attorneys, the primary research and writing was conducted by the Growth Management & Environmental, the General Governmental, and the Public Safety Committees.

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[76] City of Orlando v. Udowychenko, 98 So. 3d 589 (Fla. 5th DCA 2012).

[77] Fla. Op. Atty. Gen. 077-84 (1997).

[78] Fla. Op. Atty. Gen. 98-15 (1998); *but see* Fla. Op. Atty. Gen. 94-5 (1994) (finding a city is not preempted from regulating safety equipment for bicycles, specifically the requirement to wear a helmet).

[79] Fla. Stat. § 316.0075 (2014).

[80] *See* Fla. Stat. § 316.613 (2014); *see also* Fla. Op. Atty. Gen. 2008-11 (2008).