



City of North Port

Office of the City Attorney

Response to Request for Legal Services

To: Heather Taylor, Deputy City Clerk

From: Amber L. Slayton, City Attorney

Date: July 5, 2019

RE: Request for Legal Services – Research regarding notice of special district meetings

Pursuant to the above-referenced Request for Legal Services, you have inquired as to the requirements to notice meetings of the City's three special districts.

Attached is a memo from outside contract counsel addressing the legal analysis in response to your inquiries.

Please let me know if there are any questions, comments, or concerns. If none, no further action will be taken on this Request for Legal Services. The file will be closed.

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MEMORANDUM

TO: Amber Slayton, City Attorney
City of North Port, Florida

From: Elaine A. Humphreys, Esq. *E.A.H.*

Date: May 22, 2019

Subject: District Notices Research;
Your File No.: LF 2019-1017

You have asked me to research the notice requirements under both state law and the City's ordinances for three special districts in the City, which specifically are (1) the Fire Rescue District; (2) the Road and Drainage District; and (3) the Solid Waste District. To determine the applicable statutory notice of meetings requirements for each district, it will first be necessary to determine whether each district is a dependent special district or an independent special district. Once the statutory notice requirements are identified, then the City's ordinance requirements for property notice of meetings for each district will be examined. The summary of my research is set out below.

I. NOTICE REQUIREMENTS FOR SPECIAL DISTRICTS

A. Special District Definitions

A special district is defined by the Florida Statutes as follows:

a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

F.S. § 189.012(6). Under the statutory scheme, special districts are either dependent special districts or independent special districts. A dependent special district is defined as:

a special district that meets at least one of the following criteria:

- (a) The membership of its governing body is identical to that of the governing body of a single county or a single municipality.
- (b) All members of its governing body are appointed by the governing body of a single county or a single municipality.
- (c) During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or a single municipality.
- (d) The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

This subsection is for purposes of definition only. Nothing in this subsection confers additional authority upon local governments not otherwise authorized by the provisions of the special acts or general acts of local application creating each special district, as amended.

F.S. § 189.012(2). In contrast, an independent special district is defined as:

a special district that is not a dependent special district as defined in subsection (2). A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.

F.S. § 189.012(3). Thus, we must review how each of the special districts were created in order to properly define the three districts in question.

B. Creation of the Special Districts

The special districts in question were created by local ordinance at different times and in one instance using different verbiage. Therefore, I will examine each special district separately.

1. The North Port Fire Rescue District appears to have been created in 2008, pursuant to Ordinance No. 08-33, § 1(Exh.A), 7-28-2008, and the ordinance is codified in Chapter 66, Article II of the City's ordinances. The Fire Rescue District's purpose in general terms is to provide fire rescue service to the residents of North Port within the corporate boundaries of the City and to provide for the assessment of these services. Sec. 66-19 and Sec. 66-22 of the Code of Ordinances of the City of North Port. Thus, the City's Fire Rescue District meets the statutory definition of a special district. Sec. 66-23 of the City's ordinances provides that the governing body of the district is the City Commission of the City of North Port. Therefore, the Fire Rescue District is a *dependent special district* as defined by F.S. § 189.012(2).

2. The North Port Road and Drainage District appears to have been created originally in 2008 also, by Ordinance No. 08-11, § 1(Exh.A), 7-28-2008, and the ordinance, as amended in 2014, is codified in Chapter 66, Article III of the Code of Ordinances of the City of North Port. The Road and Drainage District's purpose in general terms is to provide road and drainage services to the residents of North Port within the corporate boundaries of the City and to provide for the

assessment of such service to fund these systems. Sec. 66-47 and Sec. 66-50 of the Code of Ordinances of the City of North Port. Thus, the City's Road and Drainage District meets the statutory definition of a special district. Sec. 66-51 of the City's ordinances provides that the governing body of the district is the City Commission of the City of North Port. Therefore, the Road and Drainage District also is a *dependent special district* as defined by F.S. § 189.012(2).

3. The North Port Solid Waste District appears to have been created in 2007, pursuant to Ordinance No. 07-09, § 1, 3-12-2007, and the ordinance is codified in Chapter 66, Article IV of the City's ordinances. The Solid Waste District was created for the purpose of providing solid waste management services to the residents of the City within the boundaries of the City. Sec. 66-86 of the Code of Ordinances of the City of North Port. Thus, the City's Solid Waste District meets the statutory definition of a special district. Sec. 66-87 of the City's ordinances provides that the governing body of the district is the City Commission of the City of North Port. Therefore, the Solid Waste District, too, is a *dependent special district* as defined by F.S. § 189.012(2).

C. Notice Requirements for Dependent Special Districts

1. *Florida Statutory Requirements*

F.S. § 189.015 (formerly F.S. § 189.417) provides the meetings, notice and reporting requirements for special districts. Specifically, all special districts must file and publish their regular meetings schedule on a quarterly, semiannually or annual basis. F.S. § 189.015(1). The schedule must include, for each scheduled meeting, the date, time and location of the meeting. *Id.* The schedule must be published in a newspaper of general paid circulation in the county in which the special district is located and the newspaper "must be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50." *Id.* I note that there are additional requirements for the advertisement of non-regular meetings and recessed and reconvened meetings; however, this appears to be expressly for *independent special districts*. *Id.*

I found no case law on point regarding these statutory notice requirements. I did find an Attorney General's Opinion that stated that the notice requirements set out in F.S. § 189.417, the former citation for this statute, did not apply to a nonprofit corporation created by a fire and rescue district in Lee County, since the Lee County Fire Commissioner's Forum was not a special district itself. However, the opinion also stated that the Forum was required to observe and follow the public meetings requirements set out in F.S. § 2867.011(1). Atty. Gen. Op. 2000-08 (2008).

2. *City Ordinance Requirements*

a. Fire Rescue District. Sec. 66-33 of the City's Code of Ordinances sets out the Fire Rescue District's meeting requirements. This section specifically requires that the District's Board schedule and convene its regular public meetings in accordance with F.S. § 189.417 (now referred to as F.S. § 189.015), and that the regular meetings schedule must be filed annually with the City Clerk and published annually in a newspaper of general circulation. It also requires that notice of the Districts regular meetings be advertised at least seven days before the meeting in a newspaper of general circulation. However, this advertisement requirement does not apply to emergency or recessed meetings, which must be convened after reasonable notice that has been provided in accordance with the City Commission's requirements for these types of meetings. Sec. 66-33. While I note that this advertisement requirement is not mandated for dependent special districts by the state statute, the City may require stricter guidelines that provide additional public notice for meetings in the sunshine.

b. Road and Drainage District. Sec. 66-60 of the City's Code of Ordinances sets out the Road and Drainage District's meeting requirements. This section specifically requires that this District's Board also schedule and convene its regular public meetings in accordance with F.S. § 189.417 (now referred to as F.S. § 189.015), that the regular meetings schedule must be filed annually with the City Clerk and that the schedule must be published annually in a newspaper of general circulation. It also requires that notice of the Districts regular meetings be advertised at least seven days before the meeting in a newspaper of general circulation. Similarly to the Fire Rescue District ordinance, the advertisement requirement for this Board does not apply to emergency or recessed meetings, which must be convened after reasonable notice that has been provided in accordance with the City Commission's requirements for these types of meetings. Sec. 66-60. Again, while I note that this advertisement requirement is not mandated for dependent special districts by the state statute, the City may require stricter guidelines that provide additional public notice for meetings in the sunshine.

c. Solid Waste District. Sec. 66-87 of the City's Code of Ordinances sets out the Solid Waste District's meeting requirements. The notice requirements for this District Board meetings are very general and only require that the Board meet from time to time, that the Board is governed by the Government in the Sunshine Act and that the Board must convene its meetings in public session and its special and emergency meetings in the same manner as such City Commission meetings are called. *Id.* Therefore, the Solid Waste District notice of meeting requirements for its regular meetings are governed by the state statute, which includes the scheduling, notice and publication requirements. For this District's Board, its special, emergency and reconvened meetings notices are required to be made under the Commission's regulations for these types of meetings.

II. CONCLUSIONS

The Solid Waste District ordinance is silent on its notice of meeting requirements and simply require that the Solid Waste District Board meet in accordance with the state's sunshine laws and the City Commissions regulations for special and emergency meetings. Thus, this District's meeting notice is governed by F.S. § 189.015. The Fire Rescue District and the Road and Drainage District ordinances generally mirror the statutory notice requirements but also impose additional notice requirements that are not demanded by the statute for dependent special districts. These additional requirements do not conflict with the state statutory notice requirements, and the statute does not express a pre-emption by the state for the regulation in this area. Therefore, the City may impose stricter notice requirements to augment its efforts to have the Boards of these special districts meet in the sunshine.

The City may want to amend the Solid Waste District ordinance so that the verbiage mirrors the language of the other two special districts; however, it is not legally imperative that it do so. The City may also want to amend all of the districts' ordinance to refer to the renumbered state statute, which is now F.S. § 189.015 as opposed to referencing the statute by its former reference number.

Please let me know if you would like to discuss any point in greater detail or if you need additional information. I have attached copies of the cited F.S. §§ 189.012 and 189.015, and Attorney General's Opinion for your review.

EAH/