

**A Model Ordinance Establishing a Local Government Tax
Deferral Program for Recreational and Commercial Working
Waterfront Properties**



Submitted to
Waterfronts Florida Partnership Program
State of Florida Department of Community Affairs

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INTRODUCTION

In 2005 the Florida legislature enacted the “Waterfront Property” law designed to support the preservation of recreational and commercial working waterfronts. One of the tools provided by the legislation is a tax deferral program that allows qualifying waterfront property owners to defer their property taxes owed to participating municipalities. The legislation allows, but does not require, local governments to adopt programs by ordinance which accomplish this.

In response to this legislation, and at the request of the Waterfronts Florida Partnership Program, the University of Florida Conservation Clinic has developed this annotated model ordinance that county or municipal governments may adapt to their needs should they choose to initiate a property tax deferral plan for recreational and commercial working waterfronts under their jurisdiction. As a model, the ordinance cannot anticipate all of the variation among local governments in the State of Florida, and care should be taken to tailor the ordinance to the specific needs of a specific local government. It is also important to understand that this program requires coordination between local governments, the office of the tax collector and the Florida Department of Revenue.¹

OVERVIEW OF THE LEGISLATION

In 2004, the Florida Senate Committee on Community Affairs published a report in which it found an overall decrease in public access to Florida’s waterways.² The Committee attributed the decline in access to increasing conversion of commercial-fishing and recreational working waterfronts to private and residential uses.³ The Committee concluded that increased conversion had resulted in increased waterfront property values, which led to increased property taxes and decreased economic viability of traditional working waterfronts.⁴ Thus, commercial and recreational waterfront property owners are currently facing increased pressure to convert property to more profitable private and residential uses. In addition, the Committee found that construction of new boat launch facilities has not kept pace with the of new vessel registration, due to state and local governments’ decreasing ability to finance purchases of increasingly valuable waterfront property.⁵

In response to the Committee on Community Affairs’ report, the Florida Legislature passed House Bill 955, and Senate Bill 1316, designed to encourage the preservation of recreational and commercial working waterfronts. The new law creates, among other things, a property tax deferral program which gives local governments a tool to help their

¹ The Clinic would like to recognize the contribution of the office of the City Attorney of the City of Clearwater, which provided the Conservation Clinic with a draft of its property tax deferral program and consulted on this model ordinance.

² THE FLORIDA SENATE, COMMITTEE ON COMMUNITY AFFAIRS, INTERIM SUMMARY REPORT 2005-122 (2004).

³ Id.

⁴ Id.

⁵ Id.

local working waterfront property owners reduce their annual tax burdens. The tax deferral program works as follows:

- Local governments may establish a tax deferral program that would permit deferral of property taxes for working waterfront properties
 - The law provides for deferring, not forgiving, the payment of the property taxes, with interest, until a later date.
 - The amount of taxes that may be deferred will vary by location depending on each local government's individual tax deferral program.
- If a local government adopts a tax deferral program, working waterfront property owners may elect to defer payment of their property taxes by filing a tax deferral application each year.
- Interest will accrue on deferred taxes.
 - The current interest rate 5.51%, and can never exceed 9.5%
- Property owners will be required to pay all deferred taxes and interest if there is:
 - A change in use of the property that results in the property losing its status as a commercial or recreational working waterfront as defined by the statute.
 - A change in the "legal or beneficial ownership" of the property
- A deferral may not be granted if:
 - The total amount of deferred taxes, interest, and all other unsatisfied liens on the working waterfront property, exceed 85% of the property's assessed value.
 - If a deferral has already been granted, and the total amount of deferred taxes, interest, and all other unsatisfied liens on the working waterfront property exceed 85% of the property's assessed value, then the amount over 85% must be paid annually
 - The primary financing on the property is for an amount greater than 70% of the property's assessed value

**Model Ordinance Establishing a Local Government Tax Deferral Program for
Recreational and Commercial Working Waterfront Properties**

Section 1. Findings of Fact

Whereas, the City of Kate’s Cove has enjoyed a long tradition of recreational and commercial use of its waterfront for access to the waters of the City by its residents, businesses and visitors;

Whereas, the City of Kate’s Cove and its residents derive significant economic benefits from the provision of public access by recreational and commercial working waterfronts;

Whereas, the City of Kate’s Cove enjoys a long and proud heritage of water-dependent industry that contributes to the economic well-being of the City;

Whereas, public use and enjoyment of the waters in and surrounding Kate’s Cove contributes to healthy lifestyles and the appreciation of the natural resources that are the subject of the public trust.

Whereas, the City of Kate’s Cove has limited public access facilities, including marinas, boat ramps, ramp lanes and vehicle parking; and

Whereas, boat ownership and use in the City of Kate’s Cove continues to increase at a rate that is greater than the installation of new public access infrastructure;

Whereas, current recreational and commercial working waterfront properties in the City of Kate’s Cove are facing increasing economic pressure to convert to uses that exclude the public; and

Whereas, the City of Kate’s Cove desires to maintain existing public access provided by individual and commercial recreational and working waterfront property owners within the City and encourage the creation of new recreational and commercial working waterfronts; and

Whereas, the City of Kate’s Cove desires to defer the property tax burden on recreational and commercial working waterfronts in order to discourage conversion of recreational and commercial waterfronts on non-public uses;

Whereas, in 2005 the Florida Legislature enacted the “Waterfront Property Law” which authorizes local governments to establish a Tax Deferral Program for Recreational and Commercial Working Waterfront Properties

And Whereas, the establishment of a Tax Deferral Program for Recreational and Working Waterfronts is consistent with, and furthers the Comprehensive Plan of the City of Kate’s Cove.

NOW, THEREFORE, BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF KATE'S COVE ON THIS __ DAY OF _____, 20____.

Commentary

Accurate and substantiated Findings of Fact are invaluable indicators that ordinances or regulations are warranted exercises of the police power by governments for the protection of the health, safety and welfare of the citizenry. The above Findings of Fact should be tailored to be consistent with the adopting local government's normal formalities, procedures, resources, and reasons for adopting the ordinance and buttressed by available data and analysis to support these findings. It is also important to refer to the relevant goals, objectives and policies of the local government comprehensive plan

Section 2. Title

The following shall be known as the Tax Deferral Program for Recreational and Commercial Working Waterfront Properties, and hereby creates Article __, Chapter __ sections ___ of the City of Kate's Cove Ordinances.

Section 3. Definitions

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Ad valorem tax" means a tax based upon the assessed value of property.⁶

"Marina" means a licensed commercial facility which provides secured public moorings or dry storage for vessels on a leased basis.⁷

"Non-ad valorem assessment" means an assessment that is not based upon the millage and which can become a lien against a homestead as permitted in section 4, Article X of the State Constitution.⁸

"Recreational and commercial working waterfront property" means a parcel of real property that provides access for water-dependant commercial activities, including hotels and motels as defined in s. 509.242(1), and/or provides access for the public to the navigable waterways of the state. Recreational and commercial working waterways require direct access to or a location on, over or adjacent to a navigable body of water. The term includes water-dependent facilities that are open

⁶ FLA. STAT. §192.001 (2005).

⁷ FLA. STAT. §327.02(19) (2005).

⁸ FLA. STAT. §197.3632(d) (2005).

to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, and other support structures over the water. . . .⁹

Commentary

The terms above track applicable language from the Florida Statutes. The tax deferral statute authorizes local governments to be more restrictive in its application of the definition, but a local government may not expand the definition beyond that provided by the statute. Local governments should review their comprehensive plan and land development regulations to determine the land use and zoning categories that make property owners presumptively eligible. It should also be noted that neither the definition of “recreational ad commercial working waterfront property” nor the statute generally describe the extent of access that a parcel seeking to qualify on that basis must provide to qualify for the deferral program. In the case of marinas one guidepost may be the discount on sovereignty submerged lands leases provided to marinas that maintain public access.¹⁰

Section 4. Property Eligible for Tax Deferral Program

Any property owner who is engaged in the operation, occupation, rehabilitation or renovation of a recreational or commercial working waterfront property, as defined in Section 3, may elect to defer payment of ad valorem taxes in accordance with this ordinance.¹¹

Commentary

Local governments should take note that the statute allows them to further limit eligible properties to a particular geographic area of the county or municipality.

Section 5. Taxes Eligible for Deferral

This deferral applies only to taxes levied by the City of Kate’s Cove.¹² This deferral does not apply to taxes or non-ad valorem assessments, as defined in section 197.3632(1)(d) of the Florida Statutes, levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to section 9(b) or section 12, Article VII of

⁹ FLA. STAT. §342.07(2) (2005). The underlined material was added in 2006 by 2006 Laws of Florida, Chapter 220, section 6.

¹⁰ Marinas “where at least 90 percent of the slips are available for rent to the public on a first-come, first-served basis are entitled to a 30% discount on the annual lease fee,

¹¹ FLA. STAT. §197.303(3)(2005).

¹² FLA. STAT. §197.303(4) (2005).

the State Constitution.¹³ This deferral is not an abatement and will constitute a lien on the property in favor of the City, and shall attach as of the date and in the same manner and be collected as other liens for taxes, as provided for under this ordinance.¹⁴

Commentary

Local governments should note that only those taxes levied by the entity named in this section can be deferred by eligible property owners. Thus, if this ordinance is adopted by a municipality, property owners may not defer taxes levied by the county, or any other entity other than the municipality.

Section 6. Application for Tax Deferral

6.1 Filing Deadline

Eligible property owners who elect to defer taxes under this ordinance must file an annual application with the tax collector on or before January 31 of the year following the year in which the taxes sought to be deferred are assessed.¹⁵

6.2 Application Form Requirements

The application for deferral must be made upon a form prescribed by the Department of Revenue and furnished by the county tax collector as provided by law.¹⁶ The applicant must sign the application form upon oath before an officer authorized by the state to administer oaths.¹⁷ Each application must contain a list of, and the current value of, all outstanding liens on the applicant's property.¹⁸ Further, each applicant shall furnish proof of fire and extended coverage insurance in an amount that is in excess of the sum of all outstanding liens and deferred taxes and interest with a loss payable clause to the tax collector.¹⁹ The tax collector may require the applicant to submit any other evidence and documentation as deemed necessary by the tax collector in considering the application.²⁰ The applicant has the burden to affirmatively demonstrate compliance with the requirements of this ordinance.²¹

6.3 Tax Collector; Determinations and Findings

Pursuant to Florida Statutes, section 197.3041(2)(a), the tax collector shall consider and render his or her findings, determinations, and decision on each annual application for tax deferral for recreational and commercial working waterfronts within

¹³ FLA. STAT. §197.303(4) (2005).

¹⁴ FLA. STAT. §197.304(5) (2005).

¹⁵ FLA. STAT. §197.304(1) (2005).

¹⁶ FLA. STAT. §197.3041(1) (2005).

¹⁷ *Id.*

¹⁸ FLA. STAT. §197.3041(3) (2005).

¹⁹ FLA. STAT. §197.3041(5) (2005).

²⁰ FLA. STAT. §197.3041(1) (2005).

²¹ FLA. STAT. §197.304(1) (2005).

45 days after the date the application is filed. The tax collector shall exercise reasonable discretion based upon applicable information made available under this ordinance.²² The determinations and findings of the tax collector as provided in this ordinance are not quasi-judicial and are subject exclusively to review by the value adjustment board as provided in section 5.7 of this ordinance.²³

Commentary

*Section 6.3 and many of the following sections outline the statutory duties of the county tax collector and other county officials. Note that a **municipality** may not alter these statutory duties and determine what **county** officials must do.*

6.4 Application Approval

6.4.1 Notification and Recording

Pursuant to Florida Statutes, section 197.3041(2)(a), if the tax collector finds that the applicant is entitled to the tax deferral the tax collector shall approve the application and file the application in the permanent records. The tax collector shall notify the property appraiser in writing of those parcels for which taxes have been deferred.²⁴ All deferrals granted under this ordinance shall remain in effect regardless of any change in the authority of the tax collector to grant the deferral.²⁵

6.4.2 Calculation of Deferred Taxes

Approval of an application for tax deferral shall defer that portion of the combined total of ad valorem taxes and any non-ad valorem assessments that are authorized to be deferred by this ordinance.²⁶ The date of receipt by the tax collector of the applications for tax deferral shall be used in calculating taxes due and payable net of discounts for early payment.²⁷

6.5 Application Disapproval

6.5.1 Specific Disqualifying Criteria

Pursuant to Florida Statutes, section 197.304(3), the tax collector may not grant a tax deferral if:

²² FLA. STAT. §197.3041(2)(a) (2005).

²³ Id.

²⁴ FLA. STAT. §197.3041(6) (2005).

²⁵ FLA. STAT. §197.303(5) (2005).

²⁶ FLA. STAT. §197.304(2) (2005).

²⁷ FLA. STAT. §197.3041(4) (2005).

(1) the total of the amount of the deferral taxes, the non-ad valorem assessments plus interest, any outstanding mortgages, and all other outstanding liens on the property exceeds 85% of the assessed value; or

(2) the primary financing of the property is for an amount in excess of 70% of the assessed value of the property.

6.5.2 Notification and Recording

Pursuant to Florida Statutes, section 197.3041(2)(a), if the tax collector finds that the applicant is not entitled to the deferral, the tax collector shall send notice of disapproval within 45 days after the date the application is filed, stating reasons for the disapproval to the applicant. The notice shall be sent by personal delivery or registered mail to the mailing address given by the applicant in the manner in which the original notice was served upon the applicant and must be filed among the permanent records of the tax collector's office.²⁸ The original notice of disapproval sent to the applicant shall advise the applicant of the right to appeal the decision of the tax collector to the value adjustment board and inform the applicant of the procedure for filing such an appeal.²⁹

6.6 Application Disapproval Appeals

6.6.1 Method of Appeal

An appeal of the decision of the tax collector to the value adjustment board must be in writing on a form prescribed by the Department of Revenue and furnished by the tax collector.³⁰ The appeal must be filed with the value adjustment board within 20 days after the applicant's receipt of the notice of disapproval.³¹

Commentary

Currently, petitioners use Form DR-486 for general petitions to their county value adjustment boards. The form may be accessed from the Florida Department of Revenue's website at <http://www.myflorida.com/dor/forms/download/!adval.html>.

6.6.2 Review by Value Adjustment Board

Pursuant to Florida Statutes, section 197.3041(2)(b), the value adjustment board (Board) must approve or disapprove an appeal within 30 days after receipt. The Board shall review the application and the evidence presented to the tax collector upon which the applicant based his or her claim for tax deferral.³² At the election of the applicant, the Board shall hear the applicant in person, or by agent on the applicant's behalf, on the

²⁸ FLA. STAT. §197.3041(2)(a) (2005).

²⁹ Id.

³⁰ FLA. STAT. §197.3041(2)(b) (2005).

³¹ Id.

³² Id.

applicant's right to the tax deferral.³³ The Board shall reverse the decision of the tax collector and grant a tax deferral to the applicant, if, in its judgment, the applicant is entitled to the tax deferral.³⁴ Otherwise, the Board shall affirm the decision of the tax collector.³⁵

6.6.3 Appeals of Value Adjustment Board Decisions

Action by the Board is final unless the applicant or tax collector or other lien holder, within 15 days after the date of the disapproval of the application by the Board, files a *de novo* proceeding for a declaratory judgment or other appropriate proceeding in the circuit court of the county in which the property is located.³⁶

Section 7. Deferred Payment Certificates

7.1 Notification and Transfer

Pursuant to Florida Statutes, section 197.3042(1), the tax collector shall notify each local governing body of the amount of taxes deferred which would otherwise have been collected for such governing body. The County shall then, at the time of the tax certificate sale held pursuant to Florida Statute Section 197.432, strike each certificate off to the City.³⁷ Certificates issued pursuant to this section are exempt from the public sale of tax certificates held pursuant to section 197.432 of the Florida Statutes.³⁸

7.2 Applicable Interest Rate

The certificates held by the City shall bear interest at a rate equal to the semiannually compounded rate of one half of one percent added to the average yield maturity of the long term fixed income portion of the Florida Retirement Savings investments as of the end of the quarter preceding the date of the sale of the deferred tax certificate.³⁹ However, the interest rate may not exceed 9.5 percent.⁴⁰

Commentary

The average yield on the long-term portion of the Fixed Income portfolio of the Florida Retirement system pursuant to Florida Statute, 197.262(2), was 5.01% effective December 30, 2005.

Section 8. Required Partial Payments

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ FLA. STAT. §197.3042(1) (2005).

³⁸ Id.

³⁹ FLA. STAT. §197.3042(2) (2005).

⁴⁰ Id.

During any year in which the total amount of deferred taxes, interest, mortgages and all other unsatisfied liens on the property exceeds 85 percent of the assessed value of the property, the tax collector shall immediately notify the owner of the property on which taxes and interest have been deferred that the portion of taxes and interest which exceeds 85 percent of the assessed value of the property is due and payable within 30 days after receipt of the notice.⁴¹ Failure to pay the amount due shall cause the total amount of deferred taxes and interest to become delinquent.⁴²

Section 9. Termination of Tax Deferral

9.1 Conditions for Termination

Pursuant to Florida Statutes, section 197.3043(1), the tax collector may partially or fully terminate a tax deferral if:

- (1) there is a change in use or ownership of the tax-deferred property such that the owner is no longer entitled to claim the property as a recreational or commercial working waterfront facility; or
- (2) there is a change in the legal or beneficial ownership of the property; or
- (3) the owner fails to maintain the required fire and extended insurance coverage.

9.2 Payment of Deferred Taxes Upon Termination

The total amount of deferred taxes and interest for all previous years becomes due and payable November 1 of the year in which the change of use or ownership occurs or on the date failure to maintain insurance occurs, and is delinquent on April 1 of the year following the year in which the change in use or ownership or failure to maintain insurance occurs.⁴³

9.3 Notification by Property Appraiser

Whenever the property appraiser discovers that there has been a change in the use or ownership of the property that has been granted a tax deferral, the property appraiser shall notify the tax collector in writing of the date such change occurs, and, pursuant to Florida Statutes, section 197.3043(2), the tax collector shall collect any taxes and interest due or delinquent.⁴⁴

Section 10. Tax Delinquency

Pursuant to Florida Statutes, section 197.3043(4), if deferred taxes become delinquent under this ordinance, the tax collector shall sell a tax certificate for the

⁴¹ FLA. STAT. §197.3043(3) (2005).

⁴² *Id.*

⁴³ FLA. STAT. §197.3043(1) (2005).

⁴⁴ FLA. STAT. §197.3043(2) (2005).

delinquent taxes and interest, in a manner provided for in Florida Statute Section 197.432, on or before June 1 following the date the taxes become delinquent.

Section 11. Prepayment of Deferred Taxes

All or part of the deferred taxes and accrued interest may be paid at any time by:

- (1) the owner of the property; or
- (2) the next of kin of the owner, heir of the owner, or any person having or claiming a legal or equitable interest in the property, if the owner makes no objection within 30 days after the tax collector notifies the owner of the fact that such payment has been tendered.⁴⁵

Any partial payment pursuant to this section shall be applied first to the accrued interest.⁴⁶

Section 12. Distribution of Deferred Tax Payments

Pursuant to Florida Statutes, section 197.3045, when any deferred taxes or interest is collected, the tax collector shall maintain a record of the payment, setting forth a description of the property and the amount of taxes or interest collected for the property. The tax collector shall distribute payments received in accordance with the procedures for distributing ad valorem taxes or redemption moneys as prescribed in Chapter 193 of the Florida Statutes.⁴⁷

Section 13. Penalties for Fraudulent Filing

Any person who willfully files information under this ordinance that is incorrect shall:

- (1) pay the total amount of taxes and interest deferred, which amount shall become immediately due;
- (2) be immediately disqualified from filing a tax deferral application for the next 3 years; and
- (3) pay a fee of 25 percent of the total amount of taxes and interest deferred.⁴⁸

Any person against whom the penalties prescribed in this section have been imposed may appeal the penalties imposed to the value adjustment board within 30 days after the penalties are imposed.⁴⁹

⁴⁵ FLA. STAT. §197.3044 (2005).

⁴⁶ Id.

⁴⁷ FLA. STAT. §197.3045 (2005).

⁴⁸ FLA. STAT. §197.3047 (2005).

⁴⁹ Id.

Section 14. Limited Applicability of Ordinance

This ordinance does not prevent the collection of personal property taxes that become a lien against tax-deferred property.⁵⁰ Further, this ordinance does not defer payment of special assessments to benefit property other than those specifically allowed to be deferred, nor does this ordinance affect any provision of any mortgage or other instrument relating to property requiring a person to pay ad valorem taxes or non-ad valorem assessments.⁵¹

<<OPTIONAL COMMUNITY REDEVELOPMENT AREA SECTION>>

Commentary

Not all local government jurisdictions may currently contain an eligible community redevelopment area; however, local governments should take care in considering addition of this section so as to avoid of any future need to amend the ordinance should a community redevelopment area encompass property eligible for the tax deferral program.

Section A. Deferrals for Community Redevelopment Areas

A.1 Notification Requirement

The tax collector shall notify a community redevelopment agency of any tax deferral that has been granted on property located within the community redevelopment area of that agency.⁵²

A.2 Tax Reduction Criteria

If an application for deferral is granted on property that is located in a community redevelopment area, the amount of taxes eligible for deferral shall be reduced if:

- (1) the community redevelopment agency has previously issued instruments of indebtedness that are secured by increment revenues on deposit in the community redevelopment trust fund; and
- (2) those instruments of indebtedness are associated with the real property applying for the deferral.⁵³

⁵⁰ FLA. STAT. §197.3046 (2005).

⁵¹ *Id.*

⁵² FLA. STAT. §197.303(6)(d) (2005).

⁵³ FLA. STAT. §197.303(6)(a) (2005).

However, issuance of debt obligation after the date a deferral has been granted shall not reduce the amount of taxes eligible for deferral.⁵⁴

A.3 Reduction Amount

If the preceding criteria apply, the tax deferral shall not apply to an amount of taxes equal to the amount that must be deposited into the community redevelopment trust fund by the entity granting the deferral based upon the taxable value of the property upon which the deferral is being granted.⁵⁵

A.4 Termination of Applicability of this Section

Once all instruments of indebtedness that existed at the time the deferral was originally granted are no longer outstanding or have otherwise been defeased, the provisions of this section shall no longer apply.⁵⁶ The community redevelopment agency shall notify the property owner and the tax collector one year before the debt instruments that prevented taxes from being deferred are no longer outstanding or otherwise defeased.⁵⁷

⁵⁴ FLA. STAT. §197.303(6)(e) (2005).

⁵⁵ FLA. STAT. §197.303(6)(b) (2005).

⁵⁶ Id.

⁵⁷ FLA. STAT. §197.303(6)(c) (2005).