

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
IN AND FOR ALACHUA COUNTY, FLORIDA**

**CASE NUMBER: 01-2025-CA-002575**

**Circuit Civil Division L**

**GAINESVILLE REGIONAL UTILITIES  
AUTHORITY, a statutory regional utilities  
authority organized under the laws of the State  
of Florida,  
Plaintiff,**

**-vs-**

**CITY OF GAINESVILLE, FLORIDA, a  
Florida Municipal Corporation, and KIM A.  
BARTON, in her official capacity as the  
Supervisor of Elections for Alachua County, Florida,  
Defendants.**

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**ORDER DENYING EXPEDITED MOTION TO ENFORCE  
STATUTORY SUSPENSION OF MUNICIPAL ORDINANCE**

THIS matter is before the Court on the Plaintiff's Expedited Motion to Enforce Statutory Suspension of Municipal Ordinance. The Court held a hearing on this motion on September 30, 2025. At the hearing, Plaintiff Gainesville Regional Utilities Authority ("GRUA") requested an order pursuant to Section 166.0411, Florida Statutes, that would prevent Defendant City of Gainesville ("City") from submitting to the voters of Gainesville a proposed charter amendment during the November 4, 2025, special election. The Court finds that under the plain language of Section 166.0411(1), a "municipality must suspend *enforcement* of an ordinance" that is being challenged on constitutional grounds. Because the proposed amendment to the charter has not been approved by the voters, there is nothing to enforce, and thus the present challenge is not ripe for court review.

The Court first addresses the distinction between enactment and enforcement. Enactment describes the legal process by which an ordinance becomes law. See Fla. Stat. § 166.041(7). Section 166.041(1)(a), Florida Statutes, defines "ordinance" as "an official legislative action of a governing body, which action is a regulation of a general and permanent nature *and enforceable as a local law.*" Enactment of municipal ordinances requires readings of the proposed ordinance on at least

two separate days and, at least 10 days prior to adoption, publication in a newspaper of general circulation in the municipality. Fla. Stat. § 166.041(3)(a). Enforcement, on the other hand, occurs *after* a law is enacted by a vote of the governing body. If a municipality fails to satisfy the enactment requirements for an ordinance, such as the statutory notice period, it is void *ab initio* and therefore unenforceable as law. See Ellison v. City of Fort Lauderdale, 183 So.2d 193 (Fla.1966); Healthsouth Doctors' Hosp. v. Hartnett, 622 So.2d 146 (Fla. 3d DCA 1993); see also Carlton v. Jones, 158 So. 170, 171 (1934)(recognizing that when an ordinance is not published according to law it is “invalid and of no effect”); Webb v. Town Council of Town of Hilliard, 766 So.2d 1241 (Fla. 1st DCA 2000).

In this case, the Gainesville City Commission passed Ordinance No. 2025-416, which proposed amending Article VII of the City Charter. The challenged ordinance reads as follows:

#### ORDINANCE NO. 2025-416

An ordinance of the City of Gainesville, Florida, proposing an amendment to Article VII titled "Gainesville Regional Utilities Authority" of the Charter Laws of the City of Gainesville; providing for submission of the charter amendment to the electors for approval or disapproval at a special election to be held on November 4, 2025; approving the question to be placed on the ballot; providing that this charter amendment will become effective if approved by the electors; providing directions to the codifier; providing directions to the city clerk; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

GRUA challenges this ordinance on the grounds that it is expressly preempted by the State Constitution and is arbitrary and unreasonable. However, the ordinance does not call for enforcing any enactment but merely submits the amendment to the voters for approval. A city's charter can be amended through an election following an ordinance or petition, or by act of the Legislature. See Section 166.031(1), Florida Statutes ("The governing body of a municipality may, by ordinance ... submit to the electors of said municipality a proposed amendment to its charter.") GRUA is not challenging the process of charter amendment, but rather the substantive amendment proposed by the ordinance. The issue is that nothing has been approved by the voters, which means there is nothing to prohibit the City from enforcing. Holding an election is not enforcement of an ordinance.

Other courts have noted that enactment and enforcement are two separate acts the Legislature may expressly preempt. In Fla. Carry, Inc. v. City of Tallahassee, 212 So. 3d 452 (Fla. 1st DCA 2017), appellants challenged firearms ordinances passed by the City of Tallahassee in 1957 and 1984, which predated the preemption of the subject. The First District Court of Appeal addressed the distinction in Section 790.33, Florida Statutes (2013), which made a municipality liable for "enacting or causing to be enforced any local ordinance" which violated the Legislature's regulation of firearms. In Florida Carry, the City Commission of Tallahassee refused to vote on the repeal of the two challenged ordinances, causing the preempted regulations to be republished in the

City Code. It was undisputed that the ordinances had not been enforced for more than a decade, and the issue in Florida Carry was whether recodification was a new enactment prohibited by law. The First District Court of Appeal found that Section 790.33 did not prohibit reprinting void ordinances, and that enactment and enforcement were two separately prohibited acts. "Thus, while the ordinances may still be 'on the books,' they are unenforceable and invalid. . . [I]t is undisputed that Appellees did not enforce or enact the ordinances at issue, the only two acts prohibited by section 790.33(3)(a)[.]" Id. at 462; see also Bhoola v. City of St. Augustine Beach, 588 So. 2d 666, 667 (Fla.5th DCA1991)("The attempt to enforce a void ordinance, extends its evil far beyond its original purported enactment.") Under this reading, whether an ordinance is void as enacted is a separate inquiry from whether it is enforceable.

In this case, while Section 166.0411(1) mandates suspension of enforcement of a challenged ordinance, it is silent on ordinances enacted but not yet enforced. *Cf.* Fla. Stat. § 316.007(stating "no local authority shall *enact or enforce* any ordinance on a matter covered by this chapter"); Fla. Stat. § 790.33(3)(a)(prohibiting "*enacting or causing to be enforced* any local ordinance" impinging on firearms regulation).

Where the legislature includes wording in one section of a statute and not in another, it is presumed to have been intentionally excluded. The judiciary cannot extend the terms of an unambiguous statute beyond its express terms or reasonable and obvious implications under Florida's strict separation of powers delineated in article II, section three, of the Florida Constitution. Even when the court determines the legislature intended something not expressed in the wording, the judiciary lacks the authority under organic law to depart from the plain meaning of an unambiguous statute.

Fla. Carry, Inc. v. Univ. of N. Fla., 133 So. 3d 966, 971 (Fla. 1st DCA 2013)(internal citations omitted). If, as GRUA contends, the subject matter of the ordinance has been preempted by the Florida Constitution, then the enacted ordinance would be void and unenforceable. "[T]he city's purported amendment is not voidable-it is void. . . . It is as though the ordinance does not exist." Bhoola at 667. But the City has not sought to enforce the ordinance, which submits a proposed amendment of the City's Charter to the voters. As written, the ordinance would only "become effective if approved by the electors," i.e. enforceable. In other words, the enforcement of the ordinance is contingent on the election in November. Should the voters choose not to amend the City's Charter, there would be nothing for the City to enforce. "When a claim of unavoidable harm or litigation rests on pure speculation as to what might happen, there are no ripening seeds of controversy, as the complainant is essentially seeking an advisory opinion." Guttenberg v. Smith & Wesson Corp., 357 So. 3d 690, 697 (Fla. 4th DCA 2023).


In the matter presently before the Court, the City is seeking to hold an election where the voters will decide whether to amend the Charter. The Court finds that the City, in submitting the proposed amendment to the voters, is not "enforcing" the ordinance. It is upon approval by the electorate that the ordinance becomes enforceable. Since that contingency has not occurred, the

Court cannot grant relief under Section 166.0411(1). This ruling does not address the merits of the case, but rather the justiciability of this narrow issue. Therefore, the Court having reviewed GRUA's motion, it is hereby

**ORDERED AND ADJUDGED** that the motion is **DENIED**.

**DONE AND ORDERED** on Friday, October 10, 2025.

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George M. Wright, Circuit Judge  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies have been furnished by U.S. Mail or via filing with the Florida Courts E-Filing Portal on Friday, October 10, 2025 to the following:

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