CUA-PP-03: EXTRA-JURISDICTIONAL MUNICIPAL UTILITY SERVICE

COMMITTEE RECOMMENDATION: ADOPT

PROPOSED POLICY: SUPPORT legislation that provides that where a county has, by ordinance, established one or more utility service areas in the unincorporated area and where the county has the current ability to provide service, a municipality may not provide utility services within such county service area(s) without consent of the county.

BACKGROUND: The issue under consideration is the scope of power available to municipalities under s. 180.02, F.S, to establish extraterritorial utility zones or service areas within the unincorporated county. Once established, the municipality may require pursuant to subsection (3) that all persons or corporations living or doing business within said area to connect, when available with described municipal systems. Section 180.191(1)(a), F.S., authorizes a municipality to add a 25% surcharge to the rates, fees, and charges to consumers outside its service boundaries and the possibility, under paragraph (1)(b), that customers of the unincorporated area within such zone or service area may pay rates, fees and charges of up to 50% more than municipal customers pay for the corresponding service. If only the surcharge is imposed over municipal rates, a public hearing is not even required under paragraph (1)(a).

A public hearing is required under paragraph (1)(b). This statutory scheme creates the possibility that customers in the unincorporated area will be paying higher rates to subsidize the lower rates of municipal customers, and the city's elected officials have no political accountability to the customers in the unincorporated areas. This scenario recently occurred in the City of Dunnellon in Marion County, where the city acquired an investor-owned utility in the unincorporated area and, pursuant to the above statute, imposed the surcharges, and other impositions on the customers of that system. This resulted in litigation that was costly to the city and ultimately led to the system being acquired by the Florida Governmental Utility Authority. In addition to the above-described concerns for residents of the unincorporated county, the municipality's unrestricted power under s. 180.02, F.S., to establish such utility zones or service areas creates a disruptive influence on the planning and system development of County-owned utility systems.

Section 180.02, F.S., was originally adopted in 1935 and was last revised in 1995. It is suggested that the statute is obsolete, and not reflective of the scope of services provided by county governments in medium and large counties. When originally adopted, and for years thereafter, counties typically did not provide municipal services in unincorporated areas. All of that has changed with the advent of the county home rule powers act, s. 125.01, F.S., and many counties, including Marion, provide a broad range of municipal services. In fact, several of the municipalities in Marion County contract for the County to provide municipal services to their residents. What is most problematic for county utility departments is the ability of cities, under s. 180.02, F.S., to create such zones in unincorporated areas, regardless of the impact thereof on county utility

operations, and with no agreement or consent required by the county. While a county may file objections under s. 180.03(2), F.S., the city is free to ignore those objections.

ANALYSIS: It is urged that a reasonable resolution of the above situation is found in s. 180.06, F.S., relating to activities authorized by municipalities and private companies, which provides:

> However, a private company or municipality shall not construct any system, work, project or utility authorized to be constructed hereunder in the event that a system, work, project or utility of a similar character is being actually operated by a municipality or private company in the municipality or territory immediately adjacent thereto *unless such municipality or private company consents to such construction.*

(Emphasis supplied). It is this requirement for consent that is lacking for counties.

It is proposed that legislation be enacted that would provide that where a county has, by ordinance, established one or more utility service areas in the unincorporated area, and within such services, has the current ability to provide service, a municipality may not provide utility services within such county service areas. Within any county service area where the county does have the ability to provide service within months, a municipality may not provide service within such county service area without consent from the county. Counties and municipalities are encouraged to cooperatively establish utility service boundary agreements that will maximize the capacities and efficiencies of their respective systems, with the goal of providing the most cost-effective utility service to system customers. Counties and municipalities are encouraged to cooperatively establish utility service boundary agreements that will maximize the capacities and efficiencies of their respective systems, with the goal of providing the most cost-effective utility service to system customers.

FISCAL IMPACT: Indeterminant.

FAC STAFF NOTES:

- FAC 2022 Policy Conference
  - CUA-PP-03 was recommended for adoption by the committee.

- Except the title, this policy proposal is identical to CUA-PP-07: Utility Services Areas, which the CUA Committee adopted.
- **Relevant Statutes:** Chapter 153, Florida Statutes *Water and Sewer Systems*
  - Section 153.03(1), F.S., *General Grant of power*. This section provides a general grant of power to purchase, construct, improve, extend, enlarge and reconstruct water supply systems and sewer disposal systems with the county or within any adjoining county or counties; to operate, manage, and controls such systems; and furnish and supply water and sewage collection and disposal services counties, municipalities, and other consumers any such counties. However, a county may

not, without the consent of a municipality's governing board, construct, own, operate or maintain such water supply or sewage disposal systems within the jurisdictional limits of the municipality. In addition, a county may not furnish any similar facilities to any property that is being furnished similar facilities by the municipality without such municipality's consent.

  - s. 153.50, F.S., *Short title.* In 1959, the Florida Legislature passed Ch. 59-446, L.O.F, which created the County Water and Sewer District Law. In so doing, the Legislature recognized the need for county governments to alleviate public health and water supply problems arising from a lack of municipal and private water and sewer facilities necessary to serve county unincorporated areas. In fact, the Legislature emphatically stated that "many unincorporated areas are in *extreme need of such sewage and water facilities,* and … *the purpose of this law [is] to provide means for the counties of the state to such conditions in in such unincorporated areas*." (Emphasis supplied). See s. 153.51, F.S., relating to legislative intent.
  - Section 153.53, F.S., *Establishment of districts [water and sewer] in unincorporated areas.* This section empowers county governing boards to creates water and sewer district determined necessary in the public interest. A district may only consist of contiguous unincorporated areas of the county, except municipalities. This section also provides alternate means for creating water and sewer district by a petition process.

- **Previous FAC Statements:** Except the title, this policy proposal is identical to CUA-PP-07: Utility Services Areas (2021-22), which the CUA Committee adopted.
-

SUBMITTING COUNTY AND CONTACT: Marion – Matthew Cretul matthew.cretul@marionfl.org (352) 817-3139

ASSIGNED COMMITTEE: CUA

BOARD SUPPORT: Yes

UNFUNDED MANDATE: No

PROTECTIVE OF HOME RULE: Yes