

BALDWIN COUNTY COMPREHENSIVE PLAN 2008 - 2025
INTERGOVERNMENTAL COORDINATION ELEMENT
DATA, INVENTORY AND ANALYSIS
SEPTEMBER, 2008

Governmental coordination refers to coordination with and cooperation between agencies in a local government, and is essential in creating local mitigation strategies, establishing level of service standards, and expanding the capabilities of critical government services and responsibilities.

Baldwin County has and is continuing to see tremendous growth within its areas of concern. Spiked population growth patterns place extreme pressure on land development; and without proper government coordination in place, costly development coupled with deep impacting events and/or natural disasters may severely impair local economies. Moreover, unplanned growth causes major depletion and degradation to an area's natural resources.

Intergovernmental coordination provides a regional approach for responding to and recovering from large-scale events such as floods, hurricanes, storm surge, etc. Coordinated intergovernmental efforts also provide a way to coordinate with local and regional governments to provide adequate and uniform standards of service to its citizens, as well as efficiently utilize limited resources.

Allowing local governments to cooperate with one another in the performance of tasks while at the same time, reduce duplication of efforts, generates substantial cost savings in addition to greater levels of service among partnering jurisdictions. Consequently, inter-local service arrangements enhance the level of service and service capabilities of smaller local governments by allowing them to offer more specialized services to their residents than they could otherwise afford.

Intergovernmental Coordination Statutory Authority: The following legislation provides the relevant authority necessary to implement the Intergovernmental Coordination element of the Baldwin County Comprehensive Plan.

Section 11-102-1, et seq: Under the Alabama Code § 11-102-1, the Joint Powers Act, any two or more local governments can jointly provide any service that either can provide on its own. It is sufficient if each of the contracting entities has the authority to exercise or perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities.

Municipal Powers Background Information: Legislature entrusts municipal councils with the duty and responsibility of exercising a wide variety of the sovereign powers of the state which vitally affect the life, liberty and property of citizens within their jurisdictions. Sections 11-43-2, 11-43-40, and 11-43-43, Alabama Code 1975 provide that all legislative powers and other powers granted to municipalities shall be exercised by the council, and generally places

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municipal powers at the discretion of the municipal council. These powers are exercised by the adoption of an ordinance, resolution or motion.

Significantly, a municipal ordinance fixing no guide or rule for the exercise of administrative discretion, leaving the whole matter to be determined by the officer or governing authority, is an unwarranted delegation of legislative power. Such ordinances are unreasonable, arbitrary, or oppressive. When adopting ordinances, a council should provide standards and guides to be used by officers responsible for administration of the ordinances.

Relevant Case Law: Municipal authority is in no way affected by the fact that the police jurisdiction encompasses territory located in another county. *White v. City of Decatur*, 25 Ala. App. 274, 144 So. 872 (1932). An exception to this rule applies to Baldwin County where a municipality may not exercise police jurisdiction authority unless a part of its corporate limits also lies in the county.

Alabama courts follow the **Dillon Rule** which was initially recognized in the seminal case *Mobile v. Moog*, 53 Ala. 561 (1875). This case quoted Judge Dillon's work on municipalities, which set forth that municipalities possess and exercise express powers, implied powers, and those powers "essential to the declared objects and purposes of the corporation –not simply convenient, but indispensable." *Id.*

In other words, these municipal powers must be germane to the purpose for which the corporation was created and cannot be enlarged by construction. Such power must be related to some corporate purpose, or have a legitimate connection. *Harris v. Livingston*, 28 Ala. 577.

Analysis: Here for instance, the issuance of building permits has become a controversial topic between the County and its municipalities. Accordingly, a municipal council has the power to adopt building laws so long as they meet the aforementioned criteria: (1) legitimate connection to a public purpose; and (2) such ordinance(s) must establish objective guidelines and rules, leaving no room for authority discretion that could be found unreasonable, arbitrary, or oppressive. Furthermore, municipal actions that amount to an issuance of building permits that occur prior to, or without, formal adoption of building law ordinances are likely invalid and could thus be subject to litigation.

Conclusion: In sum, the Intergovernmental Coordination Element of the Baldwin County Comprehensive Plan shall address those related issues that arise between local government entities. This element aims for the cooperation and coordination between the County and its municipal and regional governments to best meet the health, safety, and quality-of-life needs of its citizens.

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Summary of Existing Interlocal Agreements

1. Elberta

- **Rule:** State law authorizes a municipality to exercise such planning jurisdiction up to **5 miles** outside its corporate limits and not located in any other municipality.
- Clause 2 of The Elberta Resolution agreement provides that the municipality of Elberta (*and not the Baldwin County Commission*), shall exercise review authority over all subdivision developments within the area indicated on the Planning Jurisdiction (“PJ”) Map
- Elberta will submit a copy of each plat approved within its extraterritorial PJ to the County Engineer for his approval (as required in Section 11-52-30 of the Code of Alabama).
- Where a proposed subdivision lies partly in the County’s PJ and partly in Elberta’s PJ, it shall be Elberta’s responsibility to review said subdivision.
- The Elberta Resolution agreement expressly understands that it may be modifies or amended by mutual action of the County and municipality whenever such is deemed necessary.

2. Loxley

- The Baldwin County Commission shall have responsibility for the review of subdivision in the unincorporated areas of the County lying outside the municipality’s (here, Loxley) and not lying inside the PJ of any other municipality in Baldwin County.
- The municipality will exercise review authority over all subdivision developments located inside its corporate limits and all land lying within its PJ (all land lying within **1.5 miles** of its corporate limits and not located in any other municipality).
- Loxley will submit a copy of each plat approved within its extraterritorial PJ to the County Engineer for his approval (as required in Section 11-52-30 of the Code of Alabama). The more stringent requirements, whether of municipality or of the County, must be complied with by the developer.

3. Foley

- The Foley Resolution agreement provides that the municipality shall have particular responsibility for the review of subdivisions located inside its corporate limits and all land lying within its PJ. The municipality’s PJ shall include all land located inside its corporate limits and all land lying within **5 miles** of its corporate limits and not located in any other municipality.
- Clause 2 of the Resolution provides that if any part of a proposed subdivision lies within the municipality’s PJ (as described on the PJ Map), then the municipality, and not Baldwin County Commission, will have responsibility for review of said subdivision.

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- Elberta will submit a copy of each plat approved within its extraterritorial PJ to the County Engineer for his approval (as required in Section 11-52-30 of the Code of Alabama).
- **Rule:** State Law provides if there is a conflict between City Subdivision Regulation and County Subdivision Regulations, the more stringent regulations, whether of municipality or of the County, must be complied with by the developer.
- The Resolution agreement expressly understands that it may be modified or amended by mutual action of the County and municipality whenever such modification/amendment is deemed necessary.

4. Fairhope

- See above, Foley resolution agreement rules (same rules) in addition to:
 - i. The municipality's PJ shall include all land located inside its corporate limits and all land lying within 5 miles of its corporate limits West of Fish River and not located in any other municipality.

5. Daphne

- See above, Foley resolution agreement rules (same rules).

6. Summerdale

- See above, Foley resolution agreement rules (same rules).

7. Orange Beach

- See above, Foley resolution agreement rules (same rules) in addition to the following:
 - i. The opening of the bridge across the Intracoastal canal made accessible that portion of the city's PJ within the Orange Beach Police jurisdiction in the unincorporated areas over which neither Foley nor Gulf Shores has jurisdiction. The Orange Beach asserts PJ and control over said area.
 - ii. The County Commission agrees to notify Orange Beach of any effort or intent by any other municipality desiring to exercise jurisdiction and control over the territory north of the intracoastal waterway within the legal jurisdiction of Orange Beach pertaining to subdivision control.

8. Robertsdale

- See above, Foley resolution agreement rules (same rules).

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9. Magnolia Springs

- See above, Foley resolution agreement rules (same rules).

10. City of Gulf Shores

- See above, Foley resolution agreement rules (same rules) given the following exceptions:
 - i. The municipality's (here City of Gulf Shores) PJ will not include any land located northerly or westerly of the Compromise Boundary established by the Circuit Court of Baldwin County in that certain Consent Order on Settlement entered in City of Gulf Shores v. Hold, et al., CV95-323, Oct. 31, 1996, whether or not such land is within the PJ of any other municipality.

DEFINITIONS

For the purposes of this section and the Intergovernmental Coordination Element found within the Baldwin County Comprehensive Plan, the following terms shall hold the following meanings:

Extraterritorial Jurisdiction (ETJ): refers to the jurisdictional authority and power that a municipality may exercise outside its corporate limits. This jurisdiction shall extend to a maximum of 5 miles outside its corporate limits.

Extraterritorial Powers: refers to those powers a municipality may exercise outside its corporate limits and in accordance to the Alabama Code 1975.

Planning Jurisdiction: refers to the ETJ of a municipality in connection to having review authority over all planned subdivision developments that lie within a municipality's ETJ. Such areas shall extend to a maximum of five miles outside a municipality's corporate limits.

Police Jurisdiction: refers to the ETJ area where a municipality may enforce police or sanitary regulations, and prescribe fines and penalties for related violations. The police jurisdiction of cities and towns of less than 6,000 in population shall extend for a distance of 1-1/2 miles beyond the corporate limits. In cities of more than 6,000 in population, this jurisdiction extends for a distance of 3 miles beyond the corporate limits. The one exception to this rule provides that municipal police officers may not enforce speed limits outside their corporate limits. Section 32-5A-171, Code of Alabama 1975.

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Public Input:

Citizens who attended the two Public Workshops (Sept. 25th and 26th, 2007) ranked their list of County issues and comments by order of importance at the end of the each evening. Below are the results for this element, listed in order of importance:

Intergovernmental Coordination Element

1. Address Control Issues over zoning of County and Work with Municipalities
2. Address ETJ Issues
3. Establish Concurrency regulations for infrastructure
4. Expand public water and sewer service// Wastewater Management
5. Improve trash collection and recycling service
6. Investigate use of recycled water
7. Coordinate County land uses adjacent to city limits
8. Set Standards for Annexation
9. County and Municipalities Work With Non-Governmental Groups