



City of North Port
NEIGHBORHOOD DEVELOPMENT SERVICES DEPARTMENT

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MEMORANDUM

TO: Peter Lear, CPA, CGMA City Manager
Cari Branco, Assistant City Manager & Jason Yarborough, Assistant City Manager

FROM: Frank Miles, MPA, Neighborhood Development Services
Ryan Pieper, City Arborist
Nicole Galehouse, AICP Planning Division Manager

SUBJECT: Use of Code Fines and Tree Fund on Private property

DATE: February 6, 2019

Referencing the attached legal request and discussion from the North Port Beautification and Tree/Scenic Highway Committee, Commission had previously directed staff to obtain information and legal opinion related to the use of Tree Fund generated monies on public property and the use of code enforcement generated fine monies on public property.

Background

This legal request was initiated from a June 7th, 2018 North Port Beautification and Tree/ Scenic Highway Committee presentation to Commission. As discussion ensued, the use of tree fund monies for public purposes was brought up. At the time, Vice Mayor Yates suggested that the monies collected from Code Enforcement violations could also potentially be utilized as a funding source for beautification projects. Commission then directed staff to come back with a structure for a fund from Code Enforcement fines to be used for the revitalization program. The CAO interpretation was requested to add clarification to what monies could be legally utilized for use on private properties.

Legal Opinion and Possible Action

There are essentially two opinions rendered related to the use of public funds on private properties. First, the legal opinion obtained from the CAO indicates that the City's Tree Fund dollars, can presently only be used on public property, if Commission decides to allow for the use of the tree fund dollars to be expended on private property, this will require a code change in the ULDC. Presently, the ULDC section regarding the Tree Ordinance is being revised and is set for consideration and review at a March 4 workshop where this aspect could be considered.

The other part of the CAO opinion dealt with the use of code enforcement fines on private property and in short, the CAO office determined that Florida law doesn't specify where these funds may be directed. Code Enforcement fines are deposited in the City General fund, so if Commission wanted a portion of these funds directed and set aside to be used on private properties, a separate fund will need to be established for General Fund resources to be directed there. Then a budget will be required to create a mechanism to expend these funds.



City of North Port

Office of the City Attorney

To: Frank Miles, Neighborhood Development Services

From: Michael Golen, Assistant City Attorney

Through: Amber L. Slayton, City Attorney

Date: January 28, 2019

Re: Request for Legal Services – Funding Questions for Tree Fund

The above-referenced Request for Legal Services has been reviewed.

Your request poses the following questions which are answered below:

1. May the current use of the Tree Fund under the City's code be modified or amended to allow for planting trees on private property versus public lands as currently written?
2. May fines collected from code enforcement citations be used to fund projects of the Tree and Beautification Committee?

RESPONSE TO QUESTION 1

1. *May the current use of the Tree Fund under the City's code be modified or amended to allow for planting trees on private property versus public lands as currently written?*

Short Answer: Yes; however, both the City's code and the City's Comprehensive Plan will require modification or amendment. Additionally, a valid municipal purpose must be shown in order to justify the expenditure of public money and resources on private property.

Constitutionality of Use of Tree Funds on Private Property

ULDC Sec. 45-13 establishes the City's Tree Fund, which is funded from the "mitigation fees and monetary fines" collected for violations of ULDC Chapter 21 – Landscaping Regulations, and Chapter 45 – Tree Protection Regulations. As currently written, the Tree Fund is to be used to advance the stated intent of ULDC Chapter 45 and its use is limited to the following activities:

1. Purchasing property within the City to be used only for tree preservation purposes;

2. Planting trees from the Tree Priority List on public lands within the City according to the priorities identified in Policy 3.5 of the Conservation and Coastal Zone Management element of the Comprehensive Plan;
3. Educating the public on proper care of trees;
4. Maintaining tree health and safety on public lands within the City. Money used from the Tree Fund for the purpose of tree maintenance shall be used exclusively for those trees planted with Tree Fund money; and
5. Purchasing conservation easements on privately owned property within the City.¹

As referenced in activity 2 above, Policy 3.5 of the Conservation and Coastal Zone Management element of the City's Comprehensive Plan² requires that the City plant trees "on City property only," and as further discussed below, provides a list of priorities where the City "shall plant trees."

Both the current language in the ULDC and the Comprehensive Plan specifically prohibit the use of City money or resources from being used to plant trees on private property. Before these prohibitions could be amended to permit such a practice,³ the City would have to show that spending public money or resources to plant a tree on private property is for a valid "municipal purpose."⁴

The Florida Constitution limits the expenditure of City money and resources. It provides that "neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, or partnership or person."⁵ The Florida Supreme Court holds that this Constitutional provision seeks "to protect public funds and resources from being exploited in assisting or promoting private ventures when the public would be at most only incidentally benefitted."⁶ Therefore, "if the expenditure primarily or substantially serves a public purpose, the fact that the expenditure may also incidentally benefit private individuals does not violate" the above-cited Constitutional provision.⁷

However, the City is still required to show the valid "municipal purpose" of the expenditure. This term has been broadly construed by the courts.⁸ In the context of determining whether the City is exercising power for a valid municipal purpose the action taken must be related to the health, morals, safety, protection, or welfare of the City.⁹ A valid municipal purpose must relate to the conduct of municipal government,

¹ ULDC § 45-13.

² June 27, 2017 edition.

³ See §163.3184, Fla. Stat., for the process to amend a comprehensive plan.

⁴ *City of Ocala v. Nye*, 608 So. 2d 15 (Fla. 1992); *State v. City of Sunrise*, 354 So. 2d 1206 (Fla. 1978).

⁵ Art. VII, § 10, Fla. Const.; see Op. Att'y Gen. Fla. 2006-12 (2006).

⁶ *Bannon v. Port of Palm Beach Dist.*, 246 So. 2d 737, 741 (Fla. 1971).

⁷ Op. Att'y Gen. Fla. 2006-12 (2006); see, e.g., *State v. Housing Finance Auth. of Polk County*, 376 So. 2d 1158, 1160 (Fla. 1979).

⁸ *City of Boca Raton v. Gidman*, 440 So. 2d 1277 (Fla. 1983).

⁹ *Basic Energy Corp. v. Hamilton County*, 652 So. 2d 1237 (Fla. 1st DCA 1995); *City of Ormond Beach v. County of Volusia*, 535 So. 2d 302 (Fla. 5th DCA 1988); see, e.g., *City of Boca Raton v. Gidman*; (operation of a day-care facility); *State v. City of Sunrise*, 354 So.2d 1206 (Fla. 1978) (issuing double advance refund bonds); *City of Miami Beach v. Forte Towers, Inc.*, 305 So.2d 764 (Fla. 1974) (rent control ordinance); *City of Winter Park v. Montesi*, 448 So.2d 1242

exercise of a municipal function, or provision of a municipal service.¹⁰ If an ordinance has no reasonable relationship to the morals, health, welfare, and safety of the people of a municipality, it is beyond the authorized exercise of the police power of the municipality and prohibited under Florida's Constitution.¹¹

The determination of what constitutes a valid municipal purpose for the expenditure of public funds is a factual determination for the legislative and governing body involved. In making this determination, the commission must make appropriate legislative findings that the expenditure primarily or substantially serves a public purpose; such findings should be included in any ordinance amending the code or the Comprehensive Plan to this end.

Conflict with the Comprehensive Plan

As currently drafted, the ULDC¹² references the City's policy regarding tree regulations and implements its Comprehensive Plan, specifically Objective 3 of the Conservation and Coastal Zone Management element of the Comprehensive Plan. Also provided are the City's policy statements regarding its "Tree Protection Regulations." Pursuant to the ULDC¹³, the Comprehensive Plan Policy 3.5 provides:

Policy 3.5: The City shall plant trees, **on City property only**¹⁴, according to the following priorities:

1. In existing neighborhoods to replace dead or dying street trees.
2. In existing neighborhoods to complete existing street tree patterns.
3. On parks sites, open space areas, or other appropriate public areas to provide shaded picnic or pedestrian walkways.
4. In gateway areas, as defined in the Future Land Use Element. Upon adoption of this policy, the City shall prioritize this sub-policy by planting a maximum of 25% of developer/builder provided trees to gateway areas for a two year period.
5. On sites containing public buildings frequented by citizens such as City Hall, Multi-purpose building, etc.
6. Along arterial and collector roadways that traverse the City.

(Fla. 5th DCA), *rev. den.*, 456 So.2d 1182 (Fla. 1984) (sale of sinkhole photographs); *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA), *rev. den.*, 440 So.2d 352 (Fla. 1983) (requirement of developers to provide parks and open spaces); *City of Venice v. Valente*, 429 So.2d 1241 (Fla. 2d DCA 1983) (allowing city to recover attorney's fees and costs in a code enforcement proceeding to abate a nuisance).

¹⁰ *City of Ormond Beach v. County of Volusia*, 535 So. 2d 302 (Fla. 5th DCA 1988).

¹¹ *City of Ormond Beach*, 535 So. 2d at 304.

¹² ULDC § 45-3. – Relationship to Comprehensive Plan.

¹³ *Id.*

¹⁴ Emphasis added.

RESPONSE TO QUESTION 2

2. *May fines collected from code enforcement citations be used to fund projects of the Tree and Beautification Committee?*

Short Answer: Florida law does not specifically require the City to use funds generated from the collection of fines for a specific purpose.

Under Florida law,¹⁵ the City designates code enforcement officers who issue citations where reasonable cause exists to believe that a person has violated a City code or ordinance. The law grants the City the authority to enact ordinances that include a schedule of violations and penalties to be assessed by its designated code enforcement officers.¹⁶ Additionally, the law makes it clear that its provisions are an “additional and supplemental” means for the City to enforce its code or ordinances and that “nothing contained in this section shall prohibit [the City] from enforcing its codes or ordinances by any other means.”¹⁷ However, where the City’s use of code enforcement officers leads to the collection of fines, the law¹⁸ does not require the City to use those fines in any specific way.

Alternatively, Florida law¹⁹ also permits the City to designate code inspectors to issue citations for violations of City code and ordinances. However, where code inspectors are used, the law states that its provisions are an “additional and supplemental” means for the City to enforce its code or ordinances and that “nothing in this section shall prohibit [the City] from enforcing its codes or ordinances by any other means.”²⁰ Again, where the City’s use of code inspectors leads to the collection of fines, the law²¹ does not require the City to use those fines in a specific way.

Please let me know if there are any questions, comments, or concerns. Otherwise, no further action will be taken on this Request for Legal Services.

¹⁵ § 162.21, Fla. Stat.

¹⁶ §162.21(5), Fla. Stat.

¹⁷ § 162.21(8), Fla. Stat.

¹⁸ § 162.21, Fla. Stat.

¹⁹ § 166.0415, Fla. Stat.

²⁰ § 166.0415(7), Fla. Stat.

²¹ § 166.0415, Fla. Stat.