Hallandale Beach
CITY ATTORNEY'S OFFICE

MEMORANDUM

DATE: March 11, 2025

TO: City Commission

FROM: Jennifer Merino, City Attorney

SUBJECT: City Powers for Community Redevelopment Purposes

Question:

The Hallandale Beach Community Redevelopment Agency (HBCRA) is set to sunset in 2026. Therefore, the City Commission will need to consider how it will move forward. Generally speaking, the City may (1) elect to extend the life of the HBCRA, modified or as-is, with tax increment funds (TIF) from the City but without tax increment funds (TIF) from the County, or (2) allow the HBCRA to sunset. The Commission has asked me and the HBCRA Attorney to analyze the question of whether the City may directly adopt the mission of the HBCRA, and, if it did so, whether the City would have any legal impediments to pursuing that mission directly, without the HBCRA.

Short Answer

Based upon significant research of state statutes and applicable case law by both legal counsel, review of the HBCRA community redevelopment plan, and discussions with Dr. Earle and HBCRA staff, the collective conclusion was reached that the City has the legal authority to directly execute the mission of the HBCRA as set forth in the community redevelopment plan and current projects and programs being pursued by the HBCRA. Further, by directly undertaking the mission, certain legal constraints of the expenditure of TIF, like the prohibition of expending TIF on the construction or expansion of public administrative buildings without the approval of the taxing authority, (i.e, the City), would be avoided. It is important to note that this memorandum is strictly focused on the legal authority and does not in any way address policy or administrative aspects of the decision to sunset or extend the HBCRA.

Legal Analysis

In order to answer the above question, legal counsel reviewed the HBCRA's community redevelopment plan to determine the types of projects and programs that the CRA might pursue, followed by a review of Florida Statutes and applicable case law.

Florida municipalities have broad home rule powers granted by Art. VIII, § 2(b) of the Florida Constitution. Florida Statutes § 166.021(3) reaffirms that municipalities have the power to enact legislation concerning any subject matter upon which the state legislature may act except those subjects expressly or impliedly preempted to state by the Constitution or general law. The only general constitutional limitation placed on the municipalities' authority is that such powers be exercised for valid "municipal purposes."[1]

As it relates to economic development, the law evolved greatly in the 1900s. Initially very restrictive with respect to the use of public funds for private benefit, the state progressed to a much broader view of the role of government in spurring private economic development.[2] Perhaps to avoid any potential ambiguities, the legislature has very specifically found that utilizing public funds for economic development is well within the powers of a municipality and has declared economic development a public purpose in § 166.021(8):[3]

> (a) The Legislature finds … that there is a need to enhance and expand economic activity in the municipalities of this state by attracting and retaining manufacturing development, business enterprise management, and other activities conducive to economic promotion, in order to provide a stronger, more balanced, and stable economy in the state, to enhance and preserve purchasing power and employment opportunities for the residents of this state, and to improve the welfare and competitive position of the state. The Legislature declares that it is necessary and in the public interest to facilitate the growth and creation of business enterprises in the municipalities of the state.
>
> (b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality,

[1] *City of Ocala v. Nye,* 608 So.2d 15, 17 (Fla.,1992) ([M]unicipalities are not dependent upon the legislature for further authorization, and legislative statutes are relevant only to determine limitations of authority.")
[2] *Linscott v. Orange Cnty. Indus. Development Authority*, 443 So.2d 97, 100 (Fla., 1983) ("The impact of the adoption of article VII, section 10(c) of the Florida Constitution (1968) was to recognize constitutionally that the public interest was served by facilitating private economic development.")
[3] "[L]egislative determinations are entitled to a presumption of correctness." *City of Parker v. State*, 992 So.2d 171, 178 (Fla. 2008)

> including any powers not specifically prohibited by law which can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection.
>
> (c) For the purposes of this subsection, it constitutes a public purpose to expend public funds for economic development activities, *including, but not limited to*, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.

Sec. 166.021(8) further identifies a number of mechanisms that can be used to benefit and attract private enterprise, such as direct grants or loans, fee-based or tax-based incentives, such as credits, refunds, exemptions, and property tax abatement or assessment reductions, and indirect incentives. The section is also very clear that it is not a limitation on the power to spend for economic development, but rather an illustration of the potential mechanisms; thus, the authorization should be interpreted broadly to include any mechanism not otherwise expressly prohibited.

In § 159.602, the legislature has also recognized the provision of affordable housing, another staple of the Community Redevelopment Agency (CRA) mission, as a valid municipal purpose:

> The financing, acquisition, construction, reconstruction, and rehabilitation of housing and of the real and personal property and other facilities necessary, incidental, and appurtenant thereto are exclusively public uses and purposes for which public money may be spent, advanced, loaned, or granted and are governmental functions of public concern.

In fact, both the courts and the statutes expressly recognize that a CRA is only supplemental to a municipality and functions as a delegation of municipal powers. Sec. 163.358, which authorizes the creation of a CRA, states that municipalities have all the powers necessary to conduct the purposes of Ch.163, but that a municipality may delegate those powers to a CRA:

> Each … municipality has all powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including those powers granted under s. 163.370. A … municipality *may* delegate such powers to a community redevelopment agency created under s. 163.356, except the following, which continue to vest in the governing body of the county or municipality…

The Florida Supreme Court has also weighed in on the nature of a CRA. In *State v. City of Pensacola*, 397 So.2d 922 (Fla. 1981). the court addressed the question of whether a City was

prohibited from obtaining revenue bonds, without creation of a CRA, to issue low interest mortgages to homeowners, private beneficiaries. In challenging the bonds, the state argued that the powers of Chapter 159, relating to affordable housing, and the powers in Ch. 163, relating to CRAs, could only be exercised through those entities and not through the City directly. The court rejected that argument and held that:

> [A]s respondent points out, neither of these acts [Ch. 159 and 163] expressly prohibits municipalities from issuing revenue bonds for the purpose of financing housing or redeveloping areas within their boundaries. Instead they merely authorize the creation of housing finance authorities and community redevelopment agencies **whose powers to issue bonds are supplemental to those of the counties and municipalities.** (emphasis added).

The court further noted, "it is settled law that projects to revitalize urban communities and to promote the development of decent housing serve a public purpose."

Another potential area that we needed to consider in this analysis was Article VII, Section 10, of the Florida Constitution, which prohibits the City's use of its taxing powers to benefit private entities or persons. This provision is certainly a consideration when determining whether to utilize certain funding mechanisms. The courts have strictly construed this provision to apply only to the issuance of debt for which taxes are directly pledged, such as general obligation bonds, rather than other forms of debt such as revenue bonds which expressly state that the taxing power will not be used for repayment.[4] Even in the context of general obligation bonds, the courts have noted that private benefit can be in the public interest and a sufficient public purpose, depending on the structure of the arrangement. For example, the provision was not violated by Hillsborough County when it used bonds to finance a new stadium to be maintained and operated by the private football team.[5]

In conversations with the City Manager and review of the HBCRA community redevelopment plan, it does not appear that this constitutional provision would be a concern for the City because, if a proposed business arrangement was unable to meet the paramount public purpose test for a pledge of the tax power, the City has significant non-ad valorum revenues to provide financing options and flexibility. Further, the HBCRA itself is limited to only the issuance of revenue bonds, and only with approval of the City.[6] Nonetheless, establishing a public purpose would be required of any entity of the state. However, the questions of public purpose are no

[4] *Jackson-Shaw Co. v. Jacksonville Aviation Authority*, 8 So.3d 1076, 1097 (Fla., 2008) ("As we have defined credit and the lending of credit, the constitutional prohibition contemplates not just the use of public funds but the imposition of a new financial liability and a direct or indirect obligation to pay a debt of a third party.")(internal citations omitted);)

[5] *Poe v. Hillsborough Cnty*., 695 So.2d 672, 677 (Fla.,1997)(Approving of the imposition of taxes to fund the building of a new football stadium to be maintained and operated by private enterprise.)

[6] Sec. 163.385, Fla. Stat. Bonds payable from TIF are considered revenue bonds.

greater for the City than they would be for the HBCRA, as the explicit legislative declaration of public purpose for one applies to the other:[7]

> In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this part, or the security therefor, any such bond reciting in substance that it has been issued by the … **municipality, or community redevelopment agency** in connection with community redevelopment, as herein defined, shall be conclusively deemed to have been issued for such purpose, and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this part.

Finally, the CRA has explicit statutory limitations on the use of increment revenues that would not apply to the City's use of those same revenues if retained as general fund ad-valorem. First, TIF may only be used for purposes specified in state statute and must be used only in accordance with the community redevelopment plan.[8] Second:

> The following projects may not be paid for or financed by increment revenues:
>
> (a) Construction or expansion of administrative buildings for public bodies or police and fire buildings, unless each taxing authority agrees to such method of financing for the construction or expansion, or unless the construction or expansion is contemplated as part of a community policing innovation.
>
> (b) Installation, construction, reconstruction, repair, or alteration of any publicly owned capital improvements or projects if such projects or improvements were scheduled to be installed, constructed, reconstructed, repaired, or altered within 3 years of the approval of the community redevelopment plan by the governing body pursuant to a previously approved public capital improvement or project schedule or plan of the governing body which approved the community redevelopment plan unless and until such projects or improvements have been removed from such schedule or plan of the governing body and 3 years have elapsed since such removal or such projects or improvements were identified in such schedule or plan to be funded, in whole or in part, with funds on deposit within the community redevelopment trust fund.

[7] Sec. 163.385(5).
[8] Sec. 163.387(1) and (6).

> (c) General government operating expenses unrelated to the planning and carrying out of a community redevelopment plan.[9]

Predictably, none of the above limitations are fatal to the mission of the HBCRA. They do, however, collectively add legal hurdles that are ***legally*** unnecessary and avoidable if the City is the only funding agency, i.e. spending its own money. The City's expenditures of funds generally need not comply with any plan and are not limited in any specified way other than "municipal purpose."[10] Expending the funds directly as the City eliminates the need to maintain and amend any such plan, and further eliminates the need to review expenditures to ensure compliance with (a) the community redevelopment plan and (b) the specific types of expenditures permitted by § 163.387(6). An example of the result of the complexities of mixing direct City spending with TIF monies are the many interlocal agreements that have been entered into between the HBCRA and the City to ensure properly documented compliance with the regulations relating to TIF.

To be clear, none of these "hurdles" are insurmountable or even difficult to clear with proper planning, but they do take time and resources and should be weighed as a cost in relation to any non-legal benefit.

[9] Sec. 163.370(3), Fla. Stat.

[10] Note that this statement does not relate to obtaining funds, only their expenditure. See above for discussion of the constitutional financing limitations.