

GULF BREEZE CITY COUNCIL
REGULAR MEETING AGENDA

NOVEMBER 2, 2015
MONDAY, 6:30 P.M.
COUNCIL CHAMBERS

1. **ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE**

2. **APPROVAL OF MINUTES**

October 19, 2015, Regular Council meeting

3. **PROCLAMATIONS AND PRESENTATIONS**

Recognition of Officer Travis White and Loki on upcoming certification as K-9 Drug Officer

4. **RESOLUTIONS AND ORDINANCES**

Resolution No. 30-15 Approving an Interlocal Agreement for creation of the
Florida Alabama Transportation Organization

Resolution No 31-15 Supporting the 2016 Pensacola Double Bridge Run

PUBLIC HEARING REGARDING

Ordinance No. 07-15 Establishing a Municipal Public Service Tax (MPST)
rate of 7.5% effective April 1, 2016
(SECOND READING AND PUBLIC HEARING)

5. **CONSENT AGENDA ITEMS***

- A. Approving a Special Event application for the 2015 Holiday Parade, December 5, 2015
- B. Authorizing purchase and installation of a heating, ventilation, and air conditioning (HVAC) system and electrical system from McNorton Mechanical in the amount of \$14,739 for new office space
- C. Authorizing Warrington Utility & Excavating to remove an existing 6" meter and related structure located near Gulf Breeze Parkway and Bayshore Road and install a new 12" water main in the amount of \$7,950
- D. Approving the City's participation in the Small County Outreach Program (SCOP) with Florida Department of Transportation and Santa Rosa County in order to improve Country Club Road
- E. Approving the purchase of two Dell PowerEdge R430 servers from SafariMicro in the amount of \$6,661.12

- F. Declaring forty-five (45) cellular telephones as surplus and providing them to Paraben Corp. for credit on the annual subscription for the Police Department's forensic download system
- G. Approving staff's recommendation to cancel the December 30, 2015, Executive Session meeting
- H. Approving payment of an invoice from Galloway/Johnson/Tompkins/Burr and Smith in the amount of \$2,725.00.

*These are items considered routine in nature and will be considered by one motion. If any citizen wishes to voice an opinion on one of the items, you should advise the Council immediately.

6. **ACTION AGENDA ITEMS**

- A. Declaring 417 Fairpoint as surplus property and authorizing the disposal by a sealed bid process.

7. **NEW ITEMS**

8. **INFORMATION ITEMS**

9. **PUBLIC FORUM**

10. **ADJOURNMENT**

If any person decides to appeal any decisions made with respect to any matter considered at this meeting or public hearing, such person may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and any evidence upon which the appeal is to be based. The public is invited to comment on matters before the City Council upon seeking and receiving recognition from the Chair. If you are a person with a disability who needs accommodation in order to participate in a public hearing you are entitled to the provision of certain assistance. Please contact the City Clerk's office at (850) 934-5115 or at 1070 Shoreline Drive, Gulf Breeze at least one (1) week prior to the date of the public hearing.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

The 1,282nd Regular Meeting of the Gulf Breeze City Council, Gulf Breeze, Florida, was held at Gulf Breeze City Hall on Monday, October 19, 2015, at 6:30 p.m.

ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE:

Upon call of the roll the following Councilmembers were present: Councilwoman Cherry Fitch, Mayor Pro Tem Joseph Henderson, Councilman David G. Landfair, and Mayor Matt Dannheisser. Councilwoman Renee Bookout was not in attendance.

The City Clerk gave the invocation and led in the Pledge of Allegiance

APPROVAL OF MINUTES:

Councilman Landfair moved for approval of the minutes of the October 5, 2015, Regular Meeting. Mayor Pro Tem Henderson seconded. The vote for approval was unanimous.

PRESENTATION AND PROCLAMATIONS:

None.

RESOLUTIONS AND ORDINANCES:

Ordinance No. 07-15 Amendment of the Municipal Public Service Tax (MPST)
rate of 7.5% effective April 1, 2016
(FIRST READING)

The City Clerk read the ordinance by title. Councilwoman Fitch moved for approval of Ordinance No. 07-15 and to hold a Public Hearing and Second Reading on November 2, 2015. Councilman Landfair second. The vote for approval was unanimous.

Tom Naile, 100 Daniel Drive, Gulf Breeze; addressed the Council in regards to the tax exemption for churches.

Resolution No. 29-15 Appointing Nathan Ford and Dan Kopack as legal
resident members to the Police Pension Board of Trustees

Councilman Landfair moved for approval of Resolution No. 29-15. Councilwoman Fitch seconded. The vote for approval was unanimous.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

- D. Appointment of an alternate to serve on the Northwest Florida Regional Transportation Planning Organization

Reference: City Manager memo dated October 8, 2015

Recommendation: That the City Council appoint Councilwoman Renee Bookout to serve as an alternate on the Northwest Florida Regional Planning Organization.

Councilman Landfair moved for approval of Consent Agenda Items A, C, and D. Mayor Pro Tem Henderson seconded. The vote for approval was unanimous.

*These are items considered routine in nature and will be considered by one motion. If any citizen wishes to voice an opinion on one of the items, you should advise the Council immediately

ACTION AGENDA ITEMS:

- A. Authorizing Fast Cash ATM Systems to place an ATM in the Gulf Breeze Community Center (Moved from Consent Agenda to Action Item for discussion)

Reference: Director of Parks & Recreation memo dated October 1, 2015

Recommendation: That the City Council authorize Fast Cash ATM Systems to place an ATM in the Gulf Breeze Community Center

Councilman Landfair made a motion to approve staff's recommendation. Mayor Pro Tem Henderson seconded. The vote for approval was unanimous.

- B. Approval of School Resource Officer Agreement for the 2015-2016 school year and authorize the Mayor to sign the agreement

Reference: City Manager memo dated October 8, 2015

Recommendation: That the City Council approve the black lined version of the School Resource Officer Agreement for the 2015-2016 school year and authorize the Mayor to sign the agreement

Councilman Landfair made a motion to approve staff's recommendation. Councilwoman Fitch seconded. The vote for approval was unanimous.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

- C. Private attorney-client session confined to settlement negotiations or strategy sessions related to litigation expenditures in connection with a worker's compensation litigation brought against the City by Christopher Lanzetta.

NEW BUSINESS:

- A. Private attorney-client session confined to settlement negotiations or strategy sessions relative to pending litigation in the case of *John Lance Reese, et. al v. the City of Gulf Breeze et. al, Case No. 2013-CA-000838*.

Reference: Verbal report from Interim City Attorney

Interim City Attorney requested to hold a private attorney-client session at the end of the October 28th, Executive meeting. There being no objections, the private attorney-client session will be held at the end of the October 28, 2015, Executive meeting.

INFORMATION ITEMS: None

PUBLIC FORUM: None

ADJOURNMENT: Mayor Dannheisser adjourned the meeting at 6:47 p.m.

Leslie A. Guyer, City Clerk

Matt E. Dannheisser, Mayor

The Gulf Breeze City Council held an Executive Meeting at Gulf Breeze City Hall on Wednesday, October 28, 2015, at 6:30 p.m.

ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE:

Upon call of the roll the following Councilmembers were present: Councilwoman Renee Bookout, Councilwoman Cherry Fitch, Mayor Pro Tem Joseph Henderson, Councilman David G. Landfair, and Mayor Matt Dannheisser.

PROCLAMATIONS AND PRESENTATIONS

On Monday, November 2, 2015, the City Council will recognize Officer Travis White and Loki on his pending certification as K-9 Drug Officer

RESOLUTIONS AND ORDINANCES

- A. Adoption of Ordinance No. 07-15 establishing a Municipal Public Service Tax (MPST) rate of 7.50% effective April 1, 2016 and holding a Public Hearing and Second Reading on November 2, 2015

Reference: Deputy City Manager memo dated October 20, 2015

Recommendation: That the City Council hold a public hearing and second reading on November 2, 2015, on Ordinance 07-15 and at the close of said hearing approve the ordinance as presented.

Councilwoman Fitch made a motion to have a Public Hearing and Second Reading of Ordinance 07-15 on November 2, 2015. Councilwoman Bookout seconded. The vote for approval was unanimous.

- B. Adoption of Resolution No. 30-15 approving an Interlocal Agreement for creation and maintenance of the Florida-Alabama Transportation Organization

Reference: City Manager memo dated October 16, 2015

Recommendation: That the City Council approve Resolution 30-15 approving an Interlocal Agreement for creation and maintenance of the Florida-Alabama Transportation Organization

Councilwoman Bookout made a motion to approve Resolution 30-15 approving an Interlocal Agreement for creation and maintenance of the Florida-Alabama Transportation Organization and that the resolution be placed on the November 2, 2015, Regular meeting agenda. Councilwoman Fitch seconded. The vote for approval was unanimous.

ACTION AGENDA ITEMS

- A. Approving a Special Event application for the 2015 Holiday Parade, December 5, 2015

Reference: Assistant to City Manager memo dated October 15, 2015

Recommendation: That the City Council approve the special event application for the 2015 City of Gulf Breeze Holiday Parade.

Mayor Pro Tem Henderson made a motion to place staff's recommendation on the November 2, 2015, Regular Meeting agenda. Councilman Landfair seconded. The vote for approval was unanimous.

- B. Approving Pensacola Sports Association's traffic plan for the 2016 Double Bridge Run

Reference: City Manager memo dated October 22, 2015

Recommendation: That the City Council direct staff to prepare a Resolution approving the Pensacola Sports Association's plan for the Double Bridge Run.

Jason Libbert with the Pensacola Sports Association provided the Council with a status update on the approval process for this event.

Councilwoman Bookout made a motion directing staff to prepare a resolution approving the Pensacola Sports Association's plan for the Double Bridge Run and that language be added in the resolution that states the City's approval of the event is on a trial basis and the Maintenance of Traffic Plan provided by FDOT is reviewed and approved by the City's Chief of Police. Councilwoman Fitch seconded. The vote for approval was unanimous. This item will be placed on the November 2, 2015, Regular Meeting agenda.

- C. Authorizing purchase and installation of a heating, ventilation, and air conditioning (HVAC) system and electrical system from McNorton Mechanical in the amount of \$14,739 for new office space

Reference: Director of Public Services memo dated October 22, 2015

Recommendation: That the City Council authorize McNorton Mechanical to furnish and install the HVAC and Electrical Systems for \$14,739.

Mayor Pro Tem made a motion to place staff's recommendation on the November 2, 2015, Regular Meeting agenda. Councilwoman Fitch seconded. The vote for approval was unanimous.

- D. Authorizing Warrington Utility & Excavating to remove an existing 6" meter and related structure located near Gulf Breeze Parkway and Bayshore Road and install a new 12" water main in the amount of \$7,950

Reference: Director of Public Services memo dated October 21, 2015

Recommendation: That the City Council authorize Warrington Utility & Excavating to remove the existing 6" meter and related structures, and install new 12" water main for \$7,950.

Councilman Landfair made a motion to place staff's recommendations on the November 2, 2015, Regular Meeting agenda. Councilwoman Fitch seconded. The vote for approval was unanimous.

- E. Authorization to declare 417 Fairpoint Drive as surplus property and authorize the disposal by a sealed bid process

Reference: Deputy City Manager memo dated October 23, 2015

Recommendation: That the City Council declare 417 Fairpoint Drive to be surplus property, determine that disposal of the property through a sealed bid process is in the best interest of the City and authorize staff to invite sealed bids for the purchase of the property.

Mayor Pro Tem Henderson made a motion to place staff's recommendations on the November 2, 2015, Regular Meeting agenda. Councilwoman Fitch seconded. The vote for approval was unanimous.

- F. Approving the City's participation in the Small County Outreach Program (SCOP) with Florida Department of Transportation and Santa Rosa County in order to improve Country Club Road

Reference: City Manager memo dated October 23, 2015

Recommendation: That the City Council approve the City's participation in the Small County Outreach Program (SCOP) with the Florida Department of Transportation (FDOT) and Santa Rosa County to improve Country Club Road.

Councilman Landfair moved to place staff's recommendation on the November 2, 2015, Regular meeting agenda with the condition that the City take ownership of the center island for the purpose of landscaping and signage. Councilwoman Fitch seconded. The vote for approval was unanimous.

- G. Approving the purchase of two Dell PowerEdge R430 servers from SafariMicro in the amount of \$6,661.12

Reference: Manager of Information Technology memo dated October 20, 2015

Recommendation: That the City Council approve the purchase of the QTY 2 Dell PowerEdge R430 servers from SafariMicro for Fiscal Year 20154/16 in the amount of \$6,661.12 and expense to 001-0200-564-64-20.

Councilwoman Fitch made a motion to place staff's recommendations on the November 2, 2015, Regular Meeting agenda. Mayor Pro Tem Henderson seconded. The vote for approval was unanimous.

- H. Declaring forty-five (45) cellular telephones as surplus and providing them to Paraben Corp. for credit on the annual subscription for the Police Department's forensic download system

Reference: Director of Community Services memo dated October 14, 2015

Recommendation: That the City Council declare the forty-five (45) cellular telephones as surplus property and approve trading the phones in to Paraben Corporation for credit on the annual subscription for the Police Department's forensic download system.

Mayor Pro Tem Henderson made a motion to place staff's recommendations on the November 2, 2015, Regular Meeting agenda. Councilman Landfair seconded. The vote for approval was unanimous.

- I. Approval staff's recommendation to cancel the December 30, 2015, Executive Session meeting

Reference: City Manager memo dated October 22, 2015

Recommendation: That the City Council cancel the December 30, 2015, Executive Session and approve the holiday closing schedule as outlined in the City Manager's memo dated October 22, 2015.

Mayor Pro Tem Henderson made a motion to place staff's recommendations on the November 2, 2015, Regular Meeting agenda. Councilman Landfair seconded. The vote for approval was unanimous.

The City Manager advised that approval of final budget adjustments to the Fiscal Year 2015 Budget must be done within sixty days following approval of the new Fiscal Year budget. A Special Meeting will need to be scheduled at the end of November. The date is to be determined.

- J. Approving payment of an invoice from Galloway/Johnson/Tompkins/Burr and Smith in the amount of \$2,725. 00

Reference: City Clerk memo dated October 22, 2015

Recommendation: That the City Council approve payment of invoice 319305 in the amount of \$2,725.50 to GJTBS.

Councilwoman Fitch made a motion to place staff's recommendations on the November 2, 2015, Regular Meeting agenda. Councilman Landfair seconded. The vote for approval was unanimous.

NEW ITEMS None

INFORMATION ITEMS

The City Manager requested that a workshop be held on Tuesday, November 10th at 6:00 p.m. prior to the Executive Council meeting to hear an update from Dan Kopack and the City's Investment Committee on the performance of the City's investments managed by FS Advisors and BBT.

The City Manager advised the council that a private salvage entrepreneur, Brian Nobles, has volunteered to remove debris that washed into the rip rap on the east side of Wayside Park as a result of the October 26th rain storm.

PUBLIC FORUM None.

COUNCIL COMMENTS:

Mayor Pro Tem Henderson expressed his concern in regards to students who do not live within the City limits attending the after school program at no cost. Mr. Henderson would like to see a small fee implemented for students who live outside City limits.

ADJOURNMENT Mayor Dannheisser adjourned the meeting at 7:03 p.m.

RESOLUTION NO. 30-15

**A RESOLUTION OF THE CITY OF GULF BREEZE, FLORIDA,
AUTHORIZING THE EXECUTION OF THE INTERLOCAL
AGREEMENT FOR CREATION OF THE FLORIDA-ALABAMA
TRANSPORTATION PLANNING ORGANIZATION.**

WHEREAS, the Florida-Alabama Transportation Planning Organization (TPO) is the organization designated by the Governor of Florida as being responsible, together with the State of Florida, for carrying out the continuing, cooperative and comprehensive transportation planning process for the Florida-Alabama TPO Planning Area; and

WHEREAS, Title 23 USC §134 and Title 49 USC §§5303-5305, as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Section 339.175, Florida Statutes (F.S.), provide for the creation of Metropolitan Planning Organizations to develop transportation plans and programs for urbanized areas; and

WHEREAS, pursuant to this interlocal agreement, the parties wish to collectively participate in the metropolitan planning process as the Florida-Alabama Transportation Planning Organization for the Pensacola Urbanized Area;

NOW, THEREFORE, BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF GULF BREEZE, THAT:

The City Council authorizes the Mayor or his designee to execute the interlocal agreement for creation of the Florida-Alabama TPO.

Passed and duly adopted by the City Council of the City of Gulf Breeze, Santa Rosa County, Florida on this 2nd day of November, 2015.

CITY OF GULF BREEZE

By: _____
Matt E. Dannheisser, Mayor

ATTEST

By: _____
Leslie A. Guyer, City Clerk or
Stephanie D. Lucas, City Clerk

RESOLUTION 31-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA SUPPORTING THE 2016 PENSACOLA DOUBLE BRIDGE RUN

WHEREAS, the Pensacola Sports Association (PSA) will host the 2016 Pensacola Double Bridge Run (the Run) on February 13, 2016, and that a portion of the Run traverses through the City of Gulf Breeze; and

WHEREAS, for the 2016 Run, the PSA has requested that the Florida Department of Transportation (FDOT) permit the closure of both northbound lanes of the Pensacola Bay Bridge to accommodate Run participants; and,

WHEREAS, as part of their evaluation of the PSA request, FDOT requires a Resolution from Escambia County, Santa Rosa County, the City of Pensacola, and the City of Gulf Breeze supporting the lane closures and the event; and

WHEREAS, FDOT and the PSA will develop a Maintenance of Traffic (MOT) Plan for the proposed closure that shows a holistic and contiguous representation of the entire event route, to include the locations of all proposed traffic control devices, anticipated times of road closure, and details of traffic patterns for runners on both ends of the bridge, as well as aspects of proposed notifications to the traveling public, the proposed locations of traffic control officers and any emergency response services planned to be on standby during the event.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA:

Section 1: That the City of Gulf Breeze supports the 2016 Pensacola Double Bridge Run and the necessary road closures determined by FDOT based on their review of the MOT Plan.

Section 2: That this support is for the 2016 Run only and that an after action evaluation of the closure of the northbound lanes of the Pensacola Bay Bridge should be conducted to determine the effectiveness of future closures.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, SANTA ROSA COUNTY, FLORIDA, on this 2nd day of November, 2015.

CITY OF GULF BREEZE, FLORIDA

ATTEST:

By: _____
Matt E. Dannheisser, Mayor

Leslie A. Guyer, City Clerk or
Stephanie Lucas, City Clerk

ORDINANCE 07-15

AN ORDINANCE OF THE CITY OF GULF BREEZE AMENDING THE MUNICIPAL PUBLIC SERVICE TAX; PROVIDING FOR THE ADOPTION OF A REVISED MUNICIPAL PUBLIC SERVICE TAX RATE; PROVIDING NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature has established by law that a municipality may levy a tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service; and,

WHEREAS, Section 166.231, Florida Statutes, authorizes the City of Gulf Breeze to levy the tax only on purchases within the municipality and shall not exceed 10 percent of the payments received by the seller of the taxable item from the purchaser for the purchase of such service; and,

WHEREAS, the tax imposed by this ordinance shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. "Fuel adjustment charge" shall mean all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973; and,

WHEREAS, the City of Gulf Breeze desires to establish a Municipal Public Service Tax of 7.5% pursuant to Section 166.231, Florida Statutes; and,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Gulf Breeze, Florida, as follows:

SECTION 1. - ADOPTION OF MUNICIPAL PUBLIC SERVICE TAX RATE

The Municipal Public Service Tax authorized under Section 166.231(1)(a), Florida Statutes, for the City of Gulf Breeze is hereby established at a rate of 7.5%. This rate is to be effective April 1, 2016.

SECTION 2. - NOTICE TO THE DEPARTMENT OF REVENUE

The City of Gulf Breeze directs that notice to establish Municipal Public Service Tax to be provided to the Florida Department of Revenue by January 1, 2016. Form DR-700001 and a copy of this ordinance must be submitted with the notification.

SECTION 3. – SEVERABILITY

If any section, paragraph, sentence, clause, phrase or word of this ordinance is for any reason held by any court to be unconstitutional, inoperative, invalid or void, such holding shall not in any manner affect the validity of the remaining portions of this ordinance.

SECTION 4. - EFFECTIVE DATE

This Ordinance shall take effect immediately upon its passage by the City of Gulf Breeze. The imposition and collection of the new Municipal Public Service Tax shall commence effective April 1, 2016.

SECTION 5. - CONFLICT

The provisions of this ordinance shall be deemed to control and prevail over any ordinance or portion thereof in conflict with the terms hereof.

SECTION 6. - EFFECTIVE DATE

This Ordinance shall take effect immediately upon its passage by the City of Gulf Breeze. The imposition and collection of the new Municipal Public Service Tax shall commence effective April 1, 2016.

PASSED ON THE FIRST READING ON THE 19th DAY OF OCTOBER, 2015.

ADVERTISED ON THE 22nd DAY OF October, 2015.

PASSED ON THE SECOND READING ON THE _____ DAY OF _____, 2015.

BY: _____
MATT DANNHEISSER, MAYOR

ATTEST:

LESLIE A. GUYER, CITY CLERK OR
STEPHANIE D. LUCAS, CITY CLERK

Subject: FW: 417 Fairpoint Drive
Attachments: FLAGO 82-76.pdf; FLAGO 96-16.pdf

----- Forwarded message -----

From: **Michael Stebbins** <mjsteb@bellsouth.net>
Date: Thu, Oct 29, 2015 at 5:26 PM
Subject: 417 Fairpoint Drive
To: Matt Dannheisser <mdannheisser@dannheisserlaw.com>, Joe Henderson <joehenderson62@att.net>, Cherry Fitch <cfitch@gulfbreezefl.gov>, "David G. Landfair" <LandfairD@mail.santarosa.k12.fl.us>, Renee Bookout <rbookout@gulfbreezefl.gov>
Cc: Edwin Eddy <eaeddy@gulfbreezefl.gov>, ccarver@gulfbreezefl.gov, Leslie Guyer <lguyer@gulfbreezefl.gov>, Stephanie Lucas <slucas@gulfbreezefl.gov>, mjsteb@bellsouth.net

Dear Mayor & City Council Members:

Per your request, I have researched the legal requirements for the sale of public property as it relates to Item 4.D of the Executive Council Agenda of 10/28/15, i.e., authorizing the disposal of 417 Fairpoint Drive. Based on my research, I conclude that the City may, in its discretion, utilize whatever method or procedure it decides will be in the best interest of the City in disposing of the 417 Fairpoint Drive property.

Although I was unable to find any court decisions, there are two Florida Attorney General opinions that address this subject. *Florida AGOs 82-76 and 96-16*, which are attached for your consideration. The opinions express that in the absence of a city charter provision, ordinance or rule to the contrary, the governing body may, in its discretion, utilize whatever method or procedure it decides will be in the best interest of the municipality in disposing of surplus municipal real property. *Id.* The later opinion goes on to say that Section 125.35, Florida Statutes only applies to the sale or lease of county real property and does not apply to the sale of municipal real property. *Florida AGO 96-16.*

Therefore, in light of the above opinions, and there being no City charter provision, ordinance or rule governing the sale of City real property, I conclude that the City may, in its discretion, utilize whatever

method or procedure it decides will be in the best interest of the City in disposing of the 417 Fairpoint Drive property.

If you have any questions, please give me a call at 434-9922 (office) or 450-0250 (cell).

Sincerely, Mike

Law Office of Michael J. Stebbins, P.L.

504 North Baylen Street Pensacola, FL 32501

Phone: [\(850\)434-9922](tel:8504349922)



Florida Attorney General Advisory Legal Opinion

Number: AGO 82-76

Date: September 28, 1982

Subject: Procedure for sale of surplus real estate

Mr. David B. Higginbottom
City Attorney
City of Frostproof
Post Office Box 697
Frostproof, Florida 33843

RE: MUNICIPALITIES--Procedure for sale of surplus real property
within discretion of governing body

Dear Mr. Higginbottom:

This is in response to your request for an opinion on substantially
the following question:

Does the City of Frostproof need to conform to a specific procedure
or method when selling surplus municipal real property or does the
governing body of the city have the discretion to choose whatever
method it decides will be most likely to produce the best price for
the property?

According to your letter and supplemental information furnished this
office, the City Council of the City of Frostproof is contemplating
the sale of its old city hall which is no longer needed for
municipal use or purposes. The city charter and the Florida Statutes
are silent on prescribing a procedure for disposition or sale of
city-owned real property and you inquire whether the city is still
required to follow a specific procedure of method when disposing of
surplus municipal real property.

The Municipal Home Rule Powers Act, Ch. 166, F.S., grants to
municipalities broad home rule powers. Section 166.021(1) states:

"As provided in s. 2(b), Art. VIII of the State Constitution,
municipalities shall have the governmental, corporate, and
proprietary powers to enable them to conduct municipal government,
perform municipal functions, and render municipal services, and may
exercise any power for municipal purposes, except when expressly
prohibited by law."

See also, s. 166.021(4), F.S., stating that the provisions of s. 166.021, F.S., shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the Constitution and that it is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the Constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.

Section 6, Art. I, Ch. 8955, 1921, Laws of Florida, generally empowers the city to hold and dispose of real estate for the benefit of the city and specifically authorizes the city to acquire and hold real property to be used for a city hall and to sell or dispose of the same for the benefit of the city to the same extent that a natural person might do. Pursuant to s. 166.021(5), F.S., these provisions of Ch. 8955, *supra*, along with other provisions of Ch. 8955 pertaining exclusively to the power of the municipality were converted to an ordinance of the city on the effective date of Ch. 73-129, Laws of Florida, October 1, 1973, subject to modification or repeal as other ordinances. No procedural conditions or restrictions are placed on this power of the city to sell or dispose of its real property, except that any such sale shall be for the benefit of the city. See generally, 63 C.J.S. *Municipal Corporations* s. 962c. at p. 513 stating that insofar as no statute or ordinance governs matters of procedure, they may be committed to the discretion of the municipal authorities.

Section 166.77, F.S. 1971, which was repealed by Ch. 73-129, Laws of Florida (the Municipal Home Rule Powers Act), granted additional or supplemental authority to the governing bodies of municipalities in the state to sell their real property not needed for municipal use "to the highest and best bidder after notice thereof is published once a week for at least two weeks in some newspaper of general circulation in the municipality, calling for bids." Section 166.042 (1), F.S., of the Municipal Home Rule Powers Act, states that it is the legislative intent that the repeal of the above statute, in addition to others enumerated therein, shall not be interpreted to limit or restrict the powers of municipal officials but shall be interpreted as a recognition of residual constitutional home rule powers in municipal government which can best be accomplished by the removal of legislative direction from the statutes. Moreover, in s. 166.042(1), *supra*, the Legislature further expresses its intent that municipalities continue to exercise all powers conferred on municipalities by, *inter alia*, Ch. 167, *supra*, "but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe." (e.s.)

In accordance with the above, it appears clear that the Legislature not only granted municipalities in the state the authority to continue to exercise all powers previously conferred by Ch. 167, F.S. 1971, and in this instance, particularly s. 167.77, F.S. 1971, but additionally left it up to the municipalities' own discretion to determine what terms, conditions, and methods to employ in exercising the power to sell or dispose of surplus municipal real property. Compare, AGO 080-49 concluding that a municipality may, by virtue of broad home rule powers implemented by ss. 166.021(4) and (5), 166.031, 166.042(1), and 167.06 and Ch. 180, F.S., establish a procedure for direct negotiation and contracting for residential garbage collection and disposal services without competitive bidding by ordinance or amendment of the charter; and AGO 079-79, in which it was opined that a municipality has the power and authority to acquire and dispose of real property by means of an exchange of property so long as for a valid municipal purpose and not expressly prohibited by law.

In summary, it is my opinion that in the absence of a city charter provision requiring the governing body of a municipality to proceed in a certain manner in the sale of surplus municipal real property no longer needed for municipal use or purposes, the governing body may, in its discretion, choose and utilize whatever method or procedure it decides will be in the best interest of the city and most likely produce the best price for the property.

Sincerely,

Jim Smith
Attorney General

Prepared By:

Linda Lettera
Assistant Attorney General

Florida Attorney General Advisory Legal Opinion

Number: AGO 96-16

Date: February 29, 1996

Subject: Municipalities--disposition of surplus property

Mr. Kevin K. Dixon
Crystal River City Attorney
Post Office Box 250
Inverness, Florida 34451-0250

RE: MUNICIPALITIES--REAL PROPERTY--BIDS--procedures for disposition of surplus municipal property. ss. 166.042 and 125.35, Fla. Stat.

Dear Mr. Dixon:

You ask substantially the following question:

Do the provisions of section 125.35, Florida Statutes, govern the disposition of surplus municipal property and, if not, what procedures exist?

In sum:

The provisions of section 125.35, Florida Statutes, apply to the disposition of county property, not municipal property. In the absence of a charter provision or ordinance prescribing the procedures to be used in disposing of surplus municipal real property, the manner of disposing of such property is left to the discretion of the municipality's governing body, provided such body acts in the best interests of the municipality.

According to your letter, the City of Crystal River is exploring its options for disposing of surplus municipal property. In the absence of a provision in Chapter 166, Florida Statutes, establishing a procedure for the disposition of such property, a question has been raised as to whether the municipality is subject to the provisions of section 125.35, Florida Statutes.

Section 125.35, Florida Statutes, authorizes the board of county commissioners to sell and convey any real or personal property belonging to the county, whenever the board of county commissioners determines that it is in the best interest of the county, to the highest and best bidder for the particular use the board determines

to be the highest and the best.[1] Subsection (2) of the statute sets forth the notice requirements for such a sale.[2]

If, however, the value of a parcel of real property is \$5,000 or less and, due to its size, shape, location, and value, is of use only to one or more adjacent property owners, the board of county commissioners may effect a private sale, after sending notice of its intentions to the adjacent property owners by certified mail.[3] The statute provides that if two or more such owners, within 10 working days of receiving notice, notify the board of their desire to purchase the property, the board is required to accept sealed bids from such property owners and may convey the property to the highest bidder or reject all offers.[4]

The plain language of the above statutory provision makes it clear that its terms apply exclusively to counties.[5] Nowhere in the statute is there any evidence that the requirements of section 125.35, Florida Statutes, are applicable to the municipalities of this state. While a municipality may utilize similar procedures, the specific requirements of section 125.35 are not binding on municipalities.

This office has previously recognized that in the absence of a city charter provision, ordinance or rule to the contrary, the governing body may, in its discretion, utilize whatever method or procedure it decides will be in the best interest of the municipality in disposing of surplus municipal real property.[6] Such a conclusion was based on the broad home powers granted to municipalities by Article VIII, section 2(b), Florida Constitution, and implemented by Chapter 166, Florida Statutes, the Municipal Home Rule Powers Act.

Section 166.77, Florida Statutes 1971, formerly provided supplemental authority to municipalities to sell their real property not needed for municipal use "to the highest and best bidder after notice thereof is published once a week for at least 2 weeks in some newspaper of general circulation in the municipality, calling for bids." This statute, however, was repealed by the Municipal Home Rule Powers Act in 1973.[7] Section 166.042(1), Florida Statutes, states that it is the legislative intent that the repeal of the above statute, along with the other enumerated statutes,

"shall not be interpreted to limit or restrict the powers of municipal officials, but shall be interpreted as a recognition of constitutional powers. It is, further, the legislative intent to recognize residual constitutional home rule powers in municipal government, and the Legislature finds that this can best be accomplished by the removal of legislative direction from the statutes. It is, further, the legislative intent that municipalities shall continue to exercise all powers heretofore conferred on municipalities by the chapters enumerated above, but shall hereafter

exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe."

Thus, while the Legislature granted municipalities the authority to continue to exercise the powers formerly conferred by Chapter 167, Florida Statutes, it left to the municipalities' own discretion the determination of what terms, methods, and conditions to employ in disposing of surplus municipal real property. Accordingly, while municipalities may utilize the provisions of former section 167.35, Florida Statutes, they are not required to do so.

The courts of this state have generally recognized that in the absence of a statute or charter provision requiring competitive bids, a municipality has no legal obligation to submit a contract to competitive bids or to award the contract to the lowest bidder. [8] In such cases, the public body is required only to act in good faith and in the best interests of the public, and it is within its discretion whether to let the contract by competitive bid or not. [9]

Accordingly, I am of the opinion that in the absence of a charter provision or ordinance specifying the procedure to be utilized in disposing of surplus municipal real property, the method of disposing of such property is left to the discretion of the municipality's governing body, which is required only to act in good faith and in the best interest of the municipality. While the municipality may utilize the procedures prescribed in section 125.35, Florida Statutes, or former section 167.35, Florida Statutes 1971, it is not required to do so.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgjw

[1] Section 125.35(1)(a), Fla. Stat. (1995).

[2] See s. 125.35(1)(b), Fla. Stat. (1995), providing:

"No sale of any real property shall be made unless notice thereof is published once a week for at least 2 weeks in some newspaper of general circulation published in the county, calling for bids for the purchase of the real estate so advertised to be sold. In the case of a sale, the bid of the highest bidder complying with the terms and conditions set forth in such notice shall be accepted, unless the board of county commissioners rejects all bids because they are too low. The board of county commissioners may require a

deposit to be made or a surety bond to be given, in such form or in such amount as the board determines, with each bid submitted."

[3] Section 125.35(2), Fla. Stat. (1995).

[4] *Id.*

[5] See *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (where a statute is clear and unambiguous as it is here, a court will not look behind the statute's plain language for legislative intent).

[6] Attorney General Opinion 82-76.

[7] Chapter 73-129, Laws of Florida.

[8] See *Brown v. City of St. Petersburg*, 153 So. 140 (Fla. 1933); and see, *Volume Services Division of Interstate United Corporation v. Canteen Corporation*, 369 So. 2d 391 (Fla. 2d DCA 1979) (in absence of specific constitutional or statutory requirements, public agency has no obligation to establish a bidding procedure and may contract in any manner not arbitrary or capricious).

[9] See Ops. Att'y Gen. Fla. 80-49 (1980) and 77-140 (1977) (city not required to take competitive bids in purchase of commodities in absence of charter provision or ordinance). And see, *State ex rel. Roberts v. Knox*, 14 So. 2d 262 (Fla. 1943) (discretion conferred by law on an officer must be exercised according to established rules of law, and not in an arbitrary or capricious manner or for personal, selfish, or fraudulent motives or for any reason or reasons not supported by the discretion conferred); *Volume Services Division of Interstate United Corporation v. Canteen Corporation*, *supra*; *Mayes Printing Company v. Flowers*, 154 So. 2d 859 (Fla. 1st DCA 1963).