

FILE 2793 – January 27, 2023

CONFLICT OF INTEREST

MEMBER OF CITY COMMISSION ENTERING INTO CONTRACTUAL RELATIONSHIP WITH CITY TO RECEIVE PROPERTY IMPROVEMENT PROGRAM FUNDS

To: *David N. Tolces, Esq., City Attorney (Margate)*

SUMMARY:

Under the specific circumstances presented, a prohibited conflict of interest would not be created under 112.313(7)(a), Florida Statutes, where a City Commissioner applies to, and receives, funds from the City through its property improvement program. While the City Commissioner will have a contractual relationship with an agency being regulated by the City Commission if the application for funding is approved, Section 112.316, Florida Statutes, will operate to negate any conflict of interest, as the City Commission is not involved in the review of funding applications or the disbursement of funds, and the award of funds is non-discretionary. Referenced are CEO 20-9, CEO 18-12, CEO 18-4, CEO 12-15, CEO 12-14, CEO 12-9, CEO 08-1, CEO 00-12, CEO 95-28, CEO 89-21, CEO 93-26, and CEO 77-88.

QUESTION:

Will a member of a city commission have a prohibited conflict of interest if she applies for, and receives, funds through the city's property improvement program?

Under the unique circumstances presented, this question is answered in the negative.

In your letter of inquiry and additional information provided to our staff, you indicate you are inquiring on behalf of a City Commissioner whether she will have a prohibited conflict of interest were she to apply for and receive funding through a property improvement program recently launched by the City. To analyze your inquiry, it is first necessary to explain the genesis of the program and how the City allocates funds through it.

You explain that, in April 2022, the City Commission—including the City Commissioner on whose behalf you are seeking this opinion—passed a resolution by which the City agreed to accept over \$10 million in federal funds being offered through the American Rescue Plan Act of 2021. The funds were only to be used for certain municipal and public purposes, with the goal of benefitting the City's citizens and residents. You relate the City then began exploring allowable options for these funds, and that, at a duly-noticed City Commission meeting in September 2022, the possibility of using a portion of them to develop a property improvement program was presented.

The purpose of the program, according to the materials that you provided, was to encourage property and business owners to restore, renovate, and improve their properties, thereby improving the City's visual quality and attractiveness, and increasing property values. Through the proposed program, the City would provide funds to reimburse qualified applicants for certain fixed improvements to the exteriors of their properties, and for any minor interior work necessary to be included as part of a comprehensive exterior renovation.¹ You indicate the entire City Commission provided input to the City Manager during the meeting concerning the amount of funding that

¹ The materials that you provide indicate eligible improvements include, among others, exterior painting, exterior lighting, signage, landscaping, driveway improvements, roof repair or replacement, and structural repair.

might be allocated toward the program, who would be eligible to apply, and what types of improvements would qualify for reimbursement.

You relate the City Manager incorporated the Commission's feedback into specific guidelines, and, at a subsequent City Commission meeting held in October 2022, the City Commission unanimously passed a resolution approving the program and allocating \$1.5 million of American Rescue Plan Act funding towards it. Importantly, through the resolution, the City Commission authorized City Administration to implement the program on its own, and you indicate the City Manager's Office has since—on its own—handled any further work regarding the program, including what specific information would be required on the program application, the procedure for submitting an application, and the process by which applicants receive reimbursement.

In terms of how the program operates, you indicate the program is offered City-wide, meaning all property owners, residential and commercial, are able to apply. You state a single-family or multi-family (individual owned) homesteaded property may receive a 50% reimbursement grant of up to \$10,000 for eligible improvements.² You relate the process by which a homesteaded property owner may apply is the following: (1) an applicant submits a program application online identifying the particular improvements to be made; (2) the application is reviewed by the Assistant to the City Manager, the City's Business Development Coordinator, and one other temporary employee; (3) the application is then sent to the City Manager for final approval or denial; (4) if approved, the applicant personally pays to have the improvements made; (5) the applicant then submits to the City certain required documentation demonstrating the

² While it appears commercial properties, multi-family properties, and certain exteriors owned by a condominium or single-family homeowner association may also apply for and receive reimbursement funds, those types of applicants are not germane to the instant inquiry.

expenditures for the improvements and confirms the issuance of any final permits and certificates of completion/occupancy; and (6) the City reimburses the applicant directly.

You emphasize several things about the application and reimbursement process. First, the program is only designed for new projects, meaning any improvements already completed are ineligible for funding. Second, even if an application is approved, no formal agreement, lien, loan agreement, or other type of document is executed between the applicant and the City. Third, if an applicant meets the program's eligibility criteria, the allocation of funds is nondiscretionary and automatic.³ You state "[t]he City has no intention of denying any applicant of any funds if they meet the [p]rogram's guidelines." And, fourth, the City Commission as a whole and the City Commissioners individually have no role in approving applications or reimbursing funds to property owners. You state that, as indicated above, the City Manager and his staff are solely responsible for reviewing the applications and allocating the funds.

Turning to the specific inquiry at issue here, you indicate the City Commissioner in question owns a residential single-family home within City limits that is identified as her homestead. Given her eligibility, you state she would like to receive reimbursement funds through the program for certain improvements that she will make to her property. You relate she has not contracted for or made any of these improvements to her property yet—which would render them ineligible for reimbursement—but will do so if her application is approved. You also relate she has already submitted an application to the program, but it has not yet been reviewed by City staff, and was submitted under the condition that it not be granted until she receives an opinion from the

³ Of course, from what you indicate, the program's financial resources are finite, as the City has allocated only \$1.5 million in funding towards it. You indicate it is unknown as of yet whether the program will continue once that funding level is reached.

Commission on Ethics regarding whether her participation in the program constitutes a prohibited conflict of interest.

Section 112.313(7)(a), Florida Statutes, is the statute most relevant to your inquiry. It states:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.--No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, any agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The first part of the statute prohibits the City Commissioner from having a contractual relationship with a business entity—or an agency—if that entity or agency is doing business with, or is subject to the regulation of, the Commissioner's agency. For purposes of Section 112.313(7)(a), the "agency" of a city commissioner is the city commission. See CEO 18-4 and CEO 08-1, Question 2. The question then is whether—in the event that the City Commissioner's application to the program is approved—she will have a contractual relationship with a business entity or agency that is engaged in a business or regulatory interface with the City Commission.

Concerning whether a contractual relationship will exist, you indicate program applicants will not have any written agreements, liens, or loan agreements with the City, even if their applications are approved, and will not be required to execute any documents with the City. That being said, simply because there will be no written agreement with the City does not definitively mean there will be no contractual relationship for purposes of Section 112.313(7)(a). We have

adopted the substantive law of contract in determining the meaning of the term "contractual relationship," and have cited the following definition when interpreting the phrase:

[a]ny agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. [Black's Law Dictionary, Fifth Edition (1979)]⁴

See CEO 95-28 and CEO 89-21. In CEO 89-21, we cited alternate, but similar, definitions providing:

The term 'contract' has been defined as a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Another definition is that a 'contract' is an agreement upon a sufficient consideration to do or refrain from doing a particular lawful thing. [11 Fla. Jur. 2d Contracts, Section 1.]

Under these definitions, we find a contractual relationship will exist for purposes of Section 112.313(7)(a) once a program application is approved. At that point, and based on the promise of reimbursement funding, the program applicant will be induced to use his or her private funds to hire contractors, builders, and workers to make improvements to his or her property. If the City then chooses not to reimburse the applicant, despite the initial approval of the application and the applicant's good faith reliance on the City's guarantee of funds, it appears the applicant likely would have legal grounds to demand that the City provide the funding. We note a similar arrangement for reimbursement funding was found to be a contractual relationship in CEO 20-9, which concerned a member of the governing board of a water management district owning a business that was applying to the district for reimbursement of irrigation equipment

⁴ More recently, Black's Law Dictionary, Seventh Edition, has defined the term "contract" as "an agreement between two or more parties creating obligations that are enforceable or otherwise

under a cost-share grant program.

Of course, this contractual relationship will not be sufficient to trigger the prohibition in Section 112.313(7)(a) unless it is with a business entity—or agency—doing business with or being regulated by the City Commission. Here, from what you describe, program applications are reviewed by the City Manager's staff and then approved by the City Manager, who directs the allocation of funds to recipients. In short, the program appears to create a contractual relationship between the applicant and the City Manager's Office, which is the entity involved in approving and disbursing funds. This is all that is needed to constitute a conflicting contractual relationship for the City Commissioner under the first part of Section 112.313(7)(a), as she will have a contractual relationship (through the approval of the application) with an agency (the City Manager's Office) subject to the regulation of her agency (the City Commission).⁵

In the past, when similar circumstances have arisen for members of local governing bodies, we have found a conflict of interest under Section 112.313(7)(a). For example, in CEO 12-14, Question 1, we analyzed whether Section 112.313(7)(a) would prohibit a city commissioner—who also was sitting as a board member of a community redevelopment agency—from applying for and receiving redevelopment incentive grants. The grant programs were created by the community redevelopment agency, were administered by staff of the city's

recognizable at law."

⁵ In your inquiry, you argue the first part of Section 112.313(7)(a) is inapplicable as there is no "business entity" involved. You assert that because the City Commissioner will be applying to the program in her private capacity—without the involvement of a "business entity"—the first part of the statute does not apply. However, as noted above, the statute covers situations where the contractual relationship in question is with an "agency" that is doing business with, or is subject to the regulation of, the public officer's agency. This is the scenario at issue here, as the City Commissioner will have a contractual relationship with an agency overseen by, and subject to the regulation of, the City Commission.

redevelopment division, and were available to, among others, owners or lessees of residential properties. We found a prohibited conflict of interest would exist for the city commissioner under the first part of Section 112.313(7)(a) if she received the grant funding because, by receiving the grants, she would be entering into a contractual relationship with a city department overseen by her agency, the city commission.

Similarly, in CEO 00-12, we found a prohibited conflict of interest would be created under the first part of Section 112.313(7)(a) were a county commissioner to apply, in his private capacity as a landlord, for State Housing Assistance Program (SHIP) funds being administered by the county's community development department. We emphasized the conflict would occur because, in the event that the funding was approved, the county commissioner would have a contractual relationship with a department subject to the county commission's oversight.

And, finally, in CEO 77-88, we addressed a county commissioner who wanted to enter into a contractual relationship, in his private capacity as a landlord, with a county housing assistance office pursuant to payment program sponsored, in part, by the U.S. Department of Housing and Urban Development. Because the county housing assistance office was subject to the regulation of the board of county commissioners, we found the county commissioner would be in violation of the first part of Section 112.313(7)(a) were he to enter into the contract.

The scenario that you present is similar to those addressed in these earlier opinions. In each of them, as here, a member of the governing board of a political subdivision sought to enter into a contractual relationship to receive funding from a department or unit of local government overseen by his or her agency. As fully explained in those opinions, whose reasoning is adopted here, this scenario mechanically meets the elements of the first part of Section 112.313(7)(a) and,

therefore, triggers the statutory prohibition.

It is worth noting, though, that these opinions involved a public officer serving on the governing body of the political subdivision in question. If a public officer serves on a subordinate board of the political subdivision, and is applying for funding from another board or governmental unit within the political subdivision over which he or she has no regulatory oversight, the statutory prohibition will not be at issue. This is explained in CEO 12-14, Question 1, which addressed whether a board member of a city redevelopment area could apply for an incentive grant administered by a separate city department over which his board had no control. In that circumstance, we concluded the first part of Section 112.313(7)(a) would not apply, as the board member's contractual relationship would not be with an agency regulated by his board.

Nor do these opinions prohibit a member of a governing board of a political subdivision—such as the City Commissioner here—from merely appearing before a subordinate board on his or her own behalf, assuming the appearance does not lead to contractual relationship with that subordinate board. We acknowledge that members of governing boards of local political subdivisions may have personal needs to appear before subordinate boards, and Section 112.313(7)(a) does not prohibit them from making such appearances on their own behalf. In the event that the governing board member enters into a contractual relationship with the subordinate board, though, the statute will apply.

That being said, under the facts that you present here, we find the first part of Section 112.313(7)(a) will apply were the City Commissioner to receive funding from the City through the Property Improvement Program. The question then becomes whether any exception negates

the application of this part of Section 112.313(7)(a).

In the past, and in response to unique circumstances, the Commission has applied Section 112.316, Florida Statutes, to negate the application of the first part of 112.313(7)(a) when a public officer plays no role in the contracting process with his agency, and has no public duties related to the performance of the contract. See CEO 93-26 and the opinions cited therein. Section 112.316 provides:

CONSTRUCTION.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

Although we have been cautious in extending Section 112.316 in situations involving high-ranking local officers, such as city commissioners, given the great weight and influence their heightened positions carry over subordinate boards and employees (see CEO 18-12 and CEO 12-9), we treat each situation on its own unique facts. And, in certain instances, we have found that applying Section 112.316 to negate a conflict, even in scenarios involving governing board members, is warranted under the facts presented. For instance, in CEO 12-15, we applied Section 112.316 to negate the mechanical application of Section 112.313(7)(a) when a member of a city council served as a sales associate with a broker leasing space at a city marina. While the city councilmember had an employment or contractual relationship with a business entity doing business with his agency, we found Section 112.316 operated to negate the conflict as the city council had absolutely no responsibilities related to the leasing of the marina.

Here, from what you indicate, the program is open to all eligible property owners within the

City, and the award of funds is nondiscretionary and automatic as long as the applicant meets the program's eligibility criteria. Indeed, you state the City "has no intention of denying any applicant of any funds" if they meet the program's guidelines. Even more importantly, you relate the City Manager's staff reviews the applications, the City Manager has sole approval authority, and the City Manager's Office oversees the reimbursement process, all without any involvement from the City Commission. Under these circumstances, where the program is designed to automatically accommodate all eligible applicants and the City Commission has no responsibilities concerning it, we find Section 112.316 negates the prohibition that would exist under a strict application of the first part Section 112.313(7)(a).

We note that the second part of Section 112.313(7)(a) contains a separate prohibition applicable if a public officer or employee were to have or hold an employment or contractual relationship that would create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties, or that would impede the full and faithful discharge of his or her public duties. Given that the City Commissioner here will have no responsibilities concerning the review or approval of program applications, or the distribution of funds under the program, we do not find this part of the statute applicable.

Accordingly, we find that no prohibited conflict of interest is created under Section 112.313(7)(a) were the City Commissioner to apply for, and receive, reimbursement funds through the City's Property Improvement Program. We do caution the City Commissioner, though, that the prohibitions in Article II, Section 8(h)(2), Florida Constitution,⁶ and Section 112.313(6), Florida

⁶ Article II, Section 8(h)(2), Florida Constitution, states:

A public officer or public employee shall not abuse his or her

Statutes,⁷ prohibit her from misusing or abusing her public position or public resources in any way to expedite her application, ensure its approval, or guarantee preferential treatment in any way. While her applying for and receiving funds through the program does not automatically trigger these prohibitions, we encourage her to be mindful of them in all dealings with the program.

Your question is answered accordingly.

JG/gps/ks

cc: David N. Tolces, Esq.

position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.

⁷ Section 112.313(6), Florida Statutes, states, in relevant part:

No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resources which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.



DAVID N. TOLCES, ESQ
dtolces@wsh-law.com

November 18, 2022

Ms. Kerrie Stillman, Executive Director
The Florida Commission on Ethics
P. O. Drawer 15709
Tallahassee, FL 32317-5709

RE: Request for Formal Ethics Opinion

Dear Ms. Stillman:

On behalf of City of Margate City Commissioner Arlene Schwartz, I am requesting that the Florida Commission on Ethics issue an opinion regarding Commissioner Schwartz' ability to participate in the City of Margate's ("City") Property Improvement Program, and whether Commissioner Schwartz is prohibited pursuant to Section 112.313(7)(a), Florida Statutes, from applying for funds being provided by the City to residents and businesses in the City as reimbursement for costs associated with eligible improvements to property owned by the Commissioner.

In order to assist you and your staff with the review of this matter, I am providing you with the following information:

1. On October 19, 2022, the Margate City Commission adopted Resolution 22-094 which authorized the City of Margate Property Improvement Program (the "Program"). A copy of the Resolution is attached to this correspondence.
2. The Program provides for a 50% reimbursement grant up to \$50,000 for commercial properties, multi-family properties, and for common areas and building exteriors owned by condominium or single-family homeowner associations, and a 50% reimbursement grant up to \$10,000 for Single Family or multi-family (individually owned) homesteaded properties.
3. The Program is funded through an allocation of general fund revenues made available by the American Rescue Plan Act. The City Commission

- allocated an amount of \$1,500,000.00 to be utilized for the administration and funding of the Program.
4. Pursuant to the City Commission's actions, the City Manager developed the specific guidelines and documents to implement the Program. A copy of the description of the Program, the Program Checklist, and the Program's Frequently Asked Questions are attached to this correspondence.
 5. There will not be any agreement, lien, loan agreement, or other type of document executed between the Program participant and the City. The only documents submitted by the participant will be the application and supporting documents required by the Program Guidelines.
 6. The intent of the Program is to ". . . encourage property and business owners to restore, renovate and improve their property, thereby improving the area's visual quality and attractiveness, and increase property values."
 7. Commissioner Schwartz owns a residential single-family home in the City of Margate, which is identified as her homestead on the Broward County Property Appraiser's records. A copy of the property information from the Broward County Property Appraiser for Commissioner Schwartz' property is attached.

Like other residents of homesteaded property in the City of Margate, Commissioner Schwartz would like to receive the grant funds to reimburse her for eligible expenditures pursuant to the Program Guidelines. The issue is whether the receipt of any grant funds from the City to reimburse Commissioner Schwartz for her eligible expenditures would result in a determination that Commissioner Schwartz is doing business with her own agency in violation of Section 112.313(7)(a), Fla.Stat.

I have reviewed CEO 12-07, dated April 4, 2012, in which the Commission on Ethics found that a CRA Commissioner who receives a commercial loan subsidy from the CRA on which they sit as a board member violates Section 112.313(7)(a), Fla.Stat. Unlike the City's Program, however, the funding referenced in CEO 12-07 was a commercial loan subsidy, and not a grant provided in the form of a reimbursement. In CEO 12-07, the Commission on Ethics found that due to the fact that there would be a potential cause of action if one party defaulted or breached the loan agreement that the CRA Board member would be considered to be doing business with their own agency if they received the commercial loan subsidy.

With respect to the City's Program, in this instance, there is no loan agreement, mortgage, or lien to be entered into between a Program participant and the City. In addition, the allocation of the funds for any grant application is administered and approved by City staff, and the City Commission plays no role in the approval of any specific reimbursement grant to any property owner. Unlike a CRA loan subsidy

program, which would only be available to a select number of property owners located within the CRA's boundaries, the City's Program is offered city-wide, to all property owners, both residential and commercial, as well as all homeowner and condominium associations. These factors appear to distinguish the City's Program from the CRA loan subsidy program at issue in CEO 12-07, and therefore, it may appear that the Margate Commissioner is participating in a city-wide program that does not have any contract or agreement governing the program, and is therefore, not doing business with her own agency if she were to receive the grant funds from the City.

In CEO 98-3, the Commission on Ethics opined that a prohibited conflict of interest would be created where a board member of a community redevelopment agency sought a low-cost loan through a program offered by his agency. In CEO 98-3, the Commission on Ethics concluded that the board member's real estate partnership would be doing business with his agency, a relationship prohibited by the first part of Section 112.313(7)(a), Fla.Stat, which provides as follows:

- (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—
(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; . . .

In this instance, the Commissioner owns her own home in her private capacity. The Commissioner would complete a Program application and sign in her individual capacity, and not on behalf of any business or agency which is subject to the regulation of the City. Based upon the facts related to the City's Program, the Commissioner's receipt of grant funds pursuant to the City's Program, in the form of a reimbursement for eligible expenditures, appears to be distinguishable from the fact pattern in CEO 98-3, as there is no business entity regulated by the City which is controlled by the Commissioner. Therefore, there would not be the creation of a relationship prohibited by the first part of Section 112.313(7)(a), Fla.Stat.

In Complaint No. 09-081, *In re Wendall Hannum*, COE Final Order No. 10-132 (2010), the Commission on Ethics found a violation of Section 112.313(7)(a), where a member of a tourist development council applied for and received funding from his own agency. In the Wendall matter, the Commissioner affirmatively voted in favor of providing the funding for his business, and failed to file a memorandum of voting

conflict. Those facts formed the basis for the Commission on Ethics finding a violation of Section 112.313(7)(a), Fla.Stat.

The Commission on Ethics has consistently found that an entity is "doing business" with an agency for purposes of Section 112.313(7)(a), Florida Statutes, when the parties have entered into a lease, contract, or other type of legal arrangement under which one party would have a cause of action against the other in the event of a default or breach. In this instance, the Commission would be applying in her own individual capacity, and not on behalf of any business entity. In addition, the City does not require the execution of any grant agreement, note, mortgage, easement, or any other legally enforceable document. Therefore, it would appear that the Commissioner's participation in the City's Program is distinguishable from prior Commission on Ethics' opinions, and that the Commission could participate in the Program without violating Section 112.313(7)(a), Fla.Stat.

Finally, Section 112.316, Florida Statutes, provides as follows:

Construction - It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

In CEO 20-9, the Commission on Ethics found that Section 112.316, Fla.Stat., exempted any conflict of interest for two members of the governing board of a water management district who sought to receive grant funds for equipment and improvements purchased that meets the requirements of the water management district's grant program. The grant funds were provided as a reimbursement to the applicant up to a maximum of \$300,000, and were made available to all eligible agricultural producers who control property within the water management district's boundaries. In finding that Section 112.316, Fla.Stat. exempted any potential conflict under 112.313(7)(a), Fla.Stat., the Commission on Ethics made the following findings:

- The water management district encompasses many thousands of acres of land;
- Many farmers are similarly situated with respect to ownership of land
- The program's history is void of denial of participation or lack of funding

- There are no discretionary criteria by which to judge the applications, and therefore there is no risk that a water management district board member could leverage the application process to achieve a personal benefit that is not available to similarly-situated applicants.
- The program is not competitive amongst applicants
- There is a public benefit to applicants achieving participation in the program.
- The members of the water management district board cannot move their land to another location outside of the water management district's boundaries.

Based on those factors, the Commission on Ethics found that Section 112.316, Fla.Stat. exempted any conflict of interest for the two water management district board members would otherwise create under Section 112.313(7)(a), Fla.Stat., if their businesses or tenants were to apply for the cost-share reimbursement grant from the agency.

Similarly, Section 112.316, Fla.Stat., should exempt the City Commissioner from any conflict of interest which would be created if she were to receive funds in her individual capacity as a reimbursement grant for improvements made to her home located in the City. The exemption provided for under Section 112.316, Fla.Stat., as with CEO 20-09 would be based on the following factors:

- The City Commissioner owns her home within the municipal boundaries of the City of Margate and is required under Section 3.02 of the City's Charter to reside within the City of Margate to be elected and remain a City Commissioner.
- The City of Margate consists of over 9 square miles, which equates to about 5,760 acres.
- The Program is not competitive.
- The City has no intention of denying any applicant of any funds if they meet the Program's Guidelines.
- Every owner of a residential homesteaded property within the City of Margate is eligible to participate in the Program.
- The public benefit and intent of the Program is to allow a property owner to make improvements to their property that will make the property more attractive and safer, resulting in an increase in property values throughout the City. The increase in property values will result in an increase in the City's tax base which will allow the City to fund more programs and services for its residents and businesses.
- The Commissioner cannot move her home in order to qualify for the Program in another location.

Based on these factors, and following the reasoning in CEO 20-09, if the Commission on Ethics were to find that the Commissioner's participation in the Program violates Section 112.313(7)(a), Fla.Stat., Section 112.316, Fla.Stat., should exempt any conflict of interest the Commissioner's participation in the Program would otherwise create under Section 112.313(7)(a), Fla.Stat., if the Commissioner would apply for the reimbursement grant from the City under its Program that is otherwise available throughout the City.

The Commission on Ethics' consideration of this request is appreciated. If you require any additional information, or have any questions, please contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. N. Tolces', with a horizontal line above the letters 'N' and 'T'.

David N. Tolces
Interim City Attorney

cc: Commissioner Arlene Schwartz
Cale Curtis, City Manager

CITY OF MARGATE, FLORIDA

RESOLUTION NO. 22-094

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, APPROVING THE CITY OF MARGATE PROPERTY IMPROVEMENT PROGRAM; PROVIDING FOR MAXIMUM REIMBURSEMENT GRANT AMOUNT; PROVIDING FOR ELIGIBLE AND INELIGIBLE PROPERTIES, IMPROVEMENTS AND FUNDING; PROVIDING FOR PROGRAM ADMINISTRATION AND FUNDING IN AN AMOUNT NOT TO EXCEED \$1.5 MILLION; PROVIDING FOR EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY OF MARGATE, FLORIDA, AS FOLLOWS:

Section 1: That the City Commission of the City of Margate, Florida, approves the City of Margate Property Improvement Program, to provide for comprehensive fixed capital and other improvements to commercial, multi-family, common areas and building exteriors of condominium associations, and single-family properties.

Section 2: That the City Commission of the City of Margate finds that the City of Margate Property Improvement Program serves a municipal and public purpose, and is in the best interest of the public health, safety, and welfare of the residents and businesses located in the City of Margate.

Section 3: That the City Commission approves a Program allocation of \$1.5 million from general fund revenues made available by American Rescue Plan Act (ARPA), to provide for grant reimbursements and administration costs including but not limited to temporary staffing to assist with grant processing.

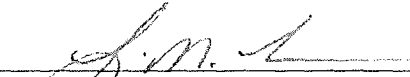
Section 4: That the City Commission approves the maximum reimbursement grant amount, as well as eligible and ineligible properties, improvements, and funding as provided for on the attached Exhibit "A".

Section 5: That the Administration is authorized to take all steps necessary to implement the Program including but not limited to providing for budget amendment, budget transfers, and amendment to program documents and requirements except for those specifically approved by Section 4 above.


Section 6: This Resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 19TH DAY OF OCTOBER 2022.

ATTEST:



JENNIFER M. JOHNSON
CITY CLERK



MAYOR ANTONIO V. ARSERIO

<u>RECORD OF VOTE</u>	
Simone	<u>YES</u>
Schwartz	<u>YES</u>
Ruzzano	<u>YES</u>
Caggiano	<u>YES</u>
Arserio	<u>YES</u>



PROPERTY IMPROVEMENT PROGRAM

The City of Margate's Property Improvement Program (PIP) is a grant program for eligible properties located in the City of Margate. The PIP grant program provides for a 50% reimbursement grant up to \$50,000 for commercial properties, multi-family properties, and for common areas and building exteriors owned by condominium or single-family homeowner associations, and a 50% reimbursement up to \$10,000 for Single Family properties. The reimbursement grant is for **comprehensive** fixed capital and other improvements to the property. The intent of the program is to encourage property and business owners to restore, renovate and improve their property, thereby improving the area's visual quality and attractiveness, and increasing property values.

Eligible Properties

- Commercial properties (applicant may be the building owner or a tenant with owner's approval)
- Multi-Family properties* (work on exterior or common areas only)
- Property owned by Condominium or Homeowner Associations (limited to work on exterior or common areas only)
- Single Family **homesteaded** properties (up to \$10,000)

Eligible Improvements

The PIP grant will reimburse the Owner for eligible costs associated with eligible fixed improvements to the exterior of the property. Minor interior work may be included as part of a comprehensive exterior renovation. The following list contains items that may be considered eligible improvements under the PIP grant program:

- Exterior painting
- Exterior Lighting
- Signage
- Landscaping

- Driveway Improvements/Replacement (addition, widening, circular, pavers, concrete, etc.) asphalt driveways not eligible
- Paving parking areas, walkways, or patios
- Impact-resistant improvements: windows, entry doors, and garage doors
- Air-conditioning
 - central air only - if converting from window units currently visible from public right-of-way
 - A/C change out – up to \$2,500
- Roof repair or replacement (if visible from public right-of-way)
- Structural repair
- Concrete restoration
- Electrical work
- Plumbing work including cast iron pipe replacement
- Fencing (Designer Fence, i.e. PVC, Iron) Chain Link and Wood Fence not eligible

Ineligible Properties

The following properties are not eligible for grant funds under the PIP grant program:

- Individually owned residential properties that are not homesteaded
- Properties listed for sale.
- Properties in foreclosure or bankruptcy proceedings
- Properties with City or County liens – Other liens to be considered on a case-by-case basis.
- Properties with active Florida Building Code or City violation(s) – To be considered on a case-by-case basis as to whether the proposed improvements will resolve the violation(s) or if the violations must be corrected prior to approval of grant funding.
- Properties that have received other Margate grant funds (i.e. SHIP, HOME, CDBG) within the last five (5) years

Ineligible for funding

The following factors will disqualify the Owner from eligibility under the PIP grant program:

- Duplication of funding – Funding for improvements already funded by other federal, state, municipal, or private sources, grants, or as part of an insurance claim, settlement, or similar is not eligible.
- Funding for work that has already commenced at time of application submittal, review, or approval.
- Funding for work that already has submitted or approved permits at time of application will be considered on a case-by-case basis.
- Owner-builder permitted work (all permitted work must be conducted by a licensed contractor)
- Grants for each individual unit owner of multi-family properties for exterior or common area improvements
- More than one grant award per property and/or per project

Terms and Conditions

Grants are limited to properties located within the City of Margate. Program funding is contingent upon an annual appropriation by the City of Margate. The City of Margate reserves the right to cancel this program at any time, prior to grant approval, without notice, if sufficient funds are determined unavailable. The City of Margate retains the right to display and advertise properties which receive PIP funding.

Initial Applications will be accepted on a first-come first-served basis. Incomplete initial Applications will move down the application list until considered complete by City staff. The order of grant funded project approval will vary based upon date all plans and permits are received and approved. Following a review and approval of the complete application, the City will issue a notice of grant award to the Owner identifying the qualifying improvements and the maximum amount of funding to be provided to the Owner upon completion of the improvements.

Grant funding will be provided on a reimbursement basis contingent upon final, approved inspections from all applicable governmental entities, and submittal and staff verification of receipts and other documents related to any authorized expenditures.

PROPERTY IMPROVEMENT PROGRAM APPLICATION

Name: _____

Name of Business/Property: _____

Address of Property: _____

Telephone Number: _____

Email address: _____

Are you the Property Owner or Business Owner? _____

Type of Improvement(s) Planned: _____

Incentive Amount: \$ _____ Total Cost of Project \$ _____

I hereby submit the attached plans, specification and color samples for the proposed project and understand that these must be approved by the City of Margate. No work shall begin until I have received written approval from the City. I further understand that funding will not be paid until the project is complete, including all required permit inspections.

All documents submitted to the City in support of the funding request are considered part of the Application, and are subject to disclosure under Florida's Public Records Law.

Pursuant to Florida Statute 95.525, a person who knowingly makes a false written declaration is guilty of the crime of perjury by false written declaration, a felony of the third degree.

Under penalties of perjury, I, _____ declare that I have read the foregoing Application and supportive documentation, and to the best of my knowledge and belief, the facts stated in it are true.

Signature of Applicant

Date

Print Name

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____ 20____, by _____, who is personally known to me or produced identification and did not take an oath.

Print Name _____

Notary Public, State of Florida at large

PIP Application Checklist

- Completed PIP Application Sheet
- Letter of Authorization for initial Application from property owner (for commercial tenants) or condominium or homeowner association board (for common area property).
- Approval of plans (required for funding approval):
 - Approval of plans by property owner for commercial tenant applicants
 - Approval of plans by Association and/or Community Development District ("CDD") for improvements to homes, condos, or other multi-family property that is governed by an Association or CDD
 - Approval of plans by Association and/or CDD for improvements to common areas
- Letter of intent from grant applicant to the City.
- At least one bid/estimate from licensed contractors for EACH ITEM in scope of work. Please note chosen contractor.
- Copy of license and liability insurance from chosen contractor (The City of Margate must be listed as an additional insured)
- Copy of property insurance for business or building (The City of Margate must be listed as an additional insured)
- Post renovation business plan (if applicable)
- Architectural plans (if applicable)
- Landscape plans (if applicable)
- Material samples (pavers, awnings, light fixtures, etc.) (if applicable).
- Before and after renderings (if applicable)
- W-9 Tax Form completed (in order for the City to be able to send the grant funds)
- Proof of residential homesteaded property ownership (i.e. recent BCPA printout)
- Proof of commercial property ownership or commercial tenant lease
- Active Sunbiz and licensed business tax receipt ("LBTR") when applicable
- Affidavit that the property owner has not received duplicate funding from another source such as insurance reimbursement or grant.
- Request for Redaction of Exempt Personal Information (City form)



PROPERTY IMPROVEMENT PROGRAM

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Eligible Properties

- Commercial properties (applicant may be the building owner or a tenant with owner's approval)
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- Exterior painting
- Exterior Lighting
- Signage
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- Paving parking areas, walkways, or patios
- Impact-resistant improvements: windows, entry doors, and garage doors
- Air-conditioning
 - central air only - if converting from window units currently visible from public right-of-way
 - A/C change out – up to \$2,500
- Roof repair or replacement (if visible from public right-of-way)
- Structural repair
- Concrete restoration
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- Properties with active Florida Building Code or City violation(s) – To be considered on a case-by-case basis as to whether the proposed improvements will resolve the violation(s) or if the violations must be corrected prior to approval of grant funding.
- Properties that have received other Margate grant funds (i.e. SHIP, HOME, CDBG) within the last five (5) years

Ineligible for funding

The following factors will disqualify the Owner from eligibility under the PIP grant program:

- Duplication of funding – Funding for improvements already funded by other federal, state, municipal, or private sources, grants, or as part of an insurance claim, settlement, or similar is not eligible.
- Funding for work that has already commenced at time of application submittal, review, or approval.
- Funding for work that already has submitted or approved permits at time of application will be considered on a case-by-case basis.
- Owner-builder permitted work (all permitted work must be conducted by a licensed contractor)
- More than one grant award per property and/or per project
- Cash payments to contractors or for materials



PROPERTY IMPROVEMENT PROGRAM

Checklist

The following checklist may not include all items specific to the Program or your project. Please contact the City at pip@margatefl.com or at (954)935-5324, if you have any questions regarding program requirements.

What documentation do I need to apply for the Property Improvement Program Grant?

- Driver's License or other government issued ID with a photo
- Before image(s) of the area of your property that you plan to improve
- Contractor Name and License Number (when applicable)
- At least one bid/estimate from licensed contractors for EACH ITEM in scope of work.
- Approval of plans:
 - Approval of plans by property owner for commercial tenant applicants
 - Approval of plans by Association and/or Community Development District ("CDD") for improvements to homes, condos, or other multi-family property that is governed by an Association or CDD
 - Approval of plans by Association and/or CDD for improvements to common areas
- Letter of Consent to submit an application - from property owner (for commercial tenants) or condominium or homeowner association board (for common area property).

Note: ONE PROJECT PER PROPERTY. Example: Impact resistant items, such as doors and windows, may be considered as one project. Roof replacement and windows are considered two projects.

What documentation do I need to provide for reimbursement by the City for the Property Improvement Program Grant?

- Invoices
- Proof of partial and final payments to contractor (**cash payments not accepted**)
- Permit closeout documents – final inspection, certificate of occupancy, etc.
NOTE: **Work that has already commenced at the time of application submission, review, or approval, is not eligible for funding.**
- W-9 Tax Form
- After improvement images



PROPERTY IMPROVEMENT PROGRAM

FREQUENTLY ASKED QUESTIONS

- Where can I find proof of my residential property being homesteaded and proof of property ownership?
 - Go to the Broward County Property Appraisers website at: <https://bcpa.net/Homepage.asp> and look up your property under the "Property Search" section.
 - Print the screen showing the owner's name, folio, site address, and homestead exemption.
 - Click on the link next to the sale date of your property to be connected to Broward County Records. This will allow you to download a copy of the warranty deed, quick claim deed, etc.

- Where can I find my active State of Florida Corporation listing?
 - Go to <https://dos.myflorida.com/sunbiz/search/> and click on "Search Records."

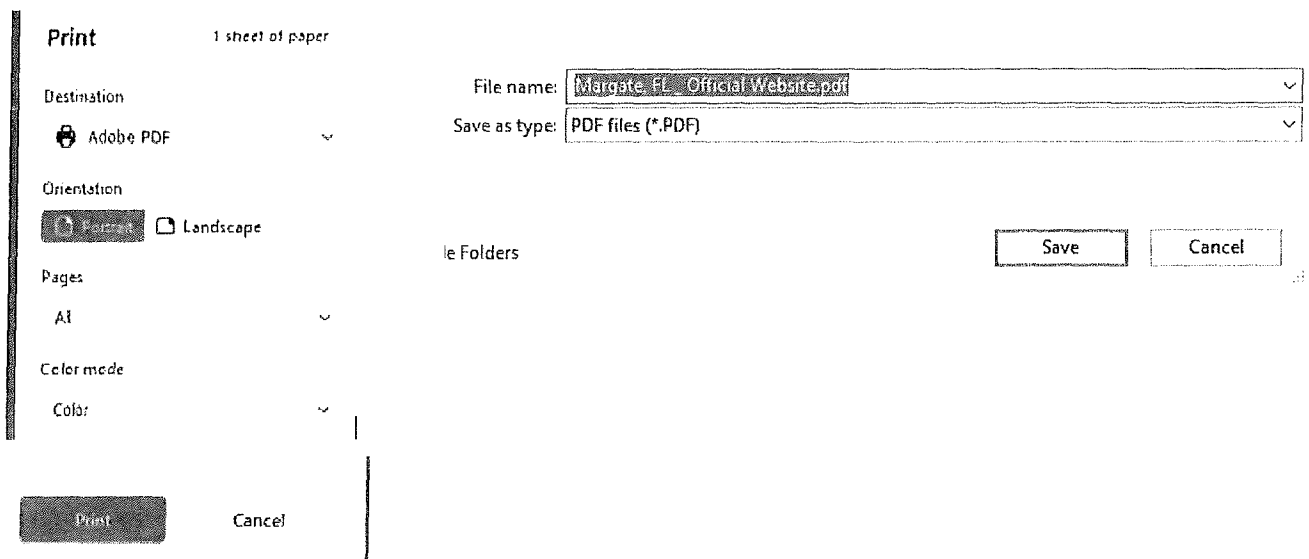
- How do I verify if a contractor is licensed?
 - Go to the Florida Department of Business & Professional Regulation (DBPR) website at <https://www.myfloridalicense.com/wl11.asp?mode=0&SID=> to verify a license and check for complaints filed with DBPR.
 - Check for contractors licensed by Broward County at [BCS - Search for Contractor License \(broward.org\)](#)

- Where can I find consumer guidance about hiring a contractor?
 - Download the City's Guide for Hiring Home Contractors & Getting City Permits at: <https://www.margatefl.com/DocumentCenter/View/6100/Protect-Yourself-and-Your-Investment?bidId>
 - Download the Florida Bar Consumer Pamphlet: Building a Home, at: <https://www.floridabar.org/public/consumer/pamphlet005/>

- Where can my contractor or I find out more about the City's Building permit process?
 - Go to <https://www.margatefl.com/196/Building>
- Where can I find the City's Code of Ordinances?
 - https://library.municode.com/fl/margate/codes/code_of_ordinances
- Where can I find zoning guides for driveways and fences?
 - The City's Development Services Department has zoning guides for common projects, such as fences and driveways, available for download at: <https://www.margatefl.com/202/Zoning>

HELPFUL HINTS:

- How do I save a document I found online if it does not give me the option to save the document to my computer? Do I have to print it and then scan it?
 - Go to your chosen webpage
 - Select a print icon or choose "File" then dropdown to "Print."
 - Choose "Adobe PDF" from the list of printers (destination) in the print dialog box.
 - Click "Print" to use the Acrobat PDF printer.
 - Click "OK" and enter a new file name for your PDF. Save to your desired location on your computer.





PROPERTY SUMMARY

Tax Year: 2023	Property Use: 01-01 Single Family	Deputy Appraiser: Residential Department
Property ID: 484135043070	Millage Code: 1212	Appraisers Number: 954-357-6831
Property Owner(s): SCHWARTZ, ARLENE	Adj. Bldg. S.F.: 1961	Email: realprop@bcpa.net
Mailing Address: 7800 NW 1 ST MARGATE, FL 33063-4710	Bldg Under Air S.F.: 1622	Zoning: R-1C - ONE FAMILY DWELLING (6,000 MINIMUM LOT SIZE)
Physical Address: 7800 NW 1 STREET MARGATE, 33063-4710	Effective Year: 1979	Abbr. Legal Des.: ORIOLE-MARGATE SEC 4 78-20 B LOT 19 BLK NN
	Year Built: 1974	
	Units/Beds/Baths: 1 / 3 / 2	

PROPERTY ASSESSMENT

Year	Land	Building / Improvement	Agricultural Saving	Just / Market Value	Assessed / SOH Value	Tax
2023	\$34,510	\$351,110	0	\$385,620	\$145,410	
2022	\$34,510	\$351,110	0	\$385,620	\$145,410	\$2,230.80
2021	\$34,510	\$254,630	0	\$289,140	\$141,180	\$2,156.73

EXEMPTIONS AND TAXING AUTHORITY INFORMATION

	County	School Board	Municipal	Independent
Just Value	\$385,620	\$385,620	\$385,620	\$385,620
Portability	0	0	0	0
Assessed / SOH 94	\$145,410	\$145,410	\$145,410	\$145,410
Granny Flat				
Homestead 100%	\$25,000	\$25,000	\$25,000	\$25,000
Add. Homestead	\$25,000	0	\$25,000	\$25,000
Wid/Vet/Dis	0	0	0	0
Senior	0	0	0	0
Exemption Type	0	0	0	0
Affordable Housing	0	0	0	0
Taxable	\$95,410	\$120,410	\$95,410	\$95,410

SALES HISTORY FOR THIS PARCEL

Date	Type	Price	Book/Page or Cin
11/01/1993	Quit Claim Deed	\$100	21507 / 532
07/01/1982	Warranty Deed	\$79,000	
09/01/1974	Warranty Deed	\$47,100	

LAND CALCULATIONS

Unit Price	Units	Type
\$5.00	6,901 SqFt	Square Foot

RECENT SALES IN THIS SUBDIVISION

Property ID	Date	Type	Qualified/ Disqualified	Price	CIN	Property Address
484135042200	10/30/2022	Warranty Deed	Qualified Sale	\$469,000	118503809	101 NW 80 AVE MARGATE, FL 33063
484135040790	10/07/2022	Warranty Deed	Excluded Sale	\$340,000	118456210	272 NW 78 TER MARGATE, FL 33063
484135042240	09/09/2022	Warranty Deed	Qualified Sale	\$435,000	118394984	248 NW 80 AVE MARGATE, FL 33063
484135042610	09/07/2022	Warranty Deed	Qualified Sale	\$455,000	118399165	7900 NW 1 CT MARGATE, FL 33063
484135042550	08/19/2022	Warranty Deed	Qualified Sale	\$485,000	118360220	7984 NW 1 CT MARGATE, FL 33063

SPECIAL ASSESSMENTS

Fire	Garb	Light	Drain	Impr	Safe	Storm	Clean	Misc
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SCHOOL

Morrow Elementary: C
 Silver Lakes Middle: C
 Coconut Creek High: I

ELECTED OFFICIALS

Property Appraiser	County Comm. District	County Comm. Name	US House Rep. District	US House Rep. Name
Marty Kiar	2	Mark David Bogen	22	Ted Deutch
Florida House Rep. District	Florida House Rep. Name	Florida Senator District	Florida Senator Name	School Board Member
96	Christine Hunschofsky	33	Rosalind Osgood	Lori Alhadeff

Schafer, Grayden

From: Schafer, Grayden
Sent: Monday, November 21, 2022 11:24 AM
To: 'dtolces@wsh-law.com'
Subject: Questions regarding formal

Mr. Tolces:

I have received your formal opinion request on behalf of Commissioner Schwartz. Before I begin a draft, I will need some more information concerning the Property Improvement Program and the nature of the Commissioner's specific improvements. If you would, please provide the answers to the following questions in writing by responding to this email. And, if you need to have any of these questions clarified, please let me know.

1. Please describe the process by which applicants apply for funding from the Program. This was not clear from the information that you provided. To whom do they send their applications? Who at the City reviews the applications? Who approves the funding?
2. To what degree, if any, is the City Commission involved in reviewing and approving applications for funding?
3. To whom is the reimbursement grant provided? Is it to the applicant or to the contractor(s) who worked on the improvements?
4. Please clarify if the Program is designed only to reimburse for improvements already made or if it also may provide funding for projects that the applicant are hoping to complete in the future.
5. Are applicants to the Program kept anonymous during the review process?
6. In your inquiry, you refer to the Program as providing "reimbursement grants." "Grant" funding often entails commensurate responsibilities/obligations. Are there responsibilities/obligations that the City will impose on an applicant if their application is approved? If so, what are these responsibilities and obligations?
7. Does the City retain a "claw-back" provision over any approved reimbursement grants? If so, who determines when such a provision will be exercised?
8. You indicate the Program has \$1.5 million in funding from the American Rescue Plan Act. Please describe the Act and how the City obtained funding through it.
9. Once the allocated \$1.5 million is gone, will the Program be terminated?
10. Am I correct in understanding that awarding a reimbursement grant will be non-discretionary and automatic as long as an applicant meets the Program's eligibility criteria?
11. Please describe the extent of Commissioner Schwartz's role in developing and approving the Program? In particular, to what extent was she involved in developing the eligibility criteria and in determining which types of improvements would be eligible for funding.
12. Please indicate any and all votes that Commissioner Schwartz has made regarding the Program, besides the vote to approve Resolution Number 22-094. If she abstained from any vote concerning the Program, please indicate that.

13. What were the improvements for which Commissioner Schwartz is seeking a reimbursement grant?

14. Has Commissioner Schwartz already completed the improvements for which she is seeking a reimbursement grant? If so, when did she contract for and—in turn—complete these improvements?

15. When did the City begin developing the Program?

16. When did it become public knowledge that the City was developing the Program? If the development of the Program—from its inception—was publicly known, please indicate that.

Thank you, and I hope you have a great Thanksgiving!

Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)-488-7864



DAVID N. TOLCES, ESQ
dtolces@wsh-law.com

November 30, 2022

VIA E-MAIL ONLY (Schafer.grayden@leg.state.fl.us)

Mr. Grayden Schafer, Assistant General Counsel
The Florida Commission on Ethics
P. O. Drawer 15709
Tallahassee, FL 32317-5709

RE: Request for Formal Ethics Opinion

Dear Mr. Schafer:

I am in receipt of your November 21, 2022 e-mail regarding the request for ethics opinion submitted on behalf of City of Margate City Commissioner Arlene Schwartz. The following are the responses to the questions contained in your e-mail:

1. Please describe the process by which applicants apply for funding from the Program. This was not clear from the information that you provided. To whom do they send their applications? Who at the City reviews the applications? Who approves the funding?

Applicants apply using an online CivicOptimize portal. The software automatically date and time stamps the application based upon the applicant clicking "submit". There are two employees and one temporary employee that review the initial applications. The employees are Nancy Popick, Assistant to the City Manager, and Paul Robinson, Business Development Coordinator. The staff utilize a CivicOptimize Part I Staff Review Form that has specific items to be verified consistently across all applications. The Part I Staff Review Form is then transmitted to the City Manager for final approval or denial of initial grant funding per applicant.

2. To what degree, if any, is the City Commission involved in reviewing and approving applications for funding?

None.

3. To whom is the reimbursement grant provided? Is it to the applicant or to the contractor(s) who worked on the improvements?

The reimbursement is provided to the applicant after receipt of required documentation demonstrating the expenditures for the improvements, and the issuance of the final permits and certificate of completion/occupancy for the improvements.

4. Please clarify if the Program is designed only to reimburse for improvements already made or if it also may provide funding for projects that the applicant are hoping to complete in the future.

The Program is designed only for new projects. Improvements already completed are specifically listed in the Program Guidelines as ruled as ineligible.

5. Are applicants to the Program kept anonymous during the review process?

No. Part of the verification requires review of a driver's license, and public records of the Broward County Property Appraiser, Broward County Records, and Broward County Clerk of Courts. Payments made to the contractor and the W-9 for payment by the City, must also match the applicants name and property. Based upon the foregoing, it would not be feasible to handle this process anonymously.

6. In your inquiry, you refer to the Program as providing "reimbursement grants." "Grant" funding often entails commensurate responsibilities/obligations. Are there responsibilities/obligations that the City will impose on an applicant if their application is approved? If so, what are these responsibilities and obligations?

The applicant must provide the following documentation as provided in Part II (reimbursement section) of the application in order to receive any grant funds for eligible improvements:

- W-9
- Association or Commercial Property Owner approval of plans (when applicable)
- Final Building Department Inspection documents
- Contractor Invoice(s)
- Proof(s) of Payment to the Contractor - Accepted Proof of Payment(s) include but are not limited to the following: canceled check, bank statement, credit

- card statement, receipt(s), along with the paid invoice confirmation from contractor. A paid invoice document alone is not sufficient proof of payment. Cash and cash transfer (i.e. – Zelle) are not accepted.
- Photographs documenting the condition of the property after the Improvements have been completed and approved.

7. Does the City retain a "claw-back" provision over any approved reimbursement grants? If so, who determines when such a provision will be exercised?

There is no "claw-back" provision in the Program. The initial application does require the applicant to acknowledge the following:

- Pursuant to Florida Statute 95.525, a person who knowingly makes a false written declaration is guilty of the crime of perjury by false written declaration, a felony of the third degree. Under penalties of perjury, by entering my name and Signing below, I declare that I have read the foregoing Application and supportive documentation, and to the best of my knowledge and belief, the facts stated in it are true.
- I have not received other City of Margate grant funds (i.e. SHIP, HOME, CDBG) within the last five (5) years.
- I have not or will not be receiving funding for improvements already funded by other federal, state, municipal, or private sources, grants, or as part of an insurance claim, settlement, or similar.
- I have not applied for funding for work that has already commenced at time of application submittal, review, or approval.
- I agree to repay assistance that is determined to be duplicative or has already commenced at time of application submittal, review, or approval.
- I acknowledge that cash payments, such as to contractors or for materials, will not be accepted for reimbursement.
- Any photographs or images submitted as part of this application may be used to promote the PIP program in publications, news releases, videos, online, and other communications related to the mission of the City of Margate.

8. You indicate the Program has \$1.5 million in funding from the American Rescue Plan Act. Please describe the Act and how the City obtained funding through it.

City of Margate Resolution 22-043, approved on April 20, 2022 affirmed the City's election of the \$10,849,938 of ARPA funds as authorized by the American Rescue Plan Act of 2021 ("ARPA"). ARPA authorized the establishment of the Coronavirus State and Local Recovery Fund, which provided for \$350 billion for states, municipalities, counties, tribes, and territories in responding to the economic and public health impacts of COVID-19, and in their efforts to contain impacts on their communities, residents, and businesses. The City received an allocation of \$10,849,938 of ARPA funds, which the City may then use for municipal and public purposes in order to benefit the citizens and residents of the City of Margate, all consistent with the ARPA. A copy of Resolution 22-043 is attached for your review.

9. Once the allocated \$1.5 million is gone, will the Program be terminated?

Whether the Program will discontinue funding once the City reaches the \$1.5 million funding level is unknown at this time.

10. Am I correct in understanding that awarding a reimbursement grant will be non-discretionary and automatic as long as an applicant meets the Program's eligibility criteria?

Your understanding is correct, based upon the Program application and guidelines.

11. Please describe the extent of Commissioner Schwartz's role in developing and approving the Program? In particular, to what extent was she involved in developing the eligibility criteria and in determining which types of improvements would be eligible for funding.

Commissioner Schwartz' role in developing or approving the Program, was the same as the other four (4) City Commissioners who provided input to the City Manager with respect to the amount of funding for the Program, the Program's eligibility criteria, and what Improvements would be eligible for the Program funding. All of the Commissioners providing input at duly noticed City Commission Meetings. Following approval of the Program pursuant to Resolution 22-094, the specifics of the Program application, submittal requirements, and reimbursement requirements was handled by the City Manager's Office.

12. Please indicate any and all votes that Commissioner Schwartz has made regarding the Program, besides the vote to approve Resolution Number 22-094.

The only vote taken by the City Commission was taken at the October 19, 2022 City Commission meeting. All members of the City Commission voted in favor of the Resolution.

13. What were the improvements for which Commissioner Schwartz is seeking a reimbursement grant?

Staff has not reviewed her application yet. All applications are reviewed in date/time stamp order.

14. Has Commissioner Schwartz already completed the improvements for which she is seeking a reimbursement grant? If so, when did she contract for and—in turn—complete these improvements?

Staff has not reviewed her application yet. All applications are reviewed in date/time stamp order.

15. When did the City begin developing the Program?

The Program was first presented at the City Commission meeting on September 21, 2022.

16. When did it become public knowledge that the City was developing the Program? If the development of the Program—from its inception—was publicly known, please indicate that.

The development of the Program was first publically noticed by the City as part of the September 21, 2022 Commission Meeting agenda. It was publically noticed by the City again for the final approval of the Program on the October 19, 2022 Commission Meeting agenda.

Mr. Grayden Schafer
November 30, 2022
Page 6 of 6

The Commission on Ethics' consideration of this request is appreciated. If you require any additional information, or have any questions, please contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read 'DNT', with a long horizontal flourish extending to the right.

David N. Tolces
Interim City Attorney

cc: Commissioner Arlene Schwartz
Cale Curtis, City Manager

CITY OF MARGATE, FLORIDA

RESOLUTION 22- 043

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, APPROVING ELECTION OF STANDARD ALLOWANCE FOR REVENUE LOSS OF \$10 MILLION TO PROVIDE FOR PROJECTS AND SERVICES WITH AMERICAN RESCUE PLAN ACT FUNDS; PROVIDING FOR CERTAIN LEGISLATIVE FINDINGS AND CONCLUSION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR EFFECTIVE DATE.

Whereas, on March 11, 2021, the President of the United States signed into law the American Rescue Plan Act of 2021 (the "ARPA"), which is a \$1.9 trillion economic stimulus bill; and

Whereas, the ARPA established the Coronavirus State and Local Fiscal Recovery Fund (SLFRF), which provides for \$350 billion for states, municipalities, counties, tribes, and territories in responding to the economic and public health impacts of COVID-19, and in their efforts to contain impacts on their communities, residents, and businesses; and

Whereas, the City received an allocation of \$10,849,938 of ARPA funds (the "ARPA Funds") which the City accepts and agrees to use for allowable multiple municipal and public purposes in order to benefit the citizens and residents of the City of Margate, all consistent with ARPA; and

Whereas, the ARPA Funds may be used to address negative economic impacts caused by the public health emergency, replace lost public sector revenue, provide premium pay for essential workers, or invest in water, sewer, and broadband infrastructure (collectively, the "Eligible Expenses"); and

Whereas, the Federal Treasury Department established the Final Rule which takes effect on April 1, 2022, which delivers broader flexibility and greater simplicity in the program; the final rule offers a standard allowance for revenue loss of \$10 million; and

Whereas, the City elects that allowance option to spend monies on government services through the period of performance including, but not limited to road building/maintenance and other infrastructure; health services; general government administration, staff, and administrative facilities; and provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles); and

Whereas, the Eligible Expenses must be incurred on or after March 3, 2021, costs must be obligated by December 31, 2024, and the ARPA Funds must be expended by December 31, 2026; and

Whereas, the City will be proposing projects to be funded by ARPA funds which will be recommended by City Administration and the City Consultant (GSG) for approval by the City Commission; and

Whereas, the City Commission and City Administration both recognize that implementation will diligently occur; however, from time to time, and over a five-year period, the needs and projects may change due to circumstances including, but not limited to the identification of other sources of funding or the provision of assistance by other agencies, and that is as, if and when such circumstances do occur, the City Commission and the City Administration will promptly address such changed circumstances and they shall also address the City's full, complete, and continuing compliance with ARPA, moving forward.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARGATE, FLORIDA:

SECTION 1: The above "Whereas" clauses are true and correct and made a part of this Resolution.

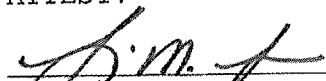
SECTION 2: That the City Commission hereby elects the standard allowance for revenue loss of \$10 million, to provide for projects and services with American Rescue Plan Act Funds.

SECTION 3: That the City Commission of the City of Margate, Florida authorizes City officials to do all things necessary to implement the intent of this resolution.

SECTION 4: That this Resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 20TH day of APRIL 2022.

ATTEST:



JENNIFER M. JOHNSON
CITY CLERK



MAYOR ANTONIO V. ARSERIO

RECORD OF VOTE

Simone	<u>YES</u>
Schwartz	<u>YES</u>
Ruzzano	<u>YES</u>
Caggiano	<u>YES</u>
Arserio	<u>YES</u>

Schafer, Grayden

Subject: FW: Questions regarding formal

From: Schafer, Grayden
Sent: Thursday, December 15, 2022 3:51 PM
To: 'David N. Tolces' <DTolces@wsh-law.com>
Subject: RE: Questions regarding formal

Mr. Tolces:

Thank you for speaking to me yesterday and clarifying the reach of the Property Improvement Program. I want to make sure that I understood our conversation clearly, though, before I start to draft the opinion, so I have just a few more questions for you, both pertaining to what we discussed yesterday. If you would, please provide your answers by replying to this email. And if you need to have any of these questions clarified, please let me know.

1. Am I correct in understanding the Commissioner has not yet contracted for or had any improvements done to her property for which she will be seeking reimbursement through the Program?
2. Am I correct in understanding a homeowner or business owner may not request reimbursement through the program for improvements that they have already made?
3. Am I correct in understanding that the Commissioner has not yet turned in her application to the Program?
4. If you would, please clarify the process for applying for reimbursement through the Program. The guidelines seem to indicate the following: (1) an applicant turns in an application identifying the particular improvements to be made; (2) that application is reviewed by City staff; (3) if approved, the applicant contracts and pays to have the improvements made; (4) the applicant submits to the City required documentation demonstrating the expenditures for the improvements and confirms the issuance of any final permits and certificates of completion/occupancy; and (5) the City reimburses the applicant directly. Is this correct?

Thank you again,

Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)-488-7864

Schafer, Grayden

Subject: FW: Questions regarding formal

From: David N. Tolces <DTolces@wsh-law.com>
Sent: Monday, December 19, 2022 4:06 PM
To: Schafer, Grayden <SCHAFFER.GRAYDEN@leg.state.fl.us>
Cc: Robert Meyers <RMeyers@wsh-law.com>
Subject: RE: Questions regarding formal

Gray: Good afternoon.

Please see the following responses to your questions in red.

If you need anything further, please let me know.

Have a happy holiday!

David

From: Schafer, Grayden <SCHAFFER.GRAYDEN@leg.state.fl.us>
Sent: Thursday, December 15, 2022 3:51 PM
To: David N. Tolces <DTolces@wsh-law.com>
Subject: RE: Questions regarding formal

Mr. Tolces:

Thank you for speaking to me yesterday and clarifying the reach of the Property Improvement Program. I want to make sure that I understood our conversation clearly, though, before I start to draft the opinion, so I have just a few more questions for you, both pertaining to what we discussed yesterday. If you would, please provide your answers by replying to this email. And if you need to have any of these questions clarified, please let me know.

1. Am I correct in understanding the Commissioner has not yet contracted for or had any improvements done to her property for which she will be seeking reimbursement through the Program? That is correct
2. Am I correct in understanding a homeowner or business owner may not request reimbursement through the program for improvements that they have already made? That is correct
3. Am I correct in understanding that the Commissioner has not yet turned in her application to the Program? The Commissioner submitted an application; however, the application was submitted under the condition that the Commissioner was waiting for clarification from an outside agency regarding the Commissioner's ability to participate in the Property Improvement Program.
4. If you would, please clarify the process for applying for reimbursement through the Program. The guidelines seem to indicate the following: (1) an applicant turns in an application identifying the particular improvements to be made; (2) that application is reviewed by City staff; (3) if approved, the applicant contracts and pays to have the improvements made; (4) the applicant submits to the City required documentation demonstrating the expenditures for the improvements and confirms the issuance of any final permits and certificates of completion/occupancy; and (5) the City

reimburses the applicant directly. Is this correct? Your understanding of the process for applying for reimbursement through the Program is correct.

Thank you again,

Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)-488-7864