



Alachua County Attorney's Office

Sylvia E. Torres, County Attorney

MEMORANDUM

TO: Charles Chestnut IV, County Commission Chair

FROM: Sylvia Torres, County Attorney

DATE: April 15, 2025 (updated April 24, 2025)

Re: Housing Uses - Local government infrastructure surtax

This Office has received questions related to the potential legal uses of the 2022 Alachua County local government infrastructure surtax for housing. In general, expenditures of surtax revenue must comply with the requirements contained in section 212.055, Fla. Stat., as well as the local criteria outlined in County Ordinance 2022-08, which authorized the referendum on the surtax. This memorandum addresses the legal uses and limitations of the surtax for affordable housing projects and economic development projects, such as workforce housing.

1. Land acquisition for affordable housing (Sec. 212.055(2)(d)1.e., Fla. Stat.)

Section 212.055(2)(d)1.e., Fla. Stat., allows for the purchase of *land* for residential housing projects in which at least 30% of the units are affordable to households whose income do not exceed 120% of the area median income. This land must be owned by a local government or a special district (if the special district enters into an agreement with the local government to provide the housing). The government owner of the land may enter a ground lease with public or private persons/entities for the construction of residential housing projects (for nominal or “other” consideration).

Alachua County Ordinance 2022-08 directed the 2022 referendum for the current surtax (2022 Surtax) and includes the allowable uses of the funds, if approved by the electors. Section 4 (Use of Surtax Proceeds) (b)iii., tracks the statutory requirements for residential housing projects, under section 212.055(2)(d)1.e.: purchase of land, projects with at least 30% affordable units, owned by government, and the option of nominal ground lease for construction. The referendum ballot language states that the surtax could be used to “acquire lands for affordable housing.” The maximum amount that can be allocated for this use is 50% of the surtax proceeds. By direction of the Board, only 30% of the maximum 50% of the surtax could be used for this purpose (in other words, 15% of the total surtax).

“Lands” is not defined in Chapter 212, Fla. Stat., but the term “Real property” is defined as: “surface land, improvements thereto, and fixtures...,” section 212.02(h), Fla. Stat. This definition seems to indicate that surface land (as opposed to submerged land or improved land) is a subset of

real property and is exclusive of improvements and fixtures. Several hypothetical “land” purchases have been presented to this office, including vacant land, land with buildings needing to be demolished, land with buildings that have value, and buildings with value but very low land value. Additionally, the question of use of these section 212.055(2)(d)1.e. funds to cover just the land value of a real estate purchase (with some other funds covering the improvements and fixtures) has been presented to this office. In the absence of other guidance regarding what “land” is, in this context, the best advice is that section 212.055(2)(d)1.e. funds may only be used for the value of land (value of real estate minus value of improvements and fixtures).

For many projects, however, this distinction between land and improvements/fixtures (as well as the requirement for government ownership) may not need to be made, because these projects may also qualify for expenditures under section 212.055(2)(d)3., Fla. Stat., as explained below.

2. Economic development projects (Sec. 212.055(2)(d)3., Fla. Stat.)

Section 212.055(2)(d)3., Fla. Stat., allows for up to 15% of the surtax proceeds to be used for funding “economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development.” Chapter 212, Fla. Stat., does not define “economic development projects,” “improving local economies,” or “incentives.”

Without a definition for “economic development” in Chapter 212, the closest statutory analogue is in section 125.045, Fla. Stat., which addresses County economic development powers. Among the codified legislative findings of this section are the purposes of economic development, the most clearly relevant one of which is “to enhance and preserve purchasing power and employment opportunities for the residents of this state.” The statute declares that it is a public purpose to expend public funds for economic development activities including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses in the community or the attraction of new businesses to the community. This illustrative list is not a complete list of County powers, nor is that list limiting. The statute says that the scope of the county economic development powers includes “any powers not specifically prohibited by law” and that those powers should be liberally construed (i.e., broadly interpreted) to carry out the purposes of economic development.

Alachua County Ordinance 2022-08 tracks the permitted uses of section 212.055(2)(d)3., Fla. Stat. A number of the Board’s findings in Ordinance 2022-08, which are incorporated into the ordinance as legislative findings, explain that the creation of workforce housing will have a general public purpose of improving the local economy because:

- Insufficient affordable housing limits Florida’s economic potential;
- Alachua County has insufficient affordable housing;
- Insufficient housing contributes to increased rental rates;
- Construction and rehabilitation of workforce housing has a stimulative effect on the local economy; and
- Workforce housing can reduce housing costs to affordable levels, thus creating more room in the family budget for local purchases.

According sections 212.055 and 125.045, Fla. Stat., with Ordinance 2022-08, this Office's legal opinion is that 15% of the total surtax can be spent on workforce housing "economic development projects," which could be any project that enhances and preserves the purchasing power and employment opportunities for residents of Alachua County. Projects funded under section 212.055(2)d.3, Fla. Stat., for economic development have fewer limitations on them than "affordable housing" projects under section 212.055(2)(d)1.e, which, as previously addressed, are limited to the purchase of land, ownership by a local government or a special district. While government-owned land for workforce housing could be an economic development project under section 212.055(2)d.3, these surtax funds can also be used for a broader scope of projects, such as to purchase improved property and provide grants to developers to incentivize the development of workforce housing or payments to developers to offset the costs of inclusionary zoning requirements adopted under section 125.01055, Fla. Stat.

The primary limitation for these section 212.055(2)(d)3, Fla. Stat., funds (which does not apply to the land acquisition expenditures under section 212.055(2)(d)1.e.) is that the expenditures must be for workforce housing, as opposed to other "affordable housing" uses (such as housing for elderly or disabled). In its Housing Plan, the County has defined "workforce housing" as 30-120% area median income. Ultimately, each project under this section must be viewed through the lens of whether it creates economic development, under the expansive powers in section 125.045, Fla. Stat.

Should you have any questions, please contact me.

SET

Cc: County Commissioners
Michele Lieberman, County Manager