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INTER-OFFICE CORRESPONDENCE
MEMORANDUM NO. 2023-079

TO: Frank C. Ortis, Mayor
Members of the City Commission

CC: Charles F. Dodge, City Manager
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Michael Bailey, Utility Director
Marlene D. Graham, City Clerk

FROM: Samuel S. Goren, City Attorney *SSG*
Sean M. Swartz, Assistant City Attorney *SMS*
Paul B. Hernandez, Assistant City Attorney *PBH*

DATE: August 28, 2023

RE: City of Pembroke Pines (the "City") / Proposed Ordinance Regarding
Water Services to Properties engaging in noxious uses outside the
City's municipal Boundaries

The intent of this memorandum is to examine the City's legal authority to enact an ordinance establishing a policy of refusing to provide water or sewer services to property located outside of the City's municipal boundaries, when the City Commission makes the determination that the proposed uses on such property are noxious, offensive, contrary to the City's best interests of the City or adverse to the health, safety and welfare of the City's residents.

The City, having recently resolved its litigation with the Town of Southwest Ranches (the "Town") and CoreCivic (formerly Corrections Corporation of America), is generally aware of the legal requirements and potential legal challenges associated with serving properties outside of its boundaries.

The Supreme Court of Florida has stated that a "municipality has no duty to supply services to areas outside its boundaries." *Allen's Creek Properties, Inc. v. City of Clearwater*, 679 So. 2d 1172, 1173 (Fla. 1996). However, exceptions to the general rule exist in situations where a municipality has contracted to provide services to a property located outside of its boundaries, or in instances where the municipality has assumed the duty to provide those services through its conduct. *Id.* at 1175-76. The type of conduct required for the City to assume the duty would be affirmative expressions of intent by the City to provide services to the property. *Id.* at 1176.

In the City's litigation against CCA, the 4th District Court of Appeals held that although the City had no duty to supply water and sewer services to areas outside its boundaries, the City expressly manifested the desire or intent to assume the duty to provide the services to the CCA parcel through its conduct. See generally, *Corrections Corporation*

of America, Inc. v. City of Pembroke Pines, 230 So. 3d 477 (Fla. 4th DCA 2017). The conduct the court considered when deciding this case included, but was not limited to, the City's approval of an Interlocal Agreement ("ILA") with the Town wherein the City stated that it would "expeditiously" approve a future water/waste water utility agreement with the Town. *Id.* at 482 The City's approval of the ILA lead to the court's decision to hold, as an exception to the above-referenced general rule, that through its conduct, the City had assumed the legal duty to provide water/waste water service to CCA.

While the City has not formally established a "service area" outside of its municipal boundaries, the City does have a history of providing water and/or sewer service to a number of parcels in the Town as well as in unincorporated Broward County, including the former Broward County landfill, the former women's prison and Everglades Holiday Park.

Currently, Section 50.10 of the City Code, entitled "Outside City Limits," provides:

(b) Outside City Limits. With one exception, property located outside the city limits shall not be allowed to connect to a city utility system unless the connection **is authorized by the City Commission**. The one exception is that Commission approval shall not be required for any connection in that area covered by the developer's agreements identified in Exhibit "H", Agreement for Sale and Purchase, September 27, 1962, between the city and the West Hollywood Water Company and the West Hollywood Utility Company.

Since the City has not established a service area outside of its boundaries by ordinance and the City Code expressly requires City Commission approval of any connections outside of its boundaries, the City may adopt and codify a policy statement affirming that the City will not provide water and/or sewer service to property outside of its boundaries when the City Commission has determined that the proposed uses on such property are noxious, offensive, contrary to the best interests of the City or adverse to the health, safety and welfare of the City's residents. However, under the *Allen's Creek* case and its progeny, including the City's CCA litigation, such a policy position by the City may be subject to a legal challenge. More specifically, a court may be asked to determine whether the City's conduct outside of its boundaries, including a history of serving certain areas in the Town and in unincorporated Broward County, demonstrates a manifestation of intent to provide water and/or sewer service and has established a continuing duty for the City to serve certain parcels outside of its boundaries.

Should you have any questions, please do not hesitate to contact our office.

SSG:JGH:SMS:PBH