

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Richard Berrios, City Attorney
DATE: May 23, 2025
SUBJECT: Legal Memorandum – Whether City May Donate Money to Private/Nonprofit Organizations

This memorandum addresses the following:

1. Providing a background of the origins of City Council Resolution 84-R36;
2. Explaining the legal significance of City Council Resolution 84-R36;
3. Providing legal guidance as to whether a municipality may donate money to nonprofit organizations.

Background on Resolution 84-R36

During the City Council workshop held on May 8, 2025, there was discussion regarding financial contributions to nonprofit organizations and a stated assumption that it was the City's unwritten policy to not provide financial contributions to nonprofits. Shortly thereafter, staff identified Resolution 84-R36 ("1984 Resolution") as the City's written policy on financial contributions to nonprofits. Resolution 84-R36, and the relevant minutes from the June 26, 1984 City Council meeting ("1984 CC Meeting") are attached.

Based upon a review of the minutes from the 1984 CC Meeting, the 1984 Resolution was the City Council's response to a request for financial support from Hospice of the Treasure Coast, a nonprofit organization providing hospice care for the region, at no cost to the patients they serve. The organization appeared to be experiencing some financial difficulty and was facing the potential of having their state licensure revoked because the state required, among other things, a free-standing building with a minimum of six (6) patient beds, 24-hour visitation, cooking patients' favorite meals, and the allowance of pets. At the time of the 1984 CC meeting, the organization did not yet have its own free-standing building providing the requisite services. Rather, it was utilizing space in Lawnwood Medical Center, which provided six (6) patient rooms, but did not completely meet the state licensing requirements (e.g., no pets were allowed and 24-hour visitation was problematic). The organization anticipated receiving funds from the United Way and a state block grant, but those amounts would not be enough to cover the cost of renovating and leasing a HUD building, the site of their planned future operations. Hence, the request for financial assistance from the City.

The 1984 Resolution recognized and acknowledged the very real and beneficial services that organizations like Hospice of the Treasure Coast provide to the community. It also found that direct cash contributions to these organizations is not a proper function of the City Council in determining the expenditure of tax dollars, but rather

that it is the responsibility of individual donors to support these institutions and organizations. With these findings, the City Council unanimously voted to adopt the 1984 Resolution establishing “a policy of not approving requests for cash contributions to organizations seeking financial assistance by the City.”

Legal Significance: What is a Resolution?

In Florida, local governments (e.g. cities, towns, and counties), through the authority granted under home rule, may enact local laws known as ordinances. Ordinances constitute “official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.” Section 166.041(1)(a), Florida Statutes. Resolutions are effectively a step below ordinances in hierarchy, with other legislative expressions (e.g., certain items requiring motions, consensus items) a further step below.

A resolution is “an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.” Section 166.041(1)(b), Florida Statutes. Therefore, it can be temporary in nature or more permanent as it relates to the administrative business of the governing body.

In this case, the 1984 Resolution provided for the disposition of administrative business (*i.e.*, an established policy on how the City will respond to requests for direct cash contributions from any non-City organization) and was made effective immediately, with no expiration date. An inquiry with the City Clerk indicates that the 1984 Resolution has not been repealed, rescinded, or amended since its effective date of June 26, 1984. Accordingly, the policy established by the 1984 Resolution is effective until repealed, rescinded, or amended.

Principle of Legislative Equivalency; How Does the Council Undo or Change What has Been Done

Once a resolution is duly approved, it is binding and requires an expressed intent to overturn its provisions for the City to deviate from what was established therein, unless the resolution was intended to be temporary. *See Marriot Corp. v. Metropolitan Dade Cnty.*, 383 So.2d 662 (Fla. 3d DCA 1980). The form of expressed intent matters. On point here is the principle of legislative equivalency. In a nutshell this principle requires, unless otherwise authorized/required by law, governing bodies to utilize the same or greater form of legislative action to undo or redo a prior legislative act. For example, resolutions can be repealed, rescinded, or amended by subsequent resolutions, ordinances, or an act of the legislature (e.g., being preempted by the State or Federal government or amending a charter through referendum), whereas something below the legislative hierarchy of a resolution would be of no effect to change a resolution.

Therefore, a resolution or greater legislative action is required to repeal, rescind, or amend the 1984 Resolution.

Repeal, Rescind or Amend: What Does the Law Say About Financial Contributions to Private/Non-Profit Organizations?

The Council may choose to repeal, rescind, or amend the 1984 Resolution, but certain principles of law would still apply regardless of which path the Council chooses.

The Florida Constitution prohibits the use of public funds to aid private entities, including non-profit organizations. Stated another way, a municipality cannot spend public money or donate public property for a non-public purpose, regardless of how worthwhile it may appear. See *State v. Miami Beach Redevelopment Agency*, 392 So.2d 875 (Fla. 1980). Stated yet another way, to be lawful, any contributions by a municipality must, at a minimum, serve a concrete public purpose and the City must maintain control over the administration of the contribution to avoid frustration of that public purpose.

Case Study and Two-Part Test: Concrete Public Purpose and Control

In *O'Neill v. Burns*, 198 So.2d 1 (Fla. 1967) the Supreme Court of Florida found an appropriation to Junior Chamber International unconstitutional because the appropriation did not serve a primary public purpose and was completely lacking in public control. There, the State Legislature enacted a law which would appropriate funds from general revenue to be paid to a non-profit organization for the purpose of creating a permanent headquarters.

In the *O'Neill* case, counsel for the appellant cited two separate cases as analogous and controlling – *Bailey v. City of Tampa*, 111 So.119 (Fla. 1926) and *Raney v. City of Lakeland*, 88 So.2d 148 (Fla. 1956). In each case, the court upheld appropriations to non-profit organizations. In *Bailey*, the City of Tampa conveyed a parcel of land to a non-profit to build an office building, and in *Raney*, the City of Lakeland leased municipal property to a non-profit organization for a nominal rental fee. The *O'Neill* court distinguished those cases factually and reiterated the relevant test to evaluate whether a municipality's financial assistance survives a constitutional challenge:¹ a two-part, fact-specific test.

The first part of the test is reviewing the contribution and determining whether it serves a clearly identified public purpose (e.g., performing municipal functions and/or rendering municipal services) as the primary objective of the contribution. This is typically a legislative finding made based on the facts and circumstances of the financial contribution in question. The second part of the test requires an evaluation of whether the municipality maintains/exercises control in the administration of that public purpose.

In the *O'Neill* case, there was no obligation that the building or lands in question serve the public agency or serve the public generally. Rather, there was an attenuated reference to an incidental public benefit to tourism based upon the location of the proposed building, which was not found to be a primary goal. This failed the valid, public purpose prong of the test. Additionally, the appropriation in question had no provision for the reversion of land/property to the public or public use of the building in question. This failed the control prong of the test.

To reiterate, the standard is (1) the expenditure/action by the municipality must serve a clearly identified and concrete public purpose; and (2) the municipality must retain some control over the expenditure/action to avoid frustration of that public purpose by the private entity.

¹ The following are the distinguishing facts in both cases. The *Bailey* case involved a conveyance of a parcel of municipal land to the board of trade for the purpose of building an office building. There the contribution required that a large portion of the building was to be turned over to the City of Tampa immediately upon completion for public use and that within 35 years, the building and the lands previously conveyed reverted back to the City except for essential office space for the board of trade. In *Raney*, the lease terms for the municipal land in question required the non-profit organization to construct a building, establish a public library of specified purpose and related facilities and programs open to the public. The property would then revert to the City of Lakeland at the end of the lease term.

A final note on the interpretation of control. Other examples of control properly exercised include municipally administered grant programs, community development block grant disbursements to non-profit organizations who provide qualifying services, and service agreements. Our office and the City Manager's team have already begun collaborating to research and review how other large cities in the state navigate this issue.

The 1984 Resolution: Practical Implications, Application, Conclusion

As written, the 1984 Resolution is within the bounds of the law as it exists today. That is, it establishes the City's adherence to the law which prohibits pure financial assistance (*i.e.*, financial and/or land contributions) to private entities, regardless of how popular or noble the goals of those private entities. One might argue that the 1984 Resolution is stricter than the law requires, meaning that the City's policy is a blanket prohibition on any cash contributions, period, regardless of whether the contribution adheres to the two-part test. However, a close reading of the minutes from the 1984 CC Meeting supports the conclusion that the City's prohibition applied to pure cash contributions without control.

There is no question that many "organizations provide the community with services that are beneficial to community[]" (*see* 1984 Resolution) and oftentimes those services could very well serve a valid public purpose, but the law requires municipalities to ensure public funds are properly expended for public purposes through the two-part test.

As stated above, the Council is free to amend, repeal, or rescind the 1984 Resolution, but may do so only with the understanding that the principles of law discussed above would still apply.

As you can tell, the determination of whether a contribution satisfies the two-part test is a fact-sensitive inquiry. If there is a proposed course of action the Council wishes for this office to evaluate outside of what is presented in this memorandum, my office will be happy to assist in such an analysis.

Please contact me if you require further clarification or information.

Best,

A handwritten signature in black ink, reading "Richard Berrios". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Richard Berrios

cc: City Manager
City Clerk

FILE COPY

RESOLUTION 84-R36

A RESOLUTION ESTABLISHING A POLICY OF NOT APPROVING REQUESTS FOR CASH CONTRIBUTIONS TO ORGANIZATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, from time to time, the City Council has been approached by various organizations requesting from the City financial assistance for such organizations, and

WHEREAS, the City Council recognizes that these organizations provide the community with services that are beneficial to the community; and

WHEREAS, the City Council further recognizes that approving requests for cash contributions to organizations is not a proper function of the City Council in determining how the City's tax dollar should be expensed, and

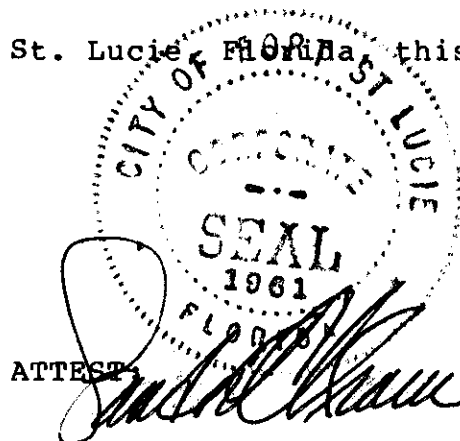
WHEREAS, the City Council further recognizes that it is not a City Council function to determine what organizations should receive cash contributions, it being properly the decision of individual donors to determine what organizations should receive their support and to what extent that support should be given.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Port St. Lucie, Florida:

Section 1. That there is hereby established a policy of not approving requests for cash contributions to organizations seeking financial assistance by the City.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this 26th day of June, 1984.



Sandra C. Krause, City Clerk

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY: William B. McChesney
William B. McChesney, Mayor

APPROVED AS TO FORM:

Roger G. Orr
Roger G. Orr
Assistant City Attorney

information, would not be permitted on the sign. Mr. Orr concurred, and pointed out that the applicant must also go through the site plan procedure for special exceptions to the sign ordinance. If there is a variation from the site plan, then the applicant will have varied from the special exception granted and therefore, would be in violation. In this sense, there is a built-in protection.

COUNCIL ACTION ON REQUEST BY GENERAL DEVELOPMENT CORPORATION FOR SPECIAL EXCEPTION FOR COMMERCIAL IDENTIFICATION SIGN ON EASTSIDE OF US #1 ALONG ACCESS ROAD LEADING INTO VILLAGE GREEN SHOPPING CENTER.

Councilman Perona moved to approve this request, Councilman Kelly seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	No
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

COUNCIL ACTION ON REQUEST BY MEDICENTER ASSOCIATES FOR SPECIAL EXCEPTION FOR COMERCIAL IDENTIFICATION SIGN ON EASTSIDE OF HILLMOOR DRIVE ALONG NORTH PROPERTY LINE.

Vice-Mayor Reeb moved for approval, Councilman Kelly seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	No
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

COUNCIL ACTION ON SITE PLAN FOR KNIGHTS OF COLUMBUS HALL ON RAVENSWOOD LANE.

Councilman Perona moved for approval, Vice-Mayor Reeb seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

COUNCIL ACTION ON SITE PLAN FOR GENERAL DEVELOPMENT CORPORATION'S MIDPORT WATER TREATMENT PLANT STORAGE TANK (TRACT C, SECTION 52) ON TIFFANY AVENUE.

Mr. Allgire advised that this item has been deleted from the agenda to complete the rezoning timetable.

COUNCIL ACTION ON SITE PLAN FOR KIWANIS PARK (TRACT 1, BLOCK 426, SECTION 3) AT INTERSECTION OF FLORESTA DRIVE AND AUTUMN STREET).

Vice-Mayor Reeb moved for approval, Councilman Alexander seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

COUNCIL CONSIDERATION OF SITE PLAN FOR MRI DIAGNOSTIC CLINIC AT THE CORNER OF HILLMOOR DRIVE AND TIFFANY AVENUE.

Councilman Perona moved for approval, Vice-Mayor Reeb seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

COUNCIL ACTION ON SITE PLAN FOR G & G ASSOCIATES' LIGHT INDUSTRIAL BUILDING AT THE CORNER OF SOUTH NEIMEYER CIRCLE AND VILLAGE GREEN DRIVE. ONE CONDITION WAS STIPULATED BY P&Z BOARD.

Vice-Mayor Reeb moved for approval, Councilman Kelly seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

COUNCIL ACTION ON SITE PLAN FOR DRAKE INDUSTRIES' ASSEMBLY WAREHOUSE AT GO TEAM INDUSTRIAL PARK.

Vice-Mayor Reeb moved for approval, Councilman Perona seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

Vice-Mayor Reeb said that the GO Team has done a great job and deserve the applauds of the City. On behalf of the GO Team, Mayor McChesney said they are very proud of their accomplishments, which will provide the City with a great

industrial area.

COUNCIL ACTION ON REQUEST FOR VARIANCE FROM REQUIREMENTS OF THE
FENCE ORDINANCE BY MR. & MRS. WILLIAM PATTON, 154 DOMINICAN
TERRACE (LOT 10, BLOCK 472, SECTION 26).

Councilman Perona moved for approval, Vice-Mayor Reeb seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

RESOLUTION 84-R34, IDENTIFYING SERVICES RENDERED BY ST. LUCIE
COUNTY WHICH PROVIDE NO REAL AND SUBSTANTIAL BENEFIT TO PROPERTY
OR RESIDENTS WITHIN THE CITY AND WHICH ARE FINANCED BY COUNTYWIDE
REVENUES.

The City Clerk read Resolution 84-R34 aloud by title only. Councilman Perona moved for approval, Vice-Mayor Reeb seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

RESOLUTION 84-R35, INITIATING THE PROCEDURE FOR ENFORCEMENT OF
ARTICLE 3, CHAPTER 12, CITY CODE, LOT CLEARING.

The City Clerk read Resolution 84-R35 aloud by title only. Vice-Mayor Reeb moved for approval, Councilman Alexander seconded the motion and roll call vote was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

RESOLUTION 84-R36, SETTING POLICY ON CONTRIBUTIONS REQUESTED FROM
VARIOUS ORGANIZATIONS.

The City Clerk read Resolution 84-R36 aloud. Councilman Perona moved for approval and Councilman Alexander seconded the motion.

Mr. Dan Richards, representing Hospice of the Treasure Coast, noted that Port St. Lucie, Fort Pierce and St. Lucie County have always supported Hospice in a warm, friendly and generous manner. They will continue serving the people in St. Lucie County as long

as they have money to do so. He noted that when they obtained licensure from the State of Florida, a portion of the State mandate requires the establishment of a free-standing building which must meet state and local codes. It must have a minimum of six patient beds and follow the hospice philosophy, such as 24-hour visitation, cooking favorite meals for patients, allowing pets, etc. He advised that Lawnwood Medical Center has provided them with six patient rooms, however, dogs are not allowed and 24-hour visitation is difficult. It is a stop-gap measure which allowed them to obtain a license in April of this year, but it is still questionable whether this will be the case next year. He noted that recently, they received an estimate of \$75,000 for renovating a HUD building, which will be leased for a minimal amount. He advised that monies will be received from the United Way, but this will not come until January, 1985. \$3,800 will be received from a state block grant and they will be eligible to reapply for more monies next year. He informed that 80% of the monies received goes toward direct patient services; the remaining pays for two registered nurses, office supplies and mailing costs. He added that patients are not charged for the service provided, regardless of someone's financial standing. In working with Lawnwood Medical Center, projections were made and as a result, it was learned that the Hospice has saved approximately \$250,000 in costs that would have been passed back to the public through higher hospital rates. He said he realizes that the City must take a stand, however, he hopes organizations such as the Hospice who charge nothing for their services, would not be excluded and that this resolution will be vetoed.

Roll call vote on the motion to approve was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

CONTINUATION OF HEARING OF MODEL HOME VIOLATION BY CLINT WESTBERRY.

Mr. Allgire reported that the model home has been inspected and the original violations have been corrected. Mayor McChesney noted that Mr. Westberry is now in compliance with City ordinances and Mr. Allgire concurred, noting that he is in compliance to the extent that the ordinance is being enforced. Mayor McChesney thanked Mr. Westberry for his cooperation.

COUNCIL ACTION ON REQUEST BY CHIEF OF POLICE FOR ADDITIONAL SERGEANT'S POSITION.

Vice-Mayor Reeb moved to approve this request, Councilman Alexander seconded the motion and roll call on the motion was as follows:

Councilman Kelly	Yes
Councilman Perona	Yes
Councilman Alexander	Yes
Vice-Mayor Reeb	Yes
Mayor McChesney	Yes

OLD BUSINESS

Vice-Mayor Reeb questioned when the remainder of work in Section 6 will be completed. He noted that for two years, the City Engineer has advised that completion will occur in 90 days.

Mr. Dike noted that he'd been promising this work would go out for bid for the last six months. He pointed out that considerable changes in the organization of his department have been made, and based on the availability of time, he is the only person who can perform this particular engineering design. He said he does the rough draft and submits it to a draftsman for finishing. He referred to the demands on his time over the last six months and advised that the work is not finished, however, he expects another 10 hours of work on his part will get it to the draftsman in its finished form. He anticipates the bidding will occur within the next 30 days, particularly since his budget is almost complete. He apologized for promising something and not delivering, but again, referred to the many demands placed on the staff's time. Vice-Mayor Reeb asked if this can be done within the next 30 days and Mr. Dike said it would.

NEW BUSINESS

Councilman Alexander referred to the Chief of Police's recent comments in the newspaper regarding handicapped parking, and said this is violated indiscriminately by people who could care less about the great number of handicapped people in this area. He pointed out that many people go to great trouble getting a parking permit to park in the handicapped spaces. Presently, the fine for this violation is ineffective; people pay the \$2 and do it again. He referred to House Bill 326 and noted that it was recently passed, authorizing cities and countys to impose a fine not to exceed \$100 for illegally parking in handicapped spaces. He recommended our present ordinance be amended to reflect the new law when it comes into effect October 1. Mayor McChesney asked the City Manager to see that proper steps are taken to bring this matter before the next workshop session.

ADJOURN

There being no further business to come before the Council, the regular meeting adjourned at 9:45 a. m.