CAVENDISH PARTNERS
P.A.

LEGAL OPINION TO THE CITY COUNCIL OF LAKE CITY, FLORIDA

PREPARED BY MICHAEL CAVENDISH, Esq. | DECEMBER 12, 2024

I. Summary of Opinion

Upon resigning from his employment as City Manager in September of 2023, the City of Lake City agreed to pay Paul Dyal, and paid Paul Dyal, post-employment, (1) a sum equal to 16 weeks of his weekly salary, (2) the additional sum of $127,207.96 for 1,763.95 hours of accrued sick leave, and (3) the additional sum of $28,846.16, for 400 hours of accrued vacation leave.

While the 16-week salary payment was within the power of the City Council to agree to pay, in the abstract, in the Employment Agreement between the City and Mr. Dyal, this payment was not called for in the event of a strictly voluntary resignation.

Instead, the 16-week salary payment in the event of Mr. Dyal's strictly voluntary resignation became an implied agreed contract term only in the Separation Agreement the City used to process his resignation.

The Separation Agreement, in its final executed form, which included the agreement to pay the 16-week salary sum, was never presented to or voted approved by the City Council.

Moreover, the Separation Agreement conflicted with the Employment Agreement, because the Employment Agreement addressed the same subject and noticeably did not include a strictly voluntary resignation as a grounds for the payment of the 16-week salary sum as a severance or post-employment payment.

The City Council had the authority to change the City's position on when and why this 16-week salary payment could be made, between the dates of Dyal's hiring and resignation, but because the final form of the Separation Agreement was not presented to or voted on by the Council, a changing of mind never had the chance to occur, legally.

As a result, the City Council never exercised its authority to approve the 16 week salary payment, the payment was actually made by the City Finance Department as an administrative function.

As a result, while the City agreed to make the 16-week salary payment to Mr. Dyal, it was without authority to do so in the manner in which it was done.

Under the prevailing legal doctrine of *ultra vires*, this error renders the 16-week salary payment term in the Separation Agreement invalid, and void, unless the Council's lack of approval is cured or ratified by new action by the Council.

The two post-employment payments to Mr. Dyal for vacation leave and sick leave were in amounts contrary to, and exceeding the City's rules for payouts of those types of benefits, as set forth in the City's codified Personnel Manual/Employee Handbook.

The City's Finance Department independently calculated and paid these leave payments in excess of what the City's rule allowed, and this was seemingly done by mistake, and the legal result or legal status of the excess payment is characterized by Florida common law as an *overpayment.*

The City made an overpayment of $91,207.96 to Mr. Dyal as to the payout of sick leave hours, and the City made an overpayment to Mr. Dyal in the amount of $5,769.16 as to vacation leave hours. Both overpaid sums are also considered invalid, and void, as contractual obligations, under the doctrine of *ultra vires*.

As to all three payments, as they were all unplanned-for, unexpected City expenses exceeding $5,000.00 that were not included in the City's annual budget for FY 2023 or FY 2024, the written Separation Agreement executed by the City and Mr. Dyal, which called for these payments to be made, should have been presented to, and voted on by the City Council, per the City's Code.

Overview of the Paul Dyal Separation Agreement

Paul Dyal ("Mr. Dyal") was appointed, hired, and served as the City Manager of the City of Lake City, Florida (the "City"), serving from January 3, 2023 to September 26, 2023.

After serving as appointed City Manager for approximately nine months, Mr. Dyal resigned, voluntarily, by delivering a written notice of resignation.

The City hired Mr. Dyal with a written Employment Agreement. His resignation was processed with a written Separation Agreement.

The City's processing of Mr. Dyal's resignation and departure included, but was not limited to, the City making following payments to Mr. Dyal:

i. A sum calculated as 1,763.95 hours of accrued sick leave totaling $127,207.96;

ii. A sum calculated as 400 hours of accrued vacation leave totaling $28,846.16;

iii. 16 weeks of his current salary.

The dates on which the first two of these payments were to be made to Mr. Dyal were specified in the Separation Agreement, but the specific amounts to be paid were not stated.

Rather, the Separation Agreement only provided that Mr. Dyal was to be paid all amounts of vacation leave and sick leave due to him.

The specific sums paid were calculated by a City Finance Department employee, who calculated the hours and sums stated above from the City's employee and payroll system records, and issued checks to Mr. Dyal based on those calculated totals of hours accrued. The specific sums paid to Mr. Dyal by the Finance Department were not based on, or did not observe, the maximum caps for vacation leave and sick leave payouts imposed by the City's rules found in the City Personnel Manual/Employee Handbook.

News of the amounts of the salary and non-salary payments from the City to Mr. Dyal circulated in the community, and there followed objections and requests for further information, from one or more members of the City Council, and from residents at-large.

What followed was the engagement of the undersigned by the City Council to study and present a legal opinion on the Separation Agreement, specifically including the City's payment of 16 weeks of salary, and the non-wage payments for vacation leave and sick leave.

II. Scope and Disclaimer

This legal opinion is given as a matter of Florida state law and the local law set forth in the Code of Ordinances[1] of the City of Lake City, Florida.

The matters stated as fact in this legal opinion are assumptions derived from City documents and records maintained by the City, and from non-recorded, informal interviews of City officials and employees.

This legal opinion is given for the purpose of providing legal advice to the City Council of the City of Lake City, Florida, it is not intended to be used as evidence or legal precedent in any subsequent legal proceeding.

III. Legal Opinion

Opinion Part 1, the Separation Agreement, once drafted in its final form, should have been presented to the City Council for formal, voted approval, both of the agreement and of its final settlement of salary and non-salary sums to be paid, as a matter of the requirements imposed by the City's Code.

Opinion Part 2, the payment of 16 weeks of salary to Dyal upon his resignation from employment from the post of City Manager does not violate the key State of Florida statute on municipal employment severance payments, Section 215.425(4)(a)(1), but was not specifically agreed to in the Council-approved Employment Agreement, and only was agreed to in the Separation Agreement that was not approved by the City Council.

Because the Separation Agreement and its 16-week salary payment term that seems to apply regardless of how employment ended was not approved by the Council, it violates the City's Code requirements for City Council approval of expenses effecting the City Budget exceeding $5,000, which items require specific approval by the City Council as a budget modification.

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[1] The Code is viewable online (accessed December 11, 2024) at https://library.municode.com/fl/lake_city/codes/code_of_ordinances?nodeId=11113.

Opinion Part 3, the payment by the City to Mr. Dyal of 1,763.95 hours of sick pay totaling $127,207.96 is not regulated by the State of Florida employee severance statute, Section 215.425, which does not cover non-salary benefits, but is regulated by the City's Code and also by the City's written Personnel Manual (also called Employee Handbook), which the City's Code has adopted and incorporated by reference at Code Section 70-3.

The City's rule on how much accrued sick pay any City employee may be paid upon separation from their employment is found at Section 10.02(E) of the Personnel Manual/Employee Handbook, and the maximum limit is the lesser of 25% of their accrual or 500 hours. The City's payment to Mr. Dyal of the cash equivalent of 1763.95 sick leave hours exceeds that maximum limit.

There is language in Mr. Dyal's Employment Agreement stating that he would accrue sick leave hours at 2X the normal rate, however, this bargained-for language stops short of stating what effect this enhanced rate of *accrual* of sick leave would have on his ability to be paid out any unused portion of that time after his employment ended.

Furthermore, the City's Code requires that any exception to the City rule as found in the Personnel Manual/Employee Handbook would necessarily be an amendment to the Code, or an amendment to the Code's adopted supplement (the Manual/Handbook), and as an amendment, would need to be enacted with the same formalities the Code requires for amendments to the Code itself.

The City Council resolution that approved Mr. Dyal's hiring and appointment, and that implicitly approved the form of his then-unsigned Employment Agreement, did not purport to amend the Code, or to change the City's codified rule on the payout of accrued sick leave hours (the cap) to create an exception for the position of City Manager.

By calculating and issuing a sick leave payment to Mr. Dyal in an amount that exceeded the maximum cap imposed by the City's Personnel Manual/Employee Handbook, the City committed an act that the Florida law of municipalities treats as *ultra vires* (without authority).

Because the City's payment of this sum was *ultra vires*, as a matter of Florida law and as a matter of the legal construction of the Employment Agreement and the Separation

Agreement, the difference between the absolute maximum (500 hour) cap that may validly have been paid to Mr. Dyal in the approximate sum of $36,000 and the actually paid sum of $127,207.96 represents an *overpayment* in the amount of $91,207.96.

In Florida, the legal cause of action most commonly used to attempt to recoup a sum of money paid by mistake, in the form of an overpayment, is a common law equitable claim known as "money had and received." *See In re Estate of Bland*, 382 So. 2d 1315, 1316 (Fla. 4th DCA 1984)("[i]t is settled that money paid under a mistake of facts may be recovered [...]."

Opinion Part 4, the payment by the City to Mr. Dyal of 400 hours of vacation pay totaling $28,846.16, is also not regulated by the State of Florida employee severance statute, Section 215.425, which does not cover non-salary benefits, but is regulated by the City's Code and also by the City's Personnel Manual/Employee Handbook, which the City's Code has adopted and incorporated by reference at Code Section 70-3.

The City's rule on how much accrued vacation pay any City employee may be paid upon separation from their employment is found at Section 10.01(B) of the Personnel Manual/Employee Handbook, and the maximum limit is 320 hours. The City's payment to Mr. Dyal of 400 hours amounting to $28,846.16 exceeds that limit.

There is language in Mr. Dyal's Employment Agreement stating that he would accrue vacation leave (also called annual leave) hours at 2X the normal rate, however, this bargained-for language stops short of stating what effect this enhanced rate of accrual of vacation leave would have on his ability to be paid out any unused portion of that time after his employment ended.

Furthermore, the City's Code requires that any exception to the City rule as found in the Personnel Manual/Employee Handbook would necessarily be an amendment to the Code (or to the Code's adopted supplement, the Manual/Handbook), and as an amendment, would need to be enacted with the same formalities the Code requires for amendments to the Code itself.

The City Council resolution that approved Mr. Dyal's hiring and appointment, and that implicitly approved the form of his then-unsigned Employment Agreement, did not purport

to amend the Code, or to change the City's codified rule on the payout of accrued vacation leave hours (the cap) to create an exception for the position of City Manager.

By calculating and issuing a vacation leave payment to Mr. Dyal in an amount that exceeded the maximum cap imposed by the City's Personnel Manual/Employee Handbook, the City committed an act that the Florida law of municipalities treats as *ultra vires* (without authority).

Because the City's payment of this sum was *ultra vires*, as a matter of Florida law and as a matter of the legal construction of the Employment Agreement and the Separation Agreement, the difference between the maximum (320 hour) cap of $23,077 and the paid sum of $28,846.16 represents a second overpayment made to Mr. Dyal in the approximate amount of $5,769.16.

In Florida, the legal cause of action most commonly used to attempt to recoup a sum of money paid by mistake, in the form of an overpayment, is a common law equitable claim known as "money had and received." *See In re Estate of Bland*, 382 So. 2d 1315, 1316 (Fla. 4th DCA 1984)("[i]t is settled that money paid under a mistake of facts may be recovered [...]."

Supplement to Summary of Opinion Parts

The foregoing opinions draw upon the following sections of the City Code and the following provisions in the City Personnel Manual/Employee Handbook:

Key City Code Sections:

1-8 [procedure and protocol for new ordinances amending the Code]

2-354 "Budget amendment procedure";

2-382 "Procedure" [for the payment of employment-related monetary claims];

70-3 [adoption of the City's Employee Handbook, attached to Ordinance 84-523]

Key Personnel Manual / Employee Handbook Provisions:

10-1 at 10.02(A), 10.02(B), and 10.02(E)

IV. Facts Assumed in this Opinion

Prior to his appointment as City Manager, Mr. Dyal worked as the City's interim city manager for a period of months, and prior to this period in the temporary role of interim city manager, Mr. Dyal worked as a career employee of the City's public utility department, for many years.

While acting as the interim city manager, Mr. Dyal was identified as a candidate for the office of City Manager, and effective January 23, 2023, Mr. Dyal was appointed as City Manager by City Council Resolution No. 2023-001.[2]

Resolution 2023-0001 and its exhibit documents were part of the noticed agenda and packet of materials provided to members of the Council prior to their approval of the Resolution.

The Resolution and its exhibits, once passed, provided that City Council approved Mr. Dyal's appointment and hiring as City Manager, and approved *the form of a draft* of a written Employment Agreement, found at Exhibit A to Resolution 2023-001.[3]

The Council agenda materials included in the City Council's consideration and passage of Resolution 2023-0001 included *a second draft written agreement*, styled as "Appendix 1 – Separation of Employment and General Release" (the "Separation Agreement").

The forms of the two draft written agreements were not created by the City or its City Attorney, at the time, City Attorney Todd Kennon; they were supplied to City officials as

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[2] The January 23, 2023 City Council proceeding in which Resolution 2023-001 was discussed and voted approved was captured on video, and is viewable from the counter mark 27:07 until 50:05 on the video recording stored at https://www.youtube.com/watch?v=4p3f6cg4E9o.

[3] The executed copy of the employment agreement provided to the undersigned by the City Clerk's office on behalf of the City Council shows that Mr. Dyal executed this agreement on January 11, 2023.

proposed forms by Mr. Dyal, and, as they later appeared as exhibits to the Resolution in the Council's agenda, they included "redlined" text.[4]

Mr. Dyal delivered a written letter giving notice that he was voluntarily resigning his position of City Manager in the month of September of 2023.

Mr. Dyal's stated reason for his resignation from his position as City Manager, as he stated to the City's Mayor, Finance Department, and other City officials, while and after giving his notice, was a voluntary resignation.

Mr. Dyal's resignation was processed by a combination of, first, the City's Finance Department, and additionally, by the then-serving City Attorney, Todd Kennon.

To process his resignation, the City's Finance Department and City Attorney Kennon used the Separation Agreement form that resembled the draft, unsigned, redlined version of the same document that was an included part of the agenda packet in the Council agenda item for Resolution 2023-0001.

One material difference between the final form of the Separation Agreement and the unexecuted draft version of the same form that was included in the Council's agenda packet during passage of the Resolution was the following red-colored language at Section 3, "Payment and Benefits", providing that payment after termination of annual leave and sick leave would be capped at 500 hours for each category of benefit:

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[4] Redlined text is so called because it is literally red in color, rather than black, and is used, according to common legal and industrial contracting practices, to denote one contracting party's suggestion to the other party of proposed language that is a change or an edit from the first draft. When redlined text is retained in a proposed final legal document, it implies that both contracting parties have provisionally agreed to the edit, subject to their final agreement given by signing or 'executing' the written agreement in its final form.

3. PAYMENT AND BENEFITS. Dyal shall receive his regular paycheck for the pay period ending ___ day of ____________, 20___, on or before ___ day of ____________, 20___, Dyal shall receive on or before ___ day of ____________, 20___, an additional payment to compensate for all his accumulated paid time off, including pre-effective date, of any variety, annual and sick at time of termination, subject to customary payroll deductions. (CAP annual and sick at 500 hours each)

In the final, executed Separation Agreement, the red language shown in this .jpeg photo of the agenda item exhibit version, instructing that a cap of 500 hours will apply to a post-termination payout of sick leave hours and annual leave hours, does not appear.

The final, executed version of the Separation Agreement and the draft version included in the Council agenda during the passage of the resolution both stated, at sub-part A of Section 3, that upon his separation from employment Mr. Dyal would be paid 16 weeks worth of his salary.

An inconsistency between the Employment Agreement and the Separation Agreement that existed as of the time they both appeared as agenda packet exhibits during the passage of the hiring Resolution is their treatment of the 16-week salary payment, post-employment, if the employment is ended by the employee's strictly voluntary resignation.

The Employment Agreement, at its Sections 7 and 8, does not provide for this 16-week payment for a strictly voluntary resignation. The Separation Agreement, on the other hand, states that the 16-week sum will be paid without creating or requiring conditions precedent, such as defining the nature of the grounds for termination or resignation.

The Separation Agreement was executed, for the City, by Mayor Stephen M. Witt, and by City Attorney Kennon, and was executed by Mr. Dyal, who added his signature to it on October 27, 2023.

The Separation Agreement in its final form, or 'as executed,' was not presented to, or voted on, by the City Council.

The sums of payments that would be calculated by the City Finance Department as the final payments to Mr. Dyal for accrued sick leave pay and accrued vacation pay were not presented to, or voted on, by the City Council following the announced resignation by Mr. Dyal.

Stating the same fact but from the vantage point of the City's records, there is no passed ordinance in the records of the City Council approving the final form of the executed Separation Agreement, or approving the sums paid to Mr. Dyal, post-employment.

To draw a factual conclusion about what the City Council approved in concept as to an eventual termination of Mr. Dyal's employment as City Manager, the Council can be seen to have approved, in concept, a payment of 16 weeks of salary to Mr. Dyal upon certain types of separation of his employment status not including a strictly voluntary resignation, but did not approve, in concept or otherwise, either the payment of the 16-week salary sum after a strictly voluntary resignation or the payment of the sums actually paid to Mr. Dyal calculated by the City's Finance Department as his vacation leave and sick leave payouts.

Before proceeding to define the legal framework that governs Mr. Dyal's Separation Agreement and the payments made to him, we will first locate key language in the two written agreements.

The Separation Agreement

The Separation Agreement is four pages in length.

At the first and second pages of the Separation Agreement, at Sections 5 and 6, there is language of a release and waiver of claims, by Mr. Dyal and in favor of the City, and there is language of an obligation of non-disparagement on the part of City officials that is owed to Mr. Dyal.

None of the City officials interviewed in connection with the preparation of this opinion were aware of any actual claims, employment-related claims or otherwise, harbored or asserted by Mr. Dyal, at the time of his resignation, and none saw any written indications, such as an email, of any claims by or from Dyal.

Interviews of members of the City Finance Department, the City Clerk, and other city officials has yielded an understanding that no one senior within the City was aware that Mr. Dyal had any legal claims to make against the City as of the date of his notice of resignation, and that no one within the City was aware of any grounds upon which anyone would have cause to make a statement concerning Mr. Dyal that could be disparaging. In short, as far as

key City officials proximate to Mr. Dyal's role as City Manager could see, nothing beyond his desire to resign voluntarily played into his decision to resign.

As stated above, as a form of agreement, the Separation Agreement was supplied by Mr. Dyal, and this implies that the release language was merely a part of the legal form that he was otherwise comfortable with, and that he was willing to give a release of any possible claims against the City, all while not asserting any such claims.

From experience in relevant markets, the undersigned finds that it is not unusual, within commonly followed practices of law or human resources, when an employee is separating from their employment, to use a form of separation contract that has the employee waive any potential employment-based legal claims, and that also prevents the employer from publicly disparaging the employee's job performance.

Finding such, the undersigned's analysis includes the assumption that there were no claims that Mr. Dyal harbored against the City, and that there were no grounds on which any City official could reasonably state a fact or opinion about Mr. Dyal that could be disparaging, such that, using contract language that has Mr. Dyal releasing any claims, and that has the City promising not to disparage him, was done in an abundance of caution, and was done to, through the use of legal form language, provide both the City and Mr. Dyal with the maximum amount of legal protection, regardless of whether actual facts between them counseled a need for such protection. This is not an uncommon practice, and this is often an accepted practice, in legal draftsmanship.

Terms in the Separation Agreement on Payment and Benefits

Page 1, Section 3, of the Separation Agreement calls for the City to make three (3) distinct monetary payments to Mr. Dyal after his effective date of termination of October 23, 2023.

First, Mr. Dyal was to be paid "his regular paycheck for the pay period ending the 29th day of October, 2023."

Second, Mr. Dyal was to be paid the equivalent of "sixteen (16) workweeks of his current salary." Significantly, this term departed from the treatment of the same subject at Sections 7 and 8 of the Employment Agreement by now requiring only a "separation" of employment as the condition to eligibility for the payment. This was a material change from the

Employment Agreement, which did not allow a strictly voluntary resignation to qualify the departing employee for the 16-week salary payment.

Third, Mr. Dyal was to be paid "an additional payment to compensate for all of his accumulated paid time off, including pre-effective date, of any variety, annual and sick at time of termination" on or before the 22nd day of February, 2024. As stated above, this term did not specify how much was to be paid, in either hours or dollars.

The Employment Agreement

The Employment Agreement is fifteen pages in length.

At page 5, Section 8 of the Employment Agreement, at the heading "Severance," language calling for a 16-week salary payment as severance is found.

Section 8 provides that severance "shall be paid to Dyal" when his employment is terminated as defined in Sections 7 and 8.

Importantly, Section 7 does not provide for a strictly or purely voluntary resignation by Dyal as a basis for a "termination" that would allow for severance pay pursuant to Section 8.

Rather, the only manner of 'resignation' provided for at Section 7 is a resignation that is precipitated by the City Council's prior communication to Dyal that he should offer to resign, or that his offer to resign would be accepted, should it be made.

Several parts of the Employment Agreement speak to the topic of non-wage cash benefits.

At page 4, Section 4: Employee Benefits, the agreement provides in pertinent part:

The City agrees to provide benefits to Dyal, at a minimum, equal to that which is provided to all other employees of the City.

At page 9, Section 16, sub-part B, additional language provides that:

Except as otherwise provided in this Agreement, Dyal shall be entitled, at a minimum, to earn and accrue the highest level of benefits that are enjoyed by or offered to other [officials of employees] of the City as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

At page 5, Section 5: Additional Annual Leave, the agreement provides that Mr. Dyal was to receive two additional weeks' worth of annual leave "in addition to the accrual of annual leave" he would typically receive as a City employee.

At page 5, Section 8: Severance, at sub-part (B), the agreement provides in pertinent part:

B. Dyal shall also be compensated for all hours, including pre-effective date, of accrued paid leave/time off, of any variety, annual and all hours of sick at time [sic, viz., sick leave] of termination, whether with or without cause.

The Employment Agreement, at Page 5, Section 5, at sub-part (D) also provided that "the termination and severance of Dyal shall be in accordance with [a pre-written but unsigned "Separation Agreement" that was, the language continues, "agreed to by the City and Dyal."

Pertinent to this 'agreement on how termination will be handled' clause at 5(D), the Employment Agreement, at Section 9, entitled "Resignation," also provides that Mr. Dyal was free to resign his position and thus, withdraw from any obligations imposed by the Employment Agreement, voluntarily, at any time, subject only to the obligation to provide the City with 30 days' notice.

A final savings clause, or sentence, appears at the bottom of page 5 and Section 8, which states:

Local and state laws and regulations shall control when any provisions within this section are found to conflict with such laws or regulations.

At page 10, at Section 18: General Provisions, sub-part (E), there is a clause entitled "Precedence," which, paraphrased, states that the terms of the agreement shall control over any City ordinance or rule, and over any state or federal law, "unless otherwise prohibited by law."[5]

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[5] Typically, federal, state, or local laws that prohibit certain practices in public contracting cannot be 'opted out' from, such that the presence of the law is, de facto, a prohibition "by law." This

Just above, at Section 18, sub-part (D), there appears a severability clause, providing that the invalidity or the partial invalidity of a portion of the Employment Agreement shall not cause the entire Employment Agreement to be invalidated.

V. Relevant Legal Framework

Cities and counties in Florida are empowered at Florida law to make written contracts to perform their public purposes, and they do so on an everyday basis. *See* Art. VIII, Section 2(b), Florida Constitution; Fla. Stat. § 166.021(4).

The City has its own Charter, which at Section 401 empowers the City Council to appoint the City Manager, and to set that person's compensation.

There are, however, certain limitations or requirements supplied by both Florida law and the City's own Code of Ordinances (enacted local legislative law) that restrain the City's powers in making written contracts with its employees, and that, consequently, inform whether a particular contract or portion of a contract may be valid and enforceable, or invalid and unenforceable.

The Legal Principle of Ultra Vires

The first of these is the basic requirement of legality, which broadly means that a city may only enter into a private legal relationship such as a contract if done in accordance with the city's own lawful ordinances or charter. *See City of Hollywood v. Witt*, 789 S. 2d 1130 (Fla. 4th DCA 2001).

A typical example of the interplay of a city, a private contract the city enters into, and a violation of the legality principle, arises when a City's charter or code requires that certain contracts must be approved by a voted decision of the governing city commission, and the city executes a contract without first seeking that required approval. *See Broward County v.*

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renders the Employment Agreement's precedence clause at Section 18, sub-part (E), a more elaborate way of stating that 'prohibitions imposed by law will apply to the agreement.'

Conner, 660 So. 2d 288 (Fla. 5th DCA 1995); *Town of Indian River Shores v. Coll,* 378 So. 2d 52 (Fla. 4th DCA 1979).

A closely related legal doctrine, known as *ultra vires*, which forms part of Florida's constitutional body of law and Florida's common, or judge-made, law in the area of municipal powers, provides that such an unauthorized municipal contract is void, also meaning unenforceable by the opposed contract party. *Coll*, 378 So. 2d at 55 (when a municipal contract is *ultra vires*, a city cannot be liable for the contract because it was without the power to make the contract).

As a basic constitutional restraint, a municipality is powerless to make a contract that depends on or that condones the violation of law, whether federal, state or local. *See P.C.B. Partnership v. Largo*, 549 So.2d 738 (Fla. 2d DCA 1989); *see also Telco Leasing v. Princeton Comm. Hosp. Assoc.*, 1978 U.S. Dist. LEXIS 14960, case no. 77-C-3476 (N.D. Ill. Oct. 13, 1978)(municipalities cannot enter into contracts that violate published laws).

A municipal contract that purports to foster or suborn an illegal act is considered, within the constitutional framework, *ultra vires*—literally, beyond the power of the city to make. *P.C.B. Partnership*, 549 So.2d at 742.

Because such form of municipal contracting is not constitutionally possible, constructions or interpretations of municipal contracts that would push a contractual provision or recast a contractual relationship into an *ultra vires* status are disfavored, because the resulting contract would be considered void. *See North Miami Beach v. Metro Dade County*, 405 So.2d 204, 206-07 (Fla. 3d DCA 1981); *see also Lykes Bros., Inc. v. Plant City,* 354 So.2d 878 (Fla. 1978)(city's contractual promise to not collect tax from a private business was *ultra vires* and void); *Clearwater v. Bonsey*, 180 So.2d 200, 205 (Fla. 2d DCA 1965)(municipal duty to follow the law or uphold the law cannot be divested by a private contract).

The City Code of Ordinances

The City of Lake City has an enacted Code of Ordinances (the "City Code"). The City Code regulates several areas of City operations that are relevant to the payment of salary, wages, or cash-value benefits to employees.

Firstly, the Code vests with the City Council the power and authority to set the salary of a City officer or City employee. City Code Sec. 1-12(4). This grant of authority mirrors the grant of authority in the City Charter as to appointing a City Manager. City Charter Sec. 401.

The same Article in the Code that empowers the Council to set employee salary also provides a broad statement of legislative intent that the existing Code should not invalidate or prevent duly-enacted ordinances of the future, or those passed after the Code's effective date, at Code Section 1-16. City Code Sec. 1-16.

This statement of a welcoming intent towards future ordinances not anticipated by the Code is not absolute, or without limitation, however. The Code's Section 1-8 adds the requirement that if a later ordinance will "amend, [...] repeal or in any way effect" the Code, it must be presented and enacted following a defined protocol that includes a numbering designation matching up with the older Code section to be amended, and that also includes this special language in the enacting law: "That section _____ of the Code of the City of Lake City, Florida, is hereby amended by [...]." City Code Sec. 1-8(a)-(c).

Next, within Code Section 2-354, entitled "Budget amendment procedure," the Finance Director of the City is empowered to spend monies that are re-allocated, e.g., that are available but not budgeted or planned for as to their usage, but not for the purpose of the payment of salary. City Code Sec. 2-354(e). Because the City Finance Director is not empowered to reallocate funds to pay salary expenses, the remaining permissible method of using available annual budget funds to pay, in reallocation, an expense of salary, is to obtain a voted City Council resolution authorizing a reallocation to salary. City Code Sec. 2-354(g).

City Code Section 2-382, entitled "Procedure" and which pertains to the settlement or payment of employment claims against the City, provides that any cash value settlement of an employment claim exceeding $5,000 in value must be "approved by the [City Council]."

Finally, City Code Section 70-3 adopts and provides notice of the City's Personnel Manual/Employee Handbook, a set of "policies and procedures" for City employment practices enacted through Ordinance 84-523.

Given their plain meaning, and read together, the foregoing sections of the City Code require that if a City employee is departing and is making a claim for the payment of monies relating to salary or accrued cash-value benefits owed—regardless of whether the nature of the claim is in recompense for monies owed during active employment and prior to separation, or are claimed as severance, meaning sums only payable after separation—if the total claimed is more than $5,000, the City Council must approve. If the source of the payment must be a reallocation of available City funds, the City Council must approve, if the funds are reallocated to pay salary.

Restated, the local government law operating in Lake City requires that, for an 'exit agreement' or 'separation agreement' with a departing employee, the agreement must be approved by the City Council if the value of its payments to the employee for post-employment pay or accrued hourly benefits owed is greater than $5,000.

Moreover, the City's Code also requires that the payment and accrual of benefits to employees follow the rules in the Personnel Manual/Employee Handbook.

The Rules in the City's Personnel Manual/Employee Handbook

Chapter 10, from page 10-1, of the City's Personnel Manual (also called Employee Handbook), provides rules for the accrual and the payment to a City employee for annual (or vacation) leave and sick leave.

Sub-section 10.02(E) of this chapter states that upon separation from the City, an employee may be paid an amount of their unused sick leave equal to either 25% of their total unused sick leave or 500 hours of sick leave, whichever is less. Sub-section 10.02(A) provides that a City employee accrues sick leave at the rate of eight (8) hours every month. This means that as to a payout of accrued but unused sick leave, the payout must adhere to this '25% or 500 hours, whichever is less' maximum limit.

From sub-section 10.02(A) of Chapter 10 of the City's Personnel Manual/Employee Handbook, the chapter sets the rules of the accrual and payment of annual leave, also called vacation pay. Sub-section 10.02(B), entitled "Maximum Accumulation," states that an employee may never accumulate more than 320 hours of annual leave, and that upon

separation, an employee may be paid the cash equivalent of their annual leave hours accrued up to the cap of 320 hours.

Florida State Law on Severance Pay Limits

Set one level of government above local laws, a city's ability to enter into specific types of employment contract with employees can be restricted, and is restricted, in certain regards, by state law,[6] in the form of a specific Florida statute, Section 215.425.

Section 215.425 is a well-known statutory law that applies to cities, counties, and state agencies that employ career personnel. The statute restricts the public employer's ability to pay "extra compensation" to any employee in several respects. The statute has been construed in Florida judicial opinions and Florida Attorney General opinions on a number of occasions, and the way in which the statute applies should be considered as 'well developed.'

Section 215.425 is mainly concerned with municipal personnel practices that attempt to pay more than 20 (twenty) weeks of "severance pay"—which the statute defines as hourly or weekly wages or salary for forward-looking time periods, and which definition, importantly, excludes sick leave and annual (vacation) leave. See Fla. Stat. § 215.425(4)(d)(1).

The payment to Mr. Dyal of the vacation leave and sick leave sums presented above does not implicate the matters regulated by Section 215.425, because the payment sums under question were for the exempted categories of annual and sick leave.

The payment to Mr. Dyal of 16 weeks of salary as severance pay does not violate the restrictions of this same statute, which limits such payments to 20 weeks of salary.

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[6] While cities and counties have been empowered to make contracts and undertake other acts in fulfillment of their mission, those contracts and those acts still cannot be "adverse to general or special law," which means that the local governments remain subject to state statutes that regulate all such bodies of local government, particularly as they spend general tax revenues. *See State v. Orange County*, 281 So. 2d 310, 312 (Fla. 1973).

VI. Concluding Comments

Viewing and construing together Section 7 and Section 8 of the Employment Agreement, there is not an indication that the City—within that Employment Agreement—agreed to pay Mr. Dyal the 16-weeks salary payment upon a purely or strictly voluntary resignation by him.

The facts reviewed suggest that the City (but not the City Council, or with the approval of the City Council) did execute a Separation Agreement that followed a strictly or purely voluntary resignation by Dyal, and that—within that Separation Agreement—agreed to pay Dyal 16 weeks of salary, post-employment.

This 16-week salary payment did not violate state law. It did violate the City Code, due to the flawed process of not bringing the matter before City Council for a voted approval.

The City Council's voted approval to hire Mr. Dyal as City Manager was made with the benefit of draft, unsigned versions of both the Employment Agreement and the Separation Agreement.

But the draft Employment Agreement did not go as far as paying 16-week salary severance in the event of a strictly voluntary resignation, while the draft Separation Agreement conflicted with this, providing that the same payment would be made, without engaging in categorizing a separation of employment as termination, resignation, or some type of a resignation. Thus, it cannot be reasonably concluded that in voting approval for Mr. Dyal's hiring, the City Council explicitly or implicitly approved the concept of paying a 16-week salary sum in the event that Mr. Dyal would voluntarily resign strictly of his own impulse.

As a matter of Florida state law, the City Council had the authority to agree to pay a city manager a sum equal to 16 weeks of salary following their separation from employment, even following a voluntary resignation.

As shown above, Florida state law would label as 'severance pay' this type of post-employment payment of salary, and the key state statute cited above allows cities to pay severance for up to 20 weeks of salary.

As a matter of the City's Code, however, the City Council had this authority, but the decision to make such payment of 16 weeks of salary was a matter that required the specific voted approval of the Council, after consideration and deliberation, a voted approval that did not occur.

The payments to Mr. Dyal of cash equivalents of sick leave hours and annual leave hours are not implicated by the state statute discussed above. They are subject to the restrictive caps on such payouts set forth in the City's Code-adopted Personnel Manual/Employee Handbook.

Both payments were simply in excess of the cap, a mistake in calculation made when Finance Department personnel consulted their records on hours accrued by Mr. Dyal but did not consult or seek a further legal opinion or legal advice on the caps in the Manual/Handbook which reduce payment amounts below accrued hours amounts.

The City Council has the authority to vote such payments (in excess of these caps) into being, but to do so without violating the City Code would require the Council to present such vote as a vote on a formal amendment, of the Code and to the Manual, following a prescribed procedure and using special amendatory language in the amending ordinance.

[END]