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April 19, 2021

Town Council
Town of Loxahatchee Groves
155 F Road
Loxahatchee Groves, Florida 33470

Re: Level of Service for Law Enforcement

Dear Mayor and Councilmembers:

At the April 6, 2021, Town Council Meeting, the Town Council discussed the Agreement between the Town and the Palm Beach County Sheriff's Office for law enforcement services. During that discussion, the Town Council discussed the obligations of the Sheriff's Office and the Town in providing law enforcement services within the boundaries of the Town. Just prior to the conclusion of your meeting (at approximately midnight), Mr. Brako advised that the Attorney General's Office has declined to render an opinion on this topic. He then offered some general comments on this matter. This letter is to provide additional information and clarification on the matter of level of service for law enforcement for the Town.

The Sheriff, pursuant to Section 30.15, Florida Statutes, has numerous powers, duties, and obligations; including, in relevant part, the following:

- (1) Sheriffs, in their respective counties, in person or by deputy, shall:
 - (e) Be conservators of the peace in their counties.
 - (f) Suppress tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary.
 - (g) Apprehend, without warrant, any person disturbing the peace, and carry that person before the proper judicial officer, that further proceedings may be had against him or her according to law.

There does not appear to be any statutory requirement dictating the means and methods by which the Sheriff is to perform his or her law enforcement duties. The level of service and the amount of resources and personnel to be committed to enforcement by any Sheriff is discretionary and likely considered a planning level function. See *Carter v. City of Stuart*, 468 So.2d 955 (Fla. 1985).

Pursuant to Section 2(b), Article VIII of the Florida Constitution,

Municipalities shall have governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Such powers are secured by Section 166.021(4), Florida Statutes, which also limits the exercise of extraterritorial powers by municipalities. There are numerous references in Florida Statutes to municipal law enforcement, including at least one statutory requirement that a municipality provide law enforcement services. Section 316.640(3), Florida Statutes, requires the police department of each chartered municipality to enforce traffic laws within the boundaries of the municipality. In addition, Section 166.049, Florida Statutes, requires municipal law enforcement agencies to provide the following:

- (1) Schedule at least two law enforcement officers to be on duty at all times. While on duty, each officer must be able to communicate directly with the other and, if not engaged in another law enforcement activity, respond to the other officer's request for assistance; or
- (2) Establish a means for a municipal law enforcement officer to communicate with the county sheriff's office and to request assistance of a routine law enforcement nature from the sheriff's office; or
- (3) Establish a mutual aid agreement as provided in chapter 23 in order for a municipal law enforcement officer to communicate with municipal law enforcement agencies of other jurisdictions and to request routine law enforcement assistance from those agencies.

The provisions in Section 166.049, Florida Statutes, were intended to protect law enforcement officers in smaller jurisdictions, to ensure that they had a means to call for assistance if needed. *Op. Att'y Gen. Fla. 97-40* (1997). Though it appears from the language in Section 316.640(3), Florida Statutes, that the Town is required to provide at least traffic related law enforcement within its boundaries, how the Town provides municipal law enforcement services is likely a discretionary planning level function. See *Carter* (Fla. 1985).

The Town has not established its own law enforcement agency. Instead, the Town is able to contract for law enforcement services. The legislature, in an effort to assist smaller municipalities, enacted Section 166.0495, Florida Statutes, which provides, in part, that:

A municipality may enter into an interlocal agreement, pursuant to s. 163.01 with an adjoining municipality or municipalities within the same county to provide law enforcement services within the territorial boundaries of the other adjoining municipality or municipalities. ... The authority granted a municipality under this section is in addition to and not in limitation of any other authority granted to a municipality to enter into agreements for law enforcement services or to conduct law enforcement activities outside the territorial boundaries of the municipality.

It is our understanding that all of the municipalities adjoining the Town contract with the Palm Beach County Sheriff's Office for law enforcement services. This eliminates the option for the Town to enter into an interlocal agreement with another municipality for such services as provided in Section 166.0495, Florida Statutes. *Op. Att'y Gen. Fla.* 2011-24 (2011). However, as stated therein, the authority granted under Section 166.0495, Florida Statutes, is in addition to any other authority the Town has to enter into agreements for law enforcement services.

Section 11(2) of the Town Charter provides that:

Law enforcement services will be provided by contract with the Palm Beach County Sheriff's Office, or contracted with other law enforcement agencies, until the town adopts an ordinance to the contrary, provided that the town will not establish a town police department without a referendum.

By adoption of its Charter, the Town has decided to contract with the Palm Beach County Sheriff's Office for law enforcement services. Such contractual arrangements between county sheriffs and municipalities have been considered appropriate and approved by Florida courts, so long as the municipal government retains ultimate responsibility to supervise law enforcement functions within its boundaries. *City of Palm Beach Gardens v. Barnes*, 390 So.2d 1188 (Fla. 1980), *Op. Att'y Gen. Fla.* 93-93 (1993), *Op. Att'y Gen. Fla.* 95-50 (1995). While the language in the Charter provides that the Town will contract for law enforcement services "until the town adopts an ordinance to the contrary", it appears from the language in Section 316.640(3), Florida Statutes, that simply not providing some level of municipal law enforcement services is probably not an option.

The Town has, in its Agreement with the Palm Beach County Sheriff's Office, established a particular level of service for law enforcement services that the Sheriff's Office provides to the Town. Without this contractual obligation, the Sheriff may not be required to provide any particular level of service. There has been some discussion as to the level of service that the Sheriff would have to provide if the Town did not contract with the Sheriff. Theoretically, the Sheriff might provide a similar level of service as that provided to unincorporated areas of Palm Beach County. However, absent a judicial determination by a Florida court, there does not appear to be any requirement as to the specific level of service that the Sheriff must provide to a municipality, other than the level of service established pursuant to a contract. Pursuant to the Agreement between the Town and the Sheriff's Office, the Sheriff has assigned deputies, at least one per shift, specifically to serve the Town. Those assigned deputies remain within the corporate limits of the

Town during their shift. Without this Agreement, the Sheriff may, for example, assign one deputy to patrol an area that includes the Town as part of a much larger area. In this example, the level of service provided to the Town would be diminished, even if it remains similar to the service provided in the unincorporated areas.

As it appears that the Town is required to provide some level of law enforcement services within its boundaries, the Town may continue to contract with the Palm Beach County Sheriff's Office. Alternatively, the Town may pursue a referendum to establish a Town police department. Either option would allow the Town to establish the level of service for law enforcement services provided to the Town.

I trust that the above opinion is of assistance. If you have any questions, please contact me.

Respectfully,



Glen J. Torcivia

cc. Jamie Titcomb, Town Manager
Lakisha Q. Burch, Town Clerk