



## Memo

To: Florida Redevelopment Association

From: Clifford B. Shepard

Date: March 30, 2020

Re: Use of CRA Funds for Business Assistance

You have asked us to provide this analysis of whether a Community Redevelopment Agency (“CRA”) may use funds from its CRA trust account for business assistance under the Community Redevelopment Act of 1969 (the “Act”). This issue is of urgent importance given the extreme economic toll the COVID-19 coronavirus is taking on certain small businesses whose survival is essential to achieving desirable redevelopment.

In our opinion, the Act generally allows CRAs to use money from their trust funds to assist struggling businesses, but only by exercising an enumerated redevelopment power rather than by relying on the more general grants of authority within the Act. Whether an individual CRA may provide business assistance will depend on the type of business assistance proposed, as well as the individual CRA’s Redevelopment Plan and budget. Some examples of potential business assistance actions are provided below. While there is some argument that CRAs could simply provide direct cash or lending assistance under a general power to contract as necessary to prevent and eliminate slum and blight, such an action would likely be struck down as unauthorized. Regardless of the action chosen by the CRA, any business assistance spending from the trust fund must comply with the following conditions:

- )] The method of business assistance must be pursuant to some goal or objective laid out in the Redevelopment Plan; and
- )] Any monies spent from the CRA trust fund must be provided for in the CRA’s annual budget.

Also note that any municipal CRAs operating under an interlocal agreement with their County should ensure the agreement does not prohibit their proposed action.

### Legal Background

The Act authorizes municipalities and counties to create CRAs with certain redevelopment powers. The purpose of the Act is to provide a mechanism by which local governments may prevent and eliminate slum and blight. *See* Op. Att’y Gen. 2010-40 (Sep. 27, 2010). As a statutorily defined special district, a CRA may only exercise the powers expressly granted by statute and any powers that are necessarily exercised in order to carry out those express powers. *Id.* Courts will resolve any reasonable doubt as to the lawful existence of a particular power against the CRA. *Id.*

Section 163.370 provides a list of redevelopment powers, most of which are factually specific. Among those listed are the powers to acquire and dispose of real property, to construct new public improvements within the Redevelopment Area, and to provide for the administration of the provisions of the Act. There is no provision discussing direct subsidies or loans to private businesses.

In addition to the more specific powers, there is some language indicating CRAs have broader authority. The relevant language states that a CRA has the following powers:

- J “To make and execute contracts and other instruments necessary or convenient to the exercise of its powers under [the Act].” F.S. § 163.370(2)(a).
- J Within the redevelopment area, “[t]o enter into any contracts necessary to effectuate the purposes of [the Act].” F.S. § 163.370(2)(e)(6).
- J “To appropriate such funds and make such expenditures as are necessary to carry out the purposes of [the Act] . . . .” F.S. § 163.370(2)(l).

In addition to these restrictions, a CRA may only spend from its trust fund as authorized under F.S. § 163.387. Section 163.387(6) now provides that a CRA may only spend moneys from the trust fund for undertakings described in its Redevelopment Plan, and only pursuant to its annual budget. The annual budget may only provide for the following expenses:

1. Administrative and overhead expenses directly or indirectly necessary to implement a community redevelopment plan adopted by the agency.
2. Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the community redevelopment agency for such expenses incurred before the redevelopment plan was approved and adopted.
3. The acquisition of real property in the redevelopment area.

4. The clearance and preparation of any redevelopment area for redevelopment and relocation of site occupants within or outside the community redevelopment area as provided in s. 163.370.
5. The repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness.
6. All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds, bond anticipation notes, or other form of indebtedness, including funding of any reserve, redemption, or other fund or account provided for in the ordinance or resolution authorizing such bonds, notes, or other form of indebtedness.
7. The development of affordable housing within the community redevelopment area.
8. The development of community policing innovations.
9. Expenses that are necessary to exercise the powers granted under s. 163.370, as delegated under s. 163.358.

Note that nothing in the Community Redevelopment Act appears to provide any additional powers to CRAs in the case of an emergency.

The Florida Attorney General has indicated that CRAs have limited leeway when it comes to spending on activities not explicitly authorized by statute. In AGO 2010-40 for example, the Attorney General stated that CRA funds may be used for festivals and street parties meant to promote the Redevelopment Area. In approving such expenditures, the Attorney General simply stated that “to read the statute as precluding the promotion of a redeveloped area once the infrastructure has been completed would be narrowly viewing community redevelopment as a static process” (emphasis added). However, in the same opinion, the AG indicated that CRA funds could NOT be used to provide grants to entities who would independently perform such marketing or provide other beneficial programs.

When the Act does provide an enumerated power, the bounds of that enumerated power will be strictly construed. In 2009, the Attorney General opined that while the Act specifically authorizes funding to assist persons displaced from a Redevelopment Area, CRAs may not do so by building replacement structures outside of the area. See Op. Att’y Gen. 2009-32 (June 19, 2009). The AG reasoned that the specific description of the allowed relocation payments foreclosed other forms of relocation relief. *Id.*

### Analysis

Whether increment revenues may be used for business assistance will depend on the type of business assistance, the individual CRA’s Redevelopment Plan and the CRA’s budget. As discussed below, the most advisable forms of business assistance will be tailored to an exercise of the CRA’s enumerated redevelopment powers.

The legal argument that the Act authorizes direct business subsidies is not frivolous. Thousands of Florida small businesses have had their revenues drastically but temporarily reduced due to governmental and societal reactions mandated by the COVID-19 pandemic. Without short-term intervention, these businesses will shutter *en masse*, potentially creating broad new areas of slum and blight. Thus, one might argue that the general powers to contract and appropriate funds as necessary to effectuate the purposes of the Act should apply and authorize direct payments within the Redevelopment Area.

However, a court would most likely limit the contract and appropriation powers to actions naturally arising from the enumerated redevelopment powers. A broad reading of the more general powers under the Act would render the remaining, specifically delineated powers pointless. As exhibited in AGO 2010-40, a payment to a third party for services as part of a redevelopment activity will be viewed differently than a general payment that will theoretically support the purposes of the Act.

For this reason, we would recommend tailoring any business assistance program to a specific enumerated power. The best, most efficient way to accomplish this will depend on each CRA's individual redevelopment plan, the CRA's budget, and the business receiving assistance.

Given that the problem presented by COVID-19 is a brief, drastic reduction in income, one option to consider would be to procure services now, with payment in advance. For example, if the CRA has marketing events as part of its Redevelopment Plan (as discussed in AGO 2010-40), the CRA could elect to hold an event later in the year and choose to prepay for catering and other services provided by district businesses in advance. Or, if the CRA knows it will purchase specific services from district businesses for redevelopment activities in the future, the CRA could purchase those services now. Of course, the wisdom of paying for such services well in advance of the actual need may be questionable, but that risk may be a worthwhile method for the CRA to temporarily support floundering district businesses. Other potential business assistance programs will require some creativity from each CRA based on their individual Plans and budgets.

Any such spending would have to comply with any procurement requirements adopted for the CRA itself or those of the county or municipality that created the CRA, and must be reflected in the CRA's annual budget, which may be amended. See F.S. §§ 163.370(5), 189.016(6).

Note that any use of CRA funds couched as "business assistance" could come under attack for unauthorized spending even if exercised under an enumerated power. A challenger may argue that CRAs are unauthorized to provide business assistance, and that business assistance was the true motive behind the CRA's action. However, I have found no case law or AG opinions indicating that when exercising a valid power, a local government's action will be nevertheless invalidated for having an ulterior motive except in cases where the motive itself is specifically prohibited (such as discrimination).