



# MEMORANDUM

Office of the City Attorney

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## CONSENT

**TO:** Mayor and City Commissioners

**DATE:** May 23, 2005

**FROM:** City Attorney

**SUBJECT:** Amicus Brief in Glenda and Sharon Herbert v. City of Deland  
Case No. 5D05-1367

Recommendation: The City Commission authorize the City Attorney to join with the City of Tallahassee and the Florida League of Cities, Inc. in filing an amicus brief on behalf of the City of Deland in the case of Glenda and Sharon Herbert v. City of Deland, Case No. 5D05-1367, and authorize the retention of special counsel for this special purpose.


The City of Gainesville has received a request from the City of Deland to participate as amicus in the appeal of an order arising under a City of Deland zoning ordinance.

As with the case of most cities and counties, the City of Deland's single family zoning ordinances limit the number of unrelated people who can live together. The Deland Code Enforcement Board cited a home in which several unrelated college students were living for violating the zoning ordinance which limited residency to no more than two unrelated people. The residents challenged the Code Enforcement Board's decision in circuit court arguing that there is a right to privacy under Florida's constitution which prohibits the type of regulation at issue and cited a California Supreme Court case in support. California has a constitutional right to privacy, similar to Florida's, and the California Supreme Court has ruled that because of this right to privacy ordinances which regulate the number of unrelated persons who live together in single family zoned areas are unconstitutional. The circuit court found that there was no expectation of privacy and upheld the code enforcement board's decision. The residents have filed an appeal in the Fifth District Court of Appeal, and according to the City Attorney for Deland, both parties intend to ask the court to certify the question to the Florida Supreme Court as one of great public importance.

The City of Gainesville has such an ordinance regulating the number of unrelated people who may live together in single-family zoned areas. The decision before the Fifth District Court of Appeal, and potentially the Florida Supreme Court, would impact the City's ordinance. For this reason this Office approached the Florida League of Cities and the City of Tallahassee to jointly file an amicus brief on behalf of the City of Deland and to share in the costs of filing the brief. Due to time constraints and work schedules, the three entities have agreed to hire a special

counsel who can address the constitutional issues and file the brief within the next month. The cost of filing the brief would be split equally among the three parties. It is anticipated that the cost of filing the brief for each party would not exceed \$5,500.

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Fiscal Impact: Funds available in Account No. 001750752051404110

EAW/cgow