

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR SUMTER COUNTY, FLORIDA**

LORI WEST, individually, and as Class Representative of a Class of all similarly situated others and ROSALIND WEAVER, individually and as Class Representative of a Class of all similarly situated others,

CASE NO. 2013 CA 000268

Plaintiff,

Class Representation

v.

**CITY OF WILDWOOD, FLORIDA,
a political subdivision of the State of
Florida,**

Defendant.

AMENDED COMPLAINT

Plaintiffs, Lori West, individually, and as class representative of a class of all similarly situated others, and Rosalind Weaver, individually, and as class representative of a class of all similarly situated others, by and through their undersigned counsel, sues Defendant, City of Wildwood, Florida, a political subdivision of the State of Florida (hereinafter the "City") and allege as follows:

**Declaratory Judgment Class Action to Declare
"Police Fees" Invalid and
Establish Common Fund**

1. Plaintiffs, Lori West, individually, and as class representative of a class of all similarly situated others, and Rosalind Weaver, individually and as class representative of a class of all similarly situated others (hereinafter jointly and severally "Class Representative"), file this suit against the City and alleges a declaratory judgment action with supplemental relief to establish a common fund comprised of all the unlawful taxes paid by the Class Representative and each class member.

Class Representative Allegations

2. Class Representative is a member of a class defined as to those who paid the City Police User Fees (hereinafter "Police Fee" or "Police Fees").

3. The City decided to spend more on police services than its ad valorem tax revenue could support.

4. Rather than raise the ad valorem tax rate or cut the level of services, the City decided to impose "user fees" for police services.
5. Whether the City's water customers used police services or did not use police services, the City's water customers were charged the police fee on each monthly water bill.
6. The City did not conduct any studies to justify the fee and did not hire any experts to set the fee, evaluate the fee or fairly apportion the fee.
7. Article 7 § (1)(a), of the Florida Constitution provides "no tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted through the state except as provided by general law."
8. Article 7 § (9)(a) of the Florida Constitution provides "counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes for their respective purposes..."
9. The City is not authorized by the Florida Constitution or general law to levy Police Fees and the City's imposition of Police Fees is contrary to Florida's established ad valorem taxation methodology.
10. The Police Fees, like the City's ad valorem taxes, support the general public services of police protection. The City's general police services can be used by all in the City whether they are water users or not.
11. The City's Police Fees are imposed on the City's water customers for the general benefit of all those who receive City police general public services.
12. Rather than raise its ad valorem taxes to support its existing level of police services or decrease the level of police services, the City increased the unlawful fees.
13. The Class Representative and each member of the class paid Police Fees for police services as City water customers.
14. The City did not impose "Police Fees" on individual properties or individual citizens. The City assessed "Police Fees" on only those who are City water utility customers.
15. There is no logical relationship between charging Police Fees based on whether one is a City water customer. Police Fees are not valid user fees and are unlawful taxes. Each water customer paid the same Police Fee, regardless of how much or little

the water customer uses police services and regardless of the size or value of the property using the water services.

16. The Police Fees were not properly approved and were arbitrarily established with no study, no evidence and no logical justification.

17. The Class Representative brings this action pursuant to Florida Rule of Civil Procedure 1.220(b)(2), or alternatively, Rule 1.220 (b)(3), on the Class Representative's behalf and all other similarly situated.

18. The relief sought is appropriate to the Class as a whole, as each member was subject to and did pay the unlawful Police Fees.

19. Pursuant to the Florida Rule of Civil Procedure 1.220, Class Representative satisfies the following:

A. Numerosity: While the exact number of class members can be determined only by appropriate discovery from Defendant, on information and belief, there are approximately 2,800 utility customers upon whom the City imposed approximately \$1,000,000 in unlawful Police Fees.

B. Common Questions of Law and Fact: There are common questions of law and fact to the claims of each member of the Class and the Class Representative, which include, but are not limited to, whether the Police Fees are unlawful or unconstitutional;

C. Typicality: The Class Representative's claims are typical of the claims of each member of the Class. Each member of the Class is or was a water customer who was charged and paid the unlawful Police Fees. Each Class Member is entitled to a refund of all unlawful Police Fees.

D. Adequate Representation: The Class Representative will fairly and adequately protect and represent the interests of each member of the class, the Class Representative's claims identical to each Class Member's claims and they have no adverse interest to any Class Member. The Class Representative has a financial interest in this matter because of paying the unlawful fees and will litigate vigorously to obtain a successful result for each Class Representative and all others similarly situated. The Class Representative is aware of the responsibilities of Class representation. Class counsel is experienced in class action litigation and will vigorously pursue the claims of the Class. Class counsel has successfully defended and prosecuted Class action cases and complex litigation cases in State and Federal court. Lead Class counsel is Board Certified in local government law and is an expert on local government matters.

20. This action may be maintained pursuant to Rule 1.220(b)(2). The City's imposition of illegal taxes has an effect on all putative Class Members. The City illegally charged and collected Police Fees.

21. This class should also be maintained under Rule 1.220(b)(3) because questions of law and fact are common to Class Representative and other putative Class Members.

22. A class action is superior to other available methods for fair and efficient adjudication of this controversy. The damages suffered by each class member will be relatively small although not insignificant. The expense and burden of individual litigation makes it virtually impossible for members of the class to effectively obtain redress individually for Defendant's wrongful imposition of illegal taxes.

Declaratory Judgment and Common Fund Allegations

23. Pursuant to §86.011, Florida Statutes, this Court may render a Declaratory Judgment on whether the City has the power or right to impose upon its City water customers a monthly Police Fee.

24. The Class Representative is interested in the invalidity of the City's practice of charging its water customer Police Fees. All putative Class Members should be made parties to this case as they each have a claim and interest which would be affected by this Court's declaration that the City's practice of charging its water customers Police Fees and that the putative Class Members are entitled to refunds.

25. The City contends that although the Police Fees were likely unlawful, it does not have to refund the money paid by its Water Utility Customers. See Letter from City's Attorney attached hereto as Exhibit "A."

26. Pursuant to Section 86.101, Florida Statutes, this Court should resolve the City's uncertainty regarding whether it has a legal right to retain the unlawful Police Fees. The Florida Legislature empowers the Court to settle and afford relief from "insecurity and uncertainty with respects to rights, status, and other equitable or legal relations and it's to liberally administered and construed."

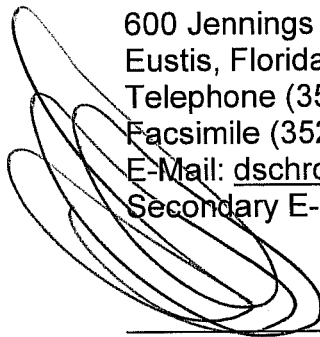
WHEREFORE, the Class Representatives, Lori West, individually, and as class representative of a class of all similarly situated others, and Rosalind Weaver, individually and as class representative of a class of all similarly situated others respectfully requests the Court enter judgment:

A. Certifying the class described herein as represented by the Class Representative and Class counsel, pursuant to Florida Rule of Civil Procedure 1.222(b)(2), or alternatively, Rule 1.220(b)(3) and providing notice to all class members,

B. Declaring Defendants' Police Fees void, invalid, illegal and unconstitutional,

- C. Directing the City establish a common fund comprised of all illegally collected Police Fees plus interest to be distributed to the class less Class Counsel's attorney's fees,
- D. Refunding all amounts paid, plus interest less Class Counsel's attorney's fees on the unlawful Police Fees,
- E. Awarding attorney's fees to Class Counsel from the common fund of refunds,
- F. Awarding Costs,
- G. Providing additional compensation to the Class Representative pursuant to Florida law, and
- H. Awarding such other and further relief as the Court deems proper to render justice.

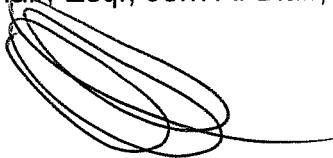
BOWEN RADSON SCHROTH, P.A.
600 Jennings Avenue
Eustis, Florida 32726
Telephone (352) 589-1414
Facsimile (352) 589-1726
E-Mail: dschroth@brslegal.com
Secondary E-Mail ahasselbring@brslegal.com



DEREK A. SCHROTH
Florida Bar No. 00352070
*Florida Bar Board Certified as a Specialist in
City, County and Local Government Law*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Complaint has been sent via e-service to Jerri A. Blair, Esq., Jerri A. Blair, P.A. jblair710@aol.com this 8th day of March, 2013.



Derek A. Schroth

Jerri A. Blair, P.A.

A NEW BUSINESS - ACTION REQUIRED b. ORDINANCES -
1ST READ ONLY (NO VOTE) (1) Ordinance No. O2011-17, an
Ordinance repealing Ordinance No. 426 and Section 13-2, City
of Wildwood Code to abolish the Police User Fee

Jerri A. Blair
Attorney at Law

Attorney and Counselor At Law

131 W. Main St.
P.O. Box 130
Tavares, FL 32778-0130
(352) 343-3755
(352) 343-5301 fax

REC'D 9.23.11
DATE
EXECUTIVE DEPT.

MEMO

To: Mayor Ed Wolf; Commissioner Ronald Allen; Commissioner Pamela Bivins; Commissioner Robby Strickland; Commissioner Don Clark; Robert Smith

From: Jerri A. Blair

Date: September 23, 2011

Re: Police User Fee

Commissioner Allen has reported to me that the police user fee has become a hot topic with the League of Cities. Other police departments have frequently called me over the years, and I have always told them, as I have told you in the past, that I have very strong concerns it could be declared unenforceable, and that, if so, there is a risk that the City collecting the fee would have to repay the money. There have been 2 attempts by League of Cities to get the legislature to pass legislation to enact a police user fee and neither was successful.

This police user fee was supposed to be a short term solution to a problem the City faced years ago. As you know I have brought this to your attention several times hoping you would put an end to the use of this funding device because it ultimately has a very, very high probability of being stricken. The risk of this is increasing because other cities have put such fees into effect and at some point a lawsuit will probably be filed. I suggest you repeal the police user tax ordinance as soon as possible. I have included language in the ordinance to try to limit the City's liability if it ever were to be declared unenforceable, but the outside risk is that if such an action were filed, the City could be ordered to return all funds received as police user fees.

