



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Miscellaneous

I.4.

9/12/2023

Subject:

Legislative Intent and Permission to Advertise RE: Amendment to Section 2-176, Brevard County Code of Ordinances, "Administrative Fines; Costs of Repairs; Liens."

Fiscal Impact:

None

Dept/Office:

District 3

Requested Action:

It is requested that the Board issue legislative intent and permission to advertise an amendment to Section 2-176(c)(2), Brevard County Code of Ordinances, to align authorization procedures to foreclose on Code Enforcement Liens with those found in Florida Statute Section 162.09(3)

Summary Explanation and Background:

This proposal is to amend the process for foreclosing on Code Enforcement liens. Currently, Sec. 2-176(c)(2), Brevard County Code of Ordinances, states that "... after three months from the filing of any such lien which remains unpaid, the board of county commissioners and the special magistrate may authorize the county attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest." Meanwhile, Fla. Stat. Sec. 162.09(3) states that "... after 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest" (note: other provisions of Florida Statute allow for the governing body to substitute the code enforcement board with a special magistrate; Brevard County has chosen to do so).

To align with statutory requirements, it is proposed that the Board issue legislative intent and permission to advertise an amendment to Sec. 2-176(c)(2) in a manner substantially similar to the following (strikethroughs indicate deletions):

A lien arising from a fine imposed pursuant to this section runs in favor of the county and the county may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, ~~the board of county commissioners and~~ the special magistrate may authorize the county attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest.

To be clear, this amendment would not *prevent* County staff from seeking Board direction regarding a

potential foreclosure; it simply would remove the *requirement* to do so. Under this structure, staff would be able to move forward according to general Board direction and County policy in seeking foreclosures in those cases where it is clearly appropriate. Those facing foreclosure would still be afforded due process, as not only may they participate in the required hearing before the Special Magistrate, but during the foreclosure process itself, which is quite robust.

Clerk to the Board Instructions:

Please send a copy of the Board action memorandum to the District 3 Office, Planning and Development Department, and the County Attorney's Office.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

September 13, 2023

MEMORANDUM

TO: John Tobia, Commissioner District 3

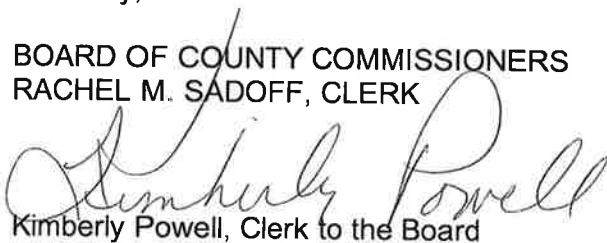
RE: Item I.4., Legislative Intent and Permission to Advertise for Amendment to Section 2-176, Brevard County Code of Ordinances, "Administrative Fines, Costs of Repairs, Liens"

The Board of County Commissioners, in regular session on September 12, 2023, granted legislative intent and permission to advertise an amendment to Section 2-176(c)(2), Brevard County Code of Ordinances, to align authorization procedures to foreclose on code enforcement liens with those found in Florida Statute Section 162.09(3).

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

cc: Planning and Development
Each Commissioner
County Attorney

A Typical Code Enforcement Case from Inception Through Foreclosure (Given District 3 Proposals)

1. Complaint received
2. Case opened
3. Case assigned to Code Enforcement Officer ("CEO")
4. CEO investigates case and substantiates violation
5. (Discretionary based on nature of violation) CEO may issue verbal warning and time to comply
6. CEO issues Notice of Violation ("NoV"), including notification of the nature of the violation, steps needed to correct the violation, and a time to comply the violation with no penalty¹
7. Respondent is sent the NoV by certified mail
8. If service is not achieved through certified mail, NoV is posted at the subject property
9. CEO conducts inspection after time to comply violation on NoV expires
10. Notice of Hearing ("NoH") is issued, including the nature of the violation and steps needed to correct the violation
11. NoH is sent certified mail to respondent
12. NoH is posted on the subject property
13. CEO conducts at least 1 prehearing inspection to confirm violation is still active (generally the day before Hearing)

[respondent may request extension due to circumstances]

14. Public Hearing with Code Enforcement Special Magistrate
15. Special Magistrate issues Findings of Fact, Conclusions of Law, Order & Lien for Costs ("FoF"), which includes the violation, method to comply the violation, and time to comply the violation (during which, no fines accrue²)

[respondent may request re-hearing within 10 days, or appeal within 30 days]

16. FoF recorded in Official Records with Clerk of Court (same day or next day)
17. CEO conducts post-hearing inspection at the conclusion of comply period determined in FoF

[respondent may request extension of ordered compliance date from Special Magistrate]

18. Fines begin to accrue
19. Order Imposing Fines as Lien prepared
20. Notice of imposition hearing sent certified mail
21. Notice of imposition hearing posted on property
22. Public Hearing on Imposition of Fines conducted by Special Magistrate
23. Special Magistrate authorizes the imposition of the fines by issuing an Order Imposing Fines as Lien

¹ For initial violations. Recurring and repeat violations follow a similar process, but enforcement costs (for recurring) and fines (for repeat) will be applicable from time violation is observed

² For initial and recurring violations. Repeat violations follow a similar process, fines will be applicable from time violation is observed

24. Order Imposing Fine as Lien recorded in Official Records with Clerk of Court (same day or next day)

[At least 3 months must accrue before foreclosure proceedings under Fla. Stat. and County Code]

25. P&D staff reviews case to determine foreclosure proceedings are appropriate
26. P&D staff consults with CAO to determine foreclosure is lawful under circumstances (no homestead protection, lien properly recorded, etc.)
27. (Discretionary but currently part of County practice) Notice of Hearing is sent to respondent, via certified mail, regarding Special Magistrate Hearing to authorize the CAO to begin foreclosure proceedings
28. (Discretionary but currently part of County practice) Notice of Hearing posted on subject property
29. Special Magistrate authorizes County Attorney to pursue foreclosure at Public Hearing
30. CAO pursues foreclosure, including affording due process under law, and under the rubric of the Florida Rules of Civil Procedure
31. CAO will file a complaint and issue a summons. Chapter 162, Florida Statutes, provides a process in which the Special Magistrate can authorize the CAO to move forward with seeking a money judgment against the violator or filing a foreclosure action. In the latter case, the County will also have to file/record a lis pendens. There will be fees and costs associated with filing the case in court and perfecting service
32. CAO will respond to pleadings and file any necessary documents and notices in accordance with the Florida Rules of Civil Procedure
33. While the Florida Rules of Civil Procedure establish specific timeframes in which documents must be filed, there is no way of knowing exactly how long it will take to conclude a foreclosure action or money judgment case. Factors that can extend a case include, but are not limited to, motions for extension of time/continuances; hearings and associated scheduling delays; and waiting for the Court to issue an order or other related findings
34. If corrective action is not taken by the violator, then the Court will issue a final order and the property (whether real or personal) will be sold
35. At any point in this process, the violator can "redeem" the property and satisfy the lien(s) by bringing the case into compliance and paying off any outstanding fines
36. In short, both the foreclosure process and money judgment process are not immediate and will, by their very nature, provide the violator with additional time and opportunities to address the situation and correct violations. Furthermore, another factor that the County must consider in these types of cases is that the prevailing party is entitled to recover all costs and reasonable attorney's fees it incurs in the action. *Section 162.10, Florida Statutes*. This will motivate the County to ensure such cases are brought correctly and appropriately.
37. Under Florida law, a code enforcement lien may not continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to Section 162.09(3), Florida Statutes, in a court of competent jurisdiction

NOTE: If the property attains compliance status after the fines have begun to accrue and the costs are paid, the owner may request a fine reduction and foreclosure would be averted, or if compliance is attained and the costs and fines are paid, the foreclosure is averted.