



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

G.1.

10/24/2023

### Subject:

Public Hearing: Amendment to Chapter 2, Article VI, Division 2, Section 2-176, Brevard County Code of Ordinances, "Administrative Fines; Costs of Repairs; Liens."

### Fiscal Impact:

None

### Dept/Office:

Planning and Development

### Requested Action:

It is requested that the Board adopt the attached amendment to Sec. 2-176, Brevard County Code of Ordinances

### Summary Explanation and Background:

On September 19, 2023, the Board issued legislative intent and permission to advertise an amendment to Section 2-176(c)(2), Brevard County Code of Ordinances. Currently, this subsection 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, the attached ordinance amends this subsection as follows:

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.

This amendment would not prevent County staff from seeking Board direction regarding a potential foreclosure, should there be a need to.

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.

**Clerk to the Board Instructions:**

Once ordinance is filed with the State, please return two copies to Planning & Development.



## FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

October 30, 2023

Honorable Rachel M. Sadoff  
Board of County Commissioners  
Brevard County  
Post Office Box 999  
Titusville, FL 32781-0999

Dear Honorable Rachel Sadoff,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2023-27, which was filed in this office on October 26, 2023.

Sincerely,

Anya Owens  
Administrative Code and Register Director

ACO/wlh



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

October 25, 2023

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director Attn: Billy Prasad

**RE:** Item G.1., Amendment to Chapter 2, Article VI, Division 2, Section 2-176, Brevard County Code of Ordinances, "Administrative Fines, Costs of Repairs, Liens"

The Board of County Commissioners, in regular session on October 24, 2023, conducted a public hearing and adopted Ordinance No. 23-27, amending Section 2-176, Administrative Fines, Costs or Repairs, Liens. Enclosed are two fully-executed Ordinances.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, appearing to read "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encls. (2)

ORDINANCE NO. 2023- 27

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE VI, DIVISION 2, SECTION 2-176, "ADMINISTRATIVE FINES; COST OF REPAIRS; LIENS" TO REMOVE THE BOARD OF COUNTY COMMISSIONERS AS AN ENTITY AUTHORIZING FORECLOSURES ON CODE ENFORCEMENT LIENS AND SUITS TO RECOVER A MONEY JUDGMENT; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, Section 162.09(3), Florida Statutes, sets out the procedural requirements for a county to foreclose on a code enforcement lien or to sue to recover a money judgment for the amount of the lien plus accrued interest; and

WHEREAS, Florida law specifically provides that a lien arising from a fine imposed pursuant to Section 162.09, Florida Statutes, runs in favor of the local governing body and, if the lien remains unpaid after three months from the filing of such lien, the Code Enforcement Special Magistrate can authorize the County Attorney's Office to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest; and

WHEREAS, the Brevard County Board of County Commissioners (the "Board") included a requirement under Section 2-176(c)(2), Brevard County Code, wherein both the special magistrate and the Board itself needed to grant permission to the County Attorney's Office to foreclose on a code enforcement lien or sue to recover a money judgment for the amount of the code enforcement lien plus accrued interest; and

WHEREAS, the Board acknowledges that no lien created pursuant to the provisions of Chapter 162, Florida Statutes, may be foreclosed on real property which is a homestead under Section 4, Article X of the State Constitution and that the money judgment provisions of Section 162.09, Florida Statutes, shall not apply to real property or personal property which is covered under Section 4(a), Article X of the State Constitution; and

WHEREAS, the Board finds that the process established by Chapter 162, Florida Statutes, allowing the Code Enforcement Special Magistrate to authorize the County Attorney's Office to proceed with lien foreclosures or suits money judgments, combined with the protections afforded within the foreclosure and money judgment processes, as well as the code enforcement procedure leading up to the imposition of a lien, provides ample procedural due process and protections to individuals and entities who are found to have violated the County Code and fail to comply with code enforcement orders.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Officially filed with the Secretary of the State on October 26, 2023.

Underline indicates additions.

~~Strike-through indicates deletions.~~

**SECTION 1.** Chapter 2, Article VI, Division 2, Section 2-176(c)(2), Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

(2) 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.

**SECTION 2.** Conflicting Provisions. In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

**SECTION 3.** Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

**SECTION 4.** Area Encompassed. This Ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

**SECTION 5.** Effective Date. A certified copy of this Ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This Ordinance shall take effect upon adoption and filing as required by law.

**SECTION 6.** Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

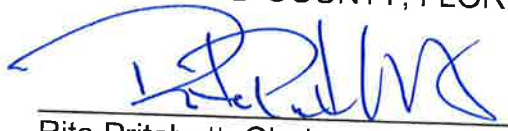
DONE, ORDERED, AND ADOPTED, in regular session, this 24th Day of October 2023.

Attest:

  
Rachel M. Sadoff, Clerk of Court

( S E A L )

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
Rita Pritchett, Chair  
(as approved by the Board on Oct. 24, 2023)