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City of Gainesville Policy Program Preliminary Research & Analysis

TOPIC: Code Enforcement Options
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DATE: December 13, 2019
REQUESTED BY: Commissioners Hayes-Santos, Johnson, and Ward

EXECUTIVE SUMMARY

The Gainesville Code Enforcement Division strives to enhance and preserve the safety, livability, health and economic stability of Gainesville streets and properties. However, when code enforcement officers cite a property owner for violations, the repairs often remain undone for extended periods of time. Properties that are derelict contribute to the neglected look of neighborhoods and communities. In other municipalities, code enforcement procedures are more robust, giving them better options to intervene and bring properties back into compliance. These options include:

- Assigning a City department or City approved contractor to **make the necessary repairs** if the landowner refuses to do so after fair warning,
- Simply taking **any action necessary** to improve the conditions, which might include: repair, condemn, vacate, demolish, etc., and
- Working with the state to coordinate a **receivership procedure** in cases of abandoned property.

In order to see an improvement in the process and outcomes, Gainesville may choose to extend the current procedures of Code Enforcement to encompass some form of City involvement when an owner does not correct a violation as other municipalities have successfully done already.

HISTORY/BACKGROUND INFORMATION

State of Florida

In the State of Florida's Statutes, Chapter 162¹ "County or Municipal Code Enforcement" governs how county or municipal officials can cite and assess penalties to owners who commit code violations. Additionally, the chapter lays out requirements and procedures for municipal or county code enforcement boards. Section 162.08 of the State Statutes specifies that enforcement boards have the power to issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.² The State Statutes also indicate that, in the event a violation of the codes is found, the official code inspector should notify the property owner and give them reasonable time to correct the violation. In the event that the reasonable time passes and the violation has not been corrected, the code inspector shall notify an enforcement board and request a hearing.

In terms of receiverships, the State of Florida currently indicates that the appointment of a receiver is in the discretion of the city and is inherent in the equitable powers of the court.³ In other words, it does appear possible for a City to proceed with a receivership process.

Alachua County

Chapter 24 of Alachua County's Code of Ordinances creates a Codes Enforcement Board of Alachua County that has jurisdiction to hear and decide on alleged violations of all codes and ordinances in the county. This does not, however, include jurisdiction over areas within Gainesville's City Limits. The codes inspector is in charge of initiating enforcement proceedings of the various codes and ordinances. As specified in the State Statutes, the codes inspector should notify the property owner and provide an allotted amount of time to correct the violation. In cases of repeat violation, or violations that are a threat to public health and safety, the codes inspector is not required to provide a reasonable time for correction. In the event the landowner does not correct the violation, the codes inspector should notify the enforcement board and request a hearing. The code outlines the procedures for hearings held by a code enforcement board and respective penalties are assessed.

On November 12, 2019, the Alachua County Board of County Commissioners voted to allow **new options for cleaning up properties** that have extensive hazards and nuisances.⁴ The new nuisance abatement ordinance will establish three new **options** for the county to enforce nuisance removal on property owners:

1. Standard notice of violation
 - a. Owners are given 30 days to clear the nuisance or a **lien** will be placed on the property if they do not clear it in time.

¹ http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0162/0162ContentsIndex.html

² http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0162/Sections/0162.08.html

³ <https://www.floridabar.org/the-florida-bar-journal/using-receiverships-to-maximize-the-value-of-distressed-assets/>

⁴ <https://www.wuft.org/news/2019/11/13/alachua-county-commissioners-pass-nuisance-abatement-ordinance/>

City of Gainesville Policy Program Preliminary Research & Analysis
Code Enforcement Options

2. An injunction with the court requiring the owner to address the issue
3. Special assessment process
 - a. If the hazard is determined to pose a threat to life and safety then a representative of the county has the power to enter the property and dispose of the nuisance
 - b. If the hazard is determined to be a non-emergency, then a notice of violation is issued and the matter will be heard by the Code Enforcement Board.

While the ordinance is specific to property, it can likely be applied to greater code enforcement efforts such as intervening to remove abandoned vehicles, graffiti, and so forth.

City of Gainesville

Within city limits, the City of Gainesville Code Enforcement Division strives to enhance the community through education, outreach and voluntary compliance with every interaction while improving the livability, health, and safety of the community. The division has jurisdiction over the enforcement of the following Codes and Nuisances:⁵

- i. Housing and Commercial Building Codes (Chapter 13)
- ii. Landlord License Codes (Chapter 14.5)
- iii. Nuisance Codes (Chapter 16)
- iv. Abandoned Vehicles on private property (Chapter 26)
- v. Land Development Code (Chapter 30)
- vi. Graffiti (Chapter 13)

Division 6 of the Gainesville Code of Ordinances covers code enforcement citation procedures, and Division 8 governs the Code Enforcement Board. The current code enforcement procedure in the City of Gainesville is as follows:⁶

- i. A code enforcement officer shall provide notice of violation to the owner of the property who has committed the violation and establish a reasonable time period within which the person must correct it (no more than 30 days).
- ii. If the person has not corrected the violation in the given time frame, a code enforcement officer can issue a citation when they have been deemed to have committed a civil infraction in violation of a code or ordinance of the City.
- iii. If the code enforcement officer has reason to believe that the violation presents a serious threat to public health, safety, or welfare, or if it is a repeat violation, or an irreparable or irreversible violation, the code enforcement officer can immediately issue a citation.

A violation of a code or an ordinance is a civil infraction, and the maximum civil penalty is not to exceed \$500. For any person who does not pay the civil penalty, or fails to appear in court as applicable, the court may enter judgement for an amount not to exceed \$500 and issue a rule requiring that the person appears before the court to explain their lack of action.

⁵ <http://www.cityofgainesville.org/CodeEnforcement.aspx#165999-candidate-signs>

⁶ https://library.municode.com/fl/gainesville/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTVB_OCOCO_DIV6CICI_S2-337COENCIPR

City of Gainesville Policy Program Preliminary Research & Analysis Code Enforcement Options

In the City of Gainesville, instead of a Code Enforcement Board there is a Gainesville Code Enforcement Special Magistrate.⁷ This Special Magistrate has jurisdiction to hear and decide the outcome of cases that have to do with violations of any City Code or Ordinance that have been filed by a Code Enforcement Officer. The magistrate's terms are one year long and the term limit is five years. To assume the position, an applicant must:

- i. Be an active member in good standing with the Florida Bar;
- ii. Reside in Alachua County;
- iii. Not be an employee of the city or hold any office with the city government or any other public office; and
- iv. Comply with the Code of Ethics of the State of Florida.

Outside of these laws, Gainesville does not currently have a system in place to send City or third party employees to repair properties and bring violations back to code. Similarly, the City does not partake in any receivership programs wherein contractors or others are appointed to repair the property while a lien is placed on it to cover costs of the repairs. As it stands, only fines and ultimately liens are used to enforce the codes and assess penalties. The City relies on property owners to remedy their violations and, if they don't, properties remain unrepaired and run-down until purchased by an entity willing to take on the costs of the lien and repairs. Regardless, further contact and cooperation with City of Gainesville Code Enforcement employees would be necessary to determine the best method moving forward.

PRELIMINARY RESEARCH AND FINDINGS

This section will highlight how other jurisdictions have approached code enforcement options and bringing properties back into compliance.

City Makes Repairs

Some cities have the option to actively repair a code violation to bring a property into compliance as opposed to levying fines on an owner who may never repair the violations.

Jacksonville, Florida

The City of Jacksonville Code Enforcement Board has the power to hear cases of code violations and vote on the matters accordingly. Before violations reach the Board, however, a designated Code Enforcement Officer (who is an employee of the City) carries out a citation process similar to that carried out in Gainesville and Alachua County. What makes the Jacksonville's options stand out, however, is that in some cases where the code enforcement employees have reason to believe that a violation presents a serious threat to the public health, safety and welfare, they can notify the Board. Then, the Code Enforcement Board will notify the department responsible for enforcement of the specific code and the appropriate department shall **make all reasonable repairs** required to bring the property into compliance. The Code Enforcement Board shall charge the property owner with the **cost of repairs** along with any fine imposed pursuant to Code of

⁷ Of note, the Code outlines the details of a Code Enforcement Board, but says the City has the ability to opt for a Special Magistrate to carry out the enforcement procedures instead.

City of Gainesville Policy Program Preliminary Research & Analysis Code Enforcement Options

Ordinances.⁸ The code indicates that making such repairs **does not create a continuing obligation** on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith.

Burlington, North Carolina

In Burlington, Code Enforcement Officers work closely with citizens to assist in the abatement of an assessed code violation. The process begins when a complaint is received by a code enforcement officer who is assigned to the site of a potential violation. If the officer deems that there is a legitimate violation, there are three steps taken:

- i. A red Notice sign is posted on the property in the yard;
- ii. A letter is sent via regular mail to the owner of the property; and
- iii. A registered letter is sent to the owner of the property.

The letter states when the violation occurred and that the owner has 10 days from the date of the letter to comply. The assigned Officer returns to the site on the 11th day to perform a follow-up inspection. If the Officer notes that the owner has not corrected the violation by the 11th day the Code Enforcement Officer will assign a **City-approved Contractor** to clean it up, and the charges of the clean-up plus a \$100 administrative fee will be **attached as a lien** on the property. However, if there is more than one violation at a specific property within a calendar year the owner is charged an automatic \$250 fine and potential contractor fees.⁹

The City of Burlington has a **thorough web page** for Code Enforcement that **includes photos** and captions to show the citizen all the possible conditions that are declared to be in violation. These include growth of weeds and openly kept appliances that have jagged edges of metal or glass or areas of confinement. Coupling a full-circle code enforcement approach with a website featuring easy-to-understand visuals and links can help to result in a productive and efficient code enforcement process.

City Takes Any Steps Necessary

For some cities, solely repairing the property may not be the best fit for a situation. So, their Code may include options to demolish, vacate, condemn, repair or purchase properties as they deem appropriate.

Orlando, Florida

The City of Orlando has a Code Enforcement Board whose powers include bringing a violation into compliance by either **repairing, vacating, condemning or demolishing structures** amongst other options, as applicable.¹⁰ The power to bring the violation into compliance is outlined in the City of Orlando's Code of Ordinances, Chapter 5 titled Code Enforcement. The section on Enforcement

⁸https://library.municode.com/fl/jacksonville/codes/code_of_ordinances?nodeId=TITIVBOCO_CH91MUCOE_NBO_S91.107PEDMFICORELI

⁹<http://www.ci.burlington.nc.us/1542/Code-Enforcement>

¹⁰https://library.municode.com/fl/orlando/codes/code_of_ordinances?nodeId=TITIICICO_CH5COEN_ARTIC_OENBO_S5.06POCOENBO

Procedure cites a chapter in the City's Property Maintenance Code that covers the authority to repair, remove, secure or demolish a property **if it is causing a public nuisance or hazard to public health, safety and welfare.**¹¹ When a codes enforcement officer cites a violation, they must notify the alleged property owner and give them a reasonable time to correct the violation. Then, if the violation is not corrected, the officer may request a hearing by the Code Enforcement Board.

For violations that create a situation where City action is necessary to eliminate an imminent public nuisance, there are multiple notice procedures that can be pursued as applicable. Some of these include a "Notice to Vacate" wherein a City employee or official **declares a building a nuisance and unfit for human occupation** and gives a notice to the owner and occupant(s) of the declaration. The notice states that if repairs, reconstruction, alterations, removal, or demolition are not voluntarily completed within the stated time, the Building Official, Code Enforcement Division Manager, Fire Marshall, or their Designee, or the Code Enforcement Board's Designee shall initiate proceedings charging the person or persons, firm, corporation, or agent with a violation of the Code. Then, an "Occupancy of Building" notice may be issued once a building has been condemned and placarded as unfit for human occupancy. Under these circumstances, the building shall not be used again for human occupancy until approval is secured from the respective city employee or division.

Once violations make it to the Code Enforcement Board, there are procedures detailing the fines, penalties, and liens to be charged. These include fines that may be charged for a first time offense or "violation." Such fines may be larger for repeat violators, or for violations irreversible or irreparable in nature. The dollar amount of fines is determined by the gravity of the violation, any actions taken by the property owner to correct the violation, and any previous violations committed by the property owner. To note, a fine that is recorded constitutes a lien on the land where the violation exists, and **the property may to be foreclosed upon if it remains unpaid for more than three months from the filing thereof.** For specific violations stated in the code, the Code Enforcement Board shall notify the City who then makes all reasonable repairs in order to bring the property into compliance, and charge the property owner with the reasonable cost of the repairs along with the fine imposed as applicable.

The City's extensive Code Enforcement Chapter gives it the opportunity to exercise its efforts in a number of manners as it deems appropriate without limiting it to only repairing the property, as in some cases that may not be the best option for the owners, neighbors, or occupants.

Receiverships (Abandoned Property)

In some cases, cities utilize receiverships as an initiative to resolve the issue of abandoned properties violating codes and bring them into compliance.

Massachusetts

In the state of Massachusetts, there exists an abandoned housing initiative¹² wherein any municipality that is interested can share the addresses of abandoned residential properties with the

¹¹ https://library.municode.com/fl/orlando/codes/code_of_ordinances?nodeId=TITIICICO_CHI4PRMACO_ARTVPUNUHAPUHESAWEURERERESEDE

¹² <https://www.mass.gov/service-details/learn-more-about-the-abandoned-housing-initiative>

City of Gainesville Policy Program Preliminary Research & Analysis Code Enforcement Options

Attorney General's Office. The AGO will attempt to contact the owner of the property to show proof that they can and will finance the necessary repairs to bring the property up to code. If they cannot, the municipality and the AGO can file a petition under the State Sanitary Code provision wherein a **receiver** is identified as an agent of the appointing court to bring the property back up to code. The **receiver can place a lien** against the property for all costs incurred during the project until the repairs have been made and the owner of the property proceeds to reimburse the receiver for the costs and clear the lien. **If the owner does not pay the costs then the receiver can foreclose on the lien.** This code enforcement tool "strikes a balance between private property owner's rights and the public's right to be free from dangers posed by health, safety, and building code violations".

A press release from the Massachusetts Attorney General in April 2019 includes positive feedback about the initiative.¹³ Citizens stated that the fund has helped provide the financial support needed for receivership projects that would not have otherwise moved forward. The process has successfully been able to turn vacant, run-down properties into renewed habitable homes for Massachusetts residents.

In Chelsea, Massachusetts, the Chelsea Restoration Corporation works to help carry out receivership efforts and has produced a Receivership of Abandoned and Problem Housing Handbook.¹⁴ The Handbook provides information on how to achieve a successful receivership through full documentation and accurate research, how to petition the court for the appointment of a receiver, financial aspects of managing property under receivership, and so forth.

North Carolina

The State of North Carolina passed an act in 2018 that would authorize municipalities to petition the superior court to appoint a receiver to a vacant building. That receiver can then rehabilitate, sell, demolish or sell the vacant structure where the owner has failed to comply with the local code enforcement procedures.¹⁵ This may include cases where the local code enforcement office has deemed the building and its conditions to be a hazard to health and safety, and/or where the property owner has failed to comply with local governing body's inspections and orders. The receivership process is similar in structure as the one mentioned in Massachusetts, and can be a viable option for rehabilitating properties as opposed to demolishing them in cases where property owner is unable to make the necessary repairs.

Think Tanks, Academia, & Others

Center for Community Progress

The Center for Community Progress created a Report for High Point, North Carolina, in 2016 which included technical assistance for finding new ways to approach property vacancy and abandonment.¹⁶ The report acknowledges the common trap of properties falling into decline along

¹³ <https://framinghamsource.com/index.php/2019/04/16/attorney-general-releases-report-on-rehabilitation-of-abandoned-massachusetts-properties/>

¹⁴ https://www.mhp.net/writable/resources/documents/chelsea_restoration_receivership_handbook.pdf

¹⁵ <https://www.ncleg.gov/Sessions/2017/Bills/House/PDF/H573v5.pdf>

¹⁶ https://www.communityprogress.net/filebin/161102_HighPoint_TASP_Report_FINAL.pdf

with simultaneously growing fines that result in large numbers of abandoned properties and taxpayers funding costly demolitions or foreclosures.

The report recommended a “Fix it Up, Pay it Up, Give it Up” approach to municipal code enforcement systems. Under this approach, property owners are given appropriate notice of the code violation, and the opportunity to fix the problem. If the owner doesn’t fix the problem, the local government will take timely action to cure the violation, and bill the owner for costs incurred. If the owner fails to reimburse the government’s out-of-pocket expenses, the local government, on behalf of the taxpayers, will lien the property and pursue all remedies, including the option to foreclose on the lien in a timely and effective manner, to recover all costs and/or compel the transfer of the problem property to a new, responsible owner. To ensure an equitable approach, the code enforcement program should include more frequent and proactive property inspections, and/or registration elements for some of the worst problem properties. Options for the code enforcement program can include reasonable cause inspections, targeted area inspections, high crime rental property, vacant property registration, and a relocation assistance program.

States such as North Carolina have sought to adopt receivership power provisions as an additional code enforcement tool in their State Statutes in light of this report.¹⁷ The state would make it possible for municipalities to work to secure court-appointed receivers that can rehabilitate or demolish properties that have been designated by the municipality and bring them into compliance of the city code. The article provided includes further details on how receivers repair and are reimbursed for the work.

PRELIMINARY COST/BENEFIT ANALYSIS

Costs

- Upfront and liability costs to the city if addressing repairs on a piece of private property to bring the violations back to code.

Benefits

- Reduction in the number of run-down properties with a simultaneous increase the number of habitable and compliant homes for Gainesville residents.

PRELIMINARY AND ILLUSTRATIVE LIST OF POTENTIAL STAKEHOLDERS

Potential Stakeholders

- City Manager’s Office (Gainesville Code Enforcement Office)
- Gainesville Code Enforcement Board (Special Magistrate)
- Alachua County Codes Enforcement Board
- Individual property owners and developers

¹⁷ <https://ced.sog.unc.edu/receivership-a-new-tool-for-addressing-vacant-problem-properties-in-north-carolina/>