



City of Gainesville

City Manager Memorandum No. 19xxx

To: The Honorable Mayor and City Commissioners
From: Lee R. Feldman, ICMA-CM, City Manager
Date: January 29, 2021
Re: Guidelines for Foreclosure on Liens

Background

At their January 21, 2021 meeting, the City Commission discussed developing a draft policy for referring properties to the City Attorney's Office for lien foreclosure. Staff has developed the following policy for Commission consideration. This policy is intended to guide decision making but shall not limit the rights of the City Commission provided for by law.

Proposed Lien Foreclosure Policy:

- Pursuant to Chapter 162 of the Florida Statute and Chapter 2 of the Code of Ordinances of the City of Gainesville, unpaid liens may be referred to the City Attorney's Office if they remain unpaid after three (3) months.
- In determining eligibility and prioritization for referrals the City shall consider the following criteria:
 - The property is not a homestead under section 4, Article X of the State Constitution.
 - The property has a history of three or more confirmed Code violations.
 - The property has a current code enforcement violation.
 - Accumulated liens are in excess of \$50,000.
 - The property does not have any encumbrances in excess of the City's liens.

Prior to referring any property that qualifies under this policy to the City Attorney's office for lien foreclosure, the City Commission will be provided a 30-day notice of the intent to foreclose prior to beginning the process. Foreclosure proceedings may be stayed or abandoned at the City Commission's discretion.

How does a Code Enforcement Lien come into existence?

When a Code violation is discovered on a property, a Notice of Violation is sent to the owner of record to correct, providing a reasonable amount of time to do so. If the violation is not corrected, a hearing is requested with the Special Magistrate. A case is presented, and if the Magistrate determines that the violation of the Ordinance is valid, the Magistrate finds the property owner guilty, assesses City costs, and provides additional time to correct the violation. If the violation is not corrected after that additional time, fines begin to accrue on a daily basis until the violation is corrected. Once the fines begin to accrue a lien is filed on the property for the fines and costs. Fines accrue from \$25 to \$500 a day based on the severity of the violation. Fines continue to accrue until the property comes into compliance. In determining the amount of the fine, if any, the Magistrate must consider the following factors listed in Section 162.09(2)(b), Florida Statutes:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation; and
3. Any previous violations committed by the violator

The purpose of fines are two-fold: 1) encourage the property owner to come into compliance and 2) discourage future violations from occurring. If the violation is corrected within the time allotted by the Magistrate, the fines cease accruing but the property owner is still responsible for any administrative costs (e.g. cost of demolition, lot clearing, staff time, etc.) incurred by the City. If they are not paid then a lien will be placed on the property for the costs.

How are liens resolved?

Once the lien is established, the property owner can request a reduction/rescission of the lien. That request is heard by the Special Magistrate, and the owner presents grounds for this action to be taken. Prior to the Magistrate hearing a request for reduction/rescission of the lien, the property owner must pay any of the City's accrued administrative costs

At the hearing Neighborhood Enhancement staff will provide a recommendation to the Magistrate concerning the request for reduction/rescission and the Magistrate will decide whether to forward a recommendation to the City Commission to either approve, approve with conditions, or deny the property owner's request for reduction/rescission of the lien. In formulating a recommendation, both staff and the Magistrate must consider the same statutory factors referenced above.

Many of the City's larger liens are accruals that take place over an extended period; sometimes years. Staff and the Magistrate weigh the effect of the violation on the neighborhood and seek recompense for the inconvenience and detraction caused to neighbors. This recompense can come in monetary compensation to the City or investment to improve the property and neighborhood.

Often the reduction/rescission request is initiated by someone other than the owner who committed the violation (the property may have changed hands without the lien being satisfied such as through a tax deed sale) or because the owner wishes to sell the property and the

amount of the lien is in excess of the property value. Staff and the Magistrate weight any improvements made to the property along with any planned improvements/investment in order to judge whether these actions are satisfactory and warrant the City surrendering its interest in the lien.

Once the Special Magistrate hears the request, a ruling is rendered and a recommendation is then forwarded to the City Commission for a final decision. Ultimately the liens are resolved by being paid in full, through the reduction/rescission process, through foreclosure, or with the lien lapsing after 20 years (the time authorized by Florida State Statute).