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City of Gainesville Policy Program Preliminary Research & Analysis

TOPIC: Lien Reduction Process

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DATE: February 21st, 2022

REQUESTED BY: Commissioner Saco

OBJECTIVE

Exploring the process the City of Gainesville currently uses to reduce or release code compliance liens, and analyzing potential improvements to the process.

EXECUTIVE SUMMARY

Currently in the City of Gainesville, when a property has a lien assessed against it due to code compliance violations, the property owner can request a reduction in the lien if the property comes into compliance with city code. After the request is made, a hearing is held by the Special Magistrate, and the Special Magistrate makes a recommendation as to whether to keep the lien as is, reduce the lien, or rescind the lien entirely. However, the Magistrate's decision is not final, and the City Commission must approve the recommendation at a City Commission meeting for that decision to be made final. While Florida State Statutes indicate that the "local governing body" may execute a satisfaction or release of a lien, the statutes specifically authorize code enforcement boards to reduce fines, and several cities across the State of Florida have adopted local ordinances which allow for their Special Magistrate to be the final decision maker on the reduction of liens. It is the interpretation of the Gainesville City Attorney's office that Florida State Statutes indicate that the City Commission must authorize the release of code enforcement liens, either by an agenda item (which could be on a Consent Agenda), or by ordinance specifically authorizing the City Manager to execute releases of liens where the fines have been reduced by final action of the Special Magistrate.

HISTORY/BACKGROUND INFORMATION

City of Gainesville Process

Under the City of Gainesville's current lien process, if a property is not in compliance with city codes, fines are accrued against that property. If those fines are not paid, a lien is assessed against that property. If the property ultimately comes into compliance with city codes, the property owner can request a reduction of the lien or a release from the lien. Once this is requested, the Special Magistrate holds a hearing and, based on information provided by staff and the property owner, makes a recommendation as to whether to keep the lien as is, reduce the lien, or rescind the lien entirely. The Magistrate's recommendation is then placed on a City Commission meeting agenda, typically a consent agenda. When these recommendations are placed on the consent agenda, rather than the regular agenda, the Commission does not substantively discuss the recommendation and instead approves the recommendation upon passage of the consent agenda. However, the Commission can decide to pull the item from the consent agenda and place it on the regular agenda if they would like to discuss the item or if they do not agree with the Magistrate's recommendation.¹

Florida State Statutes

The City of Gainesville's lien reduction process is primarily governed by Florida Statutes. Florida Statute 162.03 specifically governs the ability for municipalities to create code enforcement boards (or special magistrates), who are then given the authority to hold hearings and assess fines against violators of the municipal codes and ordinances. This statute states "Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein." The statute additionally states that the municipality may, by ordinance "adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter."²

Per Section 162.08, each enforcement board shall have the power to "Adopt rules for the conduct of its hearings; subpoena alleged violators and witnesses to its hearings; subpoena evidence to its hearings; take testimony under oath; and issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance."³

According to State Statutes Section 162.09(1), an enforcement board may order the violator to pay a fine in an amount specified for each day a violation continues past the date set by the enforcement board for compliance. If the code inspector has reason to believe that a violation presents a serious threat to public safety, health, and welfare, the enforcement board shall notify the local governing body, which may make the repairs required to bring the property into compliance and charge the violator with the reasonable cost of repairs along with the fine imposed. In determining the amount

¹ Personal Conversation with Andrew Persons, Director of Sustainable Development; Peter Backhaus, Neighborhood Enhancement Manager; and David Schwartz, Assistant City Attorney

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

³ http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0162/0162.html

of the fine, the Code Enforcement Board shall consider the following factors listed in Florida Statutes Section 162.09(2)(b):

- The gravity of the violation;
- Any actions taken by the violator to correct the violation; and
- Any previous violations committed by the violator.⁴

In Florida Statute Section 162.09(2)(c) it is stated that an enforcement board may reduce a fine imposed pursuant to this section. However, Florida Statute 162.09(3) states that “a lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section.”⁵

It is the interpretation of the Gainesville City Attorney’s office that this portion of the statute means that the City Commission must authorize the release of code enforcement liens, either by an agenda item (which could be on a Consent Agenda), or by ordinance specifically authorizing the City Manager to execute releases of liens where the fines have been reduced by final action of the Special Magistrate.⁶

Advantages and Disadvantages to Current Process

One of the primary concerns that has arisen from the current process is the additional complications that come from having the commission approve each Magistrate recommendation. Getting the recommendations from the Magistrate’s office through the City Attorney’s office and onto the City Commission’s docket can be a time-consuming process frequently taking several months, and it is often the case that the properties being discussed have pending sales which can be affected by the extended process. Additionally, it can be a confusing process for neighbors, who may not fully understand why the Magistrate’s decision is not final, why it can take several months for this recommendation to be made final, or how Commission consent agendas work. Finally, given the fact that the Commission and staff rarely dispute the Magistrate’s recommendation, the process of going through the City Commission may be seen as redundant.⁷

One of the primary advantages of our current system is ensuring that there is no question that the City is in compliance with State Statutes, as an interpretation of those statutes may be that release of liens must be run through the local governing body. In addition to ensuring legal compliance, having final approval lay with the City Commission can also ensure that, in instances where the Magistrate makes a decision contrary to staff’s recommendation, there is an additional layer of oversight. However, additional language could be added to a city ordinance creating standards that the Magistrate must comply with if they were to act as the final decision maker on the reduction and release of liens.⁸

⁴ http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0162/0162.html

⁵ http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0162/0162.html

⁶ Personal Conversation with David Schwartz, Assistant City Attorney

⁷ Personal Conversation with Andrew Persons, Director of Sustainable Development, and Peter Backhaus, Neighborhood Enhancement Manager

⁸ Personal Conversation with Andrew Persons, Director of Sustainable Development, and Peter Backhaus, Neighborhood Enhancement Manager

PRELIMINARY RESEARCH AND FINDINGS

City of Coral Springs, Florida

Per the City of Coral Springs Code of Ordinances, “The code enforcement board or special magistrate is hereby delegated the authority to hear requests for reduction of fines pursuant to this section and make the final decision on behalf of the city.”⁹ Once the Magistrate’s Order Reducing Fine is issued, that is the final decision and it does not need to go through the Coral Springs City Commission.¹⁰

City of Miramar, Florida

The City of Miramar’s Special Magistrate Judge has the authority to reduce or mitigate property liens for code compliance violations if the property is in compliance and does not have any current violations on it.¹¹ The Special Magistrate bases their ruling on the facts presented to them, and that informed ruling can be a reduction in lien amount or a complete waiving of the accrued liens. The Special Magistrate decision is typically final, and the City Commission does not have any ruling or input towards a lien reduction. If the property owner requests a further reduction of the mitigated amount, there may be additional discussions between the Code Compliance Manager and the Police Chief before an agreement is reached.¹²

City of Tallahassee, Florida

Per the City of Tallahassee’s Code of Ordinances, the Code Magistrate and Enforcement Board are entitled to hold hearings and assess fines against violators of city codes. At the conclusion of those hearings, the code enforcement board and code magistrate issue findings of fact and an order affording the proper relief consistent with the powers granted by state and local ordinance. Findings by the code enforcement board shall be by motion approved by a majority of those members present and voting.¹³ With the language in the Tallahassee Code of Ordinances, rulings on complied cases with liens are final and do not go before the commission for approval.¹⁴

City of St. Petersburg, Florida

According to St. Petersburg’s Code of Ordinances, the City Council may appoint a Special Magistrate who has the authority to hold hearings, assess fines against violators of the codes and

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https://library.municode.com/fl/coral_springs/codes/land_development_code?nodeId=CH1AD_ARTVCOENB O_S184FILI

¹⁰ Personal Conversation, DJ Mullings, Coral Springs Code Compliance Administrator

¹¹ https://library.municode.com/fl/miramar/codes/land_development_code?nodeId=CH10SI_S1012ADEN

¹² Personal Conversation, Ericca Rittenhouse, Miramar Administrative Coordinator for the Code Compliance Division

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https://library.municode.com/fl/tallahassee/codes/code_of_ordinances?nodeId=PTIICOGEOB_CH2AD_ARTV COEN_DIV3COENBOCOMA_S2-181HEPR

¹⁴ Personal Conversation, James Payne, Tallahassee Code Enforcement Supervisor

ordinances of the City, reduce fines in whole or in part, and otherwise exercise the powers of a municipal Code Enforcement Board as established in Florida State Statutes. The Code Enforcement Board or Special Magistrate may also reduce or release a lien, and they may establish objective criteria to reduce or release liens.¹⁵

The St. Petersburg City Council does not have to approve the decisions of the Code Enforcement Board related to the reduction of liens. In order to apply for a lien to be released against a property, the applicant must still own the property. If the applicant has sold the property, they can apply for the lien to be released from their name, but not the property as a whole. If an individual purchases a property with a lien assessed against it, they can apply to have the City conduct a new inspection and, if the new property owner agrees to bring the property up to code, the lien can be released.¹⁶

City of West Palm Beach, Florida

In the City of West Palm Beach, the owner of a property against which a lien has been imposed may apply to the special magistrate for a satisfaction of such lien with less than full payment. If the applicant has demonstrated compliance with city code, outlined in Section 26-39(a), a hearing will be scheduled before the Special Magistrate. In evaluating a request for a lien to be reduced, the Special Magistrate will consider the gravity of the violation; the time in which it took the violator to come into compliance; any prior or subsequent code violations on the property during the current owner's and applicant's time of ownership; whether the applicant owns other properties in the city, and how many had other code cases; whether the applicant requested the released owned or was the managing member of the owner of the property for which the lien was placed at the time the lien was placed; whether the applicant took proactive action to correct the violations for which the lien was placed; any other specific information which is available about the property or the applicant requesting the release; any other factor which may show a hardship on the applicant requesting the release. There are additionally certain criteria which make a lien not eligible for reduction, including any lien resulting from a fine for a violation that was determined to be irreversible, any lien that is insured by a title insurance policy, and any lien that is currently the subject of a foreclosure action initiated by the city.¹⁷

With these factors taken into consideration, the Magistrate makes the decision on the reduction of the lien. The City Commission is not involved in the lien reduction process.¹⁸ The City's Code of Ordinances additionally states that "The special magistrate's consideration of and determination on whether to forgive or reduce a code compliance fine/lien is an administrative decision as to whether to accept less for a debt owed to the city, not a quasi-judicial one. The property

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¹⁶ Personal Conversation, Loni Jones, City of St. Petersburg Codes Compliance
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https://library.municode.com/fl/west_palm_beach/codes/code_of_ordinances?nodeId=PTIICOOR_CH26COEN_ARTIISPMAPR_S26-39PRREFILIIMPUSE26-35BERECOCRTH

¹⁸ Personal Conversation, Mark Joyce, City of West Palm Beach Community Improvement Manager

owner/code violator has already received due process through the special magistrate code compliance proceeding and had appellate rights through that process”.¹⁹

City of Fort Pierce, Florida

The City of Fort Pierce has two types of liens, construction/lot liens and code enforcement liens. Construction and lot liens are handled by the City Commission, and requests to reduce those liens are also heard and determined by the City Commission. Code enforcement liens are originally heard by the Special Magistrate. Fort Pierce has a “fast track” program in place to implement reductions in liens once a property comes into compliance. If the city and property owner agree to reduce the lien to \$5,000 through the fast track program, no hearing is needed and the lien is automatically reduced after Magistrate approval, with the process taking an estimated two weeks. If the city and property owner agree to reduce the lien to \$3,000 through the fast track program, one hearing is needed, and if the Magistrate recommends the reduction to \$3,000 after that hearing, that reduction is final and no approval from the City Commission is needed. However, if the property owner seeks to have the lien reduced below \$3,000 or reduced entirely, or if the original lien amount was below \$3,000 and staff and the property owner cannot come to an agreement regarding how much the lien should be reduced by, then the Magistrate’s recommendation must go before the City Commission for final approval. Typically, these items are placed on the City’s Consent Agenda.²⁰

PRELIMINARY ADVANTAGES/DISADVANTAGES ANALYSIS

Advantages

- Allowing the Special Magistrate to be the final decision maker on reduction of liens may create a faster and less complicated process for neighbors requesting a reduction in lien.
- Allowing the City Manager to execute releases of liens where the fines have been reduced by final action of the Special Magistrate may create a faster and less complicated process for neighbors requesting a release of lien.
- Reduced staff time spent getting the Magistrate’s recommendations placed on City Commission agendas.
- Reduced Commission Consent Agenda items

Disadvantages

- If the decision to release the lien lies entirely with the Special Magistrate with no Commission involvement, that may be in violation of State Statute.
- If the authority to reduce or release the lien lies entirely with the Special Magistrate the Commission will not have a method of intervening in a decision that contradicts staff’s recommendation.

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https://library.municode.com/fl/west_palm_beach/codes/code_of_ordinances?nodeId=PTIICOR_CH26COEN_ARTIISPMAPR_S26-39PRREFILIIMPUSE26-35BERECOCRTH

²⁰ Personal Conversation, Katherine Calderon, Fort Pierce Codes Compliance Office

PRELIMINARY AND ILLUSTRATIVE LIST OF POTENTIAL STAKEHOLDERS

- City Attorney's Office
- Code Enforcement Manager
- Department of Sustainable Development
- Special Magistrate
- City Commission

RECOMMENDED POINTS FOR FURTHER RESEARCH/DISCUSSION

- Legality of allowing the Special Magistrate to make the final decision on lien reductions, the release of liens, or both.

ADDITIONAL RESOURCES

Coral Springs, Florida, Municipal Code §5.184

Florida State Statute §162.03

Florida State Statute §162.08

Florida State Statute §162.09(1)

Florida State Statute §162.09(2)(b)

Miramar, Florida, Municipal Code §10.1012

St. Petersburg, Florida, Municipal Code §9-28

Tallahassee, Florida, Municipal Code §2-181

West Palm Beach, Florida, Municipal Code §26-39