



155 F Road Loxahatchee Groves, FL 33470

TO: Town Council of Town of Loxahatchee Groves
FROM: Office of the Town Attorney
VIA: Francine L. Ramaglia, Town Manager
DATE: August 6, 2024
SUBJECT: Discussion of Code Enforcement Remedies

Background:

In recent meetings, the Town Council has discussed code compliance, specifically fines, liens, and the process for foreclosure of properties. The Office of the Town Attorney was asked to provide additional information.

Depending on the nature of the violation, tools for achieving code compliance may include the state and local laws discussed below. Code changes and/or specific procedures must be adopted before any of these tools can be utilized. The Town Attorney's Office will work with staff to prepare items as directed and place them on a future agenda for discussion and/or adoption.

Foreclosure Lawsuits

Section 162.09, Florida Statutes, authorizes the foreclosure of unpaid code enforcement liens three (3) months after recording. Whether to foreclose on a code enforcement lien involves a cost-benefit analysis that differs based on the property. This analysis includes a determination of whether other liens take priority over the Town's. In addition, the Town should consider the complexity of the particular case and the resources available to pursue the litigation. In all cases, staff will seek the approval of the Town Council before filing a new lawsuit.

To assist staff in determining what cases should be presented to Town Council for authorization to sue, the Town Council may consider the following, which can be adopted by resolution:

- Authorizing staff to order title searches and take other actions, as necessary, to adequately evaluate a potential new case.
- Authorizing staff to recommend foreclosure of properties with more than \$100,000 in fines.
- Authorizing staff to recommend foreclosure of properties that have been out of compliance for more than one year.



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- Authorizing staff to recommend foreclosure of properties that do not meet the specific thresholds mentioned above, but which have other conditions that would make foreclosure appropriate.

The Town's Abandoned Property Code

During the foreclosure crisis, several municipalities in Palm Beach County adopted codes requiring the monitoring and maintenance of distressed properties. The Town adopted a similar code in 2011.

Chapter 10, Article II of the Town Code requires mortgage holders to inspect and register vacant real property that is in default, or which has been foreclosed. Additionally, Article II imposes maintenance requirements, including regular landscaping, irrigation, regular maintenance of pools and spas, and keeping yards free of refuse. Affected properties must be properly secured and monitored. Where the property is owned by a corporation or out of town mortgagee, the owner is required to have a local property management company monitor the property and post their contact information. Property in violation of Chapter 10, Article II is subject to enforcement proceedings before the special magistrate.

To date, the Town has not implemented a registration program. Although code section 10-27 provides that the Town Council may adopt rules and procedures related to the enforcement of the property abandonment code, no such rules or procedures have been adopted. Similarly, while the code states that the Town Manager may direct that abandoned property be adequately secured and/or guarded if necessary for public safety, it does not specify how the Town would be reimbursed. The code also lacks standards and procedures to guide the Town Manager's use of the authority granted. Such standards and procedures are essential to ensure due process. If the Town Council desires to implement the registration program, code revisions are recommended to address these deficiencies. Finally, any vendors used to assist with implementation or operation of a registration program would need to be selected in compliance with the Town's purchasing code.

Citations

Many municipalities issue citations as a supplemental means of code enforcement. A citation is a monetary penalty which is assessed for the violation of a code section. A separate citation may be issued for each discrete code violation. Typically, a citation immediately imposes a fine, which must be either paid or appealed within a set timeframe. In most instances, a citation can be issued by either a code enforcement officer or local law enforcement. Each municipality may determine for itself what ordinances better lend themselves to enforcement by citation. The Town does not



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currently have a code provision that allows the issuance of citations. A potential code revision has been drafted and can be placed on a future agenda for feedback from the Town Council.

Camera Program in conjunction with Palm Beach County

The Director of Public Works has been in contact with the Palm Beach County Sheriff's Office (PBSO) regarding an integrated security camera system focusing on public roads within the Town. If the Town is interested in pursuing the use of cameras to address illegal dumping or other code violations, the Town Attorney's Office has worked with other jurisdictions on this issue and is ready to assist.

Inspection Warrants

When a code compliance officer is denied permission to access a property, the officer may be able to gain legal access via an inspection warrant. An inspection warrant is a court order commanding a state or local official to conduct an inspection required or authorized by state or local law. The inspection may be done to ensure compliance with a variety of standards, including those pertaining to the following:

- Fire safety;
- Environmental;
- Animal control;
- Land use;
- Plumbing;
- Electrical;
- Health;
- Minimum housing; and
- Zoning.

Pursuant to section 933.21, Florida Statutes, a judge may issue an inspection warrant "only upon cause," which must be articulated in an affidavit. The affidavit must articulate why the subject property is believed to be out of compliance and must confirm that the affiant requested permission to enter and was denied or that it was impracticable to request permission. Chapter 933, Florida Statutes, contains other legal and procedural requirements before an inspection warrant can be obtained or executed. Historically, the Town has not sought inspection warrants.

Recommendation:

Discussion and direction to staff, if desired.