

Municipal mowing program

Number: INFORMAL

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Mr. Robert H. Berntsson
Attorney for the City of Punta Gorda
City Hall
326 West Marion Avenue
Punta Gorda, Florida 33950-4492

Dear Mr. Berntsson:

You ask whether the City of Punta Gorda may place a property on the city's lot mowing program when such property has been cited for a code violation due to non-mowing and the city has corrected the violation, but the owner has failed to pay the fine or the fee for mowing, without violating the owner's right to due process under Chapter 162, Florida Statutes, and trespassing when the city enters the property to mow without the owner's consent.

The City of Punta Gorda has an optional lot mowing program in which property owners are billed on a yearly basis in January with the bills due in 25 days. When mowing begins in March, code enforcement officers begin inspecting properties within the city and notify owners of code violations for non-mowing. The owner is advised of the availability of the city's program. If the owner does not respond, the city remedies the violation and bills the owner for the service. If the invoice is not paid within 15 days of the billing date, the costs become a lien against the property.

You state that there are currently 400-600 accounts that have liens imposed on a monthly basis. The city wishes to amend its ordinances to provide that if no response is received from a violating property owner within 15 days of the date of the invoice, the city will automatically remedy the problem, place the property on the city's lot mowing program, and impose a lien each time that the property is mowed and the owner fails to pay for the service.

Part I, Chapter 162, Florida Statutes, the "Local Government Code Enforcement Boards Act,"[1] authorizes municipalities and counties to create by ordinance code enforcement boards for the enforcement of their local codes. Part I of Chapter 162 is a supplemental means of obtaining compliance with local codes and "[n]othing contained in ss. 162.01-162.12 shall prohibit a local governing body from enforcing its codes by any other means."[2]

The provisions in Part I of Chapter 162, Florida Statutes, were adopted to

"promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist."[3]

While a municipality has the authority to prescribe penalties for violations of its ordinances, a state law must authorize an administrative agency to impose such penalties.[4] Moreover, if a municipality uses the provisions of Chapter 162, Florida Statutes, as the means of enforcing its codes, it does not have the authority to alter the statutorily prescribed enforcement procedures set forth therein.[5]

Pursuant to section 162.06, Florida Statutes, a code inspector initiates the code enforcement proceedings by notifying the violator and allowing a reasonable time in which to correct the violation. Should the violation continue past the allotted time, the inspector notifies the code enforcement board and requests a hearing. Notice of such a hearing is provided to the violator.[6] In instances where a repeat violation is found, notification to the violator is still required, but there is no requirement of a reasonable time for correction before the case may be brought before the board for action.[7]

Hearings before the code enforcement board are governed by the provisions in section 162.07, Florida Statutes. At the conclusion of a hearing, the board issues findings of fact and conclusions of law and an order affording relief consistent with such findings. The board may order compliance by a specified date and impose a fine, as well as the cost of repairs should the violator not bring the property into compliance.[8]

Section 162.09, Florida Statutes, authorizes a code enforcement board to order a fine for each day the violation continues past the date set for compliance by the board. If a violation found by the inspector "presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature," the enforcement board must notify the local governing body which may make all reasonable repairs required to bring the property into compliance and charge the violator the reasonable costs of such repairs.[9] Fines may range up to \$250 per day for a first violation and up to \$500 per day for a repeat violation, plus all costs of repairs. If a violation is found to be irreparable or irreversible in nature, the board may impose a fine not to exceed \$5,000 per violation.[10] A certified copy of the board's order recorded in the public records constitutes a lien against the land upon which the violation exists and upon any other real or personal property owned by the violator.[11]

Since sections 162.07 and 162.09, Florida Statutes, contemplate that a code enforcement board or special master may impose a fine only after finding that the board's or special master's order has not been complied with, the city may not alter such procedure by authorizing the board or special master to impose a fine and make repairs when the code enforcement officer has cited the property owner for the initial notice of violation. Only after a hearing, issuance of an order and noncompliance with the order by a certain date, may the fine be levied, repairs made and a lien attach against the property.

In Attorney General Opinion 2002-27, this office was asked whether a local government code inspector is authorized to enter onto private premises to conduct inspections or assure compliance with local technical codes without the consent of the owner or occupant or after having first procured a warrant. After discussing the guarantees against unreasonable search and seizure contained in the Fourth Amendment to the United States Constitution and the need for a warrant in most instances, the opinion concluded that a local government code inspector is not authorized to enter onto any private, commercial or residential property to assure compliance

with or to enforce various technical codes or to conduct administrative inspections or searches without a duly issued search or administrative inspection warrant.[12]

I trust that these informal observations will assist you in addressing the city's amendment of its ordinances.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 162.01, Fla. Stat.

[2] Section 162.13, Fla. Stat.

[3] Section 162.02, Fla. Stat.

[4] See Art. I, s. 18, Fla. Const. *And see*, Op. Att'y Gen. Fla. 89-24 (1989) (municipality may prescribe penalties for violation of its ordinances).

[5] See Op. Att'y Gen. Fla. 2001-77 (2001).

[6] Section 162.06(1) and (2), Fla. Stat.

[7] Section 162.06(3), Fla. Stat.

[8] Section 162.07(4), Fla. Stat.

[9] *Id.*

[10] Section 162.09(2)(a), Fla. Stat. In counties with a population of 50,000 or more, the governing body may adopt by a specified majority an ordinance allowing code enforcement boards or special masters or both the authority to impose fines in excess of the limits set forth in s. 162.09(2)(a); such fines may not exceed \$1,000 per day for first violations, \$5,000 per day for repeat violations, and up to \$15,000 per violation for those found to be irreparable or irreversible in nature. Section 162.09(2)(d), Fla. Stat.

[11] Section 162.09(3), Fla. Stat.

[12] Attorney General Opinion 20002-27 further discussed sections 933.20-933.30, Fla. Stat., authorizing the issuance of limited administrative search warrants, designated "inspection warrant(s)" that must be signed by a judge or committing magistrate and directed to a state or local official to conduct an inspection of any building, place, or structure as required by state or

local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards, but recognized that s. 933.21, Fla. Stat., exempts owner-occupied family residences from the provisions of the act.