

TAB 11

POINT PAPER
ORDINANCE NO. 08-963

PROBLEM:

Currently, Chapter 2, Section 2-88-Duration of Liens (under the Code Enforcement Board provision) permits the duration of a lien to be a maximum of twenty years. Recently enacted legislation now permits the duration of a lien to be thirty years.

BACKGROUND:

On February 26, 2007, City Commission adopted Ordinance No. 07-916 which provides for the priority of City liens and the lien duration. Section 2-68 was created to provide a lien duration of thirty years.

During the proofing of Supplement 20 to the Code, staff determined there was an inconsistency in Chapter 2 regarding lien durations. The proposed ordinance will remedy the different lien durations by deleting redundant language currently stated in Section 2-88.

ALTERNATIVES:

1. Adopt Ordinance No. 08-963 amending the Code Enforcement Board provisions in Chapter 2 to provide the current lien duration period of thirty years.
2. Do nothing and have inconsistent lien duration periods.

RECOMMENDATION:

Staff recommends Alternative 1, the adoption of Ordinance No. 08-963.

**CITY OF PALMETTO
ORDINANCE NO. 08 - 963**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, AMENDING CHAPTER 2, SECTION 2-88 OF THE CITY CODE OF ORDINANCES PERTAINING TO LIENS; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

WHEREAS, the City has the authority to impose liens on property within its jurisdiction and to regulate the nature and direction of such liens consistent with Florida Statutes; and

WHEREAS, on February 26, 2007, the City Commission adopted Ordinance No. 07-916 which stated, among other things, that liens recorded by the City would have a duration of 30 years unless otherwise provided by law; and

WHEREAS, City staff seeks to revise section 2-88 of the City Code of Ordinances to avoid duplication and create consistency within Chapter 2; and

WHEREAS, the City Commission has determined that adoption of this ordinance is necessary and in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF PALMETTO, FLORIDA:

Section 1. Findings of Fact. The above-referenced “whereas” clauses are adopted herein as findings of fact.

Section 2. Revision language. Chapter 2, Section 2-88 of the City of Palmetto Code of Ordinances is hereby amended to read in its entirety as follows:

Sec. 2-88. Fees and costs associated with lien.

Deleted: Duration of

In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in connection with the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien.

Deleted: No lien provided under this division shall continue for a period longer than twenty (20) years after the certified copy of an OIF has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction.

Deleted:

Deleted: in

Deleted: The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

Section 3. Repeal of Inconsistent Ordinances. This Ordinance hereby repeals all ordinances, or parts thereof, in conflict herewith to the extent of such conflict.

Section 4. Severability. It is the intent of this Ordinance to comply with all applicable law and constitutional requirements. If any provision, paragraph or section of this Ordinance or the standards and codes adopted hereby, shall be determined by a court of competent jurisdiction to be inapplicable, illegal, unenforceable or unconstitutional, then to that extent such provisions or portions shall be deemed null and void, but the remaining provisions of this Ordinance shall be in full force and effect as applicable.

Section 7. Effective Date. This Ordinance shall take effect as provided for by law and by City Charter, Section 14 upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

FIRST READING March 17, 2008
PUBLICATION DATE April 7, 2008
SECOND READING April 21, 2008

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF
THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in
regular session assembled, this 21st day of April, 2008.

CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY COMMISSION
OF THE CITY OF PALMETTO

By: _____
LAWRENCE E. BUSTLE, JR. MAYOR

ATTEST: James R. Freeman

By: _____
City Clerk

ORDINANCE NO. 07-916

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA, PROVIDING FOR CITY LIEN PRIORITY; PROVIDING FOR THE DURATION OF SUCH LIEN; PROVIDING FOR THE LIMITED PURPOSE OF CODE REFERENCES IN SUCH LIEN; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palmetto, Florida ("City"), pursuant to Article VIII, Section 2(b), Florida Constitution, has governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, pursuant to the referenced provision of the Florida Constitution, the City may exercise any power for municipal purposes except as otherwise provided by law; and,

WHEREAS, the above-referenced constitutional provision has been implemented by Section 166.021, F.S., et. seq., "The Municipal Home Rule Powers Act," authorizing municipalities to conduct municipal government, perform municipal functions and render municipal services and to exercise any power for municipal purposes except when expressly prohibited by law; and,

WHEREAS, the City has the authority to impose a lien on property within its jurisdiction, for, among other things, a nuisance abatement assessment, a utility fee arrear, and a code enforcement fine; and

WHEREAS, the City imposes a lien on property within its jurisdiction when necessary for the public health, safety, and welfare; and

WHEREAS, to protect the interests of the citizens of the City in collecting on a City-imposed lien, the City Commission finds that it must impose the lien on the property as senior in priority to all other liens, to the fullest extent that the law permits; and

WHEREAS, the City Commission recognizes that to do otherwise may subject the City-imposed lien to other, more senior liens on the same property; and

WHEREAS, the City Commission recognizes the rights of lienholders, who would be senior in priority but for the circumstances giving rise to the City-imposed lien; and

WHEREAS, the City Commission finds, however, that it is of paramount importance and in the best interest of the public health, safety, and welfare to exercise its legal rights, to the fullest extent possible, to impose on a property within its jurisdiction the highest priority lien, when such lien is warranted, and that in doing so, the City Commission can ensure that the rights granted to the public pursuant to such lien may be foreclosed upon and the debt thereto related may be collected free and clear, without issue or encumbrance;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PALMETTO, DULY ASSEMBLED THIS DAY, THE FOLLOWING:

Section 1. Findings of Fact. The above referenced "whereas" clauses are adopted herein as findings of fact.

Section 2. Organization. Division 3, "Liens Generally", is hereby created in Chapter 2, Article III, of the Code of Ordinance of the City of Palmetto. Such Division 2 shall consist of Section 2-66 through Section 2-70. Section 2-71 through Section 2-80 shall remain reserved under Division 1 of Chapter 2, Article IV.

Section 3. New Language. Chapter 2 of the Code of Ordinance of the City of Palmetto is hereby amended by adding Sections 2-66 through 2-69, which sections shall read in their entirety as follows:

Sec. 2-66. Purpose.

It is of paramount importance and in the best interest of the public health, safety, and welfare that when the City is lawfully entitled to impose a lien on a property within its jurisdiction, the

City imposes the lien with the highest (most senior) priority permitted by law.

Sec. 2-67. Lien Priority.

Notwithstanding anything in the Code of Ordinances to the contrary, any lien imposed by the City shall be given the highest, most senior, priority above all other liens presently or in the future imposed on the property, to the fullest extent permitted by law. "Highest, most senior, priority" shall refer to a priority that is equal in dignity to taxes and tax liens.

Sec. 2-68. Lien Period.

Unless otherwise expressly provided for in the provisions authorizing the imposition of a lien, a lien imposed by the City shall be treated as a mortgage and remain in force until the lien is foreclosed upon or the debt represented by the lien is paid. Should the law require a limit on the duration of such lien, the City hereby, for that purpose alone, places a thirty (30) year limit on the lien, or, when required by law, places whatever durational limit such law prescribes.

Sec. 2-69. Code Reference.

A reference to a provision of the Code of Ordinances, cited on the instrument used to record the lien in the public records, shall not determine the authority under which the lien is imposed. Rather, such cite shall be deemed for use for reference purposes alone, and the authority for such lien shall be the law at the time the lien was lawfully imposed, notwithstanding the reference cited in the lien instrument.

Section 4. Codifier Instruction. The codifier of the Code of Ordinances is hereby instructed to insert reference notes at the end of the following sections, which reference notes shall direct the reader to the provisions created in Section 3, above, and clearly note that those provisions relate to liens: Section 2-87, Section 7-160, Section 15-22, Section 16-30, Section 18-5, Section 28-113, Section 29-42, and Section 29-208 of the City Code of Ordinances, and Section 17.14 and Section 17.15 of Appendix B of the City Code of Ordinances.

Section 5. Repeal of Inconsistent Ordinances. This Ordinance hereby repeals all ordinances, or parts thereof, in conflict herewith to the extent of such conflict.

Section 6. Severability. It is the intent of this Ordinance to comply with all applicable law and constitutional requirements. If any provision, paragraph or section of this Ordinance or the standards and codes adopted hereby, shall be determined by a court of competent jurisdiction to be inapplicable, illegal, unenforceable or unconstitutional, then to that extent such provisions or portions shall be deemed null and void, but the remaining provisions of this Ordinance shall be in full force and effect as applicable.

Section 7. Effective Date. This Ordinance shall take effect as provided for by law and by City Charter, Section 14 upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

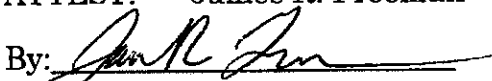
FIRST READING February 5, 2007
PUBLICATION DATE February 16, 2007
SECOND READING February 26, 2007

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this 26th day of February, 2007.

CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY COMMISSION
OF THE CITY OF PALMETTO

By: 
LAWRENCE E. BUSTLE, JR. MAYOR

ATTEST: James R. Freeman

By: 
City Clerk

§ 2-87

PALMETTO CODE

(c) A certified copy of an OIF shall be recorded in the public records of the county and thereafter shall constitute a lien against the real property on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court by the city, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this division shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this division, whichever occurs first. A lien arising from a fine imposed pursuant to this division runs in favor of the city through the city commission and the city commission may authorize the mayor to execute a satisfaction or release of lien entered pursuant to this division on behalf of the city and city commission. After three (3) months from the filing of any such lien which remains unpaid, the CEB, with the approval of the city commission, may authorize the city through the city attorney to foreclose on the lien. No lien created pursuant to the provisions of this division may be imposed or foreclosed on real property which is a homestead under section 4, article X of the Florida Constitution, but may be imposed and foreclosed upon any other real or personal property owned by the violator.

(Ord. No. 592, § 7, 6-15-98; Ord. No. 05-849, § 5, 6-6-05)

Sec. 2-88. Duration of lien.

No lien provided under this division shall continue for a period longer than twenty (20) years after the certified copy of an OIF has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The city shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(Ord. No. 592, § 8, 6-15-98)

Sec. 2-89. Appeals.

The CEB's administrative order finding or not finding a violation of the City's Code, and its order imposing a fine are both final orders. An aggrieved party may appeal any final order of the CEB to the circuit court in and for the county. Such an appeal shall not be a hearing de novo, but shall be limited to the appellate review of the record created before the CEB. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

(Ord. No. 592, § 9, 6-15-98; Ord. No. 05-849, § 6, 6-6-05)

Sec. 2-90. Notices.

(a) All notices required by this division shall be provided to the alleged violator either by:

- (1) Certified mail, return receipt requested. Mailed notice shall be sent to a property owner at the address listed in the county tax collector's records for tax notices, and at