

**CITY OF WINTER HAVEN FACT SHEET**  
**CITY COMMISSION MEETING**  
**September 14, 2009**

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**DATE:** September 4, 2009

**TO:** Honorable Mayor and City Commissioners

**VIA:** *DLG*  
David L. Greene, City Manager  
David Dickey, Community Development Director *DD*

**FROM:** Tanya Willis, Code Enforcement Supervisor  
Jeanne M. Sobierajski, Planner II *JMS*

**SUBJECT:** Ordinance O-09-38: Administrative request to revise Chapter 2, Article VIII of the Code of Ordinances, relating to the Citation Ordinance; and

Ordinance O-09-39: Administrative request to revise Chapter 12, Article I, Section 12-1 of the Code of Ordinances, relating to weeds and undergrowth; and

Ordinance O-09-40: Administrative request to add Sections 12-91 through 12-97 to Chapter 12, Article IV, to the Code of Ordinances, relating to Abandoned Real Properties

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**BACKGROUND:**

From 2006 to 2008, Florida's state court system saw foreclosure filings rise from 74,000 cases in 2006 to 370,000 cases in 2008. It has been reported that one out of every 26 homes in Florida went/will go into foreclosure action in 2008-09. These numbers place Florida second in the nation with respect to residential foreclosures.

Local government is on the front line with respect to combating the effects of foreclosures on the properties themselves as well as the surrounding neighborhood. Three initiatives are proposed to provide Code Enforcement staff with additional tools in their efforts to address abandoned properties.

Citation Ordinance

The Citation Ordinance (O-95-7), adopted on April 10, 1995, established a civil citation process for certain municipal code violations. The ordinance strengthened and enhanced the City's Code Enforcement process by establishing an alternative means of enforcement other than through the typical Chapter 162 process.

The City's current citation process requires that a notice be issued to a violator providing for a time period in which the violation must be corrected. If after the time period, the violation still exists, a citation may be issued. If violations go uncorrected violators will be issued a civil citation similar to a traffic citation. If the civil citation is not paid and/or the violation continues the violator is scheduled to appear in County Court and, if found guilty, can be fined, given community service and charged court fees. If the violation still goes uncorrected, the violator may be held in contempt.

The intent of the proposed revision to the Citation Ordinance is to enhance the existing process by expanding and/or clarifying definitions, procedural requirements, and to include classifications of violations and civil penalties. The current civil penalties have not been reviewed or revised since its adoption in 1995. The proposed revisions remain consistent with Florida Statutes Chapter 162, Article II and include the following notable elements:

- The current ordinance uses a "one size fits all" approach as all violations are treated in the same manner – whether it is a minor parking infraction or something as critical as wetland destruction. The proposed ordinance creates four (4) distinct tiered categories that include escalating penalties depending on the seriousness of the violation. For example, a house without the proper addressing/numbering could be given a \$50.00 citation; on the other hand a citation of \$250.00 could be issued for the unauthorized demolition of a designated historic structure.
- The proposed revision in accordance with §162.21(5) of the Florida Statutes clarifies the process to be followed by a Code Enforcement Officer when issuing a citation for a violation. The proposed ordinance would allow an Officer to issue a citation:
  - i. to any person residing at the violator's home who is fifteen (15) years of age or older or by registered or certified mail; or
  - ii. to a violator at his/her place of business during regular business hours. Employees of the violator shall be deemed an agent of the violator.

### High Grass & Weeds

One of the most visible and frequent violations that Code Enforcement staff deals with is high grass and weeds. Currently, Section 12-1 of the Code of Ordinances states that a sanitary nuisance includes weeds and overgrowth which are over fifteen (15) inches in height. The reason behind this standard is that vegetation of this height serves as a backstop for wind-driven litter. Over the last 12 months, staff has issued over 1,000 Notices of Violation addressing this issue. This is approximately double the number from the previous two years. This violation is typically remedied with a third party contractor who bills the City which in turn places a lien on the subject parcel.

Staff has examined this area of the code, and has reviewed other Cities requirements and has determined that the height should be reduced to 12 inches. It is anticipated that the revision would allow Code Enforcement staff to address this issue sooner - before it becomes particularly unsightly. Out of the five (5) central-Florida cities that

were surveyed, the minimum height (City of Davenport) was 10 inches and the maximum (City of Bartow) was 18 inches. Three (3) of the five (5) cities surveyed allowed a maximum height of 12 inches.

### Abandoned Real Property

The current code enforcement system, which is based on Chapter 162 of Florida Statutes, relies heavily upon monetary fines to encourage compliance from offending homeowners. The complication occurs due to the fact that in most foreclosure actions, the homeowner abandons the property and is not motivated by the typical Code Enforcement fine/lien system. Additionally, Code Enforcement fines/liens are typically subordinate to a mortgage and therefore the local government may not be able to collect its costs and/or fines. Traditional remedies, such as government-ordered nuisance abatement, also rely on the lien system for recapture of public expenditures. Like Code Enforcement fines/liens, nuisance liens are also typically subordinate to a mortgage. In the case of an abandoned residence in foreclosure, because government cost recovery is impractical, for all intents and purposes, any repair or rehabilitation work done by a local government's employees is little more than a taxpayer subsidy for private bank interests.

Normal Chapter 162 Code Enforcement proceedings (i.e., cases that go to the Special Magistrate) take about 3 months to resolve. The statutory process for matters not involving a serious threat to the health, safety and welfare of the community as a whole consist of the following steps:

- (a) Notice to the Violator of the Violation;
- (b) Required Reasonable Time Period to Correct the Violation (set by Code Enforcement);
- (c) Notice to Violator that the Violation has **not** been corrected within Code Enforcement's allocated time and will be submitted to the Special Magistrate;
- (d) Special Magistrate Hearing Convened;
- (e) If a Violation is Found by the Special Magistrate, another chance to correct must be provided; and
- (f) If the Violation continues, an automatic fine may be imposed for each day the Violation exists past the Special Magistrate's final date for compliance.

The typical violation(s) associated with a foreclosure proceeding oftentimes pose an immediate risk to the public health, safety, and welfare. As such, the typical Chapter 162 process may be inadequate.

To address the rising number of abandoned properties, at least 18 local Florida governments have adopted ordinances targeting foreclosures. Staff has reviewed a number of these and is proposing a similar initiative. In general the ordinance requires that when a lender records a Notice of Default (pre-foreclosure action) they must also inspect the property for occupancy. If the lender finds that the property is vacant, the property must be registered with the City and regular maintenance is required. The

registration is key in that it allows the City to identify and work with a responsible local party.

The lender is required to provide the City with the following information:

- (a) Owner's or Agent's phone numbers and mailing address within the State.
- (b) Certify that the property has been inspected.
- (c) Designate and retain an individual or property management company responsible for the security and maintenance of the property. The designation must state the individual or company name, phone number, and local address (PO Box is not acceptable).

**NOTIFICATION:**

All public notification requirements have been met.

**RECOMMENDATION:**

Staff recommends that the City Commission approve Ordinances O-09-38, O-09-39, and O-09-40.

**ATTACHMENTS:**

Ordinance O-09-38 (Citation Ordinance)

Ordinance O-09-39 (Section 12-1)

Ordinance O-09-40 (Abandoned Real Property Ordinance)