



CITY OF RIVIERA BEACH – MEMORANDUM

TO: HON. MAYOR, CHAIRPERSON AND CITY COUNCIL

THROUGH: JONATHAN EVANS, CITY MANAGER, MPA, MBA, ICMA-CM

FROM: DEVELOPMENT SERVICES AND LEGAL DEPARTMENT

SUBJECT: PROCESSES FOR PROPERTY AND CODE COMPLIANCE

DATE: JANUARY 11, 2020

For the January 11, 2020 City Council Workshop, City staff will provide the City Council with information on the City's code compliance process and related processes to address problematic properties in the City. In order to facilitate your discussion of these processes, I am providing the following legal information:

1. Code Compliance: This is the statutory process the City utilizes to address violations of the City's code of ordinances on private property (residential and commercial). Typical violations include landscape, overgrowth, outdoor storage of debris, litter, inoperative vehicles and parking violations. The current process is administered by the Code Compliance division within the Community Services department. The process commences with a notice of violation, which if not timely corrected, results in a hearing before the City's Special Magistrate. If the City's Special Magistrate confirms the violation, the property owner is given time to correct the violation or a fine is assessed if not timely corrected. The current process envisions two hearings after multiple notices to the property owner. The goal of the process is to obtain voluntary compliance; however, fines are assessed if compliance is not achieved. The fines can be converted to a lien which encumbers the property and other property owned by the violator. Foreclosure of the lien is a possibility with some constraints as discussed below. Code Compliance is working with the City Attorney's office on an update to its ordinance and processes to make its process more efficient.

2. Nuisance Abatement: This is the statutory process utilized by the Police Department to address nuisances at private property (commercial and residential) related to drug offenses, prostitution offenses and gang related activity. The process has primarily be used in the past to address drug offenses. The Nuisance Abatement process is initiated by Police Department and was formerly administered by the Code Compliance (when under Police Department). The Police Department will be internally administering the process along with the proposed Chronic Nuisance process (outlined below). The Nuisance Abatement process seeks voluntary compliance of the



nuisance at issue, but if voluntary compliance is not achieved the City's Special Magistrate is used to obtain an order that requires compliance and maintains compliance for at least one year. If a repeat nuisance occurs, fines and costs may be assessed and a lien may be established against the property.

3. **Chronic Nuisance:** This new process will be proposed via an ordinance to address nuisance private properties (commercial and residential) which have excessive calls for service to the Police Department for a variety of offenses. The Police Department and City Attorney's office are working on an ordinance tailored for the City to create a process to be initiated and administered by the Police Department. The process also seeks voluntary compliance from the property owner, but if not achieved the Police Department can utilize the City's Special Magistrate to address enforcement issues.

4. **Unsafe Building Abatement:** This is an established code of ordinance process used by the City's Building Official to address unsafe and unsanitary buildings and structures within the City. The process is initiated by the City's Building Official and ultimately results in a hearing before the City's Special Magistrate to confirm or deny the City's Building Official's unsafe/unsanitary conclusions. In the past, the process has been used to demolish many unsafe structures in the City. The costs for demolition can be established as a lien against the property if not timely paid.

5. **Nuisance Services:** This is a general term used to address the code of ordinance processes used to address private properties (typically vacant) which fail to address code violations related to overgrowth, litter, accumulation of debris (lot clearings), inoperative vehicles and unsecure structures (board and secure). These processes are typically commenced by the Code Compliance division. The City's costs for the services provided under these processes are ultimately assessed against the property at issue via a lien.

All of the processes set forth above are processes the City utilizes to address problematic properties in the City. Voluntary compliance is the goal of each process; however, if voluntary process is not achieved, most of the processes can result a City lien being recorded against the property and/or property owner.

Foreclosure is one option that the City may pursue to enforce its liens. However, foreclosures have their limitations: First, the City cannot foreclose these types of liens against homesteaded property. Homestead properties are constitutionally protected from such foreclosures. Secondly, the City should not foreclose its liens on properties encumbered by a superior mortgage; especially, a superior mortgage that exceeds the value of the property. In those cases, the City would become the property owner subject to the mortgage (i.e., the City will have to pay the mortgage or risk being foreclosed itself). Third, foreclosures are not a quick legal process; can be expensive in terms of legal fees; and, are not guaranteed to result in the City prevailing or recovering the property.



The City Attorney's office recommends utilizing the above processes in tandem to obtain voluntary compliance. Foreclosure is an option but not always available or the best option. The recommended action is to address each property on a case by case basis to determine the most efficient process or processes for obtaining compliance.

It is worthwhile to note that complaints regarding code violations on private property can be made to the Code Compliance division by e-mail, phone and by visiting the division. A service request on the City's website may also be used to notify the division of a complaint. Since 2000, over \$500 million in code compliance fines have accrued. This figure includes fines that have been collected, are outstanding on private property and fines that may be uncollectible (e.g., extinguished by a mortgage foreclosure). The Division estimates approximately 3,000 cases are open (this includes cases that have just been initiated and those cases with proven violations and accruing fines).

If you have any questions with regards to the foregoing, please do not hesitate to call me to discuss.