

RESOLUTION 2021-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LAKE CLARKE SHORES, FLORIDA, STRONGLY OPPOSING SENATE BILL 60 AND HOUSE BILL 883 WHICH UNNECESSARILY PREVENT MUNICIPAL CODE ENFORCEMENT DEPARTMENTS FROM INVESTIGATING ANONYMOUS CODE ENFORCEMENT COMPLAINTS, AND URGING THE FLORIDA LEGISLATURE TO NOT INTERFERE WITH LOCAL MUNICIPALITIES' ABILITY TO PROTECT THE HEALTH, SAFETY, WELFARE, AND VALUE OF THEIR NEIGHBORHOODS, AND TO ALLOW MUNICIPAL CODE ENFORCEMENT DEPARTMENTS TO CONTINUE INVESTIGATING UNLAWFUL CONDITIONS ON PROPERTIES WITHIN THE MUNICIPALITY, REGARDLESS OF THE SOURCE OF COMPLAINTS; DIRECTING THE TOWN CLERK TO DISTRIBUTE COPIES OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida municipalities establish ordinances and code provisions to promote, protect, and improve the health, safety, and welfare of the residents within their respective jurisdictions; and

WHEREAS, the Florida Legislature, with the same intent to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of Florida, enacted Chapter 162, Florida Statutes, which authorizes municipalities to establish code enforcement systems to enforce the codes and ordinances in effect in those local governments; and

WHEREAS, many Florida municipalities, including the Town of Lake Clarke Shores, established code enforcement systems and designated employees to be code enforcement officers/inspectors to promote, protect, and improve the health, safety, and welfare of their respective communities; and

WHEREAS, many of the complaints of code violations received by municipal code enforcement departments are anonymous because the complainants are concerned about creating negative feelings and/or retaliation from neighbors or landlords; and

WHEREAS, municipal code enforcement officers/inspectors will investigate those anonymous complaints or reports to determine if a condition on the property exists that violates the municipality's ordinances or code provisions and, thus, negatively impacts the health, safety, and welfare of the municipality; and

WHEREAS, if, upon investigation of that anonymous complaint, no violation of the municipality's ordinances and code is observed by the code enforcement officer/inspector, the complaint is closed, and no further action is taken with regard to that complaint; and

WHEREAS, if, upon investigation of that anonymous complaint, a violation of the municipality's ordinances or city code is observed by the code enforcement officer or inspector, the violator is notified of the violative condition and given a reasonable opportunity to correct the violative condition without penalty unless the violative condition

poses a serious threat to public health, safety, and welfare, is irreparable or irreversible in nature, or is a repeat violation; and

WHEREAS, the above-described anonymous complaint process promotes, protects, and improves the health, safety, and welfare, as well as the appearance, of the municipality by abating violative conditions while preventing negative feelings and potential retaliation by neighbors or landlords against the complainant; and

WHEREAS, on January 5, 2021, Florida Senator Jennifer Bradley filed Senate Bill 60 (“SB 60”) for consideration during the 2021 Florida Legislative Session that prohibits a code enforcement officer from initiating investigations and enforcement proceedings of potential violations of codes and ordinances by way of anonymous complaints, and requires persons who report potential violations of codes and ordinances to provide their name and address to the governing body before an investigation occurs, unless the code enforcement officer has reason to believe that a violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources; and

WHEREAS, on February 10, 2021, Florida Representative Tobin Overdorf introduced House Bill 883 (“HB 883”) with preemptions identical to those in Senate Bill 60; and

WHEREAS, prohibiting both the investigation and enforcement of code violations reported by anonymous sources will have a serious adverse effect on the promotion, protection, and improvement of the health, safety, and welfare of the residents of municipalities, including the Town of Lake Clarke Shores, because legitimate complaints will not be reported due to fear of retaliation from a neighbor and landlord; and

WHEREAS, the exception contained in SB 60 and HB 883 allowing a code inspector to investigate an anonymous report if the inspector “has reason to believe that the violation presents an imminent threat to public health, safety, or welfare or imminent destruction of habitat or sensitive resources” creates a “Catch-22” because the inspector cannot assess whether the anonymously reported violation presents an imminent threat without investigating, yet the inspector is prohibited from investigating because the report is anonymous; and

WHEREAS, Sections 162.21 and 166.0415, Florida Statutes, already provide, respectively, that a code enforcement inspector may issue a civil citation “upon personal investigation, if there is reasonable cause to believe that a person has committed a civil infraction in violation of a duly enacted code or ordinance” and “when such code enforcement officer or inspector has actual knowledge that a violation has been committed”; and

WHEREAS, municipalities should continue to have the power to implement the code enforcement system that best promotes, protects, and improves the health, safety, and welfare of the residents of the municipality, and not be limited to initiating investigations and enforcement proceedings from anonymous reports only when the threat to health, safety, and welfare is imminent.

