



AGENDA
CODE ENFORCEMENT & APPEALS BOARD HEARING
NOVEMBER 7, 2019
5:30 PM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034

- 1. CALL TO ORDER / ROLL CALL / DETERMINATION OF A QUORUM**
- 2. APPROVAL OF MINUTES**
 - 2.1 The minutes for October 3, 2019, are presented for approval.
- 3. OLD BUSINESS**
- 4. NEW BUSINESS**
 - 4.1 **DAB TRUST, 128 N. 13TH TERRACE, CASE 2019-0242.** Violation(s) of the City of Fernandina Beach Code of Ordinances exist: Section 42-117, Exterior Structure (Maintenance) and Section 42-116, Duty to Maintain Property. *Requesting Board determination of the case.*
- 5. BOARD BUSINESS**
 - 5.1 **CODE AMENDMENT - CODE ENFORCEMENT AND APPEALS BOARD LIENS - ORDINANCE 2019-23** *Discussion of implementation of new ordinance.*
- 6. ADJOURNMENT**

Quasi-Judicial – Denotes that the item must be conducted as a Quasi -Judicial hearing in accordance with City Commission established procedure and Florida Statutes.

All members of the public are invited to be present and be heard. Non -English speaking individuals may request a language or sign interpreter at least ten (10) working days prior to this meeting. Persons with disabilities requiring accommodations in order to participate should contact the City Clerk at (904) 310 - 3115 or TTY/TDD 711 (for the hearing or speech impaired).

For information regarding this matter, please contact the Community Development Department (904) 310-3135. If any person decides to appeal any decision made by the Code Enforcement & Appeals Board with respect to any matter considered at such meeting he/she will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be made.

1. Call to Order/ Roll Call/Determination of Quorum – The meeting was called to order at 5:34 pm.

Council Members Present

Vice Chair Adam Kaufman
Marlene Chapman
Gail Shults

Henry Byrd
Nicole Kresse

Council Members Absent

Chair Buddy Boyd

Cynthia Crow

Others Present

Tammi E. Bach, City Attorney
Katie Newton, Recording Secretary
Ashley Manning, Recording Secretary

George Wells, Code Enforcement Officer
Michelle Forstrom, Code Enforcement Director

2. Approval of Minutes – According to the agenda support documents, the Minutes for the August 1, 2019, Regular Hearing were presented for approval. **A motion was made by Member Chapman, seconded by Member Byrd, to approve the Minutes. Vote upon passage of the motion was taken by voice vote being all ayes, carried.**

Vice Chair Kaufman assumed the role of Chair in Chair Boyd's absence. He asked for any changes to the agenda, and there were none. He asked the Board to disclose ex-parte communications, and there were none. City Attorney Bach explained the quasi judicial procedures. Ms. Newton swore in witnesses.

3. Old Business

3.1 ELVIRA I. NOWLIN, 407 S. 13TH TERRACE, CASE 18-00094. Violation(s) of the City of Fernandina Beach Code of Ordinances exist: Section 42-116 (a) Cleaning of lots, maintenance of structures. *Property owner requests a reduction in fines.*

Mr. Wells presented on behalf of the City. He described the history of the case, which had been active since September 2018. When he was doing other inspections, he noticed that she was in the driveway so he stopped and talked to her. He deferred to Ms. Nowlin to explain her side of the case.

Elvira Nowlin, property owner, stated she was not aware there was a violation against her. Her son was scrapping and brought lots of debris in the yard and she was upset about it. She stated that she was not aware that there was a code case anymore and she did not receive notice. It is cleaned up now, with both trucks out of the yard.

Member Kresse asked if the property was in compliance. Mr. Wells stated that as of today it was and looks wonderful. Chair Kaufman stated that a lien had not been filed. He asked for staff recommendation,

Mr. Wells stated that the City recommends a reduction of fines from \$18,000 to \$5,000 plus administrative fees.

Member Chapman asked if there was any proof she ever saw paperwork. Mr. Wells stated they posted on the door.

Member Byrd asked whether the CEAB was responsible for making the decision to reduce fines. CA Bach said yes because the lien was not recorded. Member Byrd stated that the Board is about compliance.

Ms. Nowlin said that she couldn't come up with \$5,000 or \$18,000 and she did not know that the fines had been accumulating. She said that she did not get the mail and never saw a posting. She believes her sons may have removed the posting.

Chair Kaufman asked if a motion was not made, would the fines stay at \$18,000 and a lien be filed against the property. Then, Ms. Nowlin might have an opportunity to go before the City Commission to request a reduction.

Member Chapman asked if there was a figure she could come up with to try to work it out before going to Commission. Ms. Nowlin said she could afford \$1000. Member Kresse explained that she was in favor of a reduction and typically administrative fees are not waived.

A motion was made by Member Kresse, seconded by Member Shults, to uphold the administrative fees of \$248.52 and reduce the fines to \$750.00.

More discussion ensued about Ms. Nowlin's ability to pay and the motion was amended as per below.

A motion was made by Member Kresse, seconded by Member Shults, to uphold the administrative fees of \$248.52 and reduce the fines to \$500.00. A vote was taken and passed, all being in favor.

Chair Kaufman stated that the City doesn't have a means test for reducing fines and this may be problematic in the future. CA Bach said that a lien will be filed if payment is not made within 30 days.

3.2 CECILIA DAVIS-TAYLOR, 112 S. 9TH STREET, CASE 2019-0073. Violation(s) of the City of Fernandina Beach Code of Ordinances exist: Section 42-116 Duty to Maintain Property. Property owner and Code Enforcement to provide update.

Chair Kaufman read the case. Mr. Wells presented for the City. He complimented Ms. Tammi Kosack and her team of volunteers who worked to clean up the yard. He showed pictures, and said that the property was now in compliance with 42-116 so the fines set to begin in November would not have to take effect.

Chair Kaufman asked if there were any other issues with the property. Mr. Wells stated that the demolition of the sheds was supposed to go before the HDC in the coming month for permits, and there might be something down the line regarding a food truck in the back yard. The shed and garage will probably be addressed in December.

4. New Business

4.1 JORDAN WILLIE E. SMITH EST C/O EMILY MCDONALD, 102 N. 10TH STREET, CASE 2019-0278. Violation(s) of the City of Fernandina Beach Code of Ordinances exist: Section 42-116 Duty to Maintain Property. Requesting Board determination of the case.

Chair Kaufman read the case. Mr. Wells presented for the City and entered evidence into the record. He showed photos and explained that mail is not being accepted, but they have posted the property.

4.2 WILLIAM WEBB, 2004 HIGHLAND DRIVE, CASE 2019-0292. Violation(s) of the City of Fernandina Beach Code of Ordinances exist: Section 42-117 Exterior Structure (Maintenance). Requesting Board determination of the case.

Chair Kaufman read the case. Mr. Wells presented for the City and entered evidence into the record. The case started in July 2019 as a proactive sweep. A tarp covered the roof. Code Enforcement gave the owner until August 3 to come into compliance. There was no change and so they sent a notice of violation August 7. As of today, no change has been made but there are building material such as shingles in yard, although no building permits have been pulled that Mr. Wells is aware of.

He explained that both the Building department and Code Enforcement had tried to get financing for the property owner through Builders Care and they were denied. Mr. Webb has been unable to secure financing, but there have been multiple complaints at this point so case has to move forward. Staff recommends fines of \$75 per day along with administrative fees. He knows he needs a permit. Mr. Wells said that according to Mr. Webb the roof damage was storm damage.

Mr. Wells would assess fines beginning in 30 days because of the shingles in yard, which may be an indicator work could be done soon.

A motion was made by Member Kresse, seconded by Member Chapman, to find the property in violation of Code of Ordinances Section 42-117 Exterior Structure (Maintenance). A vote was taken and passed, all being in favor.

A motion was made by Member Kresse, seconded by Member Chapman, to assess administrative fees and fines of \$75 per day beginning November 2 if not in compliance with 42-116 by that date. A vote was taken and passed, all being in favor.

4.3 DEXTER & REGINA N. RAINEY, 1002 CEDAR STREET, CASE 2019-0355. Violation(s) of the City of Fernandina Beach Code of Ordinances exist: 42-173, Wrecked or inoperable vehicles in private property declared a nuisance and prohibited. *Requesting Board determination of the case.*

Chair Kaufman read the case. Mr. Wells presented for the City and introduced evidence into the record. The tag of the Dodge pickup in the yard expired in June 2018. He received a phone call from Mr. Rainey on August 20 about the notice, but has had no further communication from him. As of today, the violation remains. Staff recommends assessing administrative fees and fines of \$50 per day.

A motion was made by Member Kresse, seconded by Member Byrd, to find the property in violation of Code of Ordinances Section 42-173 Wrecked or inoperable motor vehicles declared a nuisance and prohibited. A vote was taken and passed, all being in favor.

A motion was made by Member Kresse, seconded by Member Chapman, to assess administrative fees and fines of \$50 per day beginning October 11 if not in compliance. A vote was taken and passed, all being in favor.

5. Board Business

5.1 CODE AMENDMENT - CODE ENFORCEMENT AND APPEALS BOARD LIENS - ORDINANCE 2019-23 *City Attorney will provide an update on a code amendment affecting the Board.*

CA Bach explained the status of municipal liens in the state of Florida. She discussed the issue regarding who can reduce fines and liens. The Code Board may reduce fines. Once a lien has been filed, the Commission is the only one who can reduce/satisfy a lien. The City does not have a set timeline of when liens got recorded. With the proposed ordinance, 30 days after meeting, the lien will be recorded. Ms. Forstrom explained that the findings of fact will be recorded which constitutes the lien.

Chair Kaufman asked if there would be a period of time when property owners would be able to come to CEAB to for reduction. CA Bach said no.

CA Bach discussed legal and practical effect of lien. Once the document is filed for recording, then it becomes the City Commission.

Chair Kaufman thought it interesting that there was no opportunity for property owners to come to the Board first and that the Commission would hear a lot of cases in the future.

Member Byrd said one of the most controversial things the Board does is to reduce fines. The Board has been taking lot of criticism for reducing fines and it is okay with him to have the Commission handle it. He says fines staff recommends are fair.

The Board had further discussion about process with new ordinance.

The overall feeling of board is that they would be comfortable with a 30 day appeal to Board before it goes to Commission.

Ms. Newton introduced Ashley Manning who will be taking over recording secretary duties in the winter.

6. Adjournment - There being no further business to come before the Code Enforcement and Appeals Board, the meeting was adjourned at 7:04 p.m.

DRAFT

Code Enforcement & Appeals Board Minutes
Regular Hearing
October 3, 2019
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Katie Newton, Recording Secretary

Carlton “Buddy” Boyd, Chair

STAFF REPORT
Case 2019-0242
City of Fernandina Beach Code Enforcement & Appeals Board
November 7, 2019

Violation Information

Owner: DAB Trust
128 N. 13th Terrace
Fernandina Beach, Florida 32034

Violation: City of Fernandina Beach – Code Of Ordinances, Section 42-117 - Exterior Structure (Maintenance) & 42-116 - Duty to Maintain Property

Location: 128 N. 13th Terrace, Fernandina Beach, Florida 32034

Summary and Background Information

May 31, 2019 - During a proactive sweep I observed this property had yard overgrowth and needed to be cut and cleaned. Vegetation was growing on the roof, along with vines growing up the side of the house needing to be removed. The house had peeling paint all over needing to be scraped, sealed and painted. The owner was given 30 days to correct the violations. Photos were taken of the violations.

July 1, 2019 - I received a phone call from the owner requesting additional time to complete the repairs, which I granted. An inspection of the property showed they were working on the yard, but nothing had been done to the house. The son was there working and mentioned they had arranged for someone to paint the house.

September 17, 2019 – A NOV/NOH letter was sent to the owner via certified mail giving the owner until October 17, 2019 to comply or come before the CEAB on November 7, 2019. The return receipt was returned with an owners' signature.

October 17, 2019 - A NOV/NOH inspection was performed. – The property was still in violation.

October 30, 2019 - A pre-agenda inspection was performed. – No change. Photos were taken.

October 30, 2019 – I received a call from the owner about the hearing on 11/7/19. I told the owner to come and present his case before the Code Board and their decision would be binding.

Conclusion:

The house and property are still in violation of 42-117 & 42-116 as of the pre-agenda inspection on 10-30/19.

Recommendation:

The City recommends a fine of \$ 50.00 a day for violation 42-116 and \$ 75.00 a day for violation 42-117, along with administration fees incurred.

Submitted by:


George Wells



CITY OF FERNANDINA BEACH

George Wells

Code Enforcement Department

Code Enforcement Officer

**ADMINISTRATIVE FEES INCURRED FROM
128 N. 13th Terrace
As of 11/07/19
CODE CASE #2019-0242**

STAFF PERSONNEL OR ITEMS

	<u># OF UNITS OR HOURS</u>	<u>PRICE OR RATE PER HOUR</u>	<u>TOTAL</u>
Michelle Forstrom, Code Enforcement Manager	1	\$25.24	\$25.24
George Wells, Code Compliance Officers	4.5	\$22.50	\$101.25
Katie Newton, Board Secretary/Legal Assistant	1	\$23.40	\$23.40
Tammi Bach, City Attorney	0.5	\$68.64	\$34.32
 Record Findings of Facts with the Clerk of Circuit Court of Nassau County	 1	 \$10.00	 \$10.00
 Certified letters mailed	 1	 \$6.80	 \$6.80
First Class letters mailed	1	\$0.50	<u>\$0.50</u>

TOTAL ADMINISTRATIVE FEES DUE

\$201.51

****TOTAL AMOUNT DUE MUST BE PAID IN FULL TO CLOSE THIS CASE AND AVOID A LIEN ON THIS PROPERTY****



CODE ENFORCEMENT & APPEALS BOARD
NOTICE OF VIOLATION/NOTICE OF HEARING

September 17, 2019

Case Number: CODE-2019-0242

Cert. #: 7018 1830 0001 9844 2017

IN THE MATTER OF:

D A B Trust
128 N. 13th Terrace
Fernandina Beach, FL 32034

PREMISES: 128 N 13TH TER FERNANDINA BEACH, FL 32034

The brief legal description of the real property upon which this violation occurred is: BLK 244 TRACT G & N 12 FT OF TRACT H OF LOT 6 & S 5 FT OF TRACT A OF LOT 6 IN OR 723/476

The Code Enforcement office of the City of Fernandina Beach is notifying you of alleged violation(s) of the City of Fernandina Beach Code of Ordinances and/or the City of Fernandina Beach Land Development Code and contends that the following violation(s) exist:

42-116	Duty to Maintain Property Cut all high grass and weeds on property. Remove all vines growing on the house. Remove all vegetation growing on the roof.	By 10/17/2019
42-117	Exterior Structure (Maintenance) Scrape, seal and paint all peeling paint areas on the exterior of the house. Repair and replace all rotten wood. Pull all necessary building permits as needed.	By 10/17/2019

(These can be found on the City's website: www.fbfl.us/code).

If this office is not notified of compliance by you, this department will refer this matter to the Code Enforcement & Appeals Board for legal action at the date and time listed below.

DATE: November 7, 2019
TIME: 5:30 PM
LOCATION: City Commission Chambers, 204 Ash St

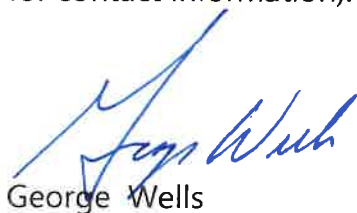
YOU HAVE THE RIGHT to appear before the Board at that time to answer and defend the allegations that you have violated the above cited provision(s) of the Code of Ordinances/Land Development Code.

If the Board finds that you are in violation, they will consider all appropriate actions required to bring the property into compliance, which may include, but is not limited to the recovery of fees, fines which may be imposed for the duration of the non-compliance (NOT TO EXCEED \$250.00 per day, per violation), and in some cases demolition.

Please be advised that the Rules of the Code Enforcement & Appeals Board and the Code of Ordinances of the City of Fernandina Beach govern the procedures of the Board.

PLEASE GOVERN YOUR SELF ACCORDINGLY.

If you have any questions, please feel free to contact me (please see my attached business card for contact information).



George Wells

Code Compliance Officer

Hearing impaired or non-English speaking individuals may request a language or sign interpreter at least (10) ten working days prior to this hearing. Please contact the City Clerk's office at (904) 310-3115.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X <i>Fred Brown</i> ☐ Agent ☒ Addressee	
1. Article Addressed to: D A B Trust 128 N 13th Terrace Fernandina Beach, FL 32034		B. Received by (Printed Name) C. Date of Delivery 9-19-14	
2. Article Number (Transfer from earlier label) 7018 1830 0001 9844 2017		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Mail Restricted Delivery (over \$500)		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
9590 9402 4930 9063 2026 40			
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®	
OFFICIAL USE	
Certified Mail Fee \$ <u>31.45</u>	
Extra Services & Fees (check box, add fee)	
☒ Return Receipt (hardcopy) \$ <u>2.75</u>	
☐ Return Receipt (electronic) \$ _____	
☐ Certified Mail Restricted Delivery \$ _____	
☐ Adult Signature Required \$ _____	
☐ Adult Signature Restricted Delivery \$ _____	
Postage \$ <u>50</u>	
Total Postage and Fees \$ <u>61.70</u>	
Sent To	
Street and Apt. No.	
City, State, ZIP+4	
PS Form 3800, July 2015 PSN 7530-02-000-9053	

In Pursuit of Health, Safety & Quality of Community



CITY OF FERNANDINA BEACH
CODE ENFORCEMENT
204 Ash Street

(904) 310-3442

gwells@fbfl.city www.fbfl.us/Code

NOTICE OF VISIT

Address: 1285 13th Ave

Date: 5-31-19

Time: 1:15

AM ☒ PM

THIS IS TO SERVE AS A WARNING THAT YOU MAY BE IN
VIOLATION OF THE FOLLOWING CITY ORDINANCE(S):

REASON FOR VISIT:

☒	Duty to Maintain Property	<u>cut all high grass + weeds</u>	42-116
☒	Exterior Structure (Maintenance) Repair	<u>Peeling paint on house</u>	42-117
☐	Component Serviceability	<u>Scrape + paint all peeling paint</u>	42-118
☐	Rubbish and Garbage		42-119
☐	Pest Elimination		42-120
☐	Vacant Structures and Land (Maintenance)		42-121
☐	Swimming Pools (Maintenance)		42-122
☐	Water and Electric Service		42-123
☐	Recreational Vehicle, Boat, Trailer or Similar Vehicle Remove or store in a proper structure or in side or rear yard		701.05 LDC
☐	Accessibility of Garbage and Recycle Containers		66-94
☐	No Visible Address Numbers		45-1 & 701.02 LDC
☐	Wrecked or inoperable motor vehicles on private property declared a nuisance and prohibited - Remove, repair, or register vehicle & put current tags on it		42-125
☐	Other		

Please contact George Wells, Code Compliance Officer at (904)
310-3442 or at gwells@fbfl.city, within 30 Days of this notice,
by 6-30 20 19 to discuss compliance with
the above listed issue. Failure to do so will result in an official
written notice with a possible outcome of fines.

Comments:

Cut + clear all high grass, weeds + remove
Vines growing on house - entire property
Scrape, seal + paint all peeling paint
Wells

Code Compliance Officer

5.31.2019 13:16









10.30.2019 10:58



10.30.2019 10:59

CITY COMMISSION AGENDA ITEM

City of Fernandina Beach



SUBJECT: Ordinance 2019-23
Code Amendment - Code Enforcement and Appeals Board Liens

ITEM TYPE: Ordinance (w/o fiscal impact)

REQUESTED ACTION: Consider Ordinance 2019-23 at Second Reading.

SYNOPSIS: This Ordinance provides a process for requesting reduction and settlement of code enforcement liens from the City Commission. The Ordinance also codifies the authority of the City Manager to execute releases of liens when liens are paid in full. Additionally, the Ordinance gives the City Manager authority to negotiate interest on liens. Code enforcement liens do not accrue interest.

This Ordinance was approved at First Reading by the City Commission at its Regular Meeting on September 17, 2019.

FISCAL IMPACT: None

CITY ATTORNEY COMMENTS: Same as above.

CITY MANAGER RECOMMENDATION(S): I recommend that the City Commission enact proposed Ordinance 2019-23 at Second Reading.

Michelle Forstrom, Code Enforcement Director 10/31/2019

Date: October 23, 2019

Submitted By: Katie Newton, Legal Assistant

COMMISSION ACTION: Approve

ORDINANCE 2019-23

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, REGARDING AUTHORITY TO SATISFY CODE ENFORCEMENT AND OTHER LIENS AND GENERALLY CODE ENFORCEMENT BOARD; REPEALING SECTION 1-13, MUNICIPAL LIEN PRIORITY, DUE TO COURT RULING PROVIDING THAT MUNICIPAL LIENS ARE NOT SUPERPRIORITY LIENS; CREATING SECTION 1-14 APPLICATION FOR SATISFACTION OF LIENS, REDUCTION OF FINES AND SETTLEMENT OF LIENS; AMENDING SECTION 2-386 REMOVAL OF MEMBERS; REPEALING ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF FERNANDINA BEACH, FLORIDA, HEREBY ENACTS:

SECTION 1. It is hereby proposed that Chapter 1 of the Code of Ordinances, City of Fernandina Beach Florida, is hereby amended by repealing Section 1-13, Municipal liens, as follows:

~~Sec. 1-13. – Municipal liens, priority.~~

~~Each and every municipal lien existing from the delivery of municipal services, including liens for special assessments, code enforcement administrative costs and fees liens, excluding liens for code enforcement fines, shall be deemed to be superior to any other lien, including mortgages, and such lien shall survive any action to foreclose such inferior lien, whether such inferior lien arises by virtue of a mortgage, mechanic's lien or other security interest in real property; provided, however, that nothing contained in this section shall be construed to be expressly prohibited by any law or statute respecting the priority of liens, and where such law or statute specifically provides for the priorities of liens, the provisions of this section shall be construed to comply therewith. Prior to the city recording in the public records municipal code enforcement liens for costs and fees against real property that shall be deemed priority liens pursuant to this section, the city staff shall perform an owners and encumbrances simple title search and notify any mortgagees found in such search in writing at least ten days prior to recording such liens. This section does not apply to or affect any municipal liens deemed to be priority liens pursuant to Florida Statutes. This section shall not be applied retroactively and shall not affect municipal code enforcement liens for fees and costs deemed priority liens pursuant to this section, or any other lien, including mortgages, recorded in the public records prior to the effective date of this section.~~

SECTION 2. It is hereby proposed that Chapter 1 of the Code of Ordinances, City of Fernandina Beach Florida, is hereby amended by adding a section to be numbered Section 1-14, which section reads as follows:

Sec. 1-14. - Application for satisfaction of liens and process for reduction of code enforcement fines and settlement of code enforcement liens.

(a) *Liens other than code enforcement.* Where a lien has been recorded by the City on real or personal property for reasons other than code enforcement fines and administrative fees, the City Manager is authorized to negotiate, in his/her sole discretion, the amount of interest to be paid to the City on the lien and execute and record a satisfaction of lien upon full payment by property owner of the entire principal amount and any negotiated interest amount.

(b) *Recording Code Enforcement Board Liens.* The City records certified copies of Code Enforcement Board orders imposing fines and administrative fees generally within thirty (30) days of the Code Enforcement Board issuing such orders. Where a certified copy of an order imposing a fine, as described in Section 162.09, Fla. Stats, has been recorded in the public records and has become a lien against the land and/or property of the violator/property owner, such violator/property owner may apply for a satisfaction or settlement of such lien as follows:

(1) Upon full payment by the violator/property owner of the code enforcement fine imposed in accordance with this section and written confirmation from the Code Compliance Department that the violation(s) is in compliance, the City Manager or designee is hereby authorized to execute and record a satisfaction of lien.

(2) Upon request for settlement of a lien (reduction of lien amount) resulting from a code enforcement board order with a fine imposed in accordance with Section 162.09, Fla. Stats., the violator/property owner must submit a written application to the City Manager or designee on a form prescribed by the City. The City Commission hears requests for code enforcement fine reductions and lien settlements.

(3) The application must include the following:

- (a) A copy of the order imposing a lien upon the property;
- (b) The code enforcement case number;
- (c) The date upon which the violator/property owner brought the subject property into compliance with the City Code;
- (c) The factual basis upon which the violator/property owner believes the application for reduction of the lien should be granted;
- (d) The terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
- (e) The reasons, if any, compliance was not obtained prior to the order of fine being recorded; and
- (f) The amount of the settlement (reduction in fine) sought by the violator/property owner; and
- (g) This application must be executed under oath and sworn to in the presence of a notary public.

(4) Upon receipt of the application for settlement of lien, the City Manager or designee must confirm through the Code Enforcement Director that the violation which resulted in the order imposing the fine has been brought into compliance.

(5) The City Manager or designee must then review and consider the application for settlement of lien for the threshold criteria as follows:

- (a) If a property owner has purchased property on which a lien was recorded, a waiver or reduction on lien will not be granted as in such cases, the lien should have been considered in reaching a purchase price;
- (b) If a title insurance policy is issued upon the purchase of the property and the title insurance policy failed to identify or consider the lien, a waiver of reduction in lien will not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction of waiver would place the City in the position of indemnifying the title insurer against its losses, which losses should be reflected in premium charges; or
- (c) A request for waiver or reduction in lien will not be granted if the City Commission has previously reduced the amount of lien. This statement applies whether or not the request is received from the original applicant for reduction or a subsequent applicant.

(6) If the City Manager or designee determines that the request fails any one of the above-established guidelines, the City Manager or designee must issue a written denial of the request.

(7) If the City Manager or designee determines that the request does not fall under any one of the above-established guidelines, the City Manager or designee must review the application for settlement of lien further. The City Manager or designee, in determining its recommendations, must consider the following factors:

- (1) The gravity of the violation;
- (2) The time in which it took the violator/property owner to come into compliance;
- (3) The accrued amount of the code enforcement lien; as compared to the value of the property and
- (4) Any previous code violations.

(8) The City Manager or designee will place the application for settlement of lien upon the agenda of the next regularly scheduled and available City Commission meeting. The City Commission may take action based solely upon the sworn application, recommendation of the City Manager or designee and the applicant will have the opportunity to address the City

Commission as to the factors warranting settlement of lien in considering the application for settlement of lien.

(9) The City Commission may reduce the amount of the lien, waive the full amount of the fines or continue the lien in the full amount, except that the City Commission will not reduce or waive administrative fees/costs, repair costs or nuisance abatement costs to the City.

(10) When a lien is satisfied as a result of full payment, reduced payment or waiver of fines as ordered by the City Commission, the City will record the satisfaction/release of lien in the Public Records of Nassau County, Florida and provide a copy to the property owner.

(11) A lien settlement request must not be used for purposes of rehearing the entire case *de novo* or as an appeal of the original order imposing the fine. A hearing on a request for a lien settlement cannot be used as a substitute for an appeal.

(c) *Determination.* The City Commission must enter an order granting or denying the requested settlement of lien in whole or in part, or such relief as the City Commission may deem appropriate without reducing or waiving administrative fees, repair costs or nuisance abatement costs incurred by the City. The City Commission must consider all relevant factors to determine what relief, if any, is appropriate including, but not limited to:

- (1) The nature and gravity of the violation;
- (2) Any actions taken by the owner to correct the violation;
- (3) The length of time between the ordered compliance date and the date the violation was brought into compliance;
- (4) Any actual costs expended by the owner to cure the violation as provided by supporting documentation, including payment of city licensing or permit fees;
- (5) Any other prior or current violations committed by the owner on the subject property or upon any other property owned by the owner within the city;
- (6) Repeat violations committed by the same owner regardless of whether it is on the same property;
- (7) Costs incurred by the city to abate the violation and prosecute the case, including administrative and overhead expenditures;

(d) Any reduction of fines granted must be contingent upon payment within a specified time period. Failure to remit payment to the city by the date ordered will cause the original fine not to be reduced.

(e) The request for fine reduction and settlement of lien must present a clear and convincing case, which is determined by the City Commission; otherwise it must be denied.

(f) If relief is denied based upon the merits of the claim, such denial must be with prejudice and the matter will not be reheard.

(g) If the fine reduction and settlement of lien request is based upon financial inability, a financial affidavit must be filed with supplemental information that may include bank account statements of at least six (6) months and federal income tax returns and W-2 statements for the last three (3) years.

(h) Appeal. Reduction under this section is strictly discretionary by the City Commission. The application must include a waiver of the right, if any, to seek judicial review of the City Commission's discretionary decision whether or not to reduce the fine and if so, by how much.

SECTION 3. It is hereby proposed that Section 2-386 of the Code of Ordinances, City of Fernandina Beach, Florida is hereby amended and reads as follows:

Sec. 2-386. - Removal of members.

A member of the code enforcement and appeals board shall be automatically removed from the board and the member's ~~office~~ seat declared vacant under any of the following conditions:

- (1) If the member moves outside the city.
- (2) ~~If a member fails to attend two of three successive meetings, unless excused by the chair or the city manager or his/her designee.~~ If a member has three (3) absences at the board's regular meetings in one (1) calendar year.

SECTION 4. All Ordinances or parts of Ordinances and all Resolutions in conflict herewith be and the same are hereby repealed.

SECTION 5. SEVERABILITY. If any provision or portion of the Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of the Ordinance ~~shall~~ remain in full force and effect.

SECTION 6. EFFECTIVE DATE. This Ordinance takes effect immediately upon its final enactment.

ENACTED this 15th day of October, 2019.

ATTEST:

CITY OF FERNANDINA BEACH

Caroline Best
City Clerk

John A. Miller
Commissioner-Mayor

APPROVED AS TO FORM & LEGALITY:



Tammi E. Bach
City Attorney



BEFORE THE CITY OF FERNANDINA BEACH CITY COMMISSION

City of Fernandina Beach,

Petitioner,

vs.

**CASE NO.
CEAB-CASENO**

PROPERTY OWNER NAME

Respondent(s)

ORDER REDUCING PENALTY/LIEN

THIS CAUSE, was heard by the City Commission of the City of Fernandina Beach on (date) pursuant to FS 162.09(1). Upon review of the record in this cause, the City Commission finds as follows:

1. Respondent has failed to comply with the Findings of Fact set forth by the Code Enforcement & Appeals Board by the time set.
2. Administrative costs in the total amount of \$_____ were incurred in prosecuting the case.
3. Fines accrued in the total amount of \$_____.
4. The City Commission agrees to reduce the fine to be paid to \$_____ if payment is received no later than 30 days from the date of this hearing.
5. The total amount to be paid is \$_____.
6. **If penalty is not paid by that date, the full penalty of \$_____ will be reinstated.**

The aforementioned penalties are for the violation(s) that existed at (PROPERTY ADDRESS), described as (LEGAL DESCRIPTION), Parcel ID# _____.



It is the order of the City Commission that the fine and costs imposed herein shall constitute a lien against all real property, in Nassau County, Florida, owned by the Respondent, and all personal property owned by the Respondent in Nassau County, Florida, pursuant to Section 162.09(3) Florida Statutes, and the City of Fernandina Beach Code of Ordinances Section 2-392; and the City Clerk is directed to record a true copy of this order in the Public Records of Nassau County, Florida.

DONE AND ORDERED in by the City of Fernandina Beach City Commission, City of Fernandina Beach, Florida on (DATE).

ATTEST:

CITY OF FERNANDINA BEACH

Caroline Best, Clerk

John A. Miller
Mayor-Commissioner

APPROVED AS TO FORM AND LEGALITY:

Tammi E. Bach, City Attorney



CASE NO. CODE - _____

**CITY COMMISSION HEARING
SETTLEMENT OF LIEN REQUEST**

IF THE PROPERTY IS NOT IN COMPLIANCE, THE CITY COMMISSION WILL NOT CONSIDER A REQUEST FOR REDUCTION.

INSTRUCTIONS: Please fill in all of the pages of this form completely. Be specific when writing your statement. Please return it to the Code Enforcement Director at 516 South 10th Street, Fernandina Beach, FL 32034 or *mailing address* at 204 Ash Street, Fernandina Beach, FL 32034 **The Code Enforcement Director must receive the request at least 30 days prior to a scheduled City Commission Meeting in order for your case to be scheduled for the hearing.** You will be notified in writing of the City Commission's decision within 10 days after the hearing. If you are claiming medical or financial hardship, attach supporting documentation (i.e. a doctor's statement or proof of income). If you have any questions, please call the Code Enforcement Department at (904) 310-3440. **The City Commission will consider requests for reduction of fine only one time for each case. The City Commission's decision shall be the final action on the case.**

Property Owner's Name _____

Property Owner's Email _____

Property Address _____

Daytime telephone number _____

Hardship claimed? _____ medical _____ financial _____ other (specify) _____

If the property owner is unable to complete this form, list the name of the person who is authorized to act for the property owner and their relationship. Attach a notarized affidavit from the property owner authorizing the representation. _____

YOU SHOULD BE PRESENT AT THE HEARING TO ANSWER ANY QUESTIONS THE CITY COMMISSION MAY HAVE CONCERNING THIS REQUEST. YOUR ONLY OPPORTUNITY TO ADDRESS THE CITY COMMISSION WILL BE IN RESPONSE TO THEIR QUESTIONS. IT IS IN YOUR BEST INTEREST TO MAKE CERTAIN THAT THIS FORM AND ANY ATTACHMENTS COMPLETELY SET FORTH YOUR POSITION.

Complete statements on pages 2-4. You should include the reasons why you did not comply with the Code Enforcement and Appeals Board's Original Order within the time specified.

- 1. Explain how you have attempted to cooperate with the City of Fernandina Beach personnel to achieve compliance of the Code Enforcement and Appeals Board.**

- 2. Did you or your representative appear at the Code Enforcement and Appeals Board's previous hearing(s) concerning this matter? If not, please state the specific reasons why you did not appear at the hearing(s) and whether you notified the City of Fernandina Beach personnel of the fact that you would not be present.**

- 3. Have you ever been (previous to this case) found by the Code Enforcement and Appeals Board to be in violation of the Code, which is the subject matter of the present case? If so, please advise what your response to the previous violation was.**

- 4. Do you claim a homestead exemption on this property that is the subject of this case? Yes _____ No _____**

- 5. Were you the owner of the property at the time the Code Enforcement case against the property began? Yes _____ No _____. If not, did you become aware of the Code Enforcement proceedings, Order, or Lien prior to recording title to the property?**

- 6. What other liens exist against the property which is the subject matter of this Code Enforcement case?**

- 7. Has the property been abandoned?**

- 8. Is the property in need of rehabilitation? If yes, explain.**

9. Is the City of Fernandina Beach's lien interfering with the sale or rehabilitation of the property or will the lien prevent the property from being conveyed to a new owner?

10. Provide your suggestion for an amount you would like the lien reduced to \$_____. In the statement below, please provide your justification for requesting the lien reduction.

I, _____, do hereby submit this petition in request for a reduction in the fine imposed and in support offer the following statement:

****I HEREBY UNDERSTAND AND ACKNOWLEDGE THAT BY SUBMITTING THIS APPLICATION FOR SETTLEMENT OF LIEN TO THE CITY, I WAIVE MY RIGHTS TO SEEK JUDICIAL REVIEW OF THE CITY COMMISSION'S DECISION WHETHER OR NOT TO REDUCE FINES AND IF SO, BY HOW MUCH****

Signed:

Date: _____

Printed Name: _____

STATE OF _____
COUNTY OF _____

SWORN TO (OR AFFIRMED) and subscribed before me this _____ day of _____, 20____ by _____ who is/is not personally known to me OR who has produced identification (type).

Date _____

Notary Public

Printed Signature

My commission expires:



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CITY OF PALM BAY v. WELLS FARGO BANK, N.A.

No. SC11-830.

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114 So.3d 924 (2013)

CITY OF PALM BAY, Appellant, v. WELLS FARGO BANK, N.A., Appellee.

Supreme Court of Florida.

May 16, 2013.

Attorney(s) appearing for the Case

James David Stokes, City Attorney, Andrew Patrick Lannon, Palm Bay, FL, and Steven L. Brannock, Tampa, FL, for Petitioner.

Matthew J. Conigliaro and Leah A. Sevi of Carlton Fields, P.A., St. Petersburg, FL, Michael K. Winston of Carlton Fields, P.A., West Palm Beach, FL, for Respondent.

Mark Partick Barnebey, Scott Ellis Rudacille, and Kurt Eugene Lee of Kirk Pinkerton, P.A., Sarasota, FL, for Amicus Curiae City of Palmetto.

Jamie Alan Cole and Susan Lanelle Trevarthen of Weiss Serota Helfman Pastoriza Cole & Boniske, P.L., Fort Lauderdale, FL, Edward G. Guedes of Weiss Serota Helfman Pastoriza Cole & Boniske, P.L., Coral Gables, FL, for Amicus Curiae Florida League of Cities.

Erin Jane O'Leary, Catherine Dwyer Reischmann, William Edward Reischmann, Usher Larry Brown of Brown, Garganese, Weiss & D'Agresta, P.A., Orlando, FL, for Amicus Curiae City of Casselberry, Florida, City of Palm Coast, Florida, and City Winter Park, Florida.

Heather M. Christman of Christman Law, P.L., Winter Haven, FL and Stephen Russell Senn of Peterson & Meyers, P.A., Lakeland, FL, for Amicus Curiae Peter and Laurie Pepe and Port Malabar Country Club, Inc.

Alan Beaumont Fields, Tallahassee, Florida and Homer Duvall, III, St. Petersburg, FL, for Amicus Curiae Florida Land Title Association.

Virginia Bullerman Townes and Carrie Ann Wozniak of Akerman Senterfitt, Orlando, FL, for Amicus Curiae Florida Bankers Association.

CANADY, J.

In this case we consider whether a municipal ordinance may validly establish superpriority status for municipal code enforcement liens. In *City of Palm Bay v. Wells Fargo Bank, N.A.*, 57 So.3d 226 (Fla. 5th DCA 2011), the Fifth District Court of Appeal concluded that such an ordinance superpriority provision is invalid because it conflicts with a state statute and that the City's lien accordingly did not have priority over the lien of Wells Fargo's mortgage that was recorded before the City's lien was recorded. Palm Bay sought review, and we accepted jurisdiction based on the Fifth District's certification of the following question of great public importance:

Whether under Article VIII, section 2(b), Florida Constitution, section 166.021, Florida Statutes and Chapter 162, Florida Statutes, a municipality has the authority to enact an ordinance stating that its code enforcement liens, created pursuant to a code enforcement board order and recorded in the public records of the applicable county, shall be superior in dignity to prior recorded mortgages?

City of Palm Bay v. Wells Fargo Bank, N.A., 67 So.3d 271, 271 (Fla. 5th DCA 2011) (mem.).

On appeal, the City argues that the ordinance superpriority provision is within the "broad home rule powers" of the City. Petitioner's Brief on the Merits at 5, *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So.3d 924, 2013 WL 2096257 (Fla. 2013). The City contends that because the Legislature has made certain exceptions to the general rules governing the priority of liens, municipalities have the power to likewise make exceptions. For the reasons we explain, we conclude that the Fifth District correctly decided that the ordinance superpriority provision is invalid. Accordingly, we answer the certified question in the negative. Before explaining our conclusion, we will review the pertinent provisions of the Palm Bay ordinance, the constitutional and statutory provisions relevant to the City's exercise of power, and the statutory framework governing the priority of interests based on recorded instruments.

I. BACKGROUND

City of Palm Bay Ordinance 97-07 provides for the operation of the City's Code Enforcement Board and contains the following superpriority provision:

Liens created pursuant to a Board order and recorded in the public record shall remain liens coequal with the liens of all state[,] county[,] district[,] and municipal taxes, superior in dignity to all other liens[,] titles[,] and claims until paid, and shall bear interest annually at a rate not to exceed the legal rate allowed for such liens and maybe foreclosed pursuant to the procedures set forth in Florida Statutes, Chapter 173.

City of Palm Bay, Ordinance No. 97-07, § 1 (1997).

[114 So.3d 927]

Chapter 162, Florida Statutes (2004), contains the Local Government Code Enforcement Boards Act. Section 162.03, Florida Statutes (2004), authorizes municipalities to establish by ordinance local code enforcement boards. Section 162.09(3), Florida Statutes (2004), provides that "[a] certified copy of [a code enforcement] order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator." The Act contains no provision expressly authorizing municipalities to establish superpriority for such liens.

Article VIII, section 2(b), Florida Constitution, contains a general provision relating to the exercise of municipal powers: "Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes *except as otherwise provided by law*." (Emphasis added). Section 166.021, Florida Statutes (2004), contains general provisions governing the exercise of municipal powers under the framework established in article VIII, section 2(b). Section 166.021(1) states: "As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law." Section 166.021(3) provides in pertinent part as follows:

The Legislature recognizes that pursuant to the grant of power set forth in section 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

(c) Any subject expressly preempted to state or county government by the constitution or by general law....

The priority of interests in real estate under Florida law is generally determined by the operation of three statutes. Section 28.222(2), Florida Statutes (2004), requires the clerk of the circuit court to record instruments in the official records and to "keep a register in which he or she shall enter at the time of filing the filing number of each instrument filed for record, the date and hour of filing, the kind of instrument, and the names of the parties to the instrument." Section 695.11, Florida Statutes (2004), provides that "[t]he sequence of [official register numbers required under section 28.222] shall determine the priority of recordation" so that "[a]n instrument bearing the lower number in the then-current series of numbers shall have priority over any instrument bearing a higher number in the same series." The legal significance of priority of recordation comes into play in the context of the rule established in section 695.01(1), Florida Statutes (2004), which provides as follows: "No conveyance, transfer, or mortgage of real property, or of any interest therein... shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law." ¹

[114 So.3d 928]

The Legislature has, however, provided separately for the priority of certain liens over the priority established under chapter 695. For example, section 197.122(1), Florida Statutes (2004), provides that "[a]ll taxes imposed pursuant to the State Constitution and laws of this state shall be a first lien, superior to all other liens." Similarly, section 170.09, Florida Statutes (2004), provides that special assessment liens are "coequal with the lien of all state, county, district, and municipal taxes, superior in dignity to all other liens, titles, and claims, until paid."

II. ANALYSIS

Based on the provisions of article VIII, section 2(b), Florida Constitution, and the related provisions in section 166.021, we have acknowledged that "[i]n Florida, a municipality is given broad authority to enact ordinances under its municipal home rule powers." *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla.2006). We have also stated that — as is recognized in section 166.021 — "a municipality may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State." *Hollywood*, 934 So.2d at 1243. But we have never interpreted either the constitutional or statutory provisions relating to the legislative preemption of municipal home rule powers to require that the Legislature specifically state that the exercise of municipal power on a particular subject is precluded. Instead, we have held that "[t]he preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject." *Barragan v. City of Miami*, 545 So.2d 252, 254 (Fla.1989). We have also recognized that where concurrent state and municipal regulation is permitted because the state has not preemptively occupied a regulatory field, "a municipality's concurrent legislation must not conflict with state law." *Thomas v. State*, 614 So.2d 468, 470 (Fla.1993).

The critical phrase of article VIII, section 2(b) — "except as otherwise provided by law" — establishes the constitutional superiority of the Legislature's power over municipal power. Accordingly, "[m]unicipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute." *Thomas*, 614 So.2d at 470. When a municipal "ordinance flies in the face of state law" — that is, cannot be reconciled with state law — the

ordinance "cannot be sustained." *Barragan*, 545 So.2d at 255. Such "conflict preemption" comes into play "where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute." 5 McQuillin Mun. Corp. § 15:16 (3d ed. 2012).

Here, it is undisputed that the Palm Bay ordinance provision establishes a priority that is inconsistent with the priority established by the pertinent provisions of chapter 695. In those statutory provisions, the Legislature has created a general scheme for priority of rights with respect to interest in real property. Giving effect to the ordinance superpriority provision would allow a municipality to displace the policy judgment reflected in the Legislature's enactment of the statutory provisions. And it would allow the municipality to destroy

[114 So.3d 929]

rights that the Legislature established by state law. A more direct conflict with a statute is hard to imagine. Nothing in the constitutional or statutory provisions relating to municipal home rule or in the Local Government Code Enforcement Boards Act provides any basis for such a municipal abrogation of a state statute. The conflict between the Palm Bay ordinance and state law is a sufficient ground for concluding that the ordinance superpriority provision is invalid.

We categorically reject the City's argument that the legislative enactment of exceptions to a statutory scheme provides justification for municipalities to enact exceptions to the statutory scheme. No authority supports this argument. The power to create exceptions to a legislative scheme is the power to alter that legislative scheme. "Fundamental to the doctrine of preemption is the understanding that local governments lack the authority to craft their own exceptions to general state laws." 5 McQuillin Mun. Corp. § 15:18 (3d ed. 2012). Although municipalities generally have "the power to enact legislation concerning any subject matter upon which the state Legislature may act," § 166.021(3), Fla. Stat. (2004), in exercising their power within that scope municipalities are precluded from taking any action that conflicts with a state statute. In this context, concurrent power does not mean equal power.

III. CONCLUSION

The Fifth District correctly concluded that the superpriority provision of the Palm Bay ordinance is invalid because it conflicts with state law. We approve that determination and answer the certified question in the negative.

It is so ordered.

POLSTON, C.J., and LEWIS, QUINCE, and LABARGA, JJ., concur.

PERRY, J., dissents with an opinion, in which PARIENTE, J., concurs.

PERRY, J., dissenting.

The majority holds that the City of Palm Bay's home rule authority does not provide it with the authority to enact an ordinance providing code enforcement liens superior priority over prior recorded mortgages. Because I disagree that the ordinance irreconcilably conflicts with the mechanical recording statute provided in section 162.09, Florida Statutes (2004), or that the Florida Legislature has expressed a scheme "so pervasive as to evidence an intent to preempt the particular area,"² I would find that the city's ordinance was properly enacted. Accordingly, I dissent.

The majority reasons that section 162.09(3) "contains no provision expressly authorizing municipalities to establish special priority for such liens." Maj. op. at 927. However, this is not the appropriate test to determine whether a municipality has exceeded its powers. The City of Palm Bay does not require the Legislature's express permission to act under its home rule powers. Section 166.021(1) states in relevant part that "municipalities... may exercise any power for municipal purposes, except when expressly prohibited by law." Further, section 166.021(3)(c) provides that the municipality has the power to enact legislation concerning any subject matter upon which the Legislature may act except "[a]ny subject expressly preempted to state or county government by the constitution or by general law..." (Emphasis added). Thus, it is not whether the Legislature has expressly authorized municipal power, but whether such power

[114 So.3d 930]

has been expressly prohibited. Here, there has been no express preemption that would prohibit the City's action.

Because the language contained in sections 162.09, 695.11, and related provisions does not expressly conflict with the ordinance, the City was within its authority to enact the ordinance. The majority avoids this outcome by relying on a single line from this Court's decision in *Barragan v. City of Miami*, 545 So.2d 252, 254 (Fla. 1989), stating, "[t]he preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject." Maj. op. at 928. The majority's reliance on *Barragan* here is misguided and misleading.

Barragan concerned an ordinance that permitted the City to deduct workers' compensation benefits from an employee's pension benefits in contradiction to the provisions of section 440.21, Florida Statutes (1987). Because the workers' compensation scheme outlined in chapter 440 explicitly applied to every employer and employee working in the state, the City's ordinance was expressly preempted by the statute. See *Barragan*, 545 So.2d at 254 (citing § 440.03, Fla. Stat. (1987)). In *Barragan*, Chief Justice Ehrlich emphasized that, "The city should not be permitted to do indirectly that which it cannot do directly." *Id.* at 255 (Ehrlich, C.J., concurring in result only). In contrast, here the mechanical recording statute does not provide an all-encompassing lien priority scheme. Clearly there is no express preemption of the subject matter concerning the City's ordinance. Yet, the majority maintains that "the Palm Bay ordinance is invalid because it conflicts with state law." Again, the majority applies the improper test.

Express preemption is not the same as implied preemption or conflict — this Court has previously distinguished between these concepts. See *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886, 888 (Fla.2010) (defining implied preemption as "when the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature" and conflict as "when two legislative enactments cannot coexist"); see also *Phantom of Brevard Inc. v. Brevard Cnty.*, 3 So.3d 309, 314 (Fla.2008); *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243, 1246-47 (Fla.2006) (internal quotations omitted). Here, section 166.021 provides that the City may act except where expressly preempted, not impliedly preempted or in conflict. These are distinct tests that should not be conflated. However, no matter the test applied here, there is no preemption evident in the statutes, neither explicit nor implicit.

While the majority recognizes that municipalities can legislate concurrently with the Legislature, see Maj. op. at 928 (citing *City of Hollywood*, 934 So.2d at 1243), the majority nevertheless "categorically reject[ed] the City's argument that the legislative enactment of exceptions to a statutory scheme

provides justification for municipalities to enact exceptions to the statutory scheme." Maj. op. at 929. To read the statute and ordinance as unable to coexist ignores that the Legislature has not previously regarded the mechanical recording statute as a pervasive scheme without exemptions. *See* § 170.09, Fla. Stat. (2004) (providing lien priority and superiority for non-home rule municipality special assessments); § 197.552, Fla. Stat. (2004) (providing superiority for tax deeds except to municipal liens); § 718.116(5)(a), Fla. Stat. (2004) (providing superior lien priority for condominium assessments); § 713.07(2), Fla. Stat. (2004) (providing lien priority for construction liens). Additionally, lien priority

[114 So.3d 931]

can be altered by contract. Likewise, courts have recognized liens with superior priority despite their inferior filing dates. In *Gailey v. Robertson*, 98 Fla. 176, 123 So. 692 (Fla.1929), this Court found that a "mortgagee has no greater vested right ... than the fee simple owner and the rights of both must yield alike to the sovereign power when exercised to impose proper and lawful taxes." *Id.* at 179, 123 So. 692. The Court accordingly found that the mortgage held by Gailey was not prior in dignity to the lien claimed by the city of Winter Haven, despite its prior recording date. *Id.* at 177, 123 So. 692. In *First Nationwide Mortg. Corp. v. Brantley*, 851 So.2d 885 (Fla. 4th DCA 2003), the Fourth District found that a city lien was not superior to the mortgage because it "was not the result of municipal services, special assessments or any other type lien covered under section 23-68 of the City's Code of Ordinances." *Id.* at 887.

I would find that the Legislature has therefore not expressed a pervasive scheme — the statutes on the issue are scattered and separately enacted. Because the Legislature has provided several exemptions to the "first in time" rule, the City may likewise legislate such a rule under its home rule authority. *See Wyche v. State*, 619 So.2d 231, 238 (Fla.1993) ("Although municipalities and the legislature may legislate concurrently in areas not expressly preempted to the state, a municipality's concurrent legislation may not conflict with state law.").

I would likewise find that there is nothing in section 695.11 that expressly preempts the City of Palm Bay's ordinance. As described in *Argent Mortgage Co. v. Wachovia Bank, N.A.*, 52 So.3d 796, 800 (Fla. 5th DCA 2010), section 695.11 is a "mechanism for determining the time at which an instrument was deemed to be recorded." Because there is no express limitation by section 695.11, The City of Palm Bay had authority under section 166.021 to enact the ordinance. Accordingly, I dissent.

PARIENTE, J., concurs.

FootNotes

1. The Fifth District states that section 695.11 "codifies ... the common law rule of first in time, first in right." *Palm Bay*, 57 So.3d at 227. Although it has no bearing on the preemption question at issue in this case, we note that this characterization of Florida law is misleading. The comment incorrectly leaves section 695.01(1) out of consideration and suggests that priority of recordation necessarily establishes priority of right. A thoughtful discussion of the operation of Florida law in determining priority of interests in real property is contained in *Argent Mortgage Co., LLC v. Wachovia Bank N.A.*, 52 So.3d 796 (Fla. 5th DCA 2010); *see also Van Eepoel Real Estate Co. v. Sarasota Milk Co.*, 100 Fla. 438, 129 So. 892 (1930).

2. *Sarasota Alliance for Fair Elections Inc. v. Browning*, 28 So.3d 880, 886, 888 (Fla.2010).

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NOTICE OF PUBLIC HEARING
CITY COMMISSION
CITY OF FERNANDINA BEACH

NOTICE IS HEREBY GIVEN that a Public Hearing is scheduled for **Tuesday, October 15, 2019, at 6:00 PM** in the City Commission Chambers, 204 Ash Street Fernandina Beach, Florida to consider the following application:

ORDINANCE 2019-23

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, REGARDING AUTHORITY TO SATISFY CODE ENFORCEMENT AND OTHER LIENS AND GENERALLY CODE ENFORCEMENT BOARD; REPEALING SECTION 1-13, MUNICIPAL LIEN PRIORITY, DUE TO COURT RULING PROVIDING THAT MUNICIPAL LIENS ARE NOT SUPERPRIORITY LIENS; CREATING SECTION 1-14 APPLICATION FOR SATISFACTION OF LIENS, REDUCTION OF FINES AND SETTLEMENT OF LIENS; AMENDING SECTION 2-386 REMOVAL OF MEMBERS; REPEALING ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Interested parties may appear at said hearing and be heard as to the advisability of any action, which may be considered. Any persons with disabilities requiring accommodations in order to participate in this program or activity should contact 310-3115, TTY/TDD 711 or through the Florida Relay Service at 1-800-955-8771 at least 24 hours in advance to request such accommodation.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD/COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH HEARING, S/HE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

For information, please contact the Staff of the City Clerk's Office, 204 Ash Street, between the hours of 8:00 AM – 5:00 PM, Monday through Friday, (904) 310-3115.

Note:

Please run as a DISPLAY in the October 2, 2019 edition of the News Leader.

Please send proof of publication to:

City Clerk's Office

City Hall, 204 Ash Street

Fernandina Beach, FL 32034

904-310-3115