

MEMORANDUM

January 29, 2013

TO: Honorable Mayor and City Commissioners

VIA: Terry Leary, City Manager

FROM: Kathy Bangley, Assistant Director
Department of Planning and Development

RE: Ordinance 2013-04, Abatement and Violation Correction Assessment
And Uniform Collection Agreement “Municipality” – Polk County Tax Collector

SYNOPSIS: Ordinance 2013-04 Abatement and Violation Correction Assessment, is an amendment to the Lake Wales Code of Ordinances Chapter 17.5 Special Assessments. This amendment allows for the collection of unpaid code enforcement service fees through the Uniform Method for the Levy, Collection, and Enforcement of Non-ad valorem assessments.

Uniform Collection Agreement “Municipality” from the County Tax Collector, is the enabling document between the City and County for this alternative method of collection.

RECOMMENDATION

Staff recommends approval of Ordinance 2013-04 after first reading and the execution of the Uniform Collection Agreement with the Polk County Tax Collector’s office. No public hearing is required.

On January 15th the Commission approved Resolution 2012-20. This resolution declared the city’s intent to utilize the alternative method of collection and was transmitted to Polk County Tax Collector, Polk County Property Appraiser and the Department of Revenue. The Tax Collector’s office has forwarded their Uniform Collection Agreement to the City for execution.

BACKGROUND

In September 2012 City Commission adopted Ordinance 2012-17 to incorporate the International Property Maintenance Code as a tool for code enforcement. It was also Commission’s desire to implement an alternative collection method for abatement and violation correction costs incurred by the City.

It is the City’s intent to use this method for service fee collection. Service fees are those that result from services provided by the City to clean properties, repair buildings and the like. When a service fee is left unpaid it is recorded as a service lien against the real property where the service was performed. This does not include fines or administrative liens.

Ordinance 2013-04 lays out the policy and procedure in the City's code for applying the assessment method in the City of Lake Wales.

OTHER OPTIONS

None with the approval of Resolution 2012-20 at the last meeting the Commission declared its intent to use this method. Therefore its specific inclusion in the city's code is required.

FISCAL IMPACT

This method of collection should result in an increase in reimbursement to the City for costs incurred in the abatement and violation correction process.

ATTACHMENT:

Ordinance 2013-04

Polk County Uniform Collection Agreement "Municipality"

ORDINANCE 2013-04
(Abatement and Violation Correction Assessment)

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING LAKE WALES CODE OF ORDINANCES, CHAPTER 17.5, "SPECIAL ASSESSMENTS" TO ADD ARTICLE II. "ABATEMENT AND VIOLATION CORRECTION ASSESSMENT" FOR THE PURPOSE OF AUTHORIZING AND REQUIRING THE CITY TO UTILIZE THE "UNIFORM METHOD FOR THE LEVY, COLLECTION, AND ENFORCEMENT OF NON-AD VALOREM ASSESSMENTS" AS SET FORTH IN SECTION 197.3632 F.S. TO COLLECT UNPAID CODE ENFORCEMENT SERVICE FEES IMPOSED ON PRIVATE PROPERTY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Pursuant to Fla. Const., art. VIII, §2(b), and F.S. §§166.021 and 166.041, the city commission has all powers of local self-government necessary to perform municipal functions and render municipal services except prohibited by law; and such power may be exercised by the enactment of legislation in the form of city ordinances; and

WHEREAS, The city commission may exercise any governmental, corporate or proprietary power for a municipal purpose except when expressly prohibited by law; and the city commission may legislate on any subject matter on which the state legislature may act, except those subjects described in F.S. §166.021(3)(a)-(d). The subject matter of F.S. §166.021(3)(a)-(d), are not relevant to the imposition of assessments related to abatement and violation correction liens of the city; and

WHEREAS, The city now wants to amend Chapter 17.5 Special Assessments to provide that if property owners do not pay the costs and expenses associated with the cleaning of properties or demolishing unsafe structures, the city may use the uniform method of collecting non-ad valorem assessments to reimburse the city for costs and expenses incurred when the city provides service.

NOW THEREFORE BE IT ENACTED by the City Commission of the City of Lake Wales, Polk County, Florida:

SECTION 1. Chapter 17.5 of the Lake Wales Code of Ordinances is hereby amended by adding Article II. To read as follows:

Sec. 17.5-23 through 17.5-30 Reserved

Article II. Abatement and Violation Correction Assessment

Division 1. General Provisions

Sec. 17.5-31 General findings.

1. Authorize and require the collection of unpaid abatement and violation service fees by the County Tax Collector pursuant to the *Uniform Method of Levy, Collection & Enforcement.*

2. Under the provisions of Chapter 12 HEALTH, SANITATION, NUISANCES AND MINIMUM PROPERTY MAINTENANCE STANDARDS services performed by the City on private property to correct code violations, such as mowing and demolition, are a special benefit to the property owner and the costs associated therewith are charged to the property owners as a “service fee.”

Unpaid service fees are imposed as a service lien against the real property on which the work was performed.

3. Chapter 197, Florida Statutes authorizes the collection by the County Tax Collector of such service liens as non-ad valorem assessments.

4. The special assessment imposed pursuant to this article is imposed by the city, not the county board of county commissioners, property appraiser or tax collector. Any activity of the property appraiser or tax collector under the provisions of this article shall be construed to be ministerial.

Sec. 17.5-32 Legislative determinations of special benefit.

It is ascertained and declared that the provision of abatement and violation correction services by the city provide a special benefit to assessed property within the incorporated city limits based upon the following legislative determinations:

(a) The City Commission finds that properties with code violations that are remedied by the city through abatement and violation correction receive special benefits and will benefit from the correction in a manner greater than other properties within the city.

Sec. 17.5-33 Establishment of special assessment district and Applicability.

The City of Lake Wales, in its entirety, as its city boundaries exist on the date of enactment of this section and as they may be expanded or contracted from time to time, is hereby declared a special assessment district for the purposes of abatement and violation correction. Individual properties within the city’s boundaries, as they may exist from time to time, may be assessed for the costs incurred by the city to perform abatement and violation correction services.

This article and the city’s authority to impose assessments pursuant to this article shall be applicable throughout the city.

Division 2. Annual Assessments

Sec. 17.5-34 Levy of non-ad valorem assessments.

There is hereby levied, and the city commission is authorized to levy from time to time, a non-ad valorem assessment against each and every property in the city (i) on which there occurs or has occurred the cleaning up of a property or the demolition of an unsafe structure, (ii) the city undertakes or has undertaken action pursuant to Chapter 12 to abate and correct violations and,

thereby incurs or has incurred costs, and (iii) the property owner and , if applicable, the agent, custodian, lessee, or occupant of the property fails or refuses or has failed or refused, for whatever reason, to pay timely the amount owed the city under section 12-228 sub-section 106 for the costs incurred by the city in carrying out the abatement and violation correction.

Sec. 17.5-35 Collection of non-ad valorem assessments.

The city commission elects to use the uniform method to impose and collect non-ad valorem assessments against properties on which abatement and violation correction has occurred. The non-ad valorem assessments collected pursuant to this section will be included in the combined notice for ad-valorem and non-ad valorem assessments as provided in section 197.3635 of Florida Statutes. Non-ad valorem assessments collected pursuant to this section are subject to all collection provisions in section 197.3632 of Florida Statutes.

Sec. 17.5-36 Agreement to reimburse the Polk County Property Appraiser and the Polk county Tax Collector.

In order to use the uniform method for the levy, collection, and enforcement of the non-ad valorem assessments, the city shall enter into a written agreement with the Polk County Property Appraiser and Polk County Tax Collector providing for the reimbursement of their costs incurred in the administration and collection of the non-ad valorem assessments levied under this article.

Sec. 17.5-37 Annual non-ad valorem assessment roll.

(a) Prior to September 15 each year the City Commission shall approve by resolution at a public hearing a non-ad valorem assessment roll. The non-ad valorem assessment roll will be comprised of properties that have had levied against them non-ad valorem assessments under this article, and such assessments have not otherwise been paid in full prior to approval of the roll.

(b) The city manager is authorized and directed each year to prepare the roll and the notice as required by Section 197 Florida Statutes as may be amended from time to time.

Sec. 17.5-38 Revisions to abatement and violation correction assessments.

If any abatement and violation correction assessment made under the provisions of this article is either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the city commission is satisfied that any such assessment is so irregular or defective that it cannot be enforced or collected, or if the city commission has omitted any property on the assessment roll, which property should have been so included, the city commission may take all necessary steps to impose a new abatement and violation correction assessment against any property benefited by the abatement and violation correction services costs, following as nearly as may be practicable the provisions of this article; and if such second abatement and violation correction assessment is annulled, vacated or set aside, the city commission may obtain and impose other

abatement and violation correction assessments until a valid abatement and violation correction assessment is imposed.

SECTION 2: If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

SECTION 3: This ordinance shall become effective upon passage by the City Commission.

CERTIFIED AS TO PASSAGE this _____ day of _____ 2013.

Mayor/Commissioner

ATTEST:

City Clerk

**UNIFORM COLLECTION
AGREEMENT
“MUNICIPALITY”**

THIS AGREEMENT made and entered into this 23rd day of, January 2013 by and between City of Lake Wales (“City”), whose address is P. O. Box 1320, Lake Wales, FL 33859-1320 and the Honorable Joe G. Tedder, State Constitutional Tax Collector in and for the Polk County Political Subdivision, whose address is Polk County Tax Collectors Office, P. O. Box 1189, Bartow, Florida 33831-1189 (“Tax Collector.”).

SECTION I

Findings and Determinations

The parties find and determine:

1. City is authorized to impose and levy, and by appropriate Resolution has expressed its intent to use the statutory uniform methodology of collection for, certain non-ad valorem special assessment for the cost of providing abatement and violation correction, as authorized by constitutional and statutory municipal home rule and by section 197.3632, Florida Statutes (1988 Supp.) and Rule 12D-18, Florida Administrative Code.
2. The term “Assessments” means those certain levies by the City which purport to constitute non-ad valorem special assessment for the cost of providing abatement and violation correction. Improvements and related systems, facilities and services pursuant to Resolution 2012-20. A non-ad valorem special assessment is lienable under Section 4, Article X, Section 4, Article X, Florida Constitution, if it results in a special benefit peculiar to the parcels of property involved, over and above general community benefit, as a result of a logical connection to the property involved from the system, facility and service provided by the City and if it is apportioned to the property fairly and reasonably.
3. The uniform statutory collection methodology is provided in section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code (“uniform methodology”), with its enforcement provisions, including the use of tax certificates and tax deeds for enforcing against any delinquencies.
4. The uniform methodology is more fair to the delinquent property owner than traditional lien foreclosure methodology; and
5. The uniform methodology provides for more efficiency of collection by virtue of the Assessment being on the official tax notice issued by the Tax Collector which will produce positive economic benefits to the County and its citizens.

6. The uniform methodology, through use of the official tax notice, will tend to eliminate confusion and
7. The Tax Collector, as the State Constitutional Officer for the county political subdivision, charged by general law in Chapter 197, Florida Statutes, and related rules and regulations, to function as the agent of the Florida Department of Revenue for purposes of the uniform methodology for the Assessments.
8. The sole and exclusive responsibility to determine, impose and levy the Assessments and to determine that it is a legal, constitutional and lienable non-ad valorem special assessment for the cost of providing abatement and violation correction, and related systems, facilities and services is that of the City and no other person, entity or officer.

SECTION II

Applicable Law and Regulations

1. Section 2, Article VIII, Florida Constitution; Chapter 170, Florida Statutes; sections 197.3631, 3632 and 3635, Florida Statutes; Rule 12D-18, Florida Administrative Code; and all other applicable provisions of constitutional and statutory law, govern the exercise by the City of its local self-government power to render and pay for municipal services.
2. Section 1(d), Article VIII, Florida Constitution; Chapter 197, Florida and other applicable provisions of constitutional and statutory law apply to Tax Collector in his capacity as a state constitutional county officer and agent of the Florida Department of Revenue for purpose the of collecting and enforcing the collection of non-ad valorem special assessments levied by City.
3. Section 197.3631, Florida Statutes, constitutes supplemental authority for City to levy non-ad valorem assessments including such non-ad valorem special assessments as the "Assessments" for the cost of providing abatement and violation correction, and related systems, facilities and services.
4. Section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code, have provisions that apply both to City and to Tax Collector, as well as, to the Department of Revenue and the Property Appraiser in and for the county.

SECTION III

Purpose

The purpose of this Agreement under Rule 12D-18, Florida Administrative Code, is to establish the terms and conditions under which the Tax Collector shall collect and enforce the collection of those certain non-ad valorem special assessments, the "Assessments", levied by City to include compensation by City to the Tax Collector for actual costs of collection pursuant to section 197.3632(8)(c), Florida Statutes; payment by City of any costs involved in separate mailings because of non merger of any non-ad valorem special assessment roll as certified by the Mayor or his or her designee, pursuant to section 197.3632(7), Florida Statutes; and reimbursement by City for necessary administrative costs, including, but not limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage and programming which attend all of the collection and enforcement duties imposed upon the Tax Collector by the uniform methodology, as provided in section 197.3632(2), Florida Statutes.

SECTION IV

Term

The term of this Agreement shall commence upon execution, effective for 2013 tax notice purposes, and shall continue and extend uninterrupted from year-to-year, automatically renewed for successive periods not to exceed one (1) year each, unless City shall inform the Tax Collector, as well as Property Appraiser and the Department of Revenue, by 10 January of each calendar year, if City intends to discontinue to use the uniform methodology for such Assessments pursuant to Section 197.3632(6), Florida Statutes (1998 Supp.) and Rule 12D-18.006(3), Florida Administrative Code, using form DR-412 promulgated by the Florida Department of Revenue.

SECTION V

Duties and Responsibilities of City

City agrees, covenants and contracts to:

1. Compensate the Tax Collector for actual collection costs incurred pursuant to section 197.3632(8)(c), Florida Statutes and 12D-18.004(2), Florida Administrative Code.
2. Reimburse Tax Collector for necessary administrative costs for the collection and enforcement of the Assessment by the Tax Collector under the uniform methodology, pursuant to section 197.3632(2), Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code, to include, but not be limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage and programming.

3. To pay for or alternatively to reimburse the Tax Collector for any separate tax notice necessitated by the inability of the Tax Collector to merge the non-ad valorem special assessment roll certified by City pursuant to section 197.3632(7), Florida Statutes and Rule 12D-18.004(2) Florida Administrative Code.
4. City upon being timely billed, shall pay directly for necessary advertising relating to implementation of the uniform non-ad valorem special assessment law pursuant to sections 197.3632 and 197.3635, Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code.
5. By September 15 of each calendar year, the Mayor, or his or her designee, shall certify, using DR Form 408, to the Tax Collector the non-ad valorem assessment (“Assessment”) roll on compatible electronic medium, tied to the property parcel identification number, and otherwise in conformance with the ad valorem tax rolls submitted by the Property Appraiser in July to the Department of Revenue. City or its agent on behalf of City shall post the non-ad valorem special assessment for each parcel on the said non-ad valorem assessment roll and shall exercise its responsibility that such non-ad valorem assessment roll be free of errors and omissions. Section 197.3632(10), Florida Statutes, and Rule 12D-18.006, Florida Administrative Code.
6. City agrees to abide by and implement its duties under the uniform law pursuant to all the provisions of sections 197.3632 and 197.3635, Florida Statutes, or its successor of statutory provisions and all applicable rules promulgated by the Department of Revenue and their successor rules.
7. City acknowledges that the Tax Collector has no duty, authority or responsibility in the imposition and levy of any non-ad valorem special assessments, including the City’s “Assessment” and that it is the sole responsibility and duty of City to follow all procedural and substantive requirements for the levy and imposition of constitutionally lienable non-ad valorem special assessments, including the Assessments.
8. City shall indemnify and hold harmless Tax Collector to the extent of any legal action which may be filed in local, state or federal courts against Tax Collector regarding the imposition, levy, roll preparation and certification of the Assessments; City shall pay for or reimburse Tax Collector for fees for legal services rendered to Tax Collector with regard to any such legal action.

SECTION VI

Duties of the Tax Collector

1. The Tax Collector shall merge timely the legally certified "Assessment" roll of the City with all non-ad valorem assessment rolls, merge said rolls with the tax roll, prepare a collection roll and prepare a combined notice (the tax notice) for both ad valorem taxes and non-ad valorem special assessments for all levying authorities within the county political subdivision, pursuant to sections 197.3632 and 197.3635, Florida Statutes, and its successor provisions, and any applicable rules, and their successor rules, promulgated by the Department of Revenue, and in accordance with any specific ordinances or resolutions adopted by City, so long as said ordinances and resolutions shall themselves each and every one clearly state intent to use the uniform method for collecting such assessments and so long as they are further not inconsistent with, or contrary to, the provisions of sections 197.3632 and 197.3635, Florida Statutes, and their successor provisions, and any applicable rules.
2. Tax Collector shall collect the Assessments of City as certified by the Mayor , or his or her designee, to the Tax Collector no later than 15 September of each calendar year on compatible electronic medium, tied to the property identification number for each parcel, and in the format used in July by the Property Appraiser for the ad valorem rolls submitted to the Department of Revenue, using, DR Form 408, and free of errors or omissions.
3. The Tax Collector agrees to cooperate with City in implementation of the uniform methodology for collecting Assessments pursuant to sections 197.3632 and 197.3635, Florida Statutes, and any successor provisions and applicable rules. The Tax Collector shall not accept any non-ad valorem assessment roll for the Assessments of City that is not officially, timely and legally certified to the Tax Collector pursuant to Chapter 197, Florida Statutes, and Rule 12D-18, Florida Administrative Code.
4. If the Tax Collector discovers errors or omissions on such roll, Tax Collector may request City to file a corrected roll or a correction of the amount of any assessment and City shall bear the cost of any such error or omission.
5. If Tax Collector determines that a separate mailing is authorized pursuant to section 197.3632(7), Florida Statutes, and any applicable rules promulgated by the Department of Revenue, and any successor provision to said law or rules, the Tax Collector shall either mail a separate notice of the particular non-ad valorem special assessment ("Assessment") or shall direct City to mail such a separate notice. In making this decision, the Tax Collector shall consider all costs to City and to the taxpayers of such a separate mailing as well as the adverse effect to the taxpayers of delay in multiple notices. If such a separate mailing is effected, City shall bear all costs associated with the separate notice for the non-ad valorem special assessment that could not be merged, upon timely billing by the Tax Collector.

SECTION VII

1. The parties shall perform all their obligations under this agreement in accordance with good faith and prudent practice.
2. This agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and may not be amended, modified or rescinded, unless otherwise provided in this Agreement, except in writing and signed by all the parties hereto. Should any provision of this Agreement be declared to be invalid, the remaining provisions of this Agreement shall remain in full force and effect, unless such provision found to be invalid alter substantially the benefits of the Agreement for either of the parties or renders the statutory and regulatory obligations unperformable.
3. This Agreement shall be governed by the laws of the State of Florida.
4. Written notice shall be given to the parties at the following addresses, or such other place or person as each of the parties shall designate by similar notice:

- | | | |
|-------------------------|---------|---|
| a. As to Tax Collector: | Address | Joe G. Tedder, Tax Collector
P.O. Box 1189
Bartow, FL 33831 |
| | | |
| b. As to City: | Address | City of Lake Wales
201 Central Avenue W
P. O. Box 1320
Lake Wales, FL 33859-1320 |

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them as are corporations have caused these presents to be signed by their duly authorized officers.

ATTEST:

POLK COUNTY TAX COLLECTOR

By: _____
(Name of Tax Collector)
Date: _____

ATTEST:

_____ By: _____

As authorized for execution by the City _____ of Lake Wales City
at its _____ regular meeting.