

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 2038

 By: Nichols

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6
7 AS INTRODUCED

8 An Act relating to cities and towns; enacting the
9 Municipal Code Lien Enforcement Act of 2023; defining
10 terms; providing applicability to all municipalities;
11 providing that the provisions do not apply to owner-
12 occupied property; providing that any fees,
13 penalties, and abatement costs imposed against
14 property for violations of a municipality's housing
15 and building codes may be enforced in rem as a lien;
16 providing that municipalities may proceed with
17 judicial in rem foreclosures of municipal code liens
18 by an enactment of an ordinance or resolution of the
19 governing authority of the municipality in which the
20 real property is located; providing requirements for
21 a municipal ordinance or resolution authorizing liens
22 and foreclosures pursuant to this act; providing this
23 act does not constitute an action for personal
24 liability for the municipal code liens against the
 owner or owners of the real property; providing that
 the rights and remedies set forth in this act are
 available solely to the governmental entities
 authorized by law to enforce municipal ordinances;
 providing that a municipality that seeks to enforce a
 municipal code lien through the sale of real property
 shall utilize the judicial in rem proceedings of this
 act as the sole remedy; providing that enforcement
 proceedings may be initiated only by the
 municipality; providing timeframe for filing a
 petition for judicial in rem foreclosure for a
 municipal code lien; providing requirements for
 filing a petition for judicial in rem foreclosure
 when the property is subject to unpaid taxes;
 providing notice requirements needed prior to a

1 judicial in rem foreclosure; providing for
2 codification; and providing an effective date.

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4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 22-140 of Title 11, unless there
7 is created a duplication in numbering, reads as follows:

8 This act shall be known and may be cited as the "Municipal Code
9 Lien Enforcement Act of 2023".

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 22-141 of Title 11, unless there
12 is created a duplication in numbering, reads as follows:

13 As used in this act:

14 1. "Code enforcement director" means an employee of a
15 municipality who is tasked by the municipal governing body with the
16 enforcement of state law or local ordinances related to the
17 condition of real property within the jurisdiction of the
18 municipality;

19 2. "Interested party" means:

- 20 a. the person who last appears as owner of the real
21 property in the county records,
22 b. the current mortgagee of record of the property or
23 assignee of record of the mortgagee,
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- 1 c. the current holder of a beneficial interest in a deed
2 of trust recorded against the real property,
3 d. a tax certificate holder, or
4 e. any party having an interest in the real property, or
5 in any part thereof, legal or equitable, in severalty
6 or as tenant in common, whose identity and address are
7 reasonably ascertainable from the records of the
8 municipality or records maintained in the county
9 records or as revealed by a full title search,
10 consisting of fifty (50) years or more.

11 An interested party shall not include the holder of the benefit
12 of an easement which burdens the real property, the holder of the
13 benefit or burden of a real covenant which burdens the real
14 property, or the holder of the benefit of a utility easement which
15 burdens the real property;

16 3. "Minimum bid price" means the price that equals the
17 redemption amount;

18 4. "Municipal code lien" means any lien that has been levied
19 against real property by a municipality that is the result of the
20 nonpayment of any fine, penalty, abatement cost, or enforcement cost
21 incurred by a municipality related to the enforcement of state or
22 local housing and building codes. Such lien shall include only
23 those liens which arise out of a failure to comply with any law of
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1 the State of Oklahoma, or from the failure to comply with a
2 municipality's ordinances or resolutions.

3 A municipal code lien shall not include any lien that has
4 previously been certified to the tax collector of the county for
5 inclusion on the property tax bill associated with the real
6 property;

7 5. "Municipal code lien payoff" means the principal amount of a
8 municipal code lien, interest accrued at the rate of seven and one-
9 half percent (7.5%) per annum from the date the municipal code lien
10 was filed in the office of the county clerk, any fees or costs
11 incurred in the collection of such a lien under this act including,
12 without limitations, the cost of title examinations and publication
13 of notices, and any other penalties allowable under either the laws
14 of the State of Oklahoma or under an ordinance or resolution enacted
15 by the municipality;

16 6. "Owner-occupied" means real property that is lawfully
17 occupied as a principal residence that is any of the following:

- 18 a. a homestead as described in Section 2888 of Title 68
19 of the Oklahoma Statutes,
- 20 b. exempt from ad valorem taxation under Sections 2904
21 through 2911 of Title 68 of the Oklahoma Statutes, and
- 22 c. eligible for the designations listed in subparagraph a
23 or b or this paragraph, but which has not yet been
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1 granted such designation and which is lawfully
2 occupied by the family of a deceased individual;

3 7. "Redemption amount" means the sum of:

- 4 a. the full amount of the municipal code lien payoff for
5 each municipal code lien on which the municipality is
6 seeking to foreclose under this act, and
- 7 b. any tax payoff that may be applicable to the property
8 on which the municipality is seeking to foreclose
9 under this act;

10 8. "Taxes" means those taxes assessed against real property by
11 either the State of Oklahoma, the county in which the real property
12 is situated, or the municipality that are delinquent as of the date
13 a proceeding under this act is commenced or at any time before final
14 resolution of the same, and shall also include any taxes assessed
15 against real property that are unpaid from any previous year and any
16 amounts required for redemption. As provided in Section 3103 of
17 Title 68 of the Oklahoma Statutes, a lien for taxes shall be
18 superior to all other liens, including municipal code liens;

19 9. "Tax certificate holder" means any of the following:

- 20 a. a tax sale purchaser who holds a certificate of
21 purchase,
 - 22 b. the state, where it has accepted and recorded a
23 certificate of purchase obtained at a tax sale,
- 24

- c. any party to which a certificate of purchase obtained at a tax sale has been assigned, or
- d. the purchaser or assignee of a tax lien certificate; and

10. "Tax payoff" means all amounts necessary to satisfy any claims for delinquent taxes assessed against the real property on which the municipality is seeking foreclosure under this act. Those amounts shall include:

- a. if the taxes associated with the property are delinquent, but the property has not yet been sold for taxes, the full amount of delinquent taxes, costs, fees, and charges due to the county tax collector,
- b. if the property has been sold for taxes to either the state or to a party other than the state, those amounts required for redemption, except for when a municipality is the prevailing bidder, the tax payoff amount shall be the lesser of these amounts, and
- c. if a tax lien has been sold by a county, the amount required for redemption.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 22-142 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. The provisions of this act shall apply to any municipal governing body that adopts the provisions of this act, and are

1 applicable to the collection of municipal code liens as to real
2 property, other than owner-occupied property, in the municipality.

3 B. The provisions of this act shall not apply to owner-occupied
4 property.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 22-143 of Title 11, unless there
7 is created a duplication in numbering, reads as follows:

8 Notwithstanding any law to the contrary, any fees, penalties,
9 and abatement costs imposed against property other than owner-
10 occupied real property for violations of a municipality's housing
11 and building codes adopted pursuant to the statutes of the State of
12 Oklahoma may be enforced in rem as a lien in accordance with this
13 act.

14 Every municipal code lien, as defined in this act, shall be
15 superior to all other liens, except those liens for taxes described
16 or referenced in Section 3103 of Title 68 of the Oklahoma Statutes.

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 22-144 of Title 11, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Any municipality to which this act applies may proceed with
21 judicial in rem foreclosures of municipal code liens in accordance
22 with the provisions of this act by enactment of an ordinance or
23 resolution of the governing authority of the municipality in which
24 the real property is located, which ordinance or resolution shall be

1 sufficient authority for use of this act by the municipality to
2 enforce its municipal code liens.

3 B. The ordinance or resolution of a municipality authorizing
4 and approving the use of this act shall include all of the
5 following:

6 1. The initial effective date for application of these
7 procedures;

8 2. The explicit exclusion of owner-occupied properties from the
9 application of the judicial in rem foreclosure procedures authorized
10 in this act;

11 3. The nature and extent of notices, support services, and
12 referrals to be provided to the owners and occupants of owner-
13 occupied properties; and

14 4. Any other matters the municipality specifies to be addressed
15 through administrative regulations and policies.

16 C. Proceedings in accordance with this act are to solely
17 enforce the municipal code lien for real property subject to the
18 municipal code lien and shall not constitute an action for personal
19 liability for the municipal code liens against the owner or owners
20 of the real property.

21 D. The rights and remedies set forth in this act are available
22 solely to the governmental entities authorized by law to enforce
23 municipal ordinances and shall not extend to any nongovernmental
24 transferee of municipal code liens.

1 E. A municipality that has adopted the provisions of this act
2 and that seeks to enforce a municipal code lien through the sale of
3 real property shall utilize the judicial in rem proceedings of this
4 act as the sole remedy for the enforcement through the sale of real
5 property.

6 F. The enforcement proceedings authorized by this act may be
7 initiated only by the municipality.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 22-145 of Title 11, unless there
10 is created a duplication in numbering, reads as follows:

11 A. After a municipal code lien has been recorded with the
12 office of the county clerk of the county in which the real property
13 is located, the code enforcement director may identify those
14 properties on which to commence a judicial in rem foreclosure in
15 accordance with this act, except that those properties the code
16 enforcement director identifies as owner-occupied shall not be
17 subject to judicial in rem foreclosure under this act. The code
18 enforcement director shall not file a petition for judicial in rem
19 foreclosure in accordance with this act for a period of six (6)
20 months following the date upon which the municipal code lien is
21 recorded in the office of the county clerk. A petition for judicial
22 in rem foreclosure may include any other municipal code lien that
23 has been filed prior to the date the petition is filed. After
24 enforcement proceedings have commenced in accordance with this act,

1 the enforcement proceedings may be amended to include any
2 subsequently arising municipal code liens and, if applicable, any
3 and all taxes as defined in this act.

4 B. If the property on which the municipality is seeking to
5 foreclose under this act is subject to taxes as defined in this act,
6 then, at least sixty (60) days prior to the filing of the petition,
7 the code enforcement director shall notify all other taxing agencies
8 within the jurisdiction of the municipality and the State of
9 Oklahoma of the code enforcement director's intention to file a
10 petition for judicial in rem foreclosure of the real property on
11 which a municipal code lien exists.

12 C. In the name of the municipality, the code enforcement
13 director shall, in the appropriate lis pendens record in the office
14 of the county clerk of the county in which the real property is
15 located, file a notice of his or her intent to file a judicial in
16 rem foreclosure action. The notice shall include a legal
17 description of the property, street address of the property if
18 available, a statement that the property is subject to judicial in
19 rem foreclosure proceedings under this act, and a statement that
20 those proceedings may extinguish any legal interests in the
21 property.

22 D. Simultaneous with the filing of his or her notice of intent
23 to file a judicial in rem foreclosure action, the code enforcement
24 director, in the name of the municipality, shall file a petition

1 with the clerk of the district court for the district in which the
2 real property is located.

3 E. The petition shall be filed against the real property
4 against which the municipal code lien has been recorded and shall
5 provide all of the following:

6 1. The identity of the municipality and the name and address of
7 the code enforcement director;

8 2. The real property address;

9 3. A description of the real property;

10 4. The tax identification number of the real property;

11 5. The municipal code lien which is being foreclosed;

12 6. The principal amount of the municipal code lien together
13 with applicable interest and penalties;

14 7. The principal amount of any additional municipal code liens
15 together with applicable interest and penalties in accordance with
16 this section, if any;

17 8. The year or years for which the taxes are delinquent, if
18 any;

19 9. The principal amount of the taxes together with interest and
20 penalties, if any;

21 10. A statement that upon final sale in accordance with this
22 act and payment of the amount due for taxes, if applicable, an
23 interested party's rights of redemption shall be extinguished; and
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1 11. The names and addresses of all interested parties to whom
2 copies of the petition are to be sent in accordance with subsection
3 F of this section.

4 F. The municipality shall mail copies of the petition by both
5 certified mail, return receipt requested, and by regular mail to all
6 interested parties whose identities and addresses are reasonably
7 ascertainable. Copies of the petition shall also be mailed by
8 first-class mail to the real property address to the attention of
9 the occupants of the property, if any. In addition, notice shall be
10 physically posted on the real property and shall include the
11 following statement: "THIS PROPERTY IS SUBJECT TO A JUDICIAL IN REM
12 FORECLOSURE ACTION AND MAY BE TRANSFERRED TO [NAME OF MUNICIPALITY]
13 OR ANOTHER PARTY. PERSONS WITH INFORMATION REGARDING THE CURRENT
14 OWNER OF THE PROPERTY ARE REQUESTED TO CONTACT [NAME OF
15 MUNICIPALITY]."

16 G. Within thirty (30) days of the filing of the petition, the
17 municipality shall cause a notice of the filing of the petition to
18 be published once each week for three (3) consecutive weeks in a
19 newspaper of general circulation in the county in which the property
20 is located. Such notice shall specify:

- 21 1. The name and address of the code enforcement director;
- 22 2. The real property address;
- 23 3. A description of the real property;
- 24 4. The tax identification number of the real property;

- 1 5. Any applicable municipal code lien which is being foreclosed
2 upon;
- 3 6. The principal amount of any municipal code lien together
4 with interest and penalties;
- 5 7. The applicable period of tax delinquency, if any;
- 6 8. The principal amount of taxes, if any;
- 7 9. That upon deposit with the appropriate parties by the court
8 of the tax payoff amount, if any, any and all rights of redemption
9 accorded to interested parties are extinguished; and
- 10 10. The date and place of the filing of the petition.

11 SECTION 7. This act shall become effective November 1, 2023.

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13 COMMITTEE REPORT BY: COMMITTEE ON COUNTY AND MUNICIPAL GOVERNMENT,
14 dated 02/20/2023 - DO PASS.

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