Ordinance for the demolition of unsafe buildings

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Subject:
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MUNICIPALITIES--ORDINANCE REGULATING MAINTENANCE OR DEMOLITION OF UNSAFE BUILDINGS PERMISSIBLE

To: J. Bart Budetti, City Attorney, Hollywood

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General, and Gerald L. Knight, Legal Research Assistant

QUESTION:

May the city commission of the City of Hollywood adopt a municipal ordinance regulating the maintenance and destruction of unsafe buildings within the municipality?

SUMMARY:

The city commission of the City of Hollywood may adopt a municipal ordinance regulating the maintenance and destruction of unsafe buildings within the municipality.

Under Art. VIII, s. 2, State Const., as implemented by Ch. 166, F. S. (the Municipal Home Rule Powers Act, enacted by Ch. 73-129, Laws of Florida), municipalities have broad home rule powers. The statute provides essentially that, with certain exceptions, municipalities can enact any legislation concerning any subject matter upon which the state legislature may act. Attorney General Opinions 073-267, 073-276, and 074-18. In addition, s. 166.042 declares the legislative intent to be that municipalities continue to exercise powers previously conferred on them by Chs. 167, 168, 169, 172, 174, 176, 178, 181, 183, and 184, F. S., substantially repealed by Ch. 73-129, "subject only to the terms and conditions which they choose to prescribe." In this regard, repealed s. 167.05 provided in pertinent part that a "city or town may prevent and abate nuisances"; and it has been held by the Florida Supreme Court that municipal ordinances requiring unsafe buildings to be repaired or torn down are within the police power, provided property rights and due process of law are observed. Rowland v. State *ex rel*. Martin, 176 So. 545 (Fla. 1937). Cf. Nobles v. City of Jacksonville, 265 So.2d 550 (1 D.C.A. Fla., 1972), in which it was said that "one of the most important duties and responsibilities of a municipality is to protect its citizens from known dangers." *See also* s. 163.295, F. S., authorizing cities and counties to adopt building and safety codes.

Accordingly, I am of the opinion that the city commission of the City of Hollywood has the general power to adopt a municipal ordinance regulating the maintenance and destruction of unsafe buildings within the municipality.

However, you also draw my attention to Ch. 24314, 1947, Laws of Florida, a general law of local application applicable to Broward County, which empowered boards of county commissioners of counties having a population exceeding 300,000 "to condemn, raze, demolish and destroy buildings and other structures which for any reason constitute a health, fire or windstorm hazard." *See also* ss. 125.56 and 163.295, F. S., authorizing counties to adopt a building code. This "population act" was repealed by Ch. 71-29, Laws of Florida, and became an ordinance of Broward County, subject to amendment or repeal. As Broward County is a noncharter county, Art. VIII, s. 1(f), State Const., applies in the instant situation. It provides in pertinent part that a county ordinance "in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict." As a result, the city commission of the City of Hollywood is not precluded by the Florida Constitution or by general law from adopting an ordinance upon the same subject matter as the Broward County ordinance, formerly Ch. 24314, even if such municipal ordinance conflicts with the county ordinance.

Your question is, therefore, answered in the affirmative.