INSTITUTE FOR JUSTICE
FLORIDA

November 6, 2024

Via Electronic Mail
Broward County Building Code Division
Zoning & Code Compliance
Resilient Environment Department
2307 West Broward Boulevard, Suite 300
Fort Lauderdale, Florida 33312
ATTN: Cyril Saiphoo, Zoning Official

Re: Code Enforcement Case Nos.: 24-0926 & 24-0927
2831 NW 11 Pl, Fort Lauderdale, FL 33311

Dear Zoning & Code Compliance Officials:

I write to you in connection with your consideration of the above-referenced code enforcement case at 2381 NW 11th Place in Fort Lauderdale. The Institute for Justice ("IJ") is a national, non-profit public interest law firm that advocates on behalf of individuals and property owners nationwide. As part of its practice, IJ specializes in property rights defense on behalf of homeowners fighting against code-enforcement abuse. In that capacity, IJ represented Miami Shores homeowners Hermine Ricketts and Tom Carrol in a legal challenge to their town's ban on front-yard vegetable gardens.[1] And in the wake of that case, IJ led the campaign to pass a statewide reform protecting the right of all residential property owners to grow food on their properties—as Americans have done on their land since time immemorial. That protection is now generally known as the Vegetable Garden Protection Act and it is now enshrined in state law. *See* Fla. Stat. § 604.71.

The County's interpretation of that law—and its understanding of the circumstances that led to its passage—are flawed. As the act expressly states, "a county, municipality, or other political subdivision of this state ***may not regulate vegetable gardens on residential properties***." *Id*. at (2) (emphasis added). And it was enacted precisely in response to the Village of Miami Shores' prohibition of exactly the conduct at issue in this code enforcement matter. The County, nonetheless, seeks to read an exception into the statute that is not there—one that relies on language from the bill's fiscal impact statement and which supposedly narrows the act to apply only to "occupants of residential properties." This interpretation, to be clear, is not rooted in any generally accepted method of statutory interpretation and is contrary to a plain reading of the unambiguous text of the statute. In addition to this lack of statutory basis, the County's

[1] https://ij.org/case/flveggies/

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law—to the extent it prohibits a property owner from growing food on their own land—is unconstitutional under both the U.S. Constitution and the Florida Constitution.

In light of the above, if the County's prohibition of this residential garden were challenged in court, the County would very likely lose. In addition, the County would be responsible for costs and attorneys' fees associated with any successful challenge. Indeed, Florida law expressly compels it: "If a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is expressly preempted by the State Constitution or by state law, the court shall assess and award reasonable attorney fees and costs and damages to the prevailing party." Fla. Stat. § 57.112(2).

I encourage you to reconsider your interpretation of your ordinances.

Sincerely,

Ari Bargil
Senior Attorney
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