

6A-3

Agenda Item#

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

BOARD APPOINTMENT SUMMARY

Meeting Date: October 6, 2009
Department: Planning, Zoning and Building

Submitted By Code Enforcement Division

Advisory Board Name: Nuisance Abatement Board

I. EXECUTIVE BRIEF

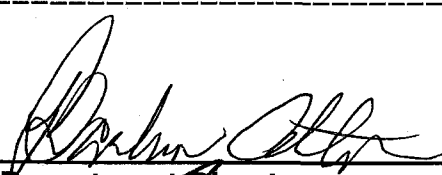
Motion and Title: Staff recommends motion to approve: Reappointment of the following members to the Nuisance Abatement Board (NAB) for the term indicated below:


<u>Nominee</u>	<u>Seat No.</u>	<u>Seat Requirement</u>	<u>Terms</u>	<u>Nominated by</u>
Linda L. O'Rourke	2	PBC resident	April 10, 2009 - April 9, 2011	Commissioner Marcus Commissioner Koons

Summary: The Nuisance Abatement Board was established under Ordinance number 2002-023 amending Ordinance 90-12. The NAB is composed of five members. All members must be residents of Palm Beach County, and at least one member shall be a licensed Attorney with trial experience. Ms. O'Rourke, meets the residency requirements. This will leave 2 vacancies on the Board. Unincorporated (DW)

Background and Justification: The Palm Beach County Nuisance Abatement Board was created to hear evidence relating to the existence of public nuisances on premises located in the unincorporated area of the County. Ms. O'Rourke' appointment will bring the Board's membership up to three (3) out of five (5).

- Attachments:**
1. Board Appointment forms
 2. List of Board Members
 3. Ordinance 2002-023

Recommended By:  9-21-09
Department Director Date

Legal Sufficiency:  9/23/09
Assistant County Attorney Date

II. REVIEW COMMENTS

A. Other Department Review:

Department Director

REVISED 06/92
ADM FORM 03
(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)



**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
NUISANCE ABATEMENT BOARD**

I. AUTHORITY :

Created pursuant to Section 893.138, Florida Statutes; Ordinance No. 90-12; amended Ordinance No. 93-16; as amended by Ordinance No. 95-64; as amended by Ordinance No. 2002-023 on May 21, 2002.

II. APPOINTING BODY :

Board of County Commissioners

III. COMPOSITION, QUALIFICATIONS, TERMS & REMOVAL :

This Board is composed of five (5) members appointed by a majority vote of the County Commissioners for two (2) year terms, except as set forth herein at subsection (b). Members of the Nuisance Abatement Board shall be persons who reside in the County. The chairman of the Board shall be an attorney, duly licensed by the state, with trial experience. The initial appointments to the Nuisance Abatement Board shall be as follows: two (2) members and the chairman appointed for a term of (2) years; and two (2) members shall be appointed for a term of one (1) year. Upon expiration of initial terms, subsequent appointments for two (2) years shall be made. Any member may be reappointed by the County Commission. Appointments to fill a vacancy shall be for the remainder of the unexpired term. Any member who fails to attend two (2) of three (3) successive meetings without cause and without prior approval of the chairman shall automatically forfeit his appointment, and the Board of County Commissioners shall promptly fill such vacancy for the remainder of the term. The presence of three (3) or more members shall constitute a quorum. Members shall serve without compensation.

IV. MEETINGS :

As needed, 2300 No. Jog Road, WPB

V. FUNCTIONS :

To conduct hearings pursuant to Ord. 90-12 procedures. Issue appropriate orders after due process, fact and findings.

VI. LIAISON INFORMATION :

LIAISON DEPARTMENT

County Attorney

CONTACT PERSON

Karon Lamb

ADDRESS

2300 N Jog Rd Fl 4TH Planning Zoning Building/code Enforcement
West Palm Beach FL 33411 2741
Phone # 561-233-5524



NUISANCE ABATEMENT BOARD

SEAT ID	CURRENT MEMBER	ROLE TYPE	RACE CODE	BUSINESS / HOME PHONE	SEAT REQUIREMENT	APPOINT DATE	RE-APPOINT DATE	EXPIRE DATE
Appointed By : AT Large								
1	Daniel Hyndman, Esquire P O Box 3731 West Palm Beach FL 33402	Member	EA	--	Attorney	02/24/2004	07/08/2008	07/07/2010
NOMINATED BY :								
2	Linda O'Rourke 521 28th St West Palm Beach FL 33407	Member	EA	561-833-8943	No Special Requirement	01/23/1996	04/10/2007	04/10/2009
NOMINATED BY :								
3	Craig Kunkle, Jr. 275 Toney Penna Dr Ste 7 Jupiter FL 33458	Member	EA	561-575-7792	No Special Requirement	04/20/1993	04/10/2007	04/10/2009
NOMINATED BY : Declined								
4	Vacant Boca Raton FL	Member	UN	--	No Special Requirement			
NOMINATED BY :								

Appointed By : AT Large

5 Nathan Lipschultz
1155 SW 5th St
Boca Raton FL 33486

Member

EA

Resident Of Palm Beach County

09/14/2004

07/08/2008

07/07/2010

NOMINATED BY :

ORDINANCE NO. 2002-023

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 23, ARTICLE III OF THE PALM BEACH COUNTY CODE (ORDINANCE NO. 90-12 AS AMENDED), PERTAINING TO NUISANCE ABATEMENT; PROVIDING FOR A TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR NUISANCE ABATEMENT BOARD AND ORGANIZATION; PROVIDING FOR OPERATING PROCEDURES; PROVIDING FOR CONDUCT OF HEARING; PROVIDING FOR ADDITIONAL PENALTIES; PROVIDING FOR JURISDICTION; PROVIDING FOR JUDICIAL REVIEW; PROVIDING FOR RIGHTS PRESERVED; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, counties are authorized to create administrative boards to abate nuisances in their communities; and

WHEREAS, the Palm Beach County Board of County Commissioners being concerned about the proliferation of public nuisances on premises located in Palm Beach County desired to abate said nuisances and adopted Ordinance No. 90-12, creating the Nuisance Abatement Board; and

WHEREAS, Chapter 893, Florida Statutes, was amended to provide additional circumstances which may constitute a nuisance and to provide for additional penalties which may be imposed by the Nuisance Abatement Board.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. TITLE:

This Ordinance shall be known as the "Palm Beach County Nuisance Abatement Ordinance."

Section 2. DEFINITIONS:

(a) **Public nuisance.** Any place or premises within Palm Beach County which has been used:

- (1) On more than two (2) occasions, within a six-month period as the site of the unlawful sale, delivery, manufacture or cultivation of any controlled substance;
- (2) On one (1) occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been

1 previously used on more than one (1) occasion as the site of the unlawf
2 sale, delivery, manufacture, or cultivation of any controlled substance;

3 (3) On more than two (2) occasions within a six (6) month period as the site
4 a violation of Florida Statutes, §796.07;

5 (4) By a criminal street gang for the purpose of conducting a pattern of crimin
6 street gang activity as defined in s.874.03, Florida Statutes; or

7 (5) On more than two (2) occasions within a six-month period, as the site of
8 violation of s.812.019, Florida Statutes, relating to dealing in stolen propert

9 (b) Board. The Nuisance Abatement Board of Palm Beach County.

10 (c) County Attorney. The legal counselor of the County or such assistant county attorne
11 as may from time to time be designated.

12 (d) Clerk. The County shall provide clerical and administrative personnel, as designate
13 by the County Administrator, to perform the duties necessary to carry out the activities of th
14 Nuisance Abatement Board.

15 (e) Operator. Tenant, lessee or person having control or possession of the premises.

16 (f) Controlled substance. Includes any substance sold in lieu of a controlled substanc
17 in violation of s.817.563, Florida Statutes, or any imitation controlled substance defined i
18 s.817.564, Florida Statutes.

19 (g) Criminal street gang. A formal or informal ongoing organization, association, o
20 group that has as one of its primary activities the commission of criminal or delinquent acts, and tha
21 consists of three or more persons who have a common name or common identifying signs, colors
22 or symbols and have two or more members who, individually or collectively, engage in or hav
23 engaged in a pattern or criminal street gang activity.

24 In this context, a criminal street gang member shall mean a person who is a membe
25 of a criminal street gang as defined in subsection (g) and who meets two or more of the following
26 criteria:

27 (1) Admits to criminal street gang membership;

28 (2) Is identified as a criminal street gang member by a parent or guardian;

29 (3) Is identified as a criminal street gang member by a documented reliable
30 informant;

- (4) Resides in or frequents a particular criminal street gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal street gang members;
- (5) Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information;
- (6) Has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity;
- (7) Is identified as a criminal street gang member by physical evidence such as photographs or other documentation; or
- (8) Has been stopped in the company of known criminal street gang members four or more times.

(h) Pattern of criminal street gang activity. The commission or attempted commission of, or solicitation or conspiracy to commit, two or more felony or three or more misdemeanor offenses, or one felony and two misdemeanor offenses, or the comparable number of delinquent acts or violations of law which would be felonies or misdemeanors if committed by an adult, on separate occasions within a three (3) year period.

In the context of this Ordinance, a gang-related incident shall mean an incident that, upon investigation meets any of the following conditions:

- (1) The participants are identified as criminal street gang members or criminal street gang associates, acting, individually or collectively, to further any criminal purpose of the gang;
- (2) A reliable informant identifies an incident as criminal street gang activity; or
- (3) An informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.

Section 3. NUISANCE ABATEMENT BOARD AND ORGANIZATION:

(a) There is hereby created and established a Nuisance Abatement Board to hear evidence relating to the existence of public nuisances on premises located in the County. This Board

1 shall consist of five (5) members appointed by a majority vote of the County Commission for tw
2 year terms, except as set forth herein at subsection (b). Members of the Nuisance Abatement Boa
3 shall be persons who reside in the County. The chairman of the Board shall be an attorney, du
4 licensed by the state, with trial experience.

5 (b) The initial appointments to the Nuisance Abatement Board shall be as follows:

6 (1) Two (2) members and the chairman appointed for a term of two (2) years; ar

7 (2) Two (2) members shall be appointed for a term of one (1) year.

8 Upon expiration of initial terms, subsequent appointments for two (2) years shall be made. Ar
9 member may be reappointed by the County Commission. Appointments to fill a vacancy shall b
10 for the remainder of the unexpired term. Any member who fails to attend two (2) of three (3)
11 successive meetings without cause and without prior approval of the chairman shall automatic
12 forfeit his appointment, and the Board of County Commissioners shall promptly fill such vacanc
13 for the remainder of the term.

14 (c) The presence of three (3) or more members shall constitute a quorum. Members sha
15 serve without compensation.

16 **Section 4. OPERATING PROCEDURES:**

17 (a) Any employee, officer or resident of the County may file a complaint and request fo
18 the Nuisance Abatement Board to determine whether a public nuisance exists on premises locate
19 in the County as defined in Section 2(a), after giving not less than three (3) days' written notice o
20 such complaint to the owner of the place or premises at his or her last known address.

21 (b) When a complaint has been received, and the County has reason to believe that
22 public nuisance as defined in Section 2(a) exists on the premises complained of, the County shal
23 promptly request a hearing before the Nuisance Abatement Board.

24 (c) The Nuisance Abatement Board, through its clerk, shall schedule a hearing; and
25 written notice of the hearing shall be sent to the owner and operator(s) of the premises at their last-
26 known addresses at least five (5) days prior to the scheduled hearing.

27 (d) The aforesaid notice of hearing shall include:

28 (1) A statement of the time, place and nature of the hearing.

29 (2) A statement of the legal authority and jurisdiction under which the hearing
30 is to be held.

- (3) A reference to the particular sections of the statutes and ordinances involved.
- (4) A short and plain statement summarizing the incidents that form the basis of the complaint.

Section 5. CONDUCT OF HEARING:

(a) The chairman of the Board may call hearings of the Board. Hearings may also be called by written notice signed by at least three (3) members of the Board. The Board, at a hearing, may set a future hearing date. The Board shall attempt to convene no less frequently than once every month but may meet more or less often as the demand necessitates. The Board shall adopt rules for the conduct of its hearings. Minutes shall be kept of all hearings, and all hearings shall be open to the public. The County shall provide clerical and administrative personnel as may be reasonably required for the proper performance of the Board's duties.

(b) The county attorney and county staff designated by the County Administrator shall present cases before the Board. All parties shall have an opportunity to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. The Board may consider any evidence, including evidence of the general reputation of the place or premises. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Orders of the Board shall be based on competent and substantial evidence, and any finding that a nuisance exists must be based on a "preponderance of the evidence" standard.

(c) After considering all evidence, the Board may declare the place or premises to be a public nuisance as defined in this Ordinance and may enter an order as follows:

- (1) Immediately prohibiting the maintaining of the nuisance;
- (2) Immediately prohibiting the operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof;
- (3) Immediately prohibiting the conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance; or
- (4) Requiring the owner of such place or premises declared to be a public nuisance to adopt such procedure as may be appropriate under the

1 circumstances to abate any such nuisance.

2 All orders of the Board shall be by motion approved by a majority of those members present a
3 voting, except that at least three (3) members of the Board must be present in order for the action
4 be official.

5 (d) An order entered under subsection (c) shall expire after one (1) year, or at such earli
6 time as stated in the order. The Board may retain jurisdiction for one (1) year to modify its orde
7 prior to the expiration of the orders.

8 (e) The county Sheriff and county staff, as designated by the County Administrator, sh
9 assist the Board in carrying out any legally authorized order rendered pursuant to this Ordinance

10 (f) In the event that orders of the Board expire and/or are not complied with, or are fi
11 any reason ineffective, the Board may then bring a complaint under s.60.05, Florida Statutes, seekir
12 a permanent injunction against any public nuisance described in Section 2(a). An order entere
13 hereunder may be enforced pursuant to the procedures contained in s.120.69, Florida Statutes.

14 (g) The County shall provide clerical and administrative personnel to the Board as ma
15 be reasonably required for the proper performance of the Board's duties. Minutes of hearings an
16 orders of the Board shall be promptly recorded and all hearings shall be open to the public.

17 **Section 6. ADDITIONAL PENALTIES:**

18 (a) The Board's order may include, but is not limited to, provisions that establis
19 additional penalties for public nuisances, including:

- 20 (1) fines not to exceed \$250 per day;
- 21 (2) requiring the payment of reasonable costs, including reasonable attorney fees
22 associated with investigations of and hearings on public nuisances;
- 23 (3) establishing penalties, including fines not to exceed \$500 per day for
24 recurring public nuisances;
- 25 (4) providing for the recording of orders on public nuisances so that notice must
26 be given to subsequent purchasers, successors in interest, or assigns of the
27 real property that is the subject of the order;
- 28 (5) providing that recorded orders on public nuisances may become liens against
29 the real property that is the subject of the order; and providing for the
30 foreclosure of property subject to a lien and the recovery of all costs,

1 including reasonable attorney fees, associated with the recording of orders
2 and foreclosure. No lien created pursuant to the provisions of this section
3 may be foreclosed on real property which is a homestead under s. 4, Art. X
4 of the State Constitution.

5 (b) Where the County seeks to bring an administrative action, based on a stolen property
6 nuisance, against a property owner operating an establishment where multiple tenants, on one site,
7 conduct their own retail business, the County shall not file a lien against the property or prohibit the
8 operation of the property if the property owner evicts the business declared to be a nuisance within
9 90 days after notification by registered mail to the property owner of a second stolen property
10 conviction of the tenant.

11 (c) The total fines imposed pursuant to the authority of this Ordinance shall not exceed
12 \$15,000.

13 (d) Nothing contained within this section prohibits the County from proceeding against
14 a public nuisance by any other means.

15 **Section 7. JURISDICTION:**

16 Consistent with law and this Ordinance, the Nuisance Abatement Board shall have
17 jurisdiction to enforce this Ordinance within the unincorporated area of the County.

18 **Section 8. JUDICIAL REVIEW:**

19 Any person, including Palm Beach County, aggrieved by any ruling or order of the Nuisance
20 Abatement Board, may seek review by certiorari in the Circuit Court of the County. A petition for
21 writ of certiorari shall be filed within thirty (30) days of the date of the written order appealed from.

22 **Section 9. RIGHTS PRESERVED:**

23 This Ordinance does not restrict the right of any person to proceed under either s.60.05 or
24 s.823.05, Florida Statutes, against any public nuisance.

25 **Section 10. REPEAL OF LAWS IN CONFLICT:**

26 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
27 repealed to the extent of such conflict.

28 **Section 11. SEVERABILITY:**

29 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason
30 held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the

1 remainder of this Ordinance.

2 **Section 12. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

3 The provisions of this Ordinance shall become and be made a part of the Code of Laws a
4 Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered
5 relettered to accomplish such, and the word "ordinance" may be changed to "section", "article",
6 other appropriate word.

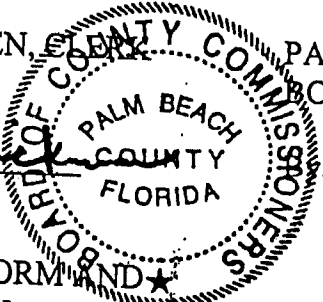
7 **SECTION 13. EFFECTIVE DATE:**

8 The provisions of this Ordinance shall become effective upon filing with the Department
9 State.

10 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach Count
11 Florida, on this the 21 day of May, 2002.

12 DOROTHY H. WILKEN, COUNTY CLERK, PALM BEACH COUNTY, FLORIDA, BY ITS
13 BOARD OF COUNTY COMMISSIONERS

14 By: Dorothy C. Hickman
15 Deputy Clerk



16 Warren H. Newell
Warren H. Newell, Chairman

17 APPROVED AS TO FORM AND
18 LEGAL SUFFICIENCY
19 By: Dawn
20 County Attorney

21 EFFECTIVE DATE: Filed with the Department of State on the 30 day of May, 2002.

22 G:\WPDATA\ENVIRLYakovakis\DAWN\ORDINANC\Nab\ordadopt.wpd

8 STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on May 21, 2002
DATED at West Palm Beach, FL on 6/13/02
DOROTHY H. WILKEN, Clerk
By: Wendy Brown D.C.