

Agenda Item #: 4F

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 21, 2011 [] Consent [] Regular
[xx] Public Hearing

Submitted By: Palm Beach County Sheriff's Office

Submitted For: Palm Beach County Sheriff's Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE CHAPTER 3, ARTICLE II, (ORDINANCE NO. 2008-060) PERTAINING TO NIGHTCLUB SECURITY; AMENDING SECTION 3-22 DEFINITIONS; AMENDING SECTION 3-23 SECURITY/LAW ENFORCEMENT PRESENCE; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING CAPTIONS; AND PROVIDING AN EFFECTIVE DATE.

Summary: In 2008, the Board of County Commissioners adopted Palm Beach County Code Chapter 3, Article II (Ord. No. 2008-060) regulating nightclub security. The Sheriff's Office has requested that the Ordinance be amended to require that all security officers at nightclubs be licensed by the State of Florida as Class "D" officers. The requirement that security officers complete a training course approved by the Sheriff's Office has been deleted at the request of the Sheriff's Office. Additionally, the Sheriff's Office has requested that the Board of County Commissioners remove the Special Restaurant Exemption as there are establishments which are currently exempt from the Nightclub Ordinance but are in fact operating as nightclubs. The Sheriff's Office has documented almost 200 calls for service at these exempt establishments. Removing the exemption, will require that these establishments comply with the security requirements of the Nightclub Ordinance and will serve to protect the health, safety and welfare of patrons at these establishments. Countywide (DW)

Background and Justification: A Sheriff's Office analysis of two nightclubs in unincorporated Palm Beach County during 2010, reveals a total of 199 calls which included 9 assaults, 2 robberies, 1 stabbing, 1 shooting/shots fired, and 53 calls requesting extra patrols/police services. The Sheriff's Office also documented many other calls of crimes against property. The two nightclubs for which these crime statistics were obtained are all currently exempt from the Nightclub Ordinance.

Attachments:

- 1. Proposed Ordinance Amendment - Strike-through/underlined version
- 2. Proposed Ordinance Amendment - Clean version

Recommended by: _____

Department Director

Date

Approved by: W. Bonvento 6/7/11

Assistant County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

No Fiscal impact
M. H. H. 6/15/11

 OFMB

J. J. Jacobs 6/15/11

 Contract Development and Control

B. Legal Sufficiency:
6/15/11

 Assistant County Attorney

C. Other Department Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

ORDINANCE NO. 2011 - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE CHAPTER 3, ARTICLE II, (ORDINANCE NO. 2008-060) PERTAINING TO NIGHTCLUB SECURITY; AMENDING SECTION 3-22 DEFINITIONS; AMENDING SECTION 3-23 SECURITY/LAW ENFORCEMENT PRESENCE; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING CAPTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2008, the Board of County Commissioners of Palm Beach County determined that the presence of security officers and Sheriff deputies would best protect the safety of patrons and employees of nightclubs, and enacted the "Palm Beach County Nightclub Security Ordinance" (Ord. No. 2008-060); and

WHEREAS, at the time of enactment, the Board of County Commissioners exempted restaurants that possessed a "Consumption on Premises, Special Restaurant Exemption"; and

WHEREAS, the Palm Beach County Sheriff's Office now indicates that there are establishments which possess a Special Restaurant Exemption and are also acting as nightclubs as defined in this Ordinance; and

WHEREAS, a Sheriff's Office analysis of two nightclubs in unincorporated Palm Beach County during 2010, reveals a total of 199 calls which included 9 assaults, 2 robberies, 1 stabbing, 1 shooting/shots fired, and 53 calls requesting extra patrols/police services; and

WHEREAS, the Sheriff's Office also documented many other calls of crimes against property; and

WHEREAS, the two nightclubs for which these crime statistics were obtained are all currently exempt from the Palm Beach County Nightclub Security Ordinance (Ord. No. 2008-060) as they possess a "Consumption on Premises, Special Restaurant Exemption"; and

WHEREAS, the Sheriff's Office has requested that the Board of County Commissioners remove the Special Restaurant Exemption and retroactively apply the

requirements of the Nightclub Security Ordinance to these establishments in order to protect the health, safety and welfare of patrons at these establishments; and

WHEREAS. the Sheriff's Office has also requested that all security officers employed or contracted by nightclubs be licensed by the State of Florida as Class "D" officers; and

WHEREAS, the Board of County Commissioners of Palm Beach County now desires to amend said Ordinance by removing the Special Restaurant Exemption and requiring that all security officers employed or contracted by nightclubs be licensed by the State of Florida as Class "D" officers.

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

Section 1. DEFINITIONS.

Palm Beach County Code Chapter 3, Article II, Section 3-22 is hereby amended as follows:

The following words and phrases when used in this Ordinance shall have the meanings as set out herein:

1. Nightclub means any commercial establishment at which alcohol is sold and consumed, and which, at any one time, is determined to be a nightclub by application of the factors set forth in this definition. If a commercial establishment could reasonably be classified as either a restaurant, a nightclub or some different use, it shall be deemed a nightclub for purposes of this Ordinance. In determining whether an establishment is a nightclub, the following factors shall be considered:

(a) If one of the following two factors is satisfied, then the establishment is a nightclub:

(1) The establishment charges a cover charge, door charge, required contribution, or one time membership fee which is paid at the door; or

(2) The establishment has a minimum drink purchase requirement.

(b) If neither of the factors listed in subsection (a) above are present, then if three of the following five factors are satisfied, the establishment is a nightclub:

(1) There is a dance floor or other open area used by patrons for dancing or for viewing of live entertainment (such dance floor or open space may be established by the temporary removal or rearrangement of furniture or tables);

(2) The establishment is open to the public anytime between 11:00 p.m. and 8:00 a.m. on any day of the week;

(3) The maximum capacity of the establishment, as set by the fire officials through fire, building, structure, and other relevant laws and ordinances, is over 150 persons. The facility may restrict its capacity to a lesser number;

(4) Advertisements for the establishment routinely describe specific entertainment events or engagements (e.g. "House Party Saturday Night"; "DJ Thursday night"; "Rock Band tonight"); or

(5) The establishment features a platform or musical staging area used in connection with performances or entertainment.

~~(c) A nightclub is distinct from a restaurant that sells alcohol when the establishment cannot qualify for a "Consumption on Premises, Special Restaurant Exemption" pursuant to state law and is exempt from the provisions of this Ordinance.~~

2. Owner, except when specific reference is made to the Owner of the physical location or premises, it shall include the Owner, operator, manager, promoter or other person having supervision over a nightclub as defined herein.

3. Parking lot means an area given, leased, rented or otherwise used by patrons and staff to park vehicles.

4. Promoter means a person or the legal entity who assumes the financial responsibilities of a nightclub, including but not limited to, contracting with the principals, renting the site and collecting the gate revenues.

5. Security Officer means any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property and maintains a Class "D" license pursuant to state law.

6. Sheriff means the Palm Beach County Sheriff.

Section 2. SECURITY /LAW ENFORCEMENT PRESENCE:

Palm Beach County Code Chapter 3, Article II, Section 3-23 is hereby amended as follows:

Nightclubs shall be required to comply with the security/law enforcement presence as follows:

1. All nightclubs located in the unincorporated area shall provide interior and exterior security personnel of a number equaling one security officer per each occupancy level of 150 occupants or any portion thereof or as determined by the Sheriff's Office, with cause. For example, if the occupancy level of an establishment is 500, a total of four interior and exterior security personnel are required. If the occupancy level is 150, a total of one interior and exterior security personnel is required. Security officers ~~must~~ employed or contracted by Owners shall complete a ~~security officer training course approved by the Sheriff's Office~~ the requirements for a Class "D" license established pursuant to Section 493.6303, F.S. and be so licensed. ~~which deals with acting as a security officer in a nightclub that serves alcohol.~~ Security Officers must provide proof of the Class "D" license upon request of law enforcement.

2. Additionally, the Owner shall, at its expense, provide the required minimum number of off-duty Sheriff deputies, as approved by the Sheriff or his designee. The Sheriff or his designee may periodically review and adjust its recommendation as to the required staffing of off-duty Sheriff deputies, based on the availability of off-duty Sheriff deputies and current security conditions at the nightclub and within its vicinity. Such deputies shall commence service at 10:00 p.m. or as designated by the Sheriff's Office each evening the nightclub is open to the public later than 10:00 p.m. and ending one hour after closing of said nightclub or as designated by the Sheriff's Office. Nightclubs shall be required to employ a minimum of two Sheriff's deputies and one additional Sheriff's deputy thereafter for each 150 persons or any portion thereof of the maximum capacity of the premises or as designated by the Sheriff's Office. Notwithstanding anything herein to the contrary, the Sheriff may, within his sole discretion, authorize a nightclub to use security officers in lieu of off-duty deputies in order to comply with this subsection.

3. This section shall not apply to nightclubs that have had less than 4 incidents which required a law enforcement response within the preceding calendar year, and which are attributable to events held at the nightclub.

Section 3. APPLICABILITY:

This Ordinance shall apply to all existing establishments and all new establishments meeting the definition of "nightclub" located in unincorporated Palm Beach County only.

Section 4. REPEAL OF LAWS IN CONFLICT:

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

Section 5. SEVERABILITY:

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

Section 6. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word ordinance may be changed to section, article, or other appropriate word.

Section 7. CAPTIONS:

The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

Section 8. EFFECTIVE DATE:

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

APPROVED and ADOPTED by the Board of County Commissioners of Palm
Beach County, Florida, on this the ____ day of _____, 20____.

**SHARON R. BOCK, CLERK &
COMPTROLLER**

**PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Karen T. Marcus, Chair

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

**EFFECTIVE DATE: Filed with the Department of State on the ____ day of
_____, 20____.**

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WHEREAS, in 2008, the Board of County Commissioners of Palm Beach County determined that the presence of security officers and Sheriff deputies would best protect the safety of patrons and employees of nightclubs, and enacted the "Palm Beach County Nightclub Security Ordinance" (Ord. No. 2008-060); and

WHEREAS, at the time of enactment, the Board of County Commissioners exempted restaurants that possessed a "Consumption on Premises, Special Restaurant Exemption"; and

WHEREAS, the Palm Beach County Sheriff's Office now indicates that there are establishments which possess a Special Restaurant Exemption and are also acting as nightclubs as defined in this Ordinance; and

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WHEREAS, the two nightclubs for which these crime statistics were obtained are all currently exempt from the Palm Beach County Nightclub Security Ordinance (Ord. No. 2008-060) as they possess a "Consumption on Premises, Special Restaurant Exemption"; and

WHEREAS, the Sheriff's Office has requested that the Board of County Commissioners remove the Special Restaurant Exemption and retroactively apply the

requirements of the Nightclub Security Ordinance to these establishments in order to protect the health, safety and welfare of patrons at these establishments; and

WHEREAS. the Sheriff's Office has also requested that all security officers employed or contracted by nightclubs be licensed by the State of Florida as Class "D" officers; and

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2. Additionally, the Owner shall, at its expense, provide the required minimum number of off-duty Sheriff deputies, as approved by the Sheriff or his designee. The Sheriff or his designee may periodically review and adjust its recommendation as to the required staffing of off-duty Sheriff deputies, based on the availability of off-duty Sheriff deputies and current security conditions at the nightclub and within its vicinity. Such deputies shall commence service at 10:00 p.m. or as designated by the Sheriff's Office each evening the nightclub is open to the public later than 10:00 p.m. and ending one hour after closing of said nightclub or as designated by the Sheriff's Office. Nightclubs shall be required to employ a minimum of two Sheriff's deputies and one additional Sheriff's deputy thereafter for each 150 persons or any portion thereof of the maximum capacity of the premises or as designated by the Sheriff's Office. Notwithstanding anything herein to the contrary, the Sheriff may, within his sole discretion, authorize a nightclub to use security officers in lieu of off-duty deputies in order to comply with this subsection.

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Section 8. EFFECTIVE DATE:

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

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the ____ day of _____, 20____.

SHARON R. BOCK, CLERK & COMPTROLLER

**PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Karen T. Marcus, Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the ____ day of _____, 20____.