

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: July 22, 2014

<input type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
<input type="checkbox"/>	Ordinance	<input checked="" type="checkbox"/>	Public Hearing

Department

Submitted By: County Attorney's Office

Submitted For: Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: An Ordinance of the Board of County Commissioners of Palm Beach County, Florida, repealing Palm Beach County Code, Chapter 20, Nuisances, Article III, Abatement of Nuisances, codifying Ordinance No. 90-12, amended by Ordinance Nos. 93-16, 95-64, 97-9 and 2002-023, known as the "Nuisance Abatement Ordinance" created pursuant to Section 893.138 Florida Statutes, establishing the Nuisance Abatement Board of Palm Beach County; providing for Inclusion in the Code of Laws and Ordinances; and providing for an Effective Date.

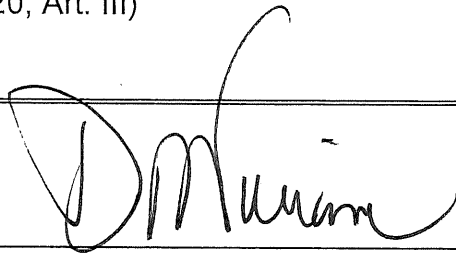
Summary: On July 1, 2014, the Board of County Commissioners held a preliminary reading of this Ordinance and authorized advertising for public hearing. The Nuisance Abatement Ordinance was enacted in 1990 to establish the "Nuisance Abatement Board of Palm Beach County" (NAB) to abate drug-related nuisances occurring on premises throughout the County. The Ordinance was amended in 1997 to apply only in the unincorporated areas of the County. Since its creation, the NAB has convened less than five (5) times to hear complaints and evidence regarding "drug-related nuisances." The Sheriff does not object to the dissolution of the NAB. Repealing the Nuisance Abatement Ordinance will not prohibit the County or any citizen from proceeding against a public nuisance by any other means, including, but not limited to, seeking injunctive relief under Section 60.05 of the Florida Statutes. The League of Cities has no opposition to the proposed Ordinance repeal. Unincorporated (PGE)

Background and Policy Issues: In 1990, under Chapter 893, Florida Statutes, as part of the "Drug Abuse Prevention and Control Act," the Florida Legislature, in an effort to expeditiously address criminal activity, such as drugs and prostitutions that was occurring in certain areas or premises, allowed local governments to form "Nuisance Abatement Boards" to hear complaints and assess an administrative fine against the owners of said premises. Although there were already several other general public nuisance laws on the books since the 1970s, outlined in Chapter 823, which included some criminal activities in the definition of "nuisance," they required the complainant to utilize the formal court system. All such other remedies are still available to the County or any citizen who desires to file a general public nuisance complaint or seek injunctive relief to enjoin a nuisance under Section 60.05, Florida Statutes.

Attachments:

1. Proposed Ordinance Repealing Nuisance Abatement Ordinance
2. Copy of the current Nuisance Abatement Ordinance (codified in the PBC Code of Ordinances as Chapter 20, Art. III)

Recommended by: _____



County Attorney

7/8/14

Date

Approved By: _____

N/A

II. FISCAL IMPACT ANALYSIS

Is Item Included In Current Budget? Yes _____ No _____

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Net Fiscal Impact	**	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Budget Account Exp No: Fund _____ Department _____ Unit _____ Object _____
 Rev No: Fund _____ Department _____ Unit _____ Object _____

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

**NO FISCAL IMPACT

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

Susan Neary 7/9/14
 OFMB
 7/8 7/9

Dr. J. Jacobson 7/10/14
 Contract Dev. and Control
 7-10-14

B. Legal Sufficiency:

Penelope E. Edelberg 7/7/14
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

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ORDINANCE NO. 2014-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REPEALING PALM BEACH COUNTY CODE, CHAPTER 20, NUISANCES, ARTICLE III, ABATEMENT OF NUISANCES, CODIFYING ORDINANCE NO. 90-12, AMENDED BY ORDINANCE NOS. 93-16, 95-64, 97-9, AND 2002-023, KNOWN AS THE "NUISANCE ABATEMENT ORDINANCE," CREATED PURSUANT TO SECTION 893.138 FLORIDA STATUTES, ESTABLISHING THE NUISANCE ABATEMENT BOARD OF PALM BEACH COUNTY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, pursuant to Section 893.138, Florida Statutes, enacted the Nuisance Abatement Ordinance, No. 90-12, which was amended by Ordinance Nos. 93-16, 95-64, 97-9, and 2002-023, established the Nuisance Abatement Board of Palm Beach County to abate drug-related nuisances on premises and in areas throughout the County; and

WHEREAS, since its creation, the Nuisance Abatement Board of Palm Beach County has convened less than five (5) times to hear complaints and evidence regarding "drug-related nuisances" on premises located in Palm Beach County; and

WHEREAS, the Sheriff of Palm Beach County does not object to the repeal of the Nuisance Abatement Ordinance; and

WHEREAS, repealing the Nuisance Abatement Ordinance will not prohibit the County or any citizen from proceeding against a public nuisance by any other means, including, but not limited to, seeking injunctive relief under Section 60.05 of the Florida Statutes.

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

Section 1. Repealer.

Chapter 20, Nuisances, Article III, Abatement of Nuisances, of the Palm Beach County Code, known as the "Nuisance Abatement Ordinance," (codifying Ordinance No. 90-12, amended by Ordinance Nos. 93-16, 95-64, 97-9, and 2002-023), is hereby repealed.

Section 2. Inclusion in the Code of Laws and Ordinances.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered

1 or re-lettered to accomplish such, and the word "ordinance" may be changed to "section,"
2 "article," or any other appropriate word.

3 **Section 3. Effective Date.**

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

6 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm Beach
7 County, Florida, on this the ____ day of _____, 2014.

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9 **SHARON R. BOCK**
10 **CLERK AND COMPTROLER**

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

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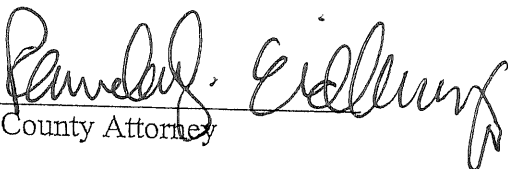
14 By: _____
15 Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

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19 APPROVED AS TO FORM AND
20 LEGAL SUFFICIENCY

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By: 
County Attorney

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29 EFFECTIVE DATE: Filed with the Department of State on the ____ day of
30 _____, 2014.
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Palm Beach County, Florida, Code of Ordinances >> - PALM BEACH COUNTY CODE >> Chapter 20 -
NUISANCES >> ARTICLE III. ABATEMENT OF NUISANCES >>

ARTICLE III. ABATEMENT OF NUISANCES ¹⁰¹

Sec. 20-36. Title.

Sec. 20-37. Definitions.

Sec. 20-38. Nuisance abatement board and organization.

Sec. 20-39. Operating procedures.

Sec. 20-40. Conduct of hearing.

Sec. 20-41. Additional penalties.

Sec. 20-42. Jurisdiction.

Sec. 20-43. Judicial review.

Sec. 20-44. Rights preserved.

Sec. 20-36. Title.

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

(Ord. No. 02-023, § 1, 5-21-02)

Sec. 20-37. Definitions.

- (a) *Public nuisance.* Any place or premises within the 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 previously used on more than one (1) occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
 - (3) On more than two (2) occasions within a six (6) month period as the site of a violation of F.S. § 796.07;
 - (4) By a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined in F.S. § 874.03; or
 - (5) On more than two (2) occasions within a six-month period, as the site of a violation of F.S. § 812.019, relating to dealing in stolen property.
- (b) *Board.* The Nuisance Abatement Board of Palm Beach County.
- (c) *County attorney.* The legal counselor of the county or such assistant county attorney as may from time to time be designated.
- (d) *Clerk.* The county shall provide clerical and administrative personnel, as designated by the county administrator, to perform the duties necessary to carry out the activities of the nuisance abatement board.
- (e) *Operator.* Tenant, lessee or person having control or possession of the premises.
- (f) *Controlled substance.* Includes any substance sold in lieu of a controlled substance in violation of F.S. § 817.563, or any imitation controlled substance defined in F.S. § 817.564.

- (g) *Criminal street gang.* A formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two (2) or more members who, individually or collectively, engage in or have engaged in a pattern or criminal street gang activity.

In this context, a criminal street gang member shall mean a person who is a member of a criminal street gang as defined in subsection (g) and who meets two (2) or more of the following criteria:

- (1) Admits to criminal street gang membership;
 - (2) Is identified as a criminal street gang member by a parent or guardian;
 - (3) Is identified as a criminal street gang member by a documented reliable 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 (2) or more felony or three or more misdemeanor offenses, or one felony and two (2) 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-year period.

In the context of this article, 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.

(Ord. No. 02-023, § 2, 5-21-02)

Sec. 20-238. 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 shall consist of five (5) members appointed by a majority vote of the county commission for two-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.
- (b) The initial appointments to the nuisance abatement board shall be as follows:
 - (1) Two (2) members and the chairman appointed for a term of two (2) years; and
 - (2) 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.

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

(Ord. No. 02-023, § 3, 5-21-02)

Sec. 20-39. Operating procedures.

- (a) Any employee, officer or resident of the county may file a complaint and request for the nuisance abatement board to determine whether a public nuisance exists on premises located in the county as defined in section 20-37(a), after giving not less than three (3) days' written notice of such complaint to the owner of the place or premises at his or her last known address.
- (b) When a complaint has been received, and the county has reason to believe that a public nuisance as defined in section 20-37(a) exists on the premises complained of, the county shall promptly request a hearing before the nuisance abatement board.
- (c) The nuisance abatement board, through its clerk, shall schedule a hearing; and written notice of the hearing shall be sent to the owner and operator(s) of the premises at their last-known addresses at least five (5) days prior to the scheduled hearing.
- (d) The aforesaid notice of hearing shall include:
- (1) A statement of the time, place and nature of the hearing.
 - (2) A statement of the legal authority and jurisdiction under which the hearing 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.

(Ord. No. 02-023, § 1, 5-21-02)

Sec. 20-40. 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 article 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 circumstances to abate any such nuisance.

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

- (d) An order entered under subsection (c) shall expire after one (1) year, or at such earlier time as stated in the order. The board may retain jurisdiction for one (1) year to modify its orders prior to the expiration of the orders.
- (e) The county sheriff and county staff, as designated by the county administrator, shall assist the board in carrying out any legally authorized order rendered pursuant to this article.
- (f) In the event that orders of the board expire and/or are not complied with, or are for any reason ineffective, the Board may then bring a complaint under F.S. § 60.05, seeking a permanent injunction against any public nuisance described in section 20-37(a). An order entered hereunder may be enforced pursuant to the procedures contained in F.S. § 120.69.
- (g) The county shall provide clerical and administrative personnel to the board as may be reasonably required for the proper performance of the board's duties. Minutes of hearings and orders of the board shall be promptly recorded and all hearings shall be open to the public.

(Ord. No. 02-023, § 5, 5-21-02)

Sec. 20-41. Additional penalties.

- (a) The board's order may include, but is not limited to, provisions that establish additional penalties for public nuisances, including:
- (1) Fines not to exceed two hundred fifty dollars (\$250.00) per day;
 - (2) Requiring the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
 - (3) Establishing penalties, including fines not to exceed five hundred dollars (\$500.00) per day for recurring public nuisances;
 - (4) Providing for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order;
 - (5) Providing that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and providing for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. No lien created pursuant to

the provisions of this section may be foreclosed on real property which is a homestead under section 4, art. X of the State Constitution.

- (b) Where the county seeks to bring an administrative action, based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the county shall not file a lien against the property or prohibit the operation of the property if the property owner evicts the business declared to be a nuisance within ninety (90) days after notification by registered mail to the property owner of a second stolen property conviction of the tenant.
- (c) The total fines imposed pursuant to the authority of this article shall not exceed fifteen thousand dollars (\$15,000.00).
- (d) Nothing contained within this section prohibits the county from proceeding against a public nuisance by any other means.

(Ord. No. 02-023, § 6, 5-21-02)

Sec. 20-42. Jurisdiction.

Consistent with law and this article, the nuisance abatement board shall have jurisdiction to enforce this article within the unincorporated area of the county.

(Ord. No. 02-023, § 7, 5-21-02)

Sec. 20-43. Judicial review.

Any person, including the county, aggrieved by any ruling or order of the nuisance abatement board, may seek review by certiorari in the circuit court of the county. A petition for writ of certiorari shall be filed within thirty (30) days of the date of the written order appealed from.

(Ord. No. 02-023, § 8, 5-21-02)

Sec. 20-44. Rights preserved.

This article does not restrict the right of any person to proceed under either F.S. § 60.05 or § 823.05, against any public nuisance.

(Ord. No. 02-023, § 9, 5-21-02)

FOOTNOTE(S):

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Editor's note—Ord. No. 02-023, adopted May 21, 2002, has been treated as amending the Code by repealing former art. III, §§ 20-36—20-43, and adding a new art. III, §§ 20-36—20-44, to read as herein set out. Former art. III pertained to similar subject matter, and derived from Ord. No. 90-12, adopted March 20, 1990; Ord. No. 93-16, adopted July 20, 1993; Ord. No. 95-64, adopted December 19, 1995; and Ord. No. 97-9, adopted April 15, 1997. [\(Back\)](#)

State Law reference—Local administrative action to abate drug-related public nuisances, F.S. § 893.138. [\(Back\)](#)