

TAB 3



516 8th Avenue West
P.O. Box 1209
Palmetto, Florida 34220-1209
Phone (941) 723-4570
Fax: (941) 723-4576
Suncom: 516-0829
E-mail: chgeneral@palmettofl.org
Web: www.palmettofl.org

May 5, 2009

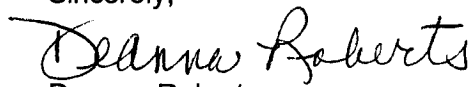
Juan Barrera Mendez
Augustina Morales Debarrerra
1210 Dr. Martin Luther King, Jr. Place
Palmetto, FL 34221

Re: Case No. 09-08/City of Palmetto, Petitioner, and Juan Barrera Mendez and
Augustina Morales Debarrerra, Respondents

Mr. Mendez and Ms. Debarrerra:

The Code Enforcement Board, at its April 28, 2009, meeting, approved unanimously a motion to reschedule Case No. 09-08 to a Public Hearing on May 26, 2009.

Sincerely,


Deanna Roberts
Clerk of the Board

/dr

cc: William Strollo, Code Enforcement Director
Charles W. Leonard, Chair, Code Enforcement Board
David S. Persson, *Esq.*, Code Enforcement Board Attorney
Mark Barnebey, *Esq.*, City Attorney



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**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

CITY OF PALMETTO CODE ENFORCEMENT BOARD

CITY OF PALMETTO
A political subdivision of the
State of Florida

Petitioner,

vs.

Case No. CEB 09-08

Juan Barrera Mendez
Augustina Morales Debarrerra
1210 Dr. Martin Luther King, Jr. Place
Palmetto, Florida 34221

Respondent.

NOTICE OF HEARING

**Address of Violation:
1210 Dr. Martin Luther King, Jr. Place
Palmetto, Florida 34221**

Pursuant to Chapter 162, Florida Statutes, and City of Palmetto Code of Ordinances, Chapter 2, you are hereby called upon to take notice that a Public Hearing will be conducted before the City of Palmetto Code Enforcement Board (CEB) on the 28th day of April, 2009, at 6:00 P.M. in the Commission Chambers at City Hall, which is located at 516 8th Avenue West, Palmetto, Florida. The purpose of the hearing is to determine whether the City of Palmetto Code of Ordinances is being violated as set forth in the Notice of Violation dated February 10, 2009, and previously provided to you by Certified Mail/Return Receipt Requested on February 10, 2009. A copy of the Notice of Violation is attached to this Notice of Hearing as Exhibit A. The CEB will receive testimony and evidence at said Public

Hearing and shall make such findings of fact and conclusions of law as are supported by the testimony and evidence pertaining to the matters alleged in the attached Notice of Violation. **If you are found to be in violation, a fine may be assessed against you, as provided by law.** The purpose of the hearing shall be to conduct proceedings regarding the attached Notice of Violation attached hereto as Exhibit A.

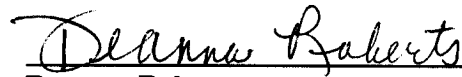
If you desire to appeal any decision of the CEB with respect to any matter considered at this Public Hearing, you will need a verbatim record of the proceedings and for that purpose, you need to insure that a verbatim record is made which includes the testimony, and evidence upon which the appeal is to be based. The hearing may be continued from time to time as deemed warranted and appropriate by the CEB. This case may be presented to the CEB even if the violation or repeat violation has been corrected prior to the hearing.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATE STATUTES, PERSONS WITH DISABILITIES NEEDING SPECIAL ASSISTANCE TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE CODE ENFORCEMENT BOARD CLERK FOR ASSISTANCE AT LEAST THREE BUSINESS DAYS PRIOR TO THE MEETING AT (941) 723-4570.

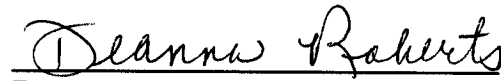
PLEASE GOVERN YOURSELF ACCORDINGLY.

DATED: April 15, 2009

**CODE ENFORCEMENT BOARD OF THE
CITY OF PALMETTO, FLORIDA**


Deanna Roberts
Clerk of the Board

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Notice of Hearing has been furnished by Certified Mail/Return Receipt Requested and by Regular Mail to the Respondent this 15th day of April, 2009.


Deanna Roberts
Clerk of the Board

cc: Mark Barnebey, City Attorney
David P. Persson, Code Enforcement Board Attorney

Chapter 16

HEALTH AND SANITATION*

- Art. I. In General, §§ 16-1—16-25
- Art. II. Nuisances, §§ 16-26—16-45
 - Div. 1. Generally, §§ 16-26, 16-27
 - Div. 2. Sanitary Nuisances, § 16-28
 - Div. 3. Nuisance Abatement Procedures, §§ 16-29—16-45
- Art. III. Control of Stormwater Discharge, §§ 16-46—16-48

ARTICLE I. IN GENERAL

Sec. 16-1. Reserved.

Editor's note—Formerly, § 16-1 adopted F.S. Ch. 381 as the sanitary code of the city. Inasmuch as reference to such statute is obsolete, the section has been deleted at the request of the city.

Secs. 16-2—16-25. Reserved.

ARTICLE II. NUISANCES†

DIVISION 1. GENERALLY

→ Sec. 16-26. Definition, enumeration of unlawful conditions or acts.

Every condition, substance or activity within the city which exists or occurs in such manner and to such extent as to threaten or endanger the public health, safety or welfare, or adversely affect and impair the economic welfare of adjacent property, is hereby declared to be a

***Cross references**—Administration, Ch. 2; code enforcement, § 2-81 et seq.; animals, Ch. 6; sanitation regulations for lots, stables, etc., where any livestock or fowl are kept, § 6-29; buildings and building regulations, Ch. 7; coastal areas and waterways, Ch. 10; garbage, trash and refuse, Ch. 15; housing, Ch. 17; junked, wrecked, abandoned property, Ch. 18; mobile homes, Ch. 21; streets, sidewalks and other public places, Ch. 25; utilities, Ch. 29.

State law references—Nuisances injurious to health, F.S. Ch. 386; mosquito control, F.S. Ch. 388.

†Editor's note—Ord. No. 05-843, §§ 2, 3, adopted April 4, 2005, repealed article II, §§ 16-26—16-31, in its entirety and replaced it with a new article II, §§ 16-26—16-33. Former article II pertained to hazardous conditions on land and derived from the Code of 1975, §§ 13-27—13-32; and Ord. No. 659, § 1, adopted Nov. 1, 1999.

Cross references—Housing, Ch. 17; junked, wrecked, abandoned property, Ch. 18; licenses and business regulations, Ch. 19; mobile homes, Ch. 21; planning and development, Ch. 23; streets, sidewalks and other public places, Ch. 25; subdivisions, Ch. 26.

nuisance. Without in any way limiting the foregoing definition, the following conditions, substances and activities are hereby specifically declared to be a nuisance within the intent and meaning of this section:

- (1) Low places upon any lot, tract or parcel of land, improved or unimproved, within one hundred (100) feet of the boundary line of any improved property within the city to the extent and in the manner that such lot, tract or parcel of land is or may reasonably become a breeding place for mosquitoes, or may reasonably cause disease, or otherwise threatens or endangers the public health, safety or welfare, or is likely to adversely affect and impair the economic welfare of adjacent property.
- (2) The accumulation or maintenance of trash, filth, rubbish, garbage, dead animals or fish, improperly treated sewage or other materials in such manner and to the extent as to cause infestation by rodents and other wild animals, the breeding of mosquitoes and vermin, or that threatens or endangers the public health, safety or welfare, or is likely to adversely affect and impair the economic welfare of adjacent property.
- (3) The existence of excessive accumulation or untended growth of weeds, undergrowth or other dead or living plant life upon any body of water, lot, tract or parcel of land, improved or unimproved, within one hundred (100) feet of the boundary line of any improved property within the city to the extent and in the manner that such lot, tract or parcel of land is or may reasonably become infested or inhabited by rodents, vermin or wild animals, or may furnish a breeding place for mosquitoes, or threatens or endangers the public health, safety or welfare, or may reasonably cause disease, or is likely to adversely affect and impair the economic welfare of adjacent property.
- (4) Partition fences, buildings or other structures which have fallen into such a poor state of repair to the extent and in the manner that they may reasonably become infested or inhabited by rodents, vermin or wild animals, or may threaten or endanger the public health, safety or welfare, or is likely to adversely affect and impair the economic welfare of adjacent property.
- (5) The unauthorized accumulation or maintenance of lumber, stone, concrete, sand or any other building or construction material on a lot, tract or parcel when construction activity is not actively taking place on the property, in such manner and to the extent as to threaten or endanger the public health, safety or welfare.
- (6) Landscaping or other obstacles located in or protruding into a public right of way so as to create a traffic or pedestrian hazard, or otherwise threaten or endanger the public health, safety and welfare.
- (7) Any foul, offensive or unlawful emissions, odors or stench and the causes thereof which threatens or endangers the public health, safety and welfare, or which is likely to adversely affect and impair the economic welfare of adjacent properties.
- (8) The pollution of any well, water body or drainage system by sewage, dead animals, industrial waste, debris or any other substance so as to threaten or endanger the public health, safety and welfare.

- (9) The partial or total blockage of any drainage inlets, outfalls, pipes, ditches, swales, canals, channels, culverts or streams so as to threaten or endanger the public health, safety and welfare.
- (10) Tampering or interference with any public facilities maintained for the purpose of furnishing sewer, potable water, reclaimed water or telecommunication services to the public, so as to threaten or endanger the public health, safety and welfare.
- (11) Any condition constituting a flood or fire hazard so as to threaten or endanger the public health, safety and welfare.
- (12) Any activity or condition that is declared elsewhere in this Code of Ordinances or other applicable law to be a nuisance.
- (13) Any trees, shrubs, or other landscaping material, or parts thereof, that threaten or endanger the public health, safety or welfare, or adversely affect and impair the economic welfare of adjacent properties, as a result of either of the following conditions:
- a. A contagious disease or infestation is found on a tree, shrub or other landscaping material; or
 - b. Disease, vines, insects, age or other defect has caused a tree, shrub or other landscaping material, or part thereof, to be unstable such that there exists a reasonable likelihood that it will fall upon any sidewalk, street or building, or result in injury to person or property.
- (14) Any unauthorized disturbance of land where a permit for such activity is required, including but not limited to alteration of the grade or contour of land, or the removal of vegetation from land, that may increase surface water runoff onto neighboring properties or otherwise threaten the public health, safety or welfare.
- (15) Any activity or condition which is manifestly injurious to the morals or manners of the public, as described in F.S. § 823.01.
(Ord. No. 05-843, §§ 2, 3, 4-4-05)

→ **Sec. 16-27. Prohibition and enforcement.**

- (a) Nuisances are hereby prohibited. It shall be unlawful for any person to cause such nuisance to come into existence anywhere within the city, or to permit the same to exist on property owned, leased, occupied or otherwise under the control of such person.
- (b) This article may be enforced against any violator, which may include the owner of the premises on which a nuisance exists, or the person or persons generating the nuisance.
- (c) This article shall be enforced as provided for by Florida law, including referral or citation to the city's code enforcement board, issuance of a citation as may be provided for by city ordinance, the entering onto the property and the abatement of the nuisance by the city, or the

filing of an action in a court of competent jurisdiction to obtain civil remedies, including a restraining order, injunction and damages. Any enumeration of enforcement mechanisms set forth herein is supplemental and not exclusive.

(Ord. No. 05-843, §§ 2, 3, 4-4-05; Ord. No. 07-920, § 2, 4-16-07)

DIVISION 2. SANITARY NUISANCES

Sec. 16-28. Sanitary nuisance.

(a) A sanitary nuisance is the commission of any act, by an individual, municipality, organization, or corporation, or the keeping, maintaining, propagation, existence, or permission of anything, by an individual, municipality, organization, or corporation, by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused. Not all nuisances are sanitary nuisances.

(b) Abatement of sanitary nuisances shall occur in the same manner as provided for all other nuisances in division 3 of this article II, except that the city is required to give only ten (10) days' notice to abate the sanitary nuisance or request a hearing.

(Ord. No. 05-843, §§ 2, 3, 4-4-05; Ord. No. 07-920, § 3, 4-16-07)

DIVISION 3. NUISANCE ABATEMENT PROCEDURE*

~~Sec. 16-29. Notice.~~

~~(a) If the director of public works, or in his absence or unavailability, his designee, finds and determines that a nuisance exists, he shall so notify the record owner or owners of the property on which the nuisance exists in writing and demand that the owner cause the condition to be remedied. The notice shall be given by registered or certified mail, addressed to the owner or owners of the property described, as their names and addresses are shown upon the record of the county tax assessor, and shall be deemed complete and sufficient when so addressed and deposited in the United States mail with proper postage prepaid. If such notice is returned by postal authorities, the director of public works, or his designee, shall cause a copy of the notice to be served by a law enforcement officer upon the owner or owners of the property or upon an occupant of the property that is fifteen (15) years of age or older, if personal service upon the occupant of the property or upon any agent of the owner thereof cannot be performed after reasonable search by a law enforcement officer, the notice shall be accomplished by physical posting on the property, and by publication of the notice in a newspaper of general circulation in the city one (1) time.~~

(b) The notice shall be sufficient if in substantially the following form:

***Editor's note**—Section 4 of Ord. No. 07-920, adopted April 16, 2007, amended §§ 16-29—16-45 in their entirety to read as herein set out under a new Div. 3. Former §§ 16-29—16-33 pertained to similar subject matter and derived from Ord. No. 05-843, adopted April 4, 2005.

JUNKED, WRECKED, ABANDONED PROPERTY*

→ **Sec. 18-1. Definitions.**

As used in this chapter.

→ *Abandoned motor vehicle or vessel:* A motor vehicle or vessel in a wrecked, inoperative or partially dismantled condition and which has an identifiable owner and has been disposed of on either public or private property within the city, or which has no identifiable owner and has been disposed of on private property within the city. Specifically excluded from this definition is a motor vehicle or vessel that has no identifiable owner or owners and has been disposed of on public property in a wrecked, inoperative or partially dismantled condition, as such property is governed under Chapter 705, Florida Statutes. Further, the absence of a license plate for the current year or the absence of a current motor vehicle or vessel registration shall be prima facie evidence that such vehicle or vessel is abandoned. The presence of a current license plate or registration shall not, in and of itself, exempt any motor vehicle or vessel from this definition or the provisions of this chapter.

Abandoned property: All tangible personal property, except a motor vehicle or vessel, that is in a wrecked, inoperative or partially dismantled condition and which has an identifiable owner and has been disposed of on public or private property within the city, or which has no identifiable owner and has been disposed of on private property within the city. Specifically excluded from this definition is tangible personal property that has no identifiable owner and has been disposed of on public property in a wrecked, inoperative or partially dismantled condition, which property is governed under Chapter 705, Florida Statutes.

→ *Motor vehicle:* An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state used to transport persons or property and propelled by power other than muscular power.

***Editor's note**—Section 1 of Ord. No. 423, adopted Nov. 5, 1990, deleted §§ 18-1–18-5 and 18-26–18-31, which were the substantive provisions of Ch. 18, derived from Code 1975, §§ 14-17–14-21 and 14-33–14-38, and contained general provisions relative to junked, wrecked and abandoned property and also provisions pertaining to abandoned vehicles. In addition, §§ 2–7 enacted provisions which have been included herein as §§ 18-1–18-6 at the editor's discretion.

Cross references—Code enforcement, § 2-81 et seq.; buildings and building regulations, Ch. 7; coastal areas and waterways, Ch. 10; fire prevention and protection, Ch. 13; garbage, trash and refuse, Ch. 15; health and sanitation, Ch. 16; procedure for abatement of nuisances involving excessive growth of weeds or other noxious plants, accumulations of trash, fill and other matter, excavations or depressions in which pools of water are located, § 16-26 et seq.; housing, Ch. 17; licenses and business regulations, Ch. 19; mobile homes, Ch. 21; planning and development, Ch. 23; sales, Ch. 24; streets, sidewalks and other public places, Ch. 25; subdivisions, Ch. 26; traffic and vehicles, Ch. 28.

State law references—Pawnbrokers, F.S. §§ 516.01, 519.09, 680.14, 715.04; precious metal dealers, F.S. § 538.01 et seq.; seized abandoned, wrecked or derelict property, F.S. Ch. 705; reporting of unclaimed motor vehicles, F.S. § 715.05.

Officer: A Palmetto Police Officer or an employee of the city whose duty it is to monitor code compliance or enforce codes and ordinances of the city, but who does not have the authority to bear arms or make arrests.

Private property: Land and improvements under private ownership located within the city, and specifically excludes public property as defined hereunder.

Public property: Land and improvements owned by the federal government, state, and county or the city, and includes sovereignty submerged lands located adjacent thereto, plus state, county or municipal buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way and other similar property located within the city.

Seller: The City of Palmetto, with regard to abandoned property, or the commercial towing and storage service having possession of an abandoned motor vehicle or vessel, with regard to such vehicle or vessel.

Vessel is synonymous with boat as referenced in section 1(b), article VII of the State Constitution and includes every description of watercraft, barge and airboat used or capable of being used as a means of transportation on water.

(Ord. No. 423, § 2, 11-5-90)

Sec. 18-2. Tangible personal property disposed of on public property declared nuisance; disposal.

All tangible personal property not having an identifiable owner and which has been disposed of on public property in a wrecked, inoperative or partially dismantled condition, or which has no apparent intrinsic value to the rightful owner, is declared to be a nuisance and shall be disposed of in the manner set forth in chapter 705, Florida Statutes.

(Ord. No. 423, § 3, 11-5-90)

→ **Sec. 18-3. Abandoned personal property, motor vehicles and vessels declared nuisances; disposal.**

All abandoned property as well as abandoned motor vehicles and vessels are hereby declared to be a public nuisance and shall be disposed of in the manner set forth herein.

(Ord. No. 423, § 4, 11-5-90)

Sec. 18-4. Notice.

(a) Whenever an officer discovers abandoned property or an abandoned motor vehicle or vessel, the officer shall cause a notice to be placed upon such article in substantially the following form:

NOTICE IS HEREBY GIVEN TO THE OWNER OF AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: (setting forth brief description) is unlawfully upon this property known as (setting forth brief description of location) and must be removed to a location outside the city or into an enclosed building within five (5) days; otherwise it shall be deemed abandoned property and be removed and disposed of