

TAB 5



516 8th Avenue West
P.O. Box 1209
Palmetto, Florida 34220-1209
Phone (941) 723-4570
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**CODE ENFORCEMENT BOARD
OF THE CITY OF PALMETTO, FLORIDA**

CITY OF PALMETTO

A political subdivision of the
State of Florida

Petitioner,

vs.

Case No. CEB – 09-25

Paul Ewing
Cory F. Babcock
4109 Sandpointe Drive
Bradenton, Florida 34205

Respondent

NOTICE OF HEARING/ASSESSMENT OF FINE

Address of Violation:

2701 Business 41
Palmetto, Florida 34221

Pursuant to Chapter 162, Florida Statutes, and City of Palmetto Code of Ordinances, Section 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 October 27, 2009, at 6:00 p.m. in the Commission Chambers at Palmetto City Hall located at 516 8th Avenue West, Palmetto, Florida. 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, in order to determine whether to assess a fine against you for the continuing violation of the City's codes. This hearing relates to the Administrative Order of the CEB finding you in violation of the City's codes and entered against you at the CEB Public Hearing conducted on September 25, 2007 and an Order Imposing Fine and Lien entered against you on October 31, 2007.

In determining the amount of the fine, if any, the CEB shall consider the following factors:

- a. The gravity of the violation;
- b. Any actions taken by the violator to correct the violation; and,
- c. Any previous violations committed by the violator.

You have the right to appear at this hearing and offer evidence and testimony in your favor. Please be advised that if a fine is assessed against you, the Order Imposing Fine may be recorded in the Public Records and thereafter become a lien against any real or personal property owned by you. Assessed fines may not exceed Two Hundred and Fifty Dollars (\$250.00) per day for a first violation and Five Hundred Dollars (\$500.00) per day for a repeat violation.

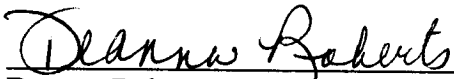
If you desire to appeal any decision of the CEB with respect to any matter considered at this Public Hearing, you will need a verbatim record of the proceedings and for that purpose, you need to insure that a verbatim record is made which includes the testimony, and evidence upon which the appeal is 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.

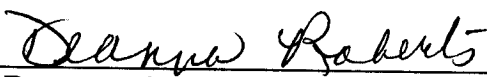
DATED: October 8, 2009

**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/Assessment of Fine has been furnished by Certified Mail/Return Receipt Requested and by Regular Mail to Paul Ewing and Corey F. Babcock this 8th day of October, 2009.



Deanna Roberts
Clerk of the Board

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



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OF THE CITY OF PALMETTO, FLORIDA**

CITY OF PALMETTO

A political subdivision of the
State of Florida

Petitioner,

vs.

Case No. CEB – 09-25

Paul Ewing
Cory F. Babcock
7131 Queens Palm Circle
Sarasota, Florida 34243
Respondent

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Palmetto, Florida 34221

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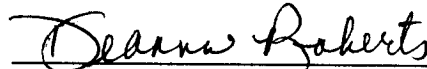
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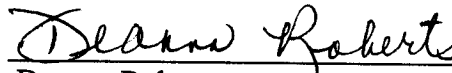
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cc: Mark Barnebey, *Esq.*, City Attorney
David P. Persson, *Esq.*, Code Enforcement Board Attorney

ADMINISTRATION

§ 2-83

Code enforcement officer (CEO) means any authorized or designated agent or employee of the city whose duty it is to assure code compliance or the enforcement of the city's codes and ordinances and compliance therewith. The term "code inspector" as per F.S. § 162.04(2), and "code enforcement officer" as used herein and in division 3, sections 2-101—2-109 (citation ordinance) are synonymous and interchangeable. The code enforcement officers shall be designated, in writing, by the city commission.

→ *Repeat violation* means a violation of a provision of a city code or ordinance by a person whom the CEB has previously found to have violated the same provision of said code or ordinance within five (5) years prior to the subsequent charge of violation.

→ *Violator* means the person, natural or otherwise, in violation of those portions of the City Code of Ordinances, or any ordinances not yet codified, which are within the jurisdiction of the city enforcement board. A "violator" may be the owner of the property where the violation exists, the person in charge of the property where the violation exists, such as a tenant, or the person causing or otherwise responsible for the violation of the City's Code or ordinances not yet codified, regardless of whether the person is an owner or in charge.

(Ord. No. 592, § 2, 6-15-98; Ord. No. 05-849, § 2, 6-6-05; Ord. No. 06-884, § 2, 6-5-06)

Sec. 2-83. Seven-member and two-alternate member code enforcement board and organization.

(a) The mayor shall appoint a CEB consisting of seven (7) members to exercise the authority and powers set forth in this division. The mayor may appoint up to two (2) alternate members for the CEB to act and serve on the CEB in the absence of the respective CEB member.

(b) Members and alternates of the CEB shall be residents of the city. Appointments shall be made on the basis of experience or interest in the subject matter jurisdiction of the CEB and membership, whenever possible, shall include an architect, a businessman, an engineer, a general contractor, a subcontractor, a realtor and the seventh member, as well as the alternate members, representing the public at-large.

(c) (1) The initial appointments to the CEB shall be as follows:

- a. Two (2) members appointed for a term of one (1) year each;
- b. Three (3) members appointed for a term of two (2) years each;
- c. Two (2) members appointed for a term of three (3) years each;
- d. Alternate members, if appointed, for a term of three (3) years each.

(2) After the initial appointment, appointment to the CEB shall be made for a term of three (3) years. A member may be reappointed for succeeding terms.

(3) An appointment to fill any vacancy on the CEB shall be for the remainder of the unexpired term of office. If any member of the CEB fails to attend two (2) of three (3) successive meetings without good cause and without receiving the prior approval of the

division. If the violation is corrected and then reoccurs or if the violation is not corrected by the time specified for correction by the CEO, the violation may be presented to the CEB even if the violation has been corrected prior to the hearing, and the notice shall so state.

→ (c) If a repeat violation is found, the CEO shall notify the violator, but is not required to give the violator a reasonable time to correct the violation. The CEO, upon notifying the violator of a repeat violation, shall notify the CEB and request a hearing with notice as provided for above. The violation may be presented to the CEB even if the repeat violation has been corrected prior to the hearing and the notice shall so state. If the repeat violation has been corrected, the CEB retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the CEB.

(d) If the CEO has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the CEO shall make a reasonable effort to notify the violator, but regardless of the success of such effort to notify the violator, the CEO may immediately notify the CEB and request a hearing be held as soon as reasonably possible.

(Ord. No. 592, § 4, 6-15-98)

Sec. 2-85. Conduct of hearing.

(a) Upon the request of the CEO, or at such other times as may be necessary to address administrative matters, the chairman, and in his absence the vice-chairman, of the CEB may call a hearing or a meeting of the CEB as circumstances dictate. A hearing or meeting of the CEB may also be called by written notice signed by at least three (3) members of the CEB. Minutes shall be kept of all hearings, meetings and proceedings of the CEB. All hearings, meetings and proceedings of the CEB shall be open to the public, but under no circumstances is the public generally entitled to participate in the proceedings unless they have relevant and material evidence, testimony or matters to submit and then only with the permission of the chairman or vice-chairman. The city shall provide for such clerical and administrative personnel as may be reasonably required and necessary by the CEB in the proper performance of their duties.

(b) (1) Each case submitted to the CEB for hearing shall be presented on behalf of the city by either the CEO or his designee, if appropriate.

(2) The city shall be entitled to reimbursement of the reasonable costs of investigation and prosecution of a code enforcement action. For costs to be imposed on a violator, the CEO and/or the city attorney shall present evidence of such costs to the CEB, including, when applicable, such costs for reasonable legal and professional fees relating to the investigation and prosecution of an action. Before making a finding whether to impose such costs, the CEB shall give the violator an opportunity to dispute such evidence presented by the CEO and/or city attorney.

a. In instances when the violator corrects the violation prior to the hearing under this section, the CEB shall include in its AO any finding of costs therein as an order imposing fines and costs. The AO with such language included may be recorded in public records to constitute a lien on the property.

→ Sec. 2-86. Powers of code enforcement board.

The CEB, appointed pursuant to this division, shall have the power to:

- (1) Adopt rules for the conduct of the hearings;
- (2) Subpoena alleged violators, witnesses and evidence to the hearings and such subpoenas may be served by the police department of the city or by the sheriff, as may be necessary;
- (3) Take all testimony under oath; and,
- (4) Issue orders having the force of law to command whatever steps are necessary to bring a violation of the city's codes and ordinances into compliance.

(Ord. No. 592, § 6, 6-15-98)

→ Sec. 2-87. Administrative fines, costs of repairs and liens.

(a) The CEB, upon notification by the CEO that an order previously entered by the said CEB has not been complied with by the time set forth in said order or, upon finding that a repeat violation has been committed, shall hold a hearing to determine whether to enter an order requiring the violator to pay a fine in an amount pursuant to this division for each day the violation continues past the date set for compliance or, in the case of a repeat violation, for each day the repeat violation continues beginning with the date the repeat violation is found to have occurred by the CEO. In addition, if the violation is a violation described in F.S. § 162.06(4), the CEB shall notify the mayor, who may authorize all reasonable repairs which are required to bring the property into compliance and the violator shall be charged with the reasonable cost of the repairs, along with the fine imposed hereunder. If, after due notice and hearing, the CEB finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified below.

- (b) (1) Any fine imposed by the CEB shall not exceed two hundred fifty dollars (\$250.00) per day for a first violation and shall not exceed five hundred dollars (\$500.00) per day for a repeat violation and, in addition, may include all costs of repairs pursuant to this division. However, if the CEB finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed five thousand dollars (\$5,000.00) per violation.
- (2) In determining the amount of the fine, if any, the CEB shall consider the following factors:
 - a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (3) The CEB may, upon application of the violator, reduce a fine it has previously imposed by order of the CEB, but which has not yet been recorded. Following recordation, the city commission may reduce or satisfy said fine in accordance with subparagraph (c), of this section.

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—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, sections 16-26—16-31, in its entirety and replaced it with a new article II, sections 16-26—16-33. Former article II pertained to hazardous conditions on land and derived from the Code of 1975, §§ 13-27—13-32; 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

(b) *Roofs, gutters and downspouts.* All roofs and existing gutters and downspouts shall be maintained to prevent damage to the structure and adjoining properties and the public. Leaking roofs shall be repaired or replaced.

(Ord. No. 470, § 4, 12-16-91)

Sec. 7-241. Requirements for trash and receptacle areas.

There shall be no trash placed upon sidewalks or other areas open to the public except on those days when such trash is to be picked up by the city. All private trash receptacle areas shall be screened from the view of the public right-of-way, except where trash receptacle placement is authorized in alleyways. Such areas shall be kept neat and clean in appearance. (Ord. No. 470, § 5, 12-16-91)

Sec. 7-242. Requirements for auxiliary structures.

(a) *Structures, fences, walls, etc.* Structures at the rear of buildings, whether attached or unattached to the principal commercial structure, which are structurally unsound shall be properly repaired or demolished. All fences, lighting devices and supports, retaining walls, nonstructural walls, outdoor service and seating areas, signs and their supporting elements shall be structurally sound, kept free of overgrowth, trash and debris and shall be repaired and painted to present a neat and clean appearance.

(b) No more than three (3) vending machines, including refrigerated vending or storage machines but not including newsracks, may be located outside any one business premises within the city and shall be placed immediately adjacent to such premises. Vending machines that exceed three (3) in number shall be kept and maintained inside such premises.

(c) All auxiliary and other structures including but not limited to buildings, fences, gates, nonstructural walls, retaining walls, fountains, parking areas, lighting devices and supports, outdoor service and seating areas, signs and their supporting elements, which are out-of-doors and exposed to the general public, shall be kept free of graffiti as defined herein.

(Ord. No. 470, § 6, 12-16-91; Ord. No. 480, § 1, 8-3-92; Ord. No. 578, § 2, 6-16-97)

→ **Sec. 7-243. Requirements for sites.**

(a) *Landscaping.* All areas (front, side and rear yards) shall be kept free of overgrowth, weeds, trash and debris. All dead tree limbs and dead trees shall be removed.

→ (b) *Vacant lots.* Where a vacant lot exists or is created through demolition, the owner must cover all areas not actively used for parking or loading with grass or other such ground cover. Such ground cover shall be maintained and the property kept free of trash and debris.

(c) *Parking lots.* All parking areas shall be constructed as provided in the city zoning code. Parking areas shall be well maintained and kept free of overgrowth, potholes, weeds, trash and debris. Paving and striping will be maintained in good repair and in a neat and clean appearance.