

TAB 4



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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 09-27

John E. Matheny, Jr.
Jill Ann Matheny
146 Montibello Drive
 Mooresville, NC 28117

Respondent.

NOTICE OF HEARING

Address of Violation:
408 20th Avenue West
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 24th day of November, 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 October 14, 2009, and previously provided to you by Certified Mail/Return Receipt Requested on October 14, 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.

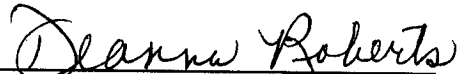
If you desire to appeal any decision of the CEB with respect to any matter considered at this Public Hearing, you will need a verbatim record of the proceedings and for that purpose, you need to insure that a verbatim record is made which includes the testimony, and evidence upon which the appeal is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

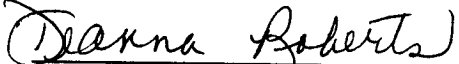
PLEASE GOVERN YOURSELF ACCORDINGLY.

DATED: November 9, 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 9th day of November, 2009.


Deanna Roberts
Clerk of the Board

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

Office, business or professional: An establishment offering services or knowledge to the business community or to individuals. Such activities would include, by way of illustration, accounting, brokerage, insurance, physician, lawyer, dentist, architect and psychologist.

Open space: Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.

Open space, common: Land within or related to a development, not individually owned or dedicated for public use, which is designed and intended for the common use or enjoyment of the residents of the development and may include such complementary structures and improvements as are necessary and appropriate.

→ *Open storage:* The storage outside of a building, or within buildings with less than three (3) sides, of materials; supplies; merchandise; equipment; commercial, recreational, or domestic vehicles, boats and like items, but excluding junk.

Parking, accessory: Any garage, carport, or surface level lot designed to accommodate the parking of motor vehicles on the same lot as the principal use.

Parking, off-street: Space located outside of any street right-of-way or easement and designed to accommodate the parking of domestic vehicles.

Parking, principal: Any garage or surface level lot used as the principal use of the property, whether it operates for commercial or private purposes.

Personal services: An establishment that primarily provides services generally involving the care of a person or a person's apparel, including, but not limited to, barbershops, beauty salons, seamstress shops, shoe repair and shining shops, dry-cleaning and laundry pickup facilities, coin-operated laundry and dry-cleaning facilities and small dry cleaners.

Place of assembly: A place designed to accommodate the assembly of persons attending athletic events, musical performances, dramatic or dance performances, speeches or ceremonies, and other such entertainment events, and including, but not limited to, coliseums, athletic centers, concert halls, and auditoriums.

Planned development: Land under unified control to be planned and developed as a whole in a single development operation or a definitely programmed series of development operations or phases. A planned development includes principal and accessory structures and uses substantially related to the character and purposes of the planned development. A planned development is built according to general and detailed plans which include not only streets, utilities, lots and building location, and the like, but also site plans for all buildings, as they are intended to be located, constructed, used, and related to each other, uses and improvements on the land as related to the buildings. A planned development includes a program for the provisions, operations, and maintenance of such areas, facilities, and improvements as will be for common use by some or all of the occupants of the planned development district, but which will not be provided, operated, or maintained at general public expense.

- (iv) Where a commercial vehicle is parked on public or private property whereon construction is underway, for which a current and valid building permit is properly displayed on the premises;
 - (v) Where a commercial vehicle is parked in a residential district for the purpose of making a delivery or service call, provided that such parking is actually in the course of business deliveries or servicing as the case may be;
 - (vi) Where an emergency vehicle is parked in a residential district, provided that the time parked is actually necessary for the emergency; or where an emergency vehicle is driven by a resident of the city and parked on that resident's private property; or
 - (vii) Where a commercial vehicle becomes disabled and, as a result of such disablement is required to be parked within a residential district; however, any such vehicle shall be removed from the residential district within twenty-four (24) hours from the time it became disabled.
- (Ord. No. 05-862, § 3, 8-29-05)

Sec. 6.6. Screening of open storage.

Open storage areas shall be screened from view of any street and from all residentially zoned land as follows:

- (a) When an open storage area abuts a collector or arterial street, the method of screening shall consist of solid masonry walls or solid wooden fences at least six (6) feet in height with access from said street only through solid gates which shall be closed except when in use. Screening shall run at least one hundred (100) feet back from the street property line unless an existing permanent structure shields the storage area.
- (b) When an open storage area abuts a residentially zoned district, the method of screening shall consist of solid wooden fences or masonry walls at least six (6) feet in height along the boundary of the storage areas and the residential district.
- (c) When an open storage area does not abut a collector or arterial street and is not within two hundred (200) feet of a residential district but is in view of a residential district, the method of screening from said residential district shall consist of walls or fences at least six (6) feet in height which shall be seventy-five (75) percent opaque.

Sec. 6.7. Swimming pools.

Swimming pools, both aboveground and belowground, are permitted accessory structures to residential or nonresidential structures, provided that the following requirements are met. Similar structures such as spas shall also meet these requirements.

- (a) *Location:* Swimming pools may be located within side, rear, or corner yards but shall not be allowed in the required front yards. Swimming pools shall be located a minimum of five (5) feet from any side, rear, or corner lot line as measured from the water's edge. Locational criteria are subject to the variance provisions of section 13.3 and section 13.6, appendix B, of this Code.

(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.

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 stenches 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.