

TAB 3



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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.

Ashland 2 Partners, LLC
7321 Merchant Court
Sarasota, Florida 34240
Respondent.

Case No. CEB 10-01

NOTICE OF HEARING

Address of Violation:
The Hall, 1330 US 301 North
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 26th day of January, 2010, 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 June 15, 2009, and previously provided to you by Certified Mail/Return Receipt Requested on June 15, 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.

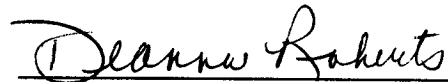
If you desire to appeal any decision of the CEB with respect to any matter considered at this Public Hearing, you will need a verbatim record of the proceedings and for that purpose, you need to insure that a verbatim record is made which includes the testimony, and evidence upon which the appeal is 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: January 5, 2010

**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 5th day of January, 2010.



Deanna Roberts
Clerk of the Board

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

Chapter 5

AMUSEMENTS*

- Art. I. In General, §§ 5-1—5-25
- Art. II. Dances and Dance Halls, §§ 5-26—5-45
- Art. III. Poolrooms, Billiard Halls, §§ 5-46, 5-47

ARTICLE I. IN GENERAL†

Sec. 5-1. Findings of fact.

The foregoing recitation of facts is incorporated herein as the basis and necessity for the city council's enactment of this legislation.
 (Ord. No. 602, § I, 9-9-97)

Sec. 5-2. Purpose and intent.

It is the purpose and intent of this article to control, regulate and prevent the generation, making, emitting, creating or allowing noise disturbances within the city in order to protect the public health, comfort, safety and welfare.
 (Ord. No. 602, § II, 9-9-97; Ord. No. 05-845, § 2, 4-4-05)

→ Sec. 5-3. Definitions.

Authorized emergency vehicle means vehicles of the fire department, police vehicles, and such ambulances and emergency vehicles of municipal departments, private public service corporations, and the department of transportation as are designated or authorized by the department or the chief of police of an incorporated city or any sheriff of any of the various counties.

→ *Disturbance* means actual or imminent interference with the peace or good order.

Motor vehicle means any vehicle which is self-propelled.

Motorcycle means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

→ *Noise* means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans. "Noise" includes low frequency vibrations, such as caused by amplification of bass instrumental sounds.

*Cross references—Administration, Ch. 2; licenses and business regulations, Ch. 19.

†Editor's note—Ord. No. 602, §§ I—IX, adopted September 9, 1997, amended the Code by repealing former § 5-1, renumbering former § 5-2 as new § 5-9, and adding new §§ 5-1—5-8. Former § 5-1 pertained to noise restrictions, and derived from the Code of 1975, § 5-1.

→ *Noise disturbance* means sound, or the vibration associated therewith, which:

- (1) Is or may be harmful or injurious to the health or welfare of a reasonable person with normal sensitivities;
- (2) Unreasonably interferes with the enjoyment or normal conduct of life, property or outdoor recreation; or
- (3) Causes noise pollution, defined as follows:

"Noise pollution" shall mean the presence of noise in excessive or unnecessary amount or of such duration, wave frequency or intensity as to be injurious to human or animal life or property; or which unreasonably interferes with the comfortable enjoyment or normal activities of life or property, or other conduct of business.

Sound means temporal or spacial oscillation in pressure, or other physical quantity in a medium with internal forces causing compression and rarefaction of that medium, and propagating at finite speed to distant points.

(Ord. No. 602, § III, 9-9-97; Ord. No. 05-845, § 3, 4-4-05)

Sec. 5-4. Prohibited acts.

→ (a) *Noise disturbance*. The willful generation, making, emitting, creating, allowing, continuing, causing or projecting of any noise disturbance by any person within the municipal boundary of the city is hereby prohibited and unlawful, unless specifically the subject of an exemption or special permit pursuant to this article. It shall be unlawful for any person to willfully generate, make, emit, create, allow, continue, project or cause to be made or continued, any noise disturbance within the city, including, but not limited to, any public streets, public parks, public buildings, schools, upon the grounds of any public building or public land, in any public parking lots, any residentially zoned district or any residential dwelling or the immediately surrounding yard or grounds of any residence.

→ (b) *Standards*. The standards to be considered in determining whether a violation of subsection (a) of this section exists may include but shall not be limited to the following:

- (1) The volume of the noise.
- (2) The intensity of the noise.
- (3) Whether the nature of the noise is usual or unusual.
- (4) The volume and intensity of the background noise, if any.
- (5) The proximity of the noise to residential sleeping facilities.
- (6) The nature and zoning of the area from which the noise emanates.
- (7) The nature and zoning of the receiving land.
- (8) The time of the day or night the noise occurs.
- (9) The duration of the noise.

(10) Whether the noise is produced by a commercial or noncommercial activity.

(11) The day of the week the noise occurs.

(Ord. No. 602, § I, 9-9-97; Ord. No. 05-845, § 4, 4-4-05)

→ **Sec. 5-5. Public nuisances.**

The generation, making, emitting, creating, continuing, causing or allowing of any noise disturbance which tends to annoy the community or is injurious to the public health, safety and welfare and may or tends to cause injury to the physical health, emotional well being and mental stability of surrounding residents, citizens or persons in general or tends to damage or have an unreasonable adverse impact upon personal or real property is hereby declared to be a public nuisance. It is the policy of the city that all public nuisances of this nature be abated by enforcement of this article or by utilization of the abatement process available pursuant to state law.

(Ord. No. 602, § V, 9-9-97; Ord. No. 05-845, § 5, 4-4-05)

Sec. 5-6. Exemptions.

The following acts or activities are exempt from the provisions of this article.

- (1) Musical chimes or sounding bells emanating from a public or religious institution or facility, provided the sound is less than five (5) minutes in duration and occurs not more than four (4) times within a one-hour period.
- (2) Sound emanating from an authorized emergency vehicle while responding to an emergency or acting within the line of duty.
- (3) Sound emanating from aircraft or rail transportation equipment which is regulated by state and federal authorities.
- (4) Sound associated with or created by an active project of construction, repair, remodeling, demolition or grading of any real property, provided such activities do not take place before 7:00 a.m. on Monday through Friday, before 8:00 a.m. on Saturday, before 9:00 a.m. on Sunday, or after 10:00 p.m. on any day.
- (5) Sound emanating from any burglar alarm or security device on any building, dwelling, structure, motor vehicle or other use, provided such sound terminates within thirty (30) minutes of its activation.
- (6) Sound emanating from an activity, device, apparatus, instrument or use which has been granted a special permit for such sound.
- (7) Sound emanating or resulting as a collateral matter from an immediate bona fide emergency situation or occurrence, but only for the duration of such emergency.

(Ord. No. 602, § VI, 9-9-97; Ord. No. 642, § I, 5-3-99; Ord. No. 05-858, § 2, 6-20-05)

Sec. 5-7. Special permits exceptions.

The use of loudspeakers, public address systems or sound systems at athletic stadiums, fields, arenas, courts, tracks, theaters, bandstands, auditoriums, convention centers or similar buildings, structures or areas for public gatherings when involving the presentation of athletic or sporting events, artistic events, rallies, performances, parades, concerts, dances or other similar activities, as part of a community or public event or program; or the performance of construction or demolition activities at times other than those provided in section 5-6(4) above, may be the subject of a special permit exception (SPE) to the provisions of this Code. A person or entity may seek a SPE from the provisions of this Code by application to the city council through filing with the office of the city clerk. An application for a SPE must be made no less than thirty (30) days prior to the date of the event or occurrence for which the special permit is sought. A special permit may only be issued for a specified number of events and for a limited period of time. No "general" or "universal" SPE of an unlimited nature and time shall be authorized. It shall be the duty of the person or entity seeking a SPE to establish by substantial competent evidence that the activity for which a SPE is sought has the means to effectively mitigate potential adverse effects and impacts upon surrounding property owners and residents. In determining whether or not a SPE shall be issued, the city council shall, at a minimum, consider the nature of the event, its possible adverse effects, its importance to the general community and the potential benefit the event may have upon the city and the general public; the size of the event with respect to anticipated public participation or attendance; the time of the event; the proposed effective mitigation mechanisms; and the availability of alternate locations where the event may reasonably be held without creating the type or degree of potential adverse effects anticipated at the site involved for which the SPE is being requested. Review of a denial of a SPE shall be to the circuit court in and for the county and must be filed within thirty (30) days of the date of the decision of the city council relating to the SPE. Review shall be based solely upon the record generated before the city council. (Ord. No. 602, § VII, 9-9-97; Ord. No. 642, § II, 5-3-99)

 **Sec. 5-8. Enforcement.**

This article shall be enforced as provided for by state law, including referral or citation to the city's code enforcement board, issuance of a citation as may be provided for by city ordinance, 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. 602, § VIII, 9-9-97; Ord. No. 05-845, § 6, 4-4-05)

Sec. 5-9. Bond, liability insurance for rides.

No person shall conduct, operate, manage or sponsor any Ferris wheel, merry-go-round or other amusement ride operated for hire, or for the purpose of promoting or advertising any trade or business without first filing with the city clerk a bond or certificate of liability insurance in the amount of at least two hundred fifty thousand dollars (\$250,000.00) indemnifying the public against damages sustained by reason of the operation of such ride.

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.