

TAB 5

AN ORDINANCE AMENDING CHAPTER 16, PERTAINING TO ABATEMENT OF NUISANCES AND NOTICE PROCEDURES

POINT PAPER

Problem: City Commission adopted nuisance abatement procedures to facilitate prompt remediation of nuisance violations. The City has experienced an increase of foreclosures of residences where the current owners have abandoned their properties prior to court settlement of the pending foreclosure proceedings. Chapter 16, Division 3, Section 16-29(a) requires posting **and** publishing of the Notice of Nuisance if the Notice sent via certified mail is returned by postal authorities and personal service by a law enforcement officer is not accomplished.

Background: The present notification process is inefficient, unnecessary and costly to the City. Many of the residences cited as nuisances are abandoned, and notification by certified mail and personal service cannot be accomplished. Under these circumstances, the Notification of Nuisance must be posted on the subject property **and** published in a newspaper of general circulation. Florida Statute Chapter 162, Section 162.12 delineates noticing procedures for Code Enforcement Board proceedings. In the event certified mail is returned as unclaimed or refused, this section authorizes personal service, publishing **or** posting in addition to regular mail.

As of August 12, 2008 Code Enforcement has processed twenty-two Notices of Nuisance and three Notices of Sanitary Nuisance since January 2008. The majority of these certified notices are returned as unclaimed or refused, and associated publishing costs for these notices would average \$135.00 per notice; this process further delays remediation of the nuisance properties and increases the City liens filed to recover costs. Code Enforcement has referred a total of eleven properties for clearing through the Department of Public Works, Parks Department.

Under the proposed Ordinance, notification would be accomplished through (1) certified mail; or (2) regular mail and posting at two locations.

Alternatives: Approve the proposed Ordinance or take no action.

Recommendation: Staff requests a motion to approve revisions as presented.

Budget Impact: The only anticipated cost is publishing this ordinance in a newspaper of general circulation; this cost is estimated at \$150.00.

ORDINANCE 08-977

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA PERTAINING TO ABATEMENT OF NUISANCES AND NOTICE PROCEDURES ; PROVIDING FOR REVISION OF SUCH PROCEDURES; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and,

WHEREAS, pursuant to the referenced provision of the Florida Constitution, a city may exercise any power for municipal purposes except as otherwise provided by law; and,

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and,

WHEREAS, within the above-referenced grant of powers, the City of Palmetto (the "City") has the authority to regulate conditions and activities within the City for the protection of the public health, safety and welfare; and

WHEREAS, Chapter 16, Article II, Division 3 of the City Code of Ordinances authorizes the Director of Public Works to abate nuisances as defined within that ordinance, and sets forth procedures for providing due public notice to owners and occupants of property on which a nuisance is alleged to exist; and

WHEREAS, City staff has determined that revision of said noticing procedures will permit the City to efficiently abate nuisances in a timely manner; and

WHEREAS, the City Commission has determined that prompt abatement of nuisances is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PALMETTO, FLORIDA, as follows:

Section 1. Findings of Fact. The above "WHEREAS" clauses are adopted herein as findings of fact.

Section 2. Revision Language. Chapter 16, Article II, Division 3, Subection 16-29(a) of the City of Palmetto Code of Ordinances is hereby amended to read in its entirety as follows:

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. All notices required by this section shall be provided to the alleged violator either by:

(1) Certified mail, return receipt requested, sent to a property owner at the address listed in the county tax collector's records for tax notices, and at any other address provided to the city by a property owner. Mailed notice to a person who is not owner of the property where the violation is located shall be to the street address of the property where the violation is located; or

(2) Regular mail sent to a property owner at the address listed in the county tax collector's records for tax notices, and at any other address provided to the city by a property owner; and posting for at least ten (10) days in at least two (2) locations, one (1) of which shall be the property upon which the violation is alleged to exist and the other of which shall be at city hall. Mailed notice to a person who is not owner of the property where the violation is located shall be to the street address of the property where the violation is located. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

Section 3. Repeal of Inconsistent Ordinances. This Ordinance hereby repeals all ordinances, or parts thereof, in conflict herewith to the extent of such conflict.

Section 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Section 5. Effective Date. This Ordinance shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

FIRST READING	September 8, 2008
PUBLICATION DATE	September 12, 2008
SECOND READING	September 22, 2008

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this 22nd, day of September, 2008.

**CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO**

By: _____
Lawrence E. Bustle, Jr., Mayor

ATTEST:

By: _____
James R. Freeman, City Clerk