

TAB 1

KIRK · PINKERTON, P.A.

TO: Shirley Groover Bryant, Mayor
City Commission

FROM: Mark P. Barnebey, City Attorney ^{2/1/12} *MPS*

DATE: February 1, 2012

RE: Criminal Public Nuisances

In looking at how to deal with certain continuing crime issues in the City, we looked at Chapter 20 of the City Code. The City has defined Public Nuisances as “any place or premises which have been used on two or more occasions as the site for unlawful sale or delivery of controlled substances as defined in F.S. Chapter 893.” As with any property within the City, this should be reviewed. This Chapter of the Palmetto City Code has not been updated since 1988, although the related statute (Section 893.138) has been modified several times since that date. This is noted because there are some additional conditions under the Statute which must be met before a violation can be found. Statutory revisions also included broadening of the possible offenses which could be the subject of action under the nuisance provisions. While the City Code does not have to be amended to take advantage of the basic provisions of Section 893.138, Florida Statutes, there are supplemental provisions which can be added by City Ordinance, including the ability to assess fines for ongoing issues.

Section 893.138, Florida Statutes, has been the subject of some litigation and there are a number of precautions which the City will need to take before moving forward the enforcement on any development. In particular, the City needs to be constant in its application of the Code. Further, case law indicates that the City must give the property owner the ability to abate the nuisance prior to enforcement of the Code part this includes notice that criminal activity might constitute a nuisance is occurring and provide a reasonable amount of time for the owner to end the criminal activity.

We would recommend the City Commission consider amending Chapter 20 to more closely match the provisions of Section 893.138, Florida Statutes.

Sec. 20-4. Park closing hours.

The following city parks, namely Heritage Park; Riverside Park (with the exception of the green bridge parking area and the boat ramp); Riverside Park East; Seventeenth Street Park; Sutton Park; and Taylor Park shall be closed to the public between the hours of 11:00 p.m. and 7:00 a.m. daily.

(Ord. No. 335, § 1, 6-6-88)

Editor's note—Ord. No. 335, adopted June 6, 1988, being nonamendatory of the Code, has been codified as § 20-4 at the editor's discretion.

Sec. 20-5. Applicability and enforcement of county fireworks ordinance.

The city hereby incorporates by reference Manatee County Ordinance 04-27, as amended from time to time, as if fully rewritten herein. The city shall have the authority to enforce the provisions of said county ordinance within the city by citation, code enforcement board proceedings, or in any other manner provided for in this Code.

(Ord. No. 04-801, § 2, 4-26-04)

Secs. 20-6—20-50. Reserved.

ARTICLE II. DRUG-RELATED NUISANCE ABATEMENT*

Sec. 20-51. Definitions.

In this article:

Board shall mean the nuisance abatement board.

City attorney shall mean the legal counsel of the city or his designee or co-council.

Clerk shall mean the person appointed by the local governing body of the city to perform the clerical duties necessary to carry out the activities of the nuisance abatement board.

Mayor shall mean the mayor of the city.

Public nuisance shall mean any place or premises which has been used on more than two (2) occasions as the site of the unlawful sale or delivery of controlled substances as defined in F.S. Chapter 893.

Vice mayor shall mean the vice mayor of the city.
(Ord. No. 336, § 1, 6-20-88)

Sec. 20-52. Rights Preserved.

This article does not restrict the right of any person to proceed under F.S. § 60.05, against any public nuisance.

(Ord. No. 336, § 7, 6-20-88)

***Editor's note**—Nonamendatory Ord. No. 336, adopted June 20, 1988, has been codified as Art. II at the editor's discretion.

Sec. 20-53. Nuisance abatement board.

(a) There is hereby created and established a nuisance abatement board to hear evidence relating to the existence of drug-related public nuisances on premises located in the city. The board shall consist of five (5) members as follows:

- (1) The mayor shall be a member of and serve as chairman of the board. The chairmanship of the nuisance abatement board shall be considered an additional duty of the