

TAB 1



City of Palmetto Agenda Item

Meeting Date

February 26, 2012
March 3, 2012

Presenter: **Department:**

Title: Criminal Nuisance Abatement Board Ordinance 2012-05

BACKGROUND:

The City has at had a form of this Nuisance Abatement Board since 1988, but it has rarely been utilized. The statute which is the basis for the City Code provisions, has been amended several times since that time to add additional types of criminal offenses over which the Board can find as a public nuisance. It has also provided for additional remedies.

DISCUSSION:

The proposed Ordinance 2012-05 greatly expands matters which can result in the finding of a public nuisance for premises. It now includes premises where crimes related to drug sale and possession, criminal gang activity, dealing in stolen property, and prostitution have occurred on a site. Further, pain management clinics found in violation of certain criminal laws can be found to be public nuisances. The Criminal Nuisance Abatement Board (the City has another Nuisance Abatement Board relating to housing) composition has been modified from the current Ordinance to avoid possible dual office holding and sunshine issues.

Budgeted Amount: **Budget Page No(s):** **Available Amount:** **Expenditure Amount:**

Additional Budgetary Information:

Funding Source(s): **Sufficient Funds Available:** Yes No **Budget Amendment Required:** Yes No **Source:**

City Attorney Reviewed: Yes No N/A **Advisory Board Recommendation:** For Against N/A **Consistent With:** Yes No N/A

Potential Motion/Direction Requested:

Staff Contact:

Attachments:

**CITY OF PALMETTO
ORDINANCE NO. 2012-05**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, AMENDING THE CODE OF ORDINANCES TO REVISE PROVISIONS RELATED TO CRIMINAL PUBLIC NUISANCES AND THE CRIMINAL NUISANCE ABATEMENT BOARD; 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, 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.

WHEREAS, Section 893.138, Florida Statutes, authorizes local governments to establish nuisance abatement boards to aid in abating drug-related, prostitution-related, stolen property-related or criminal gang-related activity.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, AS FOLLOWS:

Section 1. Amendment of Chapter 20, Article II of the City of Palmetto Code of Ordinances. Chapter 20, Article II, of the City of Palmetto Code of Ordinances is hereby amended to read in its entirety as follows:

Article II. – Criminal Nuisance Abatement

Section 20-51. – Declaration of Public Nuisance and Definitions.

(a) The following places and premises are hereby declared to be a public nuisance in the City of Palmetto, and are subject to abatement pursuant to the procedures provided in this Article:

1. Any place or premises that has been used:

- a. On more than two occasions within a 6-month period as the site of a violation of Section 796.07, Florida Statutes;
- b. On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- c. On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- d. By a criminal street gang or criminal street gang member as defined by Section 874.03, Florida Statutes; or
- e. On more than two occasions within a 6-month period as the site of a violation of Section 812.019, Florida Statutes.

2. Any pain management clinic, as described in Section 458.3625, Florida Statutes, or Section 459.0137, Florida Statutes, which has been used on more than two occasions within a 6-month period as the site of a violation of:

- a. Section 784.011, Section 784.021, Section 784.03 or Section 784.045, Florida Statutes, relating to assault and battery;
- b. Section 810.02, Florida Statutes, relating to burglary;
- c. Section 812.014, Florida Statutes, relating to dealing in theft;
- d. Section 812.131, Florida Statutes, relating to robbery by sudden snatching; or
- e. Section 893.13, Florida Statutes, relating to the unlawful distribution of controlled substances.

(b) When used in this Article, the term “controlled substances” shall include any substances sold in lieu of controlled substances in violation of Section 817.563, Florida Statutes.

- (c) When used in this Article, the term “place” or “premises” shall be defined as the extent of fee ownership. For example, a multi-unit residential facility under common ownership shall be considered a single “place” or “premises”, whereas a multi-family residential facility under condominium ownership shall be reviewed on a unit-by-unit basis.

Section 20-52. – Complaint Procedures.

(a) Any employee, officer, or resident of the city may file a complaint with the city police department alleging the existence of a Public Nuisance as defined in Section 20-51, after first giving not less than three (3) days written notice of such complaint to the owner of the premises sent via Certified Mail or hand delivered, to owner’s last known address.

(b) Upon the receipt of a complaint alleging activity meeting the definition of public nuisance in Section 20-51, and complying with the notice provisions contained herein, the Chief of Police shall investigate the allegations and, if warranted, shall request a hearing before the Criminal Nuisance Abatement Board by providing notice to the City Clerk with a copy to the Mayor and City Attorney.

(c) Upon receipt of such request for hearing, the clerk of the Criminal Nuisance Abatement Board shall schedule a hearing, and shall provide the owner of the premises with a minimum of fourteen (14) days written notice, sent via certified mail or hand delivered to the owner of the premises. The notice shall include a statement of the time, place and nature of the hearing, a reference to the specific sections of the ordinance or Florida Statutes alleged to have been violated, and a brief statement summarizing the facts underlying the allegations.

Section 20-53. – Establishment and Composition of the Criminal Nuisance Abatement Board.

The Criminal Nuisance Abatement Board is hereby established to carry out the duties and powers ascribed to it in this Article. The Board shall consist of five (5) members to be appointed by the Mayor and approved by a majority vote of the City Commission. The terms of the office shall be for two (2) years from the date of their appointment, except that the initial terms of two (2) members shall be only one (1) year from the date of their appointments. All subsequent terms shall be for two (2) years. Any vacancy occurring during the term of any member of the board shall be filled for the unexpired portion of the term. Any person who resides or is engaged in business, which means owning a business, practicing a profession, or performing a service for compensation, or serving as an officer or director of a corporation or other business entity so engaged, within the city shall be eligible for appointment to the Criminal Nuisance Abatement Board.

Section 20-54. – Vacancies and Removal of Members.

In case of vacancies occurring in membership of the Criminal Nuisance Abatement Board, the City Commission shall fill such vacancies within sixty (60) days or at least ten (10) days prior to a hearing. Any person appointed by the City Commission to fill a vacancy shall serve for the unexpired term of the original appointment. Members of the Criminal Nuisance Abatement Board may be removed by majority vote of the City Commission, in the event that the City Commission determines that such action is in the best interest of the City.

Section 20-55. – Officers; Rules of Procedure; Meetings; Compensation; Counsel.

(a) The Criminal Nuisance Abatement Board shall elect a chair and a vice-chair from among its members. They shall serve for one-year terms.

(b) The Criminal Nuisance Abatement Board shall adopt such additional rules as are necessary to conduct its affairs and in keeping with the provisions of this Article. The City Clerk, or the Clerk's designee, shall be the clerk to the Criminal Nuisance Abatement Board and shall be responsible for keeping the records of the board's actions, providing necessary background material, keeping a record of attendance, keeping a record of all official actions of the board, including the vote of the members on each question requiring a vote, or if absent or abstaining from voting, indicating such fact.

(c) The Criminal Nuisance Abatement Board shall meet on an as-needed basis. The board shall not transact any business at any meeting unless a quorum of three (3) members is present, and every official action taken and every decision rendered by the board shall be approved by a majority of the board members present. If necessary, the board may continue any matter before it.

(d) Members of the Criminal Nuisance Abatement Board shall receive no compensation.

(e) The Criminal Nuisance Abatement Board shall be represented by independent legal counsel.

Section 20-56. – Conduct of Hearings.

(a) The Chief of Police, or the Chief's designee, shall present cases before the Criminal Nuisance Abatement Board and shall be represented by the City Attorney's Office. Both parties shall have the opportunity to present evidence and to cross-examine witnesses. When authorized by the board, members of the public may be permitted oral or written testimony or evidence for consideration by the board, but both parties shall be given the opportunity to cross-examine, challenge or rebut such evidence or testimony. The board shall consider all evidence presented, including evidence of the general reputation of the premises. The Board will not be bound by the Florida Rules of Evidence and may receive and consider hearsay or other evidence not admissible under the Florida Rules of Evidence.

(b) At the conclusion of the hearing, the board may declare the place or premises to be a public nuisance as defined in Section 20-51, and may enter an order:

1. Immediately prohibiting the maintaining of the nuisance;
2. Immediately prohibiting the operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or
3. Immediately prohibiting the conduct, operation or maintenance of any business or activity on the premises which is conducive to such nuisance.

(c) An order entered under subsection (b) shall expire after one (1) year or at such earlier time as stated in the order.

Section 20-57. – Enforcement.

(a) An order of the Criminal Nuisance Abatement Board may be enforced by any or all of the following procedures:

1. The City may pursue enforcement pursuant to the provisions contained in Section 120.69, Florida Statutes
2. The City may bring a complaint under Section 60.05, Florida Statutes, seeking temporary and permanent injunctive relief.
3. The City may bring an enforcement action before the Criminal Nuisance Abatement Board. An enforcement action before the Criminal Nuisance Abatement Board shall follow the notice provisions in Section 20-52(c) and the hearing procedures in Section 20-56(a).

(b) Upon a finding by the court or by the Criminal Nuisance Abatement Board that an order issued pursuant to Section 20-56(b) has been violated, the following penalties may be imposed, in addition to the other remedies available at law:

1. Imposing fines not to exceed \$250 per day.
2. Requiring the payment of the reasonable costs, including reasonable attorneys fees, associated with the investigations of and hearings related to the public nuisance.
3. Providing for continuing jurisdiction for a period of one (1) year over any place or premises declared to be or have been a public nuisance.
4. Imposing fines not to exceed \$500 per day for recurring public nuisances.
5. Providing for the recording of the order so that notice must be given to subsequent purchasers, successors in interest, or assigns, of the real property that is subject to the order.
6. Providing that the recorded order shall be a lien against the real property that is subject to the order.
7. Providing for the foreclosure of the property subject to a lien, and the recovery of all costs, including reasonable attorney's fees, associated with the recording of orders and foreclosure.

(c) Any lien arising from fines or costs imposed pursuant to this Section, shall run in favor of the City, and only the City Commission shall be authorized to execute a release or satisfaction of lien entered pursuant to this Section.

(d) The total fines imposed pursuant to this Section shall not exceed \$15,000.

(e) No lien created under this Section may be foreclosed on real property which is a homestead under Section 4, Article X of the Florida Constitution.

(f) Where an enforcement action is brought based on a stolen property nuisance, against a property owner operating an establishment where multiple tenants on one site conduct their own retail businesses, the property owner shall not be subject to a lien against the property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within 90 days after notification by registered mail to the property owner of a second stolen property conviction of the tenant.

Section 2. Repeal of Ordinance. This Ordinance hereby repeals any and all provisions of ordinances in conflict herewith to the extent of such conflict.

Section 3. Severability. If any section, sub-section, paragraph, sentence, clause or phrase in this Ordinance shall be held invalid by a court of competent jurisdiction, then such invalidity shall not affect the remaining portions hereof.

Section 4. 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 of the City Commission.

PASSED AND DULY ADOPTED, by the City Commission, in open session, with a quorum present and voting, this 19th day of March, 2012.

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| First Reading: | March 5, 2012 |
| Publication: | March 9, 2012 |
| Second Reading and | |
| Public Hearing: | March 19, 2012 |

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

By: _____
SHIRLEY GROOVER BRYANT,
MAYOR

ATTEST: James R. Freeman
City Clerk

By: _____
City Clerk/Deputy Clerk