



AGENDA ITEM MEMORADUM

Town Manager

Connie Hoffmann

Department

Department Director

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input type="checkbox"/> Feb 28, 2012	Feb 17
<input type="checkbox"/> Mar 13, 2012	Mar 2
<input type="checkbox"/> Mar 27, 2012	Mar 16
<input type="checkbox"/> April 10, 2012	Mar 30
<input checked="" type="checkbox"/> April 24, 2012	Apr 13

***Subject to Change**

- | | | | |
|---------------------------------------|---|---------------------------------------|--|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input type="checkbox"/> Consent | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Quasi-Judicial | <input type="checkbox"/> Old Business | <input checked="" type="checkbox"/> New Business |

FY2012 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC: NUISANCE ABATEMENT ORDINANCE

SUBJECT TITLE: Discussion of Creating a Nuisance Abatement Board

EXPLANATION: Florida Statutes Section 893.138 authorizes municipalities to set up a board with the "authority to impose administrative fines and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing ordinances under circumstances when a pending or repeated violation continues to exist." These boards are commonly referred to as Nuisance Abatement Boards.

The enabling statute deals with criminal activities and specifically refers to "places or premises" used on multiple occasions for prostitution activities; criminal gang activity; storing or trafficking in stolen property; unlawful sale, delivery, manufacture or cultivation of any controlled substance; and to certain criminal activities that occur on premises of pain management clinics (e.g. assault and battery, burglary, theft, unlawful distribution of controlled substances).

It allows the board to declare such places or premises as public nuisances after notice to the property owner and an evidentiary hearing. Once the nuisance has been declared, the board can order actions by the property owner to abate the nuisance and those orders can remain in place for a year. The statute also allow boards the authority to seek injunctive relief against the nuisance and to impose administrative fines and "other non-criminal" penalties.

The Town may, by ordinance, establish additional penalties to be imposed including fines not to exceed \$250 a day, provide for reimbursement to the Town of reasonable associated costs the Town has incurred including attorneys' fees, increase fines to \$500 per day for recurring public nuisances, place liens against properties that do not pay their fines, and eventually foreclose on non-homesteaded property. The total fines assessed any one property cannot exceed \$15,000.

Oftentimes, property owners who rent to criminals, operate a business that attract a criminal element, or own a building or property that criminals use for their illegal activities disavow knowledge of or responsibility for their tenant's, loiterers', or customer's behavior. A Nuisance Abatement Board would give the Town a tool to get property owners whose properties are the site of repeat criminal infractions to take responsibility to prevent those problems from reoccurring.

The State conducted a survey of Florida's municipalities and counties in 2006 regarding the use of Nuisance Abatement Boards and received 33 responses from local governments that had created such a board. Most of the governments responding indicated that their board had been successful in abating nuisances. Miami-Dade



County reported that they had considerable success in getting property owners to prevent nuisances from recurring on their properties through such proactive action as providing private security, making property improvements that discouraged loitering, evicting tenants who had committed illegal activities, and securing vacant properties.

The Town Attorney's Office has drafted a Nuisance Abatement ordinance that, in addition to the criminal activities mentioned in the state statute, also includes repeated infractions for lewd and lascivious behavior occur and where alcoholic beverage-related crimes occur. Dade County has such provisions in their ordinance and our code already has provisions for considering lewd and lascivious behavior a nuisance.

Given the small size of our Town, we have recommended the Board be comprised of three members who are Town residents, although the Town Attorney has advised that a Nuisance Abatement Board is not an advisory board and, therefore, does not fall under Section 7.3 of the Charter that requires that Board members be Town residents.

The ordinance also moves the authority for filing for injunctive relief from the Nuisance Abatement Board to the Town Commission as considerable legal costs can be incurred in filing and pursuing injunctive relief. The ordinance also provides for fines to be levied within the limits set by the state statute.

If the Commission wishes to proceed with establishment of a Nuisance Abatement Board, we will schedule the ordinance for first reading in May and post a request for Town residents to apply to serve on such a Board. When the ordinance comes back for first reading, it will be revised to replace the current provisions in our code regarding abatement of lewd and lascivious nuisances.

It should be noted that the burden of presenting evidence to the Nuisance Abatement Board will fall upon BSO and there will be some legal costs incurred as the Town Attorney's office – or special legal counsel – would need to advise the Board. However, the statute allows the fines levied to recoup such costs via the fines levied. Not all of those costs will be recovered, however, as some property owners will come into compliance before a fine is levied.

The Police Chief is in agreement that this can be a useful tool for the Town to use and is supportive of the ordinance.

EXHIBIT: Draft Nuisance Abatement Ordinance

Reviewed by Town Attorney
 Yes No

Town Manager Initials CA

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24 **WHEREAS**, the Town Commission conducted a first and second reading of this Ordinance at duly
25 noticed public hearings, as required by law, and after having received input from and participation by
26 interested members of the public and staff, the Town Commission has determined that this Ordinance is in
27 the best interest of the Town, its residents, and its visitors.

28 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF**
29 **LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:**

30 **SECTION 1. Recitals.** The preceding "Whereas" clauses are ratified and incorporated as the
31 legislative intent of this Ordinance.

32 **SECTION 2. Amendment.** Article _____, _____, of Chapter 14, Offenses,
33 of the Code of Ordinances is hereby created/amended to read as follows:

34 **Sec. 14.100. - Intent.**

35 This article is enacted pursuant to the provisions of Florida Statute, Section 893.138, as it may be
36 renumbered or amended from time to time, and shall be known and may be cited as the
37 "Lauderdale-By-The-Sea Nuisance Abatement Ordinance."

38 The Town Commission of the Town of Lauderdale-By-The-Sea, hereby finds and declares that any
39 places or premises which are used as the site of the unlawful sale, delivery, manufacture or cultivation of
40 controlled substances, prostitution, criminal gang activity, illegal sale or consumption of alcoholic
41 beverages, lewd or lascivious behavior, dealing with stolen property, and certain crimes on the premises
42 of a pain clinic may be a public nuisance that adversely affects the public health, safety, morals, and
43 welfare. This Commission also finds that abating the public nuisance which results from said criminal
44 activity is necessary to improve the quality of life of the residents of the Town and that said abatement
45 will safeguard the public health, safety, and welfare.

46 This article is hereby declared to be remedial and essential to the public interest and it is intended that
47 this article be liberally construed to affect the purposes as stated above.

48 The provisions of this Article shall be cumulative and supplemental to and not in derogation of any
49 provision of the Florida Statutes, the Code of the Town of Lauderdale-By-The-Sea, or any other
50 applicable law.

51 **Sec. 14.101. - Definitions.**

52 For the purpose of this article the following definitions shall apply:

53 *Public nuisance:* Any place or premise which has been used on more than two (2) occasions within a
54 twelve-month period:

55 (1) As the site of the unlawful sale or delivery, manufacture, or cultivation of controlled
56 substances, or

57 (2) By a criminal gang for the purpose of conducting criminal gang activity as defined by Section
58 874.03, Florida Statutes

59 (3) For prostitution, or solicitation of prostitution, or

60 (4) For dealing in stolen property; or

61 (5) Which is occupied by a pain-management clinic which has been the site of a violation:

62 (a) Relating to assault; or

63 (b) Relating to burglary; or

64 (c) Relating to dealing in theft; or

65 (d) Relating to robbery by sudden snatching; or

66 (e) Relating to unlawful distribution of controlled substances; or

67 (6) For the illegal sale or consumption of alcoholic beverages, or

68 (7) For lewd or lascivious behavior, or

69 (8) Any premise or place declared to be a nuisance by Florida Statute, Section 823.05 or Section
70 823.10 as they may be renumbered or amended from time to time.

71 **Sec. 14.102. - Operating procedure.**

72 Any employee or officer of the Town may file a complaint and request for investigation regarding the
73 existence of a public nuisance located within the Town. Said complaint shall be filed with the Town
74 Police Chief, or his or her designee. The Police Chief shall investigate and make a determination
75 whether the complaint(s) meet the criteria of this Article. Upon receiving two (2) complaints on any
76 particular place or premises meeting the criteria of this Article, the Police Chief shall submit the
77 complaint(s) to the Town Manager. Upon the receipt from the Police Chief the Town Manager or his or
78 her designee shall mail written notice of such complaints by certified mail with return receipt to the
79 owner of the place or premises complained of at the owner's address as shown in the Broward County
80 property tax collector's file. Said notice shall provide for the owner of the place or premises to contact
81 the Town Manager or his or her designee within fourteen (14) days of receipt of the notice. This time

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82 period shall be allowed for the purpose of allowing the owner to take such good faith measures as are
83 appropriate to abate the nuisance. The Town Manager or his or her designee may extend the fourteen
84 (14) days to allow the owner to institute or continue actions to abate the nuisance provided the actions
85 are reasonable. In the event the owner fails to respond to the Notice of Complaint or fails to take
86 reasonable action to abate the nuisance, the Town Manager or his or her designee shall schedule a
87 hearing on the complaint before the Nuisance Abatement Board.,

88 The aforesaid notice of hearing shall include:

- 89 (a) A statement of the time, place and nature of the hearing;
- 90 (b) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- 91 (c) A reference to the particular sections of the statutes and ordinances involved;
- 92 (d) A short and plain statement summarizing the incidents complained of.

93 **Sec. 14.103. - Nuisance Abatement Board.**

94 The Nuisance Abatement Board is hereby created and established. The Board shall consist of three (3)
95 members appointed by the Town Commission.

96 (a) *Qualification of members.* All members of the Board shall reside in the Town and shall
97 possess outstanding reputations for civic pride, integrity, responsibility and business or professional
98 ability, with interest or experience in abating public nuisances. No member shall be an elected
99 official or employee of the Town.

100 (b) *Terms of office.* The Town Commission shall appoint members to the Nuisance Abatement
101 Board in even numbered years to coincide with the election of the members of the Town
102 Commission. The members shall be appointed at the second Town Commission meeting following
103 each election. The term of office for all members shall be two years from the date of appointment
104 expiring on the date of the election, in all even-numbered years.

105 (c) *Removal from office.* The members of the Board shall serve at the pleasure of the Town
106 Commission and may be removed by a majority vote of the Town Commission. A member may
107 be removed with or without cause by the affirmative vote of not less than a majority of the entire
108 Town Commission. Any Board member who fails to attend three (3) consecutive meetings during a
109 two-year term shall forfeit his or her position.

110 (d) *Organization of the Board.* The members of the Board shall elect a chairperson and
111 vice-chairperson, who shall serve at the will of the Board. Members shall serve without
112 compensation.

113 (e) *Meetings of the Board.* Meetings of the Board shall be held as frequently as necessary, to hear
114 and dispose of the pending complaints. Notice of the time and place of meetings shall be given to
115 all complainants and owners of premises scheduled to be heard. Any aggrieved person may request
116 a continuance of the hearing. The Board may grant a continuance of any hearing for good cause.

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117 The chairperson may call an emergency meeting of the Board upon at least 24 hours' written notice
118 to each member. Meetings may also be called by written notice signed by two (2) members of the
119 Board, subject to the regular or emergency notice requirements. Any party desiring a transcript of
120 the proceedings shall be responsible for making such arrangements as may be necessary at their
121 own expense. All meetings shall be in compliance with Florida's "Government in Sunshine Law"
122 and Chapter 286.011, Florida Statute.

123 (f) *Notice of Meetings.* Written notice of non-emergency hearings shall be by certified mail with
124 return receipt requested to the owner of the premises and the complainant at least ten (10) days
125 prior to the scheduled hearing. Written notice of emergency hearings shall be by certified mail
126 with return receipt to the owner of the premises and the complainant as soon as the meeting is
127 scheduled or if the hearing is scheduled with less than four (4) days notice, by overnight mail, with
128 delivery confirmation by delivery vendor, or by hand delivery a minimum of one (1) day prior to
129 the scheduled hearing. Notice shall also be posted no less than 24 hours in advance of the date and
130 time of the scheduled hearing.

131 (g) *Quorum.* No less than two (2) members shall constitute a quorum. No less than two (2)
132 members voting affirmatively shall be required to declare any place or premises a public nuisance
133 under this provision.

134 (h) *Support.* The Town Manager shall provide adequate and competent clerical and administrative
135 personnel, and such technical or scientific personnel as may be reasonably required by the Board
136 for the proper performance of its duties. The Town Manager shall provide a regular meeting place
137 for the Board. All records shall be public records as defined by Chapter 119.011, Florida Statutes.

138 (i) *Conduct of hearings.*

139 (1) The Chief of Police or his or her designee shall present cases before the Board. All
140 parties shall have an opportunity to present evidence and argument on all issues involved, to
141 conduct cross-examination and submit rebuttal evidence, and to be represented by counsel.
142 When appropriate, the general public may be given an opportunity to present oral or written
143 communications. If the Board proposes to consider such material, then all parties shall be
144 given an opportunity to cross-examine or challenge or rebut it. The Board may consider any
145 evidence, including evidence of the general reputation of the place or premises. All testimony
146 shall be under oath. Formal rules of evidence shall not apply, but fundamental due process
147 shall be observed and shall govern the proceedings. Orders of the Board shall be based on
148 competent and substantial evidence.

149 (2) After considering all evidence, the Board may declare the place or premises to be a
150 public nuisance as defined in this Article and may enter an order:

151 (i) Requiring the property owner of such place or premise to adopt such procedure(s)
152 as may be appropriate under the circumstances to abate any such nuisance;

153 (ii) Prohibiting the maintaining of the nuisance;

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154 (iii) Prohibiting the operating or maintaining of the place or premises, including the
155 closure of the place or premises or any part thereof;

156 (iv) Prohibiting the conduct, operation, or maintenance of any business or activity on
157 the premises which is conducive to such nuisance;

158 (v) Requiring the owner to pay a fine in an amount up to two hundred fifty dollars
159 (\$250.00) per day for a public nuisance or up to five hundred dollars (\$500.00) per day
160 for a recurring public nuisance. Total fines imposed pursuant to this section shall not
161 exceed the statutory limit provided in Section 893.138, Florida Statutes, as amended from
162 time to time;

163 (vi) Establishing continuing jurisdiction for a period of up to one (1) year over any place
164 or premises that has been or is declared to be a nuisance to monitor compliance or modify
165 its orders prior to the expiration of said orders;

166 (vii) Providing for the payment of reasonable costs including attorney fees, associated
167 with the preparation, investigation, and presentation of the case and hearings on public
168 nuisances.

169 (3) An order entered under subsection (2) shall expire after one year or at such earlier time as
170 stated in the order.

171 (4) In accordance with F.S. 893.138(8) the Board may bring a complaint under Section
172 60.05 of the Florida Statutes, seeking a temporary or permanent injunction against any public
173 nuisance, in accordance with the following procedures:

174 1) The Board shall, by majority vote, make a recommendation to the Town Commission to
175 seek a temporary or permanent injunction; and

176 2) The Town Commission shall by majority vote determine whether to:

177 a. Seek a temporary or permanent injunction; or

178 b. To recommend alternative action for consideration by the Board.

179 **Sec. 14.104. –Lien for Fines and Costs.**

180 In the event that the Board declares a place or premises to be a nuisance and issues an order pursuant to
181 Section 14.103 above imposing fines or costs, said fines and/or costs shall be due and payable ten (10)
182 days after the written order of the Board has been filed or at such other time as may be designated in the
183 order. A certified copy of an order imposing fines and/or costs may be recorded in the public records
184 and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does
185 not own the land, upon any other real or personal property owned by the violator; and it may be enforced
186 in the same manner as a court judgment by the sheriffs of this state including levy against the personal
187 property, but shall not be deemed to be a court judgment except for enforcement purposes. After one
188 year from the filing of any such lien which remains unpaid, the Town may foreclose or otherwise

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189 execute on the lien. Interest shall accrue on the unpaid costs at the legal rate of interest set forth in
190 Section 55.03, Florida Statute as that may be amended from time to time.

191 **Sec. 14.105. - Appeals.**

192 An aggrieved party may appeal a final order of the Nuisance Abatement Board to the Circuit Court of
193 the Seventeenth Judicial Circuit, Appeals Division. Such an appeal shall not be a hearing de novo, but
194 shall be limited to appellate review of the record created before the Board. An appeal shall be filed
195 within thirty (30) days of the date of the written order appealed from.

196 **Sec. 14.106. - Rights preserved.**

197 This article does not restrict the right of any person to proceed under Section 60.05 of the Florida
198 Statutes, against any Public Nuisance.

199

200 **SECTION 3. Severability.** If any section, sentence, clause or phrase of this Ordinance is held
201 to be invalid or unconditional by any court of competent jurisdiction, then said holding shall in no way
202 affect the validity of the remaining portions of this Ordinance.

203 **SECTION 4. Conflicts.** All ordinances or parts of Ordinances and all Resolutions or parts of
204 Resolutions in conflict with the provisions of this Ordinance are hereby repealed.

205 **SECTION 5. Codification.** This Ordinance shall be codified.

206 **SECTION 6. Effective Date.** This Ordinance shall become effective immediately upon second
207 reading.

208 Passed on the first reading, this __ day of _____, 2012.

209 Passed and adopted on the second reading, this __ day of _____, 2012.

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Mayor Roseann Minnet

First Reading

Second Reading

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216 Mayor Minnet _____
217 Vice-Mayor Sasser _____
218 Commissioner Brown _____
219 Commissioner Dodd _____
220 Commissioner Vincent _____
221

222 Attest:

223

224 _____
225 Town Clerk, June White, CMC

226

227 Approved as to form:

228

229 _____
230 Susan L. Trevarthen, Town Attorney