



AGENDA ITEM MEMORADUM

Town Attorney

Susan L. Trevarthen

Department

Department Director

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
<input type="checkbox"/> May 8, 2012	April 27
<input checked="" type="checkbox"/> May 22, 2012	May 11
<input type="checkbox"/> June 12, 2012	June 1
<input type="checkbox"/> June 26, 2012	June 15
<input type="checkbox"/> July 10, 2012	June 29
<input type="checkbox"/> July 24, 2012	July 13

***Subject to Change**

- Presentation Reports Consent Ordinance
 Resolution Quasi-Judicial Old Business New Business

FY2012 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Ordinance Establishing Public Nuisances and Related Enforcement Procedures

EXPLANATION: On April 24 and May 8, 2012, the Town Commission discussed the issue of nuisance abatement in the Town, and evaluated whether to create a nuisance abatement board. On May 8, 2012, the Town Commission gave direction that an ordinance be drafted to aid in the use of existing code enforcement procedures against public nuisances associated with persons and properties in the Town. The ordinance defines the types of activities that constitute a public nuisance, and provides for enforcement pursuant to Chapter 162, F.S., by the code enforcement special master, or by filing suit pursuant to Chapter 60, F.S.

EXPECTED OUTCOME: Approval of the Ordinance on First Reading

EXHIBIT(S): Ordinance 2012-
Section 823.05, F.S.
Section 893.138, F.S.

Reviewed by Town Attorney
 Yes No

Town Manager Initials CA

ORDINANCE 2012- 08

1 AN ORDINANCE OF THE TOWN OF
2 LAUDERDALE-BY-THE-SEA, FLORIDA, CREATING
3 ARTICLE IV, PUBLIC NUISANCE, OF CHAPTER 14,
4 OFFENSES, OF THE CODE OF ORDINANCES, TO
5 REGULATE PUBLIC NUISANCES; PROVIDING FOR
6 SEVERABILITY, CONFLICTS, CODIFICATION, AND AN
7 EFFECTIVE DATE

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9 **WHEREAS**, the Town Commission recognizes that changes to the adopted Code of
10 Ordinances are periodically necessary in order to ensure that the Town's Code is current and
11 consistent with the Town's regulatory needs; and

12 **WHEREAS**, Section 823.05, Florida Statutes, identifies places and groups engaged in
13 criminal gang related activities as public nuisances; and

14 **WHEREAS**, Section 893.138, Florida Statutes, identifies and defines drug-related,
15 prostitution-related, stolen-property-related and criminal gang related activities which may be
16 defined as public nuisances; and

17 **WHEREAS**, the Town Commission finds that any places or premises which are used as
18 the site of the unlawful sale, delivery, manufacture or cultivation of controlled substances,
19 prostitution, criminal gang activity, illegal sale or consumption of alcoholic beverages, lewd or
20 lascivious behavior, dealing with stolen property, and certain crimes on the premises of a pain
21 clinic, may be a public nuisance that adversely affects the public health, safety, morals, and
22 welfare and

23 **WHEREAS**, the Town Commission finds that actively abating the public nuisance which
24 results from these criminal activities through the available code enforcement procedures is

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25 necessary to maintain and improve the quality of life of the residents of the Town and will
26 safeguard the public health, safety, and welfare; and

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

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

33 **SECTION 1. Recitals.** The preceding “Whereas” clauses are ratified and incorporated
34 as the legislative intent of this Ordinance.

35 **SECTION 2. Amendment.** Article IV. Public Nuisance, of Chapter 14, Offenses, of
36 the Code of Ordinances, is hereby created to read as follows:

37 **ARTICLE IV. - PUBLIC NUISANCE**

38 **Sec. 14.90 – Public Nuisance.**

39 (a) *Definition.* For purposes of this Section, Public Nuisance shall mean those actions or
40 failures to act defined as Public Nuisances in Section 823.05, F.S. or Section 893.138, F.S.,
41 and shall also include illegal sale or consumption of alcoholic beverages on two or more
42 instances at a premises or business establishment within a twelve-month period.

43 (b) *Violation Established.* It shall be unlawful and shall constitute a violation of this section
44 for any person who engages in any profession or occupation within the Town, or who

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owns, operates or manages any premises or business establishment within the Town, to engage in such profession or occupation or operate or manage said premises or business establishment, in a manner which directly facilitates the efforts of that person or any other person to engage in conduct which constitutes the establishment or maintenance of a Public Nuisance within the Town.

(c) *Enforcement.*

(1) The Town may prosecute violations by issuance of notices to appear before the code enforcement special master for violation of a Town ordinance, in which case the penalty for a violation shall be as follows:

- i. First offense250.00
- ii. Second offense\$500.00
- iii. Violation Irreparable in nature up to \$5,000.00

Each day on which a violation exists shall constitute a separate violation for the purpose of determining the fine or penalty imposed.

(2) The Town Attorney, if directed by the Town Commission, may bring suit on behalf of the Town, against the person, persons or business causing or maintaining the violation, or against the owner/agent of the business, building or property on which the violation exists. Relief may be granted according to the terms and conditions of Chapter 60, F.S. entitled "Abatement of Nuisances."

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

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

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

70 **SECTION 6. Effective Date.** This Ordinance shall become effective immediately upon
71 second reading.

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

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

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Mayor Roseann Minnet

First Reading

Second Reading

Mayor Minnet

Vice-Mayor Sasser

Commissioner Brown

Commissioner Dodd

Commissioner Vincent

Attest:

Town Clerk June White, CMC

Approved as to form:

Susan L. Trevarthen, Town Attorney

F.S. 823.05 Places and groups engaged in criminal gang-related activity declared a nuisance; may be abated and enjoined.—

- (1) Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in ss. 60.05 and 60.06.
- (2)
 - (a) As used in this subsection, the terms "criminal gang," "criminal gang member," "criminal gang associate," and "criminal gang-related activity" have the same meanings as provided in s. 874.03.
 - (b) A criminal gang, criminal gang member, or criminal gang associate who engages in the commission of criminal gang-related activity is a public nuisance. Any and all such persons shall be abated or enjoined as provided in ss. 60.05 and 60.06.
 - (c) The use of a location on two or more occasions by a criminal gang, criminal gang members, or criminal gang associates for the purpose of engaging in criminal gang-related activity is a public nuisance. Such use of a location as a public nuisance shall be abated or enjoined as provided in ss. 60.05 and 60.06.
 - (d) Nothing in this subsection shall prevent a local governing body from adopting and enforcing laws consistent with this chapter relating to criminal gangs and gang violence. Where local laws duplicate or supplement this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field.
 - (e) The state, through the Department of Legal Affairs or any state attorney, or any of the state's agencies, instrumentalities, subdivisions, or municipalities having jurisdiction over conduct in violation of a provision of this chapter may institute civil proceedings under this subsection. In any action brought under this subsection, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

F.S. 893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.—

- (1) It is the intent of this section to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing ordinances in counties and municipalities under circumstances when a pending or repeated violation continues to exist.
- (2) 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 s. 796.07; [Prohibiting prostitution, etc.]
 - (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 gang for the purpose of conducting criminal gang activity as defined by s. 874.03; or
 - (e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

- (3) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137, 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, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;
 - (b) Section 810.02, relating to burglary;
 - (c) Section 812.014, relating to dealing in theft;
 - (d) Section 812.131, relating to robbery by sudden snatching; or
 - (e) Section 893.13, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.