



Item No. 16b

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"/> May 8, 2012	

***Subject to Change**

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

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

SUBJECT TITLE: Discussion of Creating a Nuisance Abatement Board

EXPLANATION: At the last meeting, staff and the Town Attorney presented the attached agenda item and draft ordinance to create a Nuisance Abatement Board. (**Exhibit 2.**) The Town Attorney mentioned to the Commission that an alternative to the Board was to utilize a Code Enforcement Special Magistrate to hear nuisance cases. The Commission asked the Town Attorney to come back with an explanation of that option. The Town Attorney's memo explaining that option is attached as **Exhibit 1.**

We need Commission direction on whether you wish to proceed with creating a Nuisance Abatement Board or to utilize the Code Enforcement Magistrate instead.

- EXHIBIT: 1) Town Attorney Memo Dated May 4, 2012**
2) April 24th Agenda Item on Nuisance Abatement Board and Draft Nuisance Abatement Ordinance

Reviewed by Town Attorney
 Yes No

Town Manager Initials CH

Memo

To: Connie Hoffmann, Town Manager

Cc: Bud Bentley, Assistant Town Manager

From: Susan Trevarthen, Town Attorney
Kathy Mehaffey, Assistant Town Attorney

Date: May 4, 2012

Re: Nuisance Abatement Enforcement Strategies: Code Enforcement Against Public Nuisances vs. Creation of a Nuisance Abatement Board

I. Issue

At the last Town Commission meeting, there was a discussion of whether to pursue a nuisance abatement board or to adopt language in the Town Code that would allow the existing special magistrate system to deal with repeated criminal violations at certain properties in the Town. As discussed, here is an evaluation of the alternative methods for dealing with criminal nuisance issues within the Town. The two alternatives at issue are traditional code enforcement methods against newly defined public nuisances, and the creation of a Nuisance Abatement Board.

II. Discussion

A. Use of Nuisance Abatement Board Against Public Nuisances

As noted previously, a public nuisance abatement board can be created under Section 893.138, Florida Statutes. This provides significant tools to address various criminal nuisances, including a legal mechanism to shut down problematic businesses for up to one year. With regard to hotels renting rooms by the hour, a nuisance abatement order can direct that the establishment cannot rent a room for less than a 24-hour period of time in order to abate prostitution-related nuisances. The board can retain jurisdiction for one year and bring the property owner back every month for a status report, and amend the order to include additional steps to abate the public nuisance, if necessary.

Section 893.138(10), F.S. describes additional enforcement mechanisms, penalties and remedies that can be provided by local ordinance for the board. Pursuant to Section 893.138(5)(11) F.S., the Board may impose fines in an amount up to two hundred fifty dollars (\$250.00) per day for a public nuisance or up to five hundred dollars (\$500.00) per day for a recurring public nuisance. These fines are capped at \$15,000.

Additionally, the board would have the authority to order a business to implement measures the board deems necessary to abate the public nuisance. For example, the City of Fort Lauderdale has successfully used such a board to issue orders requiring the installation of new lighting, trimming of hedges and removal of fences to abate public nuisances. That city's board chairperson indicated that they have only fined a property once, and that 95% of the time, the property owners work with them to achieve compliance prior to a fine being imposed. The board is staffed by representatives of the Police Department, rather than the Code Compliance staff.

While a nuisance abatement board has considerable leeway and authority to abate a public nuisance, if used improperly to shut down all use of a property, the Town could be challenged for that deprivation of property rights. In order to avoid litigation and liability for a taking, the Town Attorney would need to prepare the case and submit sufficient evidence obtained by the Broward Sheriff's Office documenting the pattern of criminal activity, as well as evidence establishing how the business is facilitating such activity.

B. Use of Traditional Code Enforcement Special Magistrate Procedure or the Courts Against Public Nuisances

Alternatively, the Town can use other enforcement mechanisms currently available under the Code or applicable statutes against civil or criminal offenses. While criminal enforcement against the perpetrators for the individual criminal acts always remains available to the Town, as does an injunction through the court system, code enforcement using a public nuisance ordinance can reach beyond the perpetrators to the owners of the premises who are allowing repeated offenses.

1. *Code Enforcement through the Courts.* Under Chapter 162, F.S., the Town can file a municipal information in county court. A county court judge can impose a maximum fine of \$500 or 60 days imprisonment. The Town could also choose to apply for injunctive relief from the Court pursuant to Section 60.05, F.S. This procedure could result in the circuit court enjoining the continuation of those public nuisances outlined in Section 823.05, F.S. (e.g., prostitution, lewdness, gambling and gang-related activity). Under this alternative, any action would be imposed and enforced by the court system, and the Town avoids potential liability for the sanctions the court may choose to impose. However, the Town incurs legal costs, and is subject to the vagaries and delays of the court system.
2. *Adopting a Public Nuisance Ordinance That Makes People and Businesses Liable for Nuisance Activity on Their Premises.* As noted at the last meeting and in our prior memo, the Town could also consider enacting an ordinance that makes businesses responsible for facilitating public nuisances on their premises. When these public nuisances are defined to include criminal violations such as those identified in Section 823.05(1), F.S., for the nuisance abatement board process, this ordinance can allow the Town to bring an individual, business owner or property owner to the Special Magistrate for the same criminal issues.

An example of similar language adopted by one of our other cities is below; it was successfully used against the operation of an illegally operating pharmacy/pain clinic (both the individual pharmacist as well as the pharmacy business), and led to the relocation of that clinic to another city:

“Public Nuisance” - It shall be unlawful and shall constitute a violation for any person who engages in any profession or occupation within the Town or who 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 as defined in Section 823.05(1), F.S.¹

Under such an ordinance and Chapter 162, F.S., the Town can argue to the Special Magistrate that each instance of prostitution or drug-related activity facilitated by the business establishment is irreversible. In other words, a failure to maintain a property can be complied; a criminal act, once complete, cannot be undone. If a violation is found to be irreparable or irreversible, as many crimes of this type are, the Special Magistrate can impose a fine of up to \$5,000.00 per violation under Chapter 162, without any statutory cap. Per violation could be measured by each act of prostitution or drug-related activity, for example. Because these fines can be quite hefty, there is significant incentive for the violator to address the violation and to negotiate a solution which successfully ameliorates the nuisance.

When this option was utilized to address the pharmacy/pain clinic referenced above, the city negotiated a stipulated agreement with the violator which was then approved by the Special Magistrate. No violation or fine was ever imposed. The agreement provided that the violator close his operation in the city by a certain date, and that he implement significant procedural and security measures until the date of his departure. Such negotiation can be utilized to achieve any number of outcomes.

¹ Florida Statute 823.05(1) provides in relevant part, “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...shall be deemed guilty of maintaining a nuisance”. That section also identifies several specific nuisances, all of which the Town may or may not want to address. Additional statutory nuisances are found in Section 893.138 F.S. providing for nuisance abatement boards. If desired by the Town, the ordinance creating the public nuisance violation could identify the definition itself and additional specific nuisances, rather than limiting to an individual nuisance or statutory reference.

III. Comparison of Public Nuisance Enforcement Strategies

Nuisance Abatement Board vs. Code Enforcement Special Magistrate		
	Nuisance Abatement Board	Code Enforcement by Special Magistrate with Public Nuisance Ordinance
Maximum Fine	Fine per violation of \$250/\$500 per day, currently capped by statute at \$15,000.	Fine per violation of \$250/\$500 per day, \$5,000 one-time <i>per violation</i> fine if irreparable, no statutory limit.
Continuing Jurisdiction	The Board can work with violators to achieve compliance prior to issuing orders and can retain jurisdiction after an order is issued in order to monitor compliance and conditions and revise requirements in order to better achieve compliance.	The Town can work with violators to negotiate conditions and tools to achieve compliance. The magistrate can choose to continue the matter and delay a final order and fine, if it appears compliance is being achieved in this manner. If the property owner agrees to conditions negotiated with Town staff, then an order implementing that set of agreed conditions can be approved by the Special Magistrate. No subsequent jurisdiction is retained after a final order and fine is imposed.
Decision Making Process	Appointed Board, neighbors judging neighbors, new procedures. Town Police preparing cases rather than Code staff.	Existing Special Magistrate utilizing existing procedures and staffing (would still require Town Police to prepare and present cases due to their criminal nature).
Procedural Costs	Similar. Police involvement in presenting cases and monitoring compliance. Board Members are volunteer. Investigative costs can be shifted to violator.	Similar. Police involvement in presenting cases and monitoring compliance. Special Magistrate fees and investigative costs can be shifted to violator.
Length of Process	Can act in emergencies on as little as 24 hours notice. Non-emergency processing, allowing for remediation period,	Issue notice of violation. Set time for compliance. If no compliance, provide 10 days' notice for first hearing where

	approximately 24 days. Board usually meets monthly or as needed.	Special Magistrate will order a certain number of days for compliance (10 if particularly egregious, otherwise usually 30). Then, second hearing must be held before magistrate to impose fines. However, Town negotiation with property owner can begin immediately, and agreed terms can be taken to Special Magistrate at any point in the process. Special Magistrate usually meets monthly or as needed.
Appeal	Circuit Court	Circuit Court
Liabilities	If not handled appropriately, and extreme measures are taken such as shutting down a property for an extended period of time, could be challenged.	Recognized process, but novel application to public nuisances. Possibility of challenge.
Tools	<ul style="list-style-type: none"> • Continuing jurisdiction following final order and fines. • Impose limited fines/costs of repair/ costs of enforcement. Fines capped at \$15,000. • Impose special requirements such as security, hours of operation, reporting, and other limitations which would reduce/eliminate the nuisance. • Order the closing of part or all of the property. • Negotiated strategies. 	<ul style="list-style-type: none"> • Impose unlimited fines/costs of repair/costs of enforcement. • Negotiate agreed compliance strategies prior to final order, which may include special requirements such as security, hours of operation, reporting, and other limitations which would reduce/eliminate the nuisance. Such additional conditions and strategies may be imposed only if agreed to by violator. • Orders approving settlements negotiated between the violator and the Town.

IV. Conclusion

Both alternatives, utilization of a Nuisance Abatement Board and implementation of a new Public Nuisance Ordinance utilizing traditional Code Enforcement Special Magistrate process, can achieve significant results in eliminating criminal nuisances, if used properly. The mechanism for the creation of both is the same: adoption of an ordinance. The ability to negotiate to a successful solution exists for both procedures. With a Nuisance Abatement Board,

those negotiations take place with the Board itself as well as staff. With Code Enforcement, those negotiations have to take place with Town staff. They may be reported to the Magistrate, who can decide to continue the matter while seeing if compliance is achieved, and then a stipulated order can be approved by the Special Magistrate.

However, there would be some additional setup time for a Board, as opposed to the Code Enforcement/Special Magistrate system and procedures which are already in place and with which Town staff are already familiar. While the Nuisance Abatement Board has more far-reaching powers, those powers come with somewhat increased risks.

The special magistrate's power to fine for continuing violations and for irreparable violations, without a cap, is greater than the fining power of the Nuisance Abatement Board. The threat of the significant fines in the Code Enforcement process provides additional strength to the Town staff in negotiating for compliance.



AGENDA ITEM MEMORADUM

Town Manager

Connie Hoffmann *CH*

Department

Department Director

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<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

ORDINANCE 2012-__

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.

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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.

210

211

212

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214

215

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

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227 Approved as to form:

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229 _____
230 Susan L. Trevarthen, Town Attorney