



Agenda
Criminal Nuisance Abatement Board
Manatee County Administrative Center
1112 Manatee Avenue West
Bradenton, Florida
Board of County Commission Chambers, 1st Floor
Monday, May 9, 2011 – 1:30 P.M.

- I. Call to Order**
- II. Pledge of Allegiance**
- III. Roll Call**
- IV. Approval of Previous Meeting's Minutes**
- V. Process Review**
 - *MSO Captain Pat Bartholomew**
 - *Nuisance Abatement Officer Peyt Dewar**
- VI. Meeting Schedule**
 - *Future Cases Going Forward**
 - *Second Monday of the Month at 1:30 P.M.**
- VII. Adjournment**

For information, contact:

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The Board of County Commissioners of Manatee County, Florida, does not discriminate upon the basis of any individual's disability status. This non-discrimination policy involves every aspect of the Board's functions including one's access to, participation, employment, or treatment in its programs or activities. Anyone requiring reasonable accommodation for this meeting as provided for in the Americans with Disabilities Act, should contact Kaycee Ellis at 742-5801; TDD ONLY 742-5802 and wait 60 seconds; FAX 745-3790.

According to Florida Statutes, Section 286.0105, any person desiring to appeal any decision made by the Board with respect to any matter considered at said Public Meeting will need a record of the proceedings, and for such purposes may need to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence upon which the appeal is to be based.

ABATEMENT OF CRIMINAL NUISANCES

Sec. 2-33-1. Intent.

It is the intent of this chapter to promote, protect, and improve the health, safety, and welfare of the citizens of Manatee County, Florida, by providing for the creation of an administrative board 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 the unincorporated area of Manatee County under circumstances when a pending or repeated violation of a criminal nuisance continues to exist.

(Ord. No. 10-57, § 2, 8-10-10)

Sec. 2-33-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

Board shall mean the Manatee County criminal nuisance abatement board.

Controlled substance shall mean any substance named or described in Schedules I through V of Section 893.03, Florida Statutes, and any substance sold in lieu of a controlled substance in violation of Section 817.563, Florida Statutes, or any imitation controlled substance defined in Section 817.564, Florida Statutes.

County shall mean Manatee County, Florida.

County administrator shall mean the county administrator of Manatee County or the county administrator's designee.

County attorney shall mean the county attorney of Manatee County or a deputy county attorney assigned by the county attorney.

Criminal nuisance shall mean any place or premises that has been used:

- (1) On more than two (2) occasions within a six-month period, as the site of a violation of Section 796.07, Florida Statutes;
- (2) On more than two (2) occasions within a six-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- (3) 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;
- (4) By a criminal gang for the purpose of conducting criminal gang activity as defined by Section 874.03, Florida Statutes; or

- (5) On more than two (2) occasions within a six-month period, as the site of a violation of Section 812.019, Florida Statutes, relating to dealing in stolen property.

Recurring criminal nuisance shall mean any single or multiple occurrence of the same criminal public nuisance at the same place or premises during the one-year effective term of an order entered by the board.

Sheriff shall mean the sheriff of Manatee County or a deputy sheriff designated by the sheriff.

(Ord. No. 10-57, § 2, 8-10-10)

Sec. 2-33-3. Criminal nuisance abatement board.

(a) There is hereby created a criminal nuisance abatement board as an administrative board to hear complaints regarding criminal nuisances on places or premises located in the unincorporated area of the county.

(b) The board shall consist of five (5) members appointed by the board of county commissioners for two-year terms. Members of the board shall be residents of the county.

(c) The initial appointments to the board shall be as follows: two (2) members appointed for a term of one year each, and three (3) members appointed for a term of two (2) years each. Thereafter, any appointment shall be made for a term of two (2) years.

(d) A member may be reappointed upon approval of the board of county commissioners.

(e) An appointment to fill any vacancy on the board shall be for the remainder of the unexpired term of office. If any member fails to attend two (2) of three (3) successive meetings without cause or without prior notice to the board, the board of county commissioners may declare the member's office vacant and shall promptly fill such vacancy.

(f) The members of the board shall serve without compensation at the pleasure of the board of county commissioners. Any member of the board may be suspended and removed with or without cause by a majority vote of the board of county commissioners.

(g) The members of the board shall elect a chair and a vice-chair, who shall be voting members, from among the members of the board. The presence of three (3) or more members shall constitute a quorum of the board.

(h) The county attorney shall serve as legal counsel to the board.

(Ord. No. 10-57, § 2, 8-10-10)

Sec. 2-33-4. Hearings.

(a) Upon the occurrence of any activity defined as a criminal nuisance, the sheriff shall furnish a written notice to the owner of the place or premises, informing the owner of such activity and the consequences if such activity is not eliminated. Should the activity continue to occur or be repeated at the same place or premises, any employee, officer, or resident of the county may file a complaint with the county administrator. The county administrator shall

review the complaint together with sworn supporting statements and other documents. If the county administrator determines that the activity defined as a criminal nuisance has been eliminated, the complaint may be dismissed. If the county administrator has reasonable cause to believe such activity continues to exist or has been repeated at the place or premises, the county administrator shall refer the complaint to the board for a hearing.

(b) In the event the owner does not eliminate the activity defined as a criminal nuisance, the board, through the county administrator, may schedule a hearing. A copy of the complaint and written notice of the hearing shall be provided to the owner of the place or premises at his or her last known address not less than three (3) days prior to the hearing. The notice shall be provided by certified mail, return receipt requested, or by hand delivery by the sheriff or other law enforcement officer.

(c) Upon request of the county administrator, or at such other times as may be necessary, the chair or vice-chair of the board may call a hearing of the board. The board at any hearing may set a future hearing date. Minutes shall be kept of all hearings of the board, and all hearings and proceedings shall be open to the public in accordance with the Government in the Sunshine Law, Chapter 286, Florida Statutes. The county administrator shall provide clerical and administrative personnel as may be reasonably required by the board for the proper performance of its duties.

(d) The clerk of the circuit court shall serve as clerk to the board as it serves as clerk to the board of county commissioners. The clerk shall keep minutes of all board proceedings and shall be the custodian of the official records of the board. All records of the board shall be public records in accordance with the Public Records Law, Chapter 119, Florida Statutes.

(e) A hearing on a complaint may be held if the owner of the place or premises complained against is absent, provided notice of the hearing has been given to such owner in accordance with subsection (b) of this section.

(f) Each case before the board shall be presented by the complainant or by a member of the county administrative staff. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The burden of proof at the hearing shall be on the complainant or the county administrative staff to establish that a criminal nuisance exists by competent and substantial evidence sufficient to meet the clear and convincing standard of proof.

(g) The owner of the place or premises shall have an opportunity, in person and/or through legal counsel, to present testimony and evidence in his or her defense, to cross examine witnesses, and to submit rebuttal testimony and evidence. The board may consider any evidence, including evidence of the general reputation of the place or premises.

(h) The board may continue a hearing in order to receive additional testimony and/or evidence or for any other reason the board determines appropriate before ruling on the complaint. If the board does not find that the allegations of the complaint have been proven, the board shall enter an order dismissing the complaint.

(i) At the conclusion of the hearing and based on the evidence received, the board may declare the place or premises to be a criminal nuisance. The order shall be by motion approved by a majority of those members present and voting, except that at least three (3) members of the board must vote in order for the action to be official. The order shall be reduced to writing and shall be signed by the chair or vice-chair of the board. The order shall be provided to the owner by U.S. mail or hand delivery.

(Ord. No. 10-57, § 2, 8-10-10)

Sec. 2-33-5. Penalties.

(a) If the board declares a place or premises to be a criminal nuisance, the board may enter an order requiring the owner of such place or premises to adopt such procedures as may be appropriate under the circumstances to abate any such criminal nuisance or it may enter an order immediately prohibiting:

- (1) The maintaining of the criminal nuisance;
- (2) The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof, provided that the activities which constitute the criminal nuisance meet the standard of being inextricably intertwined with the operation of the place or premises as set forth in the case of *Keshbro, Inc., vs. City of Miami*, 801 So.2d 864 (Fla. 2001); or
- (3) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such criminal nuisance.

(b) Before the board can order the closure of a place or premises under subsection (a) of this section, the board must make a factual finding that closure is the only effective option in eradicating the criminal nuisance, such finding to be supported by a written order setting forth the factual bases for such determination; and

- (1) That the owner did not abate the criminal nuisance after being ordered by the board to do so;
- (2) That the owner did not substantially comply with an appropriate order entered by the board; and
- (3) That the owner continued to maintain an ongoing criminal nuisance.

(c) The order may require the county administrator to post a sign in a prominent location on any county right-of-way adjacent to the place or premises designating such place or premises to be a criminal nuisance.

(d) An order entered by the board shall expire after one year or at such earlier time as stated in the order. The board may retain continuing jurisdiction for a period of one year over any place or premises that has been or is declared to be a criminal nuisance.

(e) An order entered by the board may be enforced pursuant to the procedures contained in Section 120.69, Florida Statutes. This provision does not subject the county or the board to any other provision of Chapter 120, Florida Statutes.

(f) The board may request that the board of county commissioners bring a complaint under Section 60.05, Florida Statutes, seeking temporary and permanent injunctive relief against any criminal nuisance.

(g) This chapter does not restrict the right of any person to proceed under Section 60.05, Florida Statutes, against any public nuisance.

(Ord. No. 10-57, § 2, 8-10-10)

Sec. 2-33-6. Supplemental provisions.

(a) The board may impose a fine not to exceed two hundred fifty dollars (\$250.00) per day for each day a criminal nuisance exists at the place or premises, or a fine not to exceed five hundred dollars (\$500.00) per day for a recurring criminal nuisance. The board may order the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on criminal nuisances. The total fines imposed by the board pursuant to the authority of this chapter shall not exceed fifteen thousand dollars (\$15,000.00).

(b) Orders on criminal nuisances shall be recorded in the public records of Manatee County, Florida, so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order. Recorded orders on criminal nuisances shall become liens against the real property that is the subject of the order. The board of county commissioners may authorize the foreclosure of property subject to such liens and the recovery of all costs, including reasonable attorney fees, associated with the recording of the orders and foreclosure of the liens.

(c) No lien created pursuant to the provisions of this chapter may be foreclosed on real property which is a homestead under Section 4, Article X of the State Constitution.

(d) Where the county seeks to bring an administrative action, based on a stolen property criminal nuisance, against a property owner operating an establishment where multiple tenants, on one site, conduct their own retail business, the property owner shall not be subject to a lien against his or her property or the prohibition of operation provision if the property owner evicts the business declared to be a criminal nuisance within ninety (90) days after notification by registered mail to the property owner of a second stolen property conviction of the tenant.

(e) Nothing contained within this chapter prohibits the county from proceeding against a criminal nuisance by any other means, including, but not limited to, filing a complaint for a violation of Section 823.01, Florida Statutes.

(Ord. No. 10-57, § 2, 8-10-10)

Sec. 2-33-7. Review.

An aggrieved party, including the county, may seek review of a final administrative order of the board in circuit court. Such review shall be by petition for writ of certiorari filed within thirty (30) days from the date of execution of the order or other remedies as provided by law.

(Ord. No. 10-57, § 2, 8-10-10)

Sec. 2-33-8. Procedures.

Rules of procedure for the conduct of hearings and the operation of the board shall be adopted by resolution of the board of county commissioners. In the event of any conflict between rules established in this chapter and rules adopted by resolution, the rules established in this chapter shall control.

(Ord. No. 10-57, § 2, 8-10-10)