

Meeting Date:

Agenda Item

March 22, 2016

22

REQUESTED COMMISSION ACTION:


Consent	x	Ordinance	Resolution	Consideration/ Discussion	Presentation
_____	_____	_____	_____	_____	_____

SHORT TITLE **AN ORDINANCE AMENDING CHAPTER 33, "BOARDS AND COMMISSIONS," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 33.130, "NUISANCE ABATEMENT BOARD," BY CHANGING THE TERMS AND CONDITIONS OF THE MEMBERSHIP OF THE BOARD; BY AUTHORIZING COUNSEL FROM THE CITY ATTORNEY'S OFFICE TO PRESENT ALL CASES BEFORE THE BOARD; BY AUTHORIZING ADDITIONAL MUNICIPAL VIOLATIONS TO BE CONSIDERED AS A PUBLIC NUISANCE; AND TO OTHERWISE CONFORM THE CITY'S ORDINANCE WITH CHANGES IN SECTION 893.138 FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Summary of Purpose and Why:

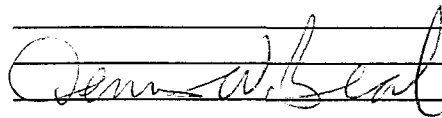
Amending Section 33.130, "Nuisance Abatement Board," by revising the term and condition of the membership of the board, the definition of Public Nuisance, and conforming the city's ordinance with changes to the Florida Statutes.

- (1) Origin of request for this action: City Commission
- (2) Primary staff contact: Mark E. Berman, City Attorney/Tracy A. Lyons, ACA Ext. 4614
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: _____

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
City Attorney	3/10/16		See City Attorney's Comm. #2016-587 
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



X City Manager



ACTION TAKEN BY COMMISSION:

Ordinance	Resolution	Consideration	Workshop
1 st Reading	1 st Reading	Results:	Results:
_____	_____	_____	_____
2 nd Reading	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2016-587

March 10, 2016


TO: Dennis W. Beach, City Manager
FROM: Mark E. Berman, City Attorney
RE: Ordinance Amending Chapter 33, "Boards and Commissions"

Attached please find the following captioned Ordinance:

AN ORDINANCE AMENDING CHAPTER 33, "BOARDS AND COMMISSIONS," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 33.130, "NUISANCE ABATEMENT BOARD," BY CHANGING THE TERMS AND CONDITIONS OF THE MEMBERSHIP OF THE BOARD; BY AUTHORIZING COUNSEL FROM THE CITY ATTORNEY'S OFFICE TO PRESENT ALL CASES BEFORE THE BOARD; BY AUTHORIZING ADDITIONAL MUNICIPAL VIOLATIONS TO BE CONSIDERED AS A PUBLIC NUISANCE; AND TO OTHERWISE CONFORM THE CITY'S ORDINANCE WITH CHANGES IN SECTION 893.138 FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

This Ordinance has been advertised and it is requested that this matter be placed on the agenda for the City Commission of March 22, 2016. A City Commission agenda cover sheet is attached for your convenience.

Should you have any questions regarding this matter, please feel free to contact me.


MARK E. BERMAN

MEB/jrm
l:cor/manager/2011-262

Attachments

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 33, "BOARDS AND COMMISSIONS," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 33.130, "NUISANCE ABATEMENT BOARD," BY CHANGING THE TERMS AND CONDITIONS OF THE MEMBERSHIP OF THE BOARD; BY AUTHORIZING COUNSEL FROM THE CITY ATTORNEY'S OFFICE TO PRESENT ALL CASES BEFORE THE BOARD; BY AUTHORIZING ADDITIONAL MUNICIPAL VIOLATIONS TO BE CONSIDERED AS A PUBLIC NUISANCE; AND TO OTHERWISE CONFORM THE CITY'S ORDINANCE WITH CHANGES IN SECTION 893.138 FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 33.130, "Nuisance Abatement Board," of Chapter 33, "Boards and Commissions," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 33.130 NUISANCE ABATEMENT BOARD.

(A) *Establishment*

(1) There is hereby created and established a Nuisance Abatement Board to hear evidence and address issues relating to the existence of drug-related public nuisances, prostitution-related public nuisances, criminal street gang related public nuisances, or nuisances involving dealing in stolen property, or nuisances involving any pain management clinic, as described in Section 458.3265 or Section 459.0137 of the Florida Statutes, on premises located within the city. Said Board shall consist of members of the city's Unsafe Structure and Housing Appeals Board, from a cross-section of the community with the goal of membership by professionals with experience in Real Estate, General Contracting, Land Development, Architecture, Engineering, Law and/or Business, who shall serve as members of the Nuisance Abatement Board. The City Commission shall appoint by resolution the board members. All members shall be appointed to serve for a period of three years. However, if any member by death, resignation or other disability or by authority of the City Commission should be unable to serve, another person shall be appointed to fill the unexpired term.

(2) The City Commission may, by resolution, amend the provisions of subsection (A) relating to the terms and conditions of membership on the Nuisance Abatement Board.

(3) The Nuisance Abatement Board shall consist of six (6) members and two alternates, and the presence of five four or more members shall constitute a quorum. Members shall serve without compensation.

(B) *Definitions.*

BOARD. The Nuisance Abatement Board of the City of Pompano Beach.

CLERK. Person who performs the clerical duties necessary to carry out the activities of the Nuisance Abatement Board, and who also serves as the Clerk of the Unsafe Structures Board.

CONTROLLED SUBSTANCE. Includes any substance listed in F.S. Chapter 893, and any substance sold in lieu of a controlled substance in violation of F.S. §817.563, or any imitation controlled substance defined in F.S. § 817.564.

OWNER. The lawful owner of any place or premises within the City.

PUBLIC NUISANCE. Any place or premises within the city limits of the City of Pompano Beach which has been used:

(a) On more than two occasions within a six-month period, as the site of a violation of § 796.07, F.S. or

(b) On more than two occasions within a six-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance; or

(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; or

(d) By a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined by § 874.03, F.S.; or

(e) On more than two occasions within a six-month period, as the site of a violation of § 812.019, F.S., relating to dealing in stolen property; or

(f) Any pain-management clinic, as described in § 458.3265 F.S. or § 459.0137 F.S., which has been used on more than two occasions within a six-month period as the site of a violation of:

1. Section 784.011, § 784.021., § 784.03, or § 784.045, Florida Statutes, relating to assault and battery;

2. Section 810.02, F.S., relaying to burglary;

3. Section 812.014, F.S., relating to dealing in theft;

4. Section 812.131, F.S., relating to robbery by sudden snatching; or

5. Section 893.13, F.S., relating to the unlawful distribution of controlled substances.

(C) Any public nuisance as defined in subsection (B) above, may be abated pursuant to the procedures set forth in this section.

(D) *Procedures.*

(1) Pursuant to § 893.138, F.S., the Nuisance Abatement Board shall hear complaints regarding public nuisances. Any employee, law enforcement officer, or resident of the city may initiate a complaint before the Board. The complaint shall be made to the city's Law Enforcement Agency, and shall be forwarded for review to the Nuisance Abatement Officer as designated by the Chief of Police. The Nuisance Abatement Officer shall promptly review said complaint and if determined that the complaint properly alleges that a public nuisance exists on a place or premises which is within the purview of the Board, the Nuisance Abatement Officer shall promptly request a hearing before the Nuisance Abatement Board from the Board's Clerk.

(2) The Nuisance Abatement Board, through its clerk, shall schedule a hearing, and written notice of the hearing shall be sent to the owner of the place or premises by mail at his or her last known address at least five days prior to the scheduled hearing. The aforementioned notice of hearing shall include:

(a) The statement of the time, place and nature of the hearing;

(b) The statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and ordinances involved;

(d) A short and plain statement summarizing the incidents complained of.

(3) The Board shall attempt to convene no less frequently than once every month, but may meet more or less often as the demand necessitates. The Board may adopt additional rules for the conduct of its hearings. Minutes shall be kept of all hearings and hearings shall be open to the public. The Board shall have the power to subpoena owners, witnesses and evidence to the hearings. The city shall provide clerical and administrative personnel as may be reasonably required for the proper performance of the Board's duties.

(3) (a) The Board shall attempt to convene no less frequently than once every month, but may meet more or less often as the demand necessitates. The Board may adopt additional rules for the conduct of its hearings. Minutes shall be kept of all hearings and hearings shall be open to the public. The Board shall have the power to subpoena owners, witnesses and

evidence to the hearings. The city shall provide clerical and administrative personnel as may be reasonably required for the proper performance of the Board's duties.

(b) The city's Law Enforcement Agency's Nuisance Abatement Officer, along with its legal counsel; from the City Attorney's Office or another party designated by the city, shall prepare and present all its cases before the Board. Should the City Attorney's Office present cases, Legal Counsel may be appointed by the City to advise the Board. All parties shall have an opportunity to present evidence and argument on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications before the Board. The Board may consider any evidence, including evidence of the general reputation of the place or premises. All testimony shall be under oath. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Orders of the Board shall be based upon competent and substantial evidence, and any findings that a nuisance exists must be based on a "preponderance of the evidence" standard. A majority vote of those Board members voting is required in order to approve any Board order.

(4) After considering all evidence, the Board may declare the place or premises to be a public nuisance as defined in subsection (B) (4) of this section and may enter an order as follows:

(a) Requiring the owner of such place or premises to adopt such procedure as may be appropriate under the circumstances to abate such nuisance.

(b) Prohibiting the maintaining of the nuisance.

(c) Prohibiting the operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof.

(d) Prohibiting the conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

(e) Requiring the owner to pay a fine in an amount up to \$250.00 per day for a public nuisance or up to \$500.00 per day for a recurring public nuisance. Total fines imposed pursuant to this section shall not exceed \$15,000.00.

(f) Providing for the payment of reasonable costs, including attorney's fees, associated with investigations of and hearings on public nuisances.

(5) Any order entered under subsection (E) (4) of this section shall expire after one year or at such earlier time as stated in the order. The Board may retain jurisdiction to modify its orders prior to the expiration of any such order.

(6) The City's Law Enforcement Agency shall assist the Board in carrying out any legally authorized order rendered pursuant to this section.

(7) An order entered under this section may be enforced pursuant to the procedures contained in F.S. § 120.69, but does not subject the city or the Board to any other provisions of F.S. Chapter 120.

(8) A certified copy of orders on public nuisances entered by the Nuisance Abatement Board may be recorded in the public records and shall constitute a lien against the real property that is the subject of the order. A lien arising pursuant to this section runs in favor of the City, and the City may execute a satisfaction or release of lien upon compliance with the order.

(a) Said liens may be foreclosed in the manner prescribed by law for foreclosure of liens, and the Nuisance Abatement Board may authorize the City Attorney's Office to foreclose on the lien and to seek the recovery of all costs, including reasonable attorney's fees, associated with the recording of orders and foreclosure.

(b) No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under S.4, Art X of the State Constitution.

(9) For any action under this section based upon a stolen property 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 nuisance within 90 days after notification by certified mail to the property owner, of a second stolen property violation by the tenant.

(10) The procedures contained within this section do not restrict the right of the Board or of any person or entity to bring a complaint under § 60.05, F.S. or § 823.05, F.S. against any public nuisance, or from proceeding against a public nuisance by any other means.

~~(11) The City Attorney's Office shall act as legal counsel to the Board~~

(DE) *Right of to appeal.* An aggrieved party, including the City of Pompano Beach, may appeal a Final Administrative Order of the Nuisance Abatement Board to the Circuit Court of the 17th Judicial Circuit. Such appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created for the Board. An appeal shall be filed within 30 days of the written order appealed from.

SECTION 2. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 3. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

TAL:jrm
2/29/2016
l:ord/ch33/2016-51