

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020353

1. REQUESTED MOTION:

ACTION REQUESTED: Hold a Public Hearing for proposed amendment to the Nuisance Abatement Board Ordinance.

WHY ACTION IS NECESSARY: Nuisance Abatement Ordinance needs to be considered pursuant to Public Hearing ordinance amendment process.

WHAT ACTION ACCOMPLISHES: Sets the Nuisance Abatement Board Ordinance for Public Hearing and Adoption.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT # 5:00 #4

3. MEETING DATE:

05-14-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
-
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
 - ORDINANCE 01-07
 - ADMIN. CODE
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT County Attorneys' Office
- C. DIVISION
- BY: Scott S. Covert
Scott S. Covert, Asst County Attorney

7. BACKGROUND:

The Lee County Sheriff's Office requests an amendment to the current Nuisance Abatement Ordinance 01-07 changing the process of presenting complaints from the Clerk of the Nuisance Abatement Board to the Sheriff's Office Nuisance Abatement Coordinator, adding fines for declared nuisances, and other amendments.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<u>S. Covert</u> <u>4/29/02</u>	OA <u>4/30/02</u>	OM <u>4/30/02</u>	RISK <u>4/30</u>	GC <u>4-30-02</u>	<u>2002</u> <u>5-1-02</u>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

-b ADMIN 4/29/02 mm

RECEIVED BY COUNTY ADMIN.	<u>PM</u>
<u>4/29</u>	<u>4:30</u>
COUNTY ADMIN. FORWARDED TO:	<u>5/2 8:30</u>

LEE COUNTY ORDINANCE NO. _____

AN ORDINANCE AMENDING AND RESTATING LEE COUNTY NUISANCE ABATEMENT ORDINANCE NUMBER 01-07 PERTAINING TO NUISANCE ABATEMENT; PROVIDING FOR THE CREATION OF A NUISANCE ABATEMENT BOARD; INTENT AND JURISDICTION; PROVIDING FOR CERTAIN ACTIVITIES TO BE DECLARED NUISANCES; DEFINITIONS; ORGANIZATION; INITIATION OF PROCEEDINGS; CONDUCT OF HEARINGS; COSTS AND FINES; APPEALS; ENFORCEMENT; RIGHTS RESERVED; CONFLICTS; SEVERABILITY; INCLUSION IN CODE; AND EFFECTIVE DATE.

WHEREAS, Lee County previously adopted Ordinance 01-07 declaring that places or premises which are used as the site of the unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale or consumption of alcoholic beverages, or lewd or lascivious behavior, may be found to be a public nuisance that adversely affects the public health, safety, morals and welfare of the citizens of Lee County; and,

WHEREAS, the findings and purposes included within Lee County Ordinance 01-07 are hereby further confirmed, re-adopted and ratified; and,

WHEREAS, Lee County now desires to amend Ordinance 01-07 to further promote, protect and improve the public health, safety and welfare of the citizens of Lee County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA that:

SECTION ONE: CREATION OF A NUISANCE ABATEMENT BOARD

Pursuant to Chapter 125, Florida Statutes, and Chapter 893, F.S., and other relevant provisions of Florida law, the Board of County Commissioners hereby creates a NUISANCE ABATEMENT BOARD.

SECTION TWO: INTENT

It is the intent of this Ordinance to establish the Lee County NUISANCE ABATEMENT BOARD, pursuant to Chapter 125, Florida Statutes, and Chapter 893, F.S. and other relevant provisions of Florida law, to promote, protect, and improve the health, safety and welfare of the citizens of Lee County by providing an equitable and effective method to reduce the use of property within Lee County for the unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale or consumption of alcoholic beverages, or lewd or lascivious behavior.

SECTION THREE: JURISDICTION

The NUISANCE ABATEMENT BOARD shall have jurisdiction throughout unincorporated Lee County and in municipalities where law enforcement is provided by the Lee County Sheriffs Office and have entered into a Lee County Nuisance Abatement Interlocal Agreement with the County.

SECTION FOUR: CERTAIN ACTIVITIES DECLARED NUISANCES

The Board of County Commissioners of Lee County hereby declares that any place or premises within Lee County that has been found on ~~at least three (3) more~~ than two (2) occasions within a ~~twelve~~ six-month period as a site for the unlawful sale or

delivery of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale or consumption of alcoholic beverages, or lewd or lascivious behavior, or any premise or place declared to be a nuisance by Sections 823.05 or 823.10, Florida Statutes, is a public nuisance.

SECTION FIVE: DEFINITIONS

- (a) CLERK shall mean a person retained by the Board of County Commissioners of Lee County to perform the required clerical duties to the NUISANCE ABATEMENT BOARD, and such other duties as provided herein necessary to carry out all of the activities of the Lee County NUISANCE ABATEMENT BOARD.
- (b) COMMISSION shall mean the Board of County Commissioners of Lee County.
- (c) NUISANCE ABATEMENT BOARD shall mean the persons appointed by the Board of County Commissioners and designated as the County NUISANCE ABATEMENT BOARD.
- (d) OPERATOR shall mean a tenant, lessee, or person having control or possession of a place or premises which is the subject of a complaint filed with the NUISANCE ABATEMENT BOARD.
- (e) OWNER shall mean the lawful owner of real property consisting of a place or premises which is the subject of a complaint filed with the NUISANCE ABATEMENT BOARD.
- (f) PARTY shall mean a complainant, owner or operator.

(g) PUBLIC NUISANCE shall include all relevant Florida Statutes pertaining to public nuisances as they may be renumbered or amended from time to time, and other relevant provisions of Florida law. Generally, but not limited to, a public nuisance shall mean any place or premises which has been the site on more than ~~three (3)~~ two (2) occasions within a ~~twelve~~ six-month period:

- (1) ~~as the site of~~ for the unlawful sale or delivery of controlled substances as defined by law, or
- (2) by a youth and street gang for the purpose of conducting a pattern of youth and street gang activity as defined by law, or
- (3) for prostitution, or solicitation of prostitution as defined by law, or
- (4) for illegal gambling as defined by law, or
- (5) ~~for~~ the illegal sale or consumption of alcoholic beverages as defined by law, or
- (6) for lewd or lascivious behavior as defined by law, or
- (7) any premise or place declared to be a nuisance by Sections 823.05 or 823.10, F.S., as they may be renumbered or amended from time to ~~or~~ time.

SECTION SIX: ORGANIZATION

(a) The Lee County Board of County Commissioners shall appoint a seven-member NUISANCE ABATEMENT BOARD. One member shall be appointed by each Commissioner, and two (2) members shall be appointed "at large", collectively, by the Board of County Commissioners. Seven (7) alternate members shall also be appointed by the Board of County Commissioners in the same manner as the direct appointments.

- (1) All Board members shall be year around residents of Lee County.
- (2) One (1) member may be a retired law enforcement officer as defined in Section 943.10, F.S., who is not currently employed nor engaged in any law enforcement activities.
- (3) One (1) member may be a local attorney with a criminal prosecution or criminal defense background currently practicing law in Lee County and a member in good standing with the Florida Bar.
- (4) One (1) member may be a local attorney practicing law in any other area of the law, currently practicing in Lee County and a member in good standing with the Florida Bar.
- (5) Four (4) members of the general public, who possess outstanding reputations for civic pride, integrity, responsibility and business or professional ability who may

be engaged in matters involving real property, banking, finance, social work, religious work, or other local matters, with an interest or any experience in abating public nuisances and who reflect the ethnic and cultural diversity of the community.

- (6) The selection of the alternate members shall be through the same criteria as set out for the regular members.
- (b) The initial appointments to the NUISANCE ABATEMENT BOARD shall be as follows:
- (1) The seven (7) members and seven (7) alternate members shall be appointed for a term of three (3) years each.
 - (2) A member may be reappointed for successive terms by the appointing Commissioner upon the Board of County Commissioners approval.
 - (3) If a any member, not an alternate member, fails to attend two (2) out of three (3) successive meetings without cause and without prior approval of the Board Chairperson, the NUISANCE ABATEMENT BOARD shall declare the member's office vacant and the Board of County Commissioners shall promptly fill such vacancy from the list of alternate members. Members shall serve in accordance with applicable state law and all other ordinances and

regulations of Lee County, and may be suspended or removed with or without cause by the Board of County Commissioners.

- (c) The members of the NUISANCE ABATEMENT BOARD shall elect a Chairperson and Vice-Chairperson from among the members of the NUISANCE ABATEMENT BOARD. A Clerk shall be retained by the NUISANCE ABATEMENT BOARD and shall be responsible for clerical and administrative duties as may be reasonably required by the NUISANCE ABATEMENT BOARD for the proper performance of its duties.
- (d) The presence of at least three (3) members shall constitute a quorum of the Board for the purposes of conducting the Board's general business. A majority vote of those members present shall enable the NUISANCE ABATEMENT BOARD to take any action, except that in no case, may the NUISANCE ABATEMENT BOARD find the existence of a nuisance, enter any order, or direct counsel to seek any judicial relief by a vote of less than four (4) members. The NUISANCE ABATEMENT BOARD shall promulgate such additional internal procedures and rules as it deems necessary to conduct its regular business. Members shall serve without compensation.
- (e) The office of the Lee County Attorney shall represent the NUISANCE ABATEMENT BOARD in all matters and at all proceedings.

SECTION SEVEN: INITIATION OF PROCEEDINGS

- (a) ~~Any citizen of unincorporated person who resides in or is employed within Lee County may file a complaint with the NUISANCE ABATEMENT BOARD Lee County Sheriff's Office (LCSO) Nuisance Abatement Coordinator with regard to nuisances as described in Section Four (Example at Exhibit "A"). However, no member of the NUISANCE ABATEMENT BOARD may file such a complaint. All complaints shall be filed with the Clerk to the Board. The Board shall provide written notice of the complaint and hearing to the owner at the latter's last known address at least fourteen (14) business days prior to the scheduled hearing date.~~
- (b) ~~The NUISANCE ABATEMENT BOARD~~ LCSO Nuisance Abatement Coordinator shall schedule a hearing with the NUISANCE ABATEMENT BOARD for each complaint that sufficiently alleges a nuisance as defined in Section Four, and such place or premises was used on at least three more than two (2) occasions within twelve consecutive months; a six-month period, and the nature of the evidence the complainant LCSO Nuisance Abatement Coordinator or other designee will introduce to prove such nuisance occurred at the place or premises. ~~The NUISANCE ABATEMENT BOARD shall schedule a hearing by notifying the Clerk of the Nuisance Abatement Board on a complaint unless a quorum of members' finds the allegations in the complaint insufficient, and vote against scheduling such a hearing.~~
- (c) ~~The NUISANCE ABATEMENT BOARD,~~ through its Clerk, LCSO Nuisance Abatement Coordinator shall give written notice of every hearing by certified

mail or hand delivery to the owner(s) and/or operator(s) of the designated property at the last known address(es), at least fourteen (14) days prior to the scheduled hearing. If an attempt to reach an owner or operator by certified mail or hand delivery is unsuccessful, notice of hearing may be by publication as provided for in Chapter 49, Florida Statutes. Notice to owners shall include the following:

- (1) The time, date, place, and nature of the hearing;
- (2) A reference to the Lee County Nuisance Abatement Ordinance;
- (3) A short and plain statement summarizing the incidents which form the basis of the complaint;
- (4) A statement that "Failure to attend may result in an order being issued adverse to your property interests";
- (5) A statement that all parties may be represented by counsel;
- (6) A statement that all parties shall be given an opportunity to present evidence in support of their position, submit rebuttal evidence, and conduct cross-examinations; and
- (7) A conspicuous statement reflecting the requirements of Chapter 286, Florida Statutes, that a person deciding to appeal any decision of the NUISANCE ABATEMENT BOARD will need to ensure that a verbatim record of the proceedings is made.

- (d) Meetings of the NUISANCE ABATEMENT BOARD may be scheduled by the Chairperson, by written notice signed by at least three(3) Board members, or by the Board at any meeting. All meetings shall be open to the public and minutes shall be kept and recorded.

SECTION EIGHT: CONDUCT OF HEARINGS

- (a) The NUISANCE ABATEMENT BOARD shall adopt procedure rules for the conduct of its hearings generally consistent with the Florida Rules of Evidence. All hearings and proceedings shall be open to the public and minutes kept. All testimony shall be taken under oath and shall be recorded.
- (b) The NUISANCE ABATEMENT BOARD shall proceed to hear complaints on the agenda for the day scheduled for the public hearings. Before the NUISANCE ABATEMENT BOARD may hear a complaint, the Board shall make a finding that the notice requirements as set forth in Section ~~Six~~, Seven, paragraph (c), have been satisfied. In no case shall the NUISANCE ABATEMENT BOARD proceed to hear any complaint unless the notice requirements set forth in Section ~~Six~~, Seven, paragraph (c), have been found to be satisfied.
- (c) The Florida Rules of Evidence shall not apply, but both substantive and procedural due process rights of the parties shall be preserved. The NUISANCE ABATEMENT BOARD may consider any evidence, including evidence of the general reputation of the place or premises, in its decision process. All evidence of a type commonly relied upon by reasonably prudent

persons in the conduct of their affairs may be admissible, whether or not such evidence would be ordinarily admissible in a Florida Court under the Rules of Evidence.

- (d) Each party shall have the following rights:
- (1) To call and examine witnesses;
 - (2) To introduce documentary evidence, exhibits, or physical evidence;
 - (3) To cross-examine opposing witnesses on any relevant matter;
 - (4) To impeach any witnesses;
 - (5) To submit rebuttal evidence; and
 - (6) To be represented by counsel.
- (e) The owner of the place or premises in question may introduce evidence as to any remedial or mitigating measures taken to abate the conditions which led to the illegal conduct (nuisances) on his/her premises.
- (f) All findings of the NUISANCE ABATEMENT BOARD shall be based upon the standard of a preponderance of the evidence. The NUISANCE ABATEMENT BOARD may rely on rebuttal evidence, impeachment evidence, or other relevant factors to the hearing. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in and of itself to support a finding of a public nuisance. The burden of proof shall be on the ~~complaining~~ party bringing the complaint.

- (g) At the conclusion of the hearing, the NUISANCE ABATEMENT BOARD shall issue written findings of fact and its conclusions with respect to the issues brought before it by the LCSO Nuisance Abatement Coordinator, complaining party or other designee.
- (h) If the NUISANCE ABATEMENT BOARD finds that on ~~at least three (3)~~ more than two (2) occasions, a place or premises was the site of an unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale or consumption of alcoholic beverages, or lewd or lascivious behavior within ~~twelve (12) months~~, a six-month period, or any premise or place declared to be a nuisance by Sections 823.03 or 828.10, Florida Statutes, the NUISANCE ABATEMENT BOARD may find and declare the place or premises in question to be a public nuisance. Upon such declaration, the NUISANCE ABATEMENT BOARD may enter an order immediately prohibiting:
- (1) The maintaining of the nuisance;
 - (2) The operating or maintaining of the place or premises; or
 - (3) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.
- (i) An order of the NUISANCE ABATEMENT BOARD shall automatically expire on its terms after one (1) year, or at such earlier time as may stated in the Order, or upon further action of the NUISANCE ABATEMENT BOARD.

SECTION NINE: COSTS AND FINES

- (a) In the event that the NUISANCE ABATEMENT BOARD finds a place or premises to be a public nuisance and issues an order pursuant to Section 7 8(h) above, the NUISANCE ABATEMENT BOARD shall assess against the owner of the place or premises the reasonable costs which the County and Sheriff's Office has incurred in the preparation, investigation, and presentation of the case.
- (b) In addition to any procedure penalty, costs, or other sanction imposed by Lee County Ordinance 01-07, as amended, the NUISANCE ABATEMENT BOARD may enter an order:
- (1) Imposing a fine not to exceed \$250 per day for each day that conduct occurred upon which the Board based its finding of a public nuisance; and/or
 - (2) Imposing a fine not to exceed \$500 per day for recurring public nuisance conduct occurring on the premises. A "Recurring public nuisance conduct" means any additional instances of conduct after being found a public nuisance as described in Lee County Ordinance 01-07, as amended; and/or
 - (3) Imposing a fine not to exceed \$100 per day for each day the owner of the premises fails to comply with an order of the Board.

(4) The total fines imposed pursuant to Lee County Ordinance 01-07, as amended, shall not exceed \$5,000 during the effective term of any order.

(c) These costs and/or fines shall be due and payable thirty (30) days after the written order of the NUISANCE ABATEMENT BOARD has been filed or such other time as the NUISANCE ABATEMENT BOARD may direct. A certified copy of an order imposing costs and/or fines may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, if the violator does not own the land, upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state including levy against the personal property, but shall not be deemed to be a judgment of a court except for enforcement purposes. After one year from the filing of any such lien which remains unpaid, Lee County may foreclose or otherwise execute on the lien. Interest shall accrue on the unpaid costs and/or fines at the rate of interest set forth in Section 55.023, Florida Statutes, as that section may be amended from time to time.

SECTION TEN: APPEALS

An aggrieved party may appeal a final order of the Lee County NUISANCE ABATEMENT BOARD to the Circuit Court of the Twentieth Judicial Circuit. Such an

appeal shall not be a hearing de novo, but shall be limited to an appellate review of the record created before the NUISANCE ABATEMENT BOARD. Such appeal shall be filed within thirty (30) days of the date of the written order from the NUISANCE ABATEMENT BOARD. ~~order appealed from~~ No appeal may be sought beyond the thirty (30) day filing time as set out herein.

SECTION ELEVEN: ENFORCEMENT

The NUISANCE ABATEMENT BOARD, with the approval of the Board of County Commissioners, may direct the Office of the County Attorney to bring a complaint under Section 60.05, Florida Statutes, seeking an injunction against any place, property or premises found to be a public nuisance in addition to, or for the purposes of enforcement of any order of the NUISANCE ABATEMENT BOARD. The NUISANCE ABATEMENT BOARD, with the approval of the Board of County Commissioners, may additionally seek any other lawfully available relief as may be provided or permitted by law.

SECTION TWELVE: RIGHTS PRESERVED

This Ordinance does not limit, restrict nor abridge the rights of any person to proceed under Section 60.05 of the Florida Statutes against any public nuisance, nor prohibits any jurisdiction from proceeding against a public nuisance by any other lawfully available means.

SECTION THIRTEEN: CONFLICTS

Whenever there is a conflict between the terms and provisions of Lee County Ordinance Number 01-07 and this ordinance, the terms and provisions of this ordinance will control.

SECTION FOURTEEN: SEVERABILITY

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in now way affect the validity of the remaining portions of this Ordinance.

SECTION FIFTEEN: INCLUSION IN CODE

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County Code; and that the selections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION SIXTEEN: EFFECTIVE DATE

This Ordinance shall take effect immediately upon its filing with the Office of the Secretary of State of the Florida Department of State.

The foregoing Ordinance was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and, being put to a vote, the vote was as follows:

BOB JANES	_____
DOUGLAS ST. CERNY	_____
RAY JUDAH	_____
ANDREW W. COY	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED this ___ day of _____, 2002.

ATTEST: CHARLIE GREEN
CLERK OF THE COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney

EXHIBIT "A"

LEE COUNTY NUISANCE ABATEMENT BOARD
COMPLAINT

IN THE MATTER OF: _____)
_____)
_____)
~~(STREET ADDRESS AND/OR NAME)~~ _____)
_____)
_____)
(OF BUSINESS) _____)
_____)
_____)

CASE NO.: _____

SWORN COMPLAINT

I, _____, as _____
(name) ("citizen"/title if complaint)

_____ of _____,
~~(on behalf of government agency)~~ Lee County/government agency

pursuant to Lee County Ordinance No. _____, bring this sworn complaint stating that the place or premises known as _____ owned by _____, located at _____, is a public nuisance as it has been, on at least three occasions within twelve months, the site of _____ (unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale or consumption of alcoholic beverages, or lewd or lascivious behavior, as contemplated within Chapter 893, Florida Statutes):

[] _____ will present evidence in the
(I"/name of agency)

~~form of sworn police testimony that (unlawful sale or delivery of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale or consumption of alcoholic beverages, or lewd or lascivious behavior unlawful sales or deliveries of controlled substances) occurred on the subject property on the following dates~~
_____, _____,
and _____.

_____ [] _____ will present evidence in the
_____ ("I"/name of agency)

form of certified copies of criminal convictions to prove that unlawful sales or deliveries of controlled substances occurred on the subject property on the following dates _____, and _____.

_____ The following is a short and plain statement summarizing the incidents which form the basis of this complaint: _____

By execution of this Complaint, I _____
_____ authorize/do not authorize

the Clerk of the LEE COUNTY NUISANCE ABATEMENT BOARD to send a copy of this Complaint to the owner(s) of the place or premises that is the subject of this Complaint, at least ten (10) days prior to the hearing date.

_____ I hereby swear that the information presented in this Complaint is true and accurate to the best of my knowledge.

_____ Complainant

_____ INDIVIDUAL

STATE OF FLORIDA _____)
_____))
COUNTY OF LEE _____)

_____ Before me personally appeared _____ to me well known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that _____ executed said instrument for the purposes therein expressed.

_____ WITNESS my hand and official seal, this _____ day of _____, 2002.

_____ Notary Public
_____ State of Florida

My Commission Expires:

CHARLIE GREEN
Clerk of Circuit Court
Lee County, Florida

STATE OF FLORIDA

COUNTY OF LEE

I, Charlie Green, Clerk of the Circuit Court, Lee County, Florida, and ex-Officio Clerk to the Board of County Commissioners, Lee County, Florida, do hereby certify that acknowledgment has been received from the Secretary of State on this _____ day of _____, 2002, at _____ a.m., of the filing of Lee County Ordinance No. 91-27 duly adopted by the Board of Lee County Commissioners at their meeting held on the _____ day of _____, 2002.

Given under my hand and seal, at Fort Myers, Florida, this _____ day of _____, 2002.

CHARLIE GREEN
Clerk of Circuit Court
Lee County, Florida

By _____
Deputy Clerk