

ORDINANCE NO. 2014- 29

AN ORDINANCE OF ST. JOHNS COUNTY, FLORIDA, REPEALING AND REPLACING ORDINANCE 2012-10; AND PROVIDING FOR THE EXERCISE OF COUNTY POWERS; PROVIDING FOR THE REGULATION AND CONTROL OF PUBLIC NUISANCES WITHIN THE WEST AUGUSTINE COMMUNITY REDEVELOPMENT AREA OF ST. JOHNS COUNTY, FLORIDA; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF ANY INCONSISTENT AND/OR CONFLICTING ORDINANCES; PROVIDING SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of St. Johns County, Florida, recognizes the need for, and the benefits of, regulating Public Nuisances insofar as they impede or detract from the interests or enjoyment of the property of any citizen living within the West Augustine Community Redevelopment Area ("CRA") of St. Johns County; and

WHEREAS, the Board of County Commissioners recognizes that the West Augustine CRA has been working to revitalize West Augustine and this revitalization of the community has generated more complaints relating to perceived Public Nuisances; and

WHEREAS, the Board of County Commissioners of St. Johns County, Florida, believes that it is in the best interests of the County, businesses and its residents that certain nuisances be declared unlawful and abated.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

Section 1. Effect of Recitals

The above Recitals are incorporated into the body of this Ordinance and such Recitals are adopted as findings in fact.

Section 2. Purpose and Intent

Pursuant to Section 893.138, *Florida Statutes*, it is the intent of this Ordinance to promote, protect, and improve the health, safety, and welfare of the citizens, businesses and property owners within the West Augustine CRA by authorizing imposition of administrative fines and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing this Ordinance within the CRA under circumstances when a pending or repeated violation continues to exist.

Section 3. **Nuisance and Abatement**

A place or premises may be declared to be a "Public Nuisance" and such nuisance may be abated pursuant to Section 893.138, *Florida Statutes* (as may be amended from time to time), and the procedures provided in this Ordinance. For purposes of this Ordinance, "Public Nuisance" shall mean any place or premises that have been used for the following criminal violations which resulted in arrest:

A. On more than (2) two occasions within a 6-month period, as the site of a violation of *Florida Statutes*, Section 796.07, relating to prostitution;

B. On more than (2) two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

C. On (1) one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

D. For use by a criminal gang for the purpose of conducting criminal gang activity as defined by Section 874.03, *Florida Statutes*; or

E. On more than (2) two occasions within a 6-month period, as the site of a violation of Section 812.019, *Florida Statutes*, relating to dealing in stolen property.

In addition, any pain-management clinic, as described in Section 458.3265 or Section 459.0137, *Florida Statutes*, which has been used on more than two occasions within a 6-month period as the site of a violation of *Florida Statutes*:

- 1) Sections 784.011, 784.021, 784.03, or 784.045, relating to assault and battery;
- 2) Section 810.02, relating to burglary;
- 3) Section 812.014, relating to dealing in theft;
- 4) Section 812.131, relating to robbery by sudden snatching; or
- 5) Section 893.13, relating to the unlawful distribution of controlled substances.

Section 4. **Administrative Board**

A. Pursuant to Section 893.138, *Florida Statutes*, the Board of County Commissioners of St. Johns County authorizes the West Augustine CRA Nuisance Abatement Board, (Administrative Board), to hear complaints regarding the Public Nuisances described in this Ordinance.

B. This Administrative Board shall consist of five (5) members and two (2) alternates, (specifically a First Alternate and a Second Alternate), who shall be appointed by the County Commission with a recommendation from the West Augustine Community Redevelopment Area (CRA) Steering Committee. Three (3) members shall constitute a quorum; tie votes fail for lack

of a simple majority. Each alternate shall serve two (2) years and shall have voting power if a quorum, full panel of five (5) board members or tie-break is needed in any meeting, otherwise alternates shall be non-voting members. The First Alternate shall have priority in voting over the Second Alternate should they both be in attendance. The Administrative Board shall operate in accordance with Chapter 286, *Florida Statutes* ("Sunshine Law") and members shall be required to attend annual training on applicable Florida Sunshine Laws, Ethics and due process procedures. Initial appointments of two (2) members shall serve for two (2) years, with the remaining three (3) members serving for three (3) years. Thereafter, all appointees to the Administrative Board shall serve for two (2) years. The Administrative Board shall operate under the Rules and Policies of the St. Johns County Board of County Commissioners, as amended from time to time. This Administrative Board may meet quarterly or more often as the need arises, however, it shall meet a minimum of once (1) per year, and such meeting may encompass the aforementioned annual training.

The membership qualifications shall be:

1. County resident for at least one (1) year;
2. Eighteen (18) years old;
3. Residing within ~~or~~ operating a business or organization within the West Augustine Community Redevelopment Area (CRA); and
4. Exhibit an interest in fairly enforcing this Ordinance and exhibit civic duty.

C. The County Administrator or designee shall provide clerk services, including but not limited to sending notices, taking minutes and filing orders of the Administrative Board. Such notices, minutes, exhibits and orders, etc. shall be filed with the Minutes and Records Department of the Clerk of Courts of St. Johns County.

D. Beginning in calendar year 2015, Administrative Board members and alternates will be required to file an annual statement of financial interests and comply with all provisions applicable to a "local officer," in Section 112.3145, Florida Statutes.

Section 5. Complaints

Any County employee, law enforcement officer, business owner or resident of St. Johns County may make a complaint alleging that a property within the CRA is being used for illegal activity as described in Section 3 and thereby creating a Public Nuisance. Complaints shall be made to and investigated by the St. Johns County Sheriff's Office. The Sheriff's Office shall review the complaint and any other relevant information, including but not limited to arrest records. The Sheriff's Office shall, within thirty (30) days of receiving such complaint, determine whether a public nuisance exists under this Ordinance.

If the Sheriff's Office determines that a public nuisance exists, as described in Section 3, and that the property is negatively impacting the health, safety, and welfare of the citizens, businesses, and property owners within the CRA, then after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at the owner's last known address, the Sheriff's Office shall promptly request a hearing before the Administrative Board. Factors to

be considered by the Sheriff's Office in determining whether the property is negatively impacting the health safety, and welfare of the citizens, businesses, and property owners within the CRA include, but are not limited to: the recency of the incidents or offenses that constituted a public nuisance, any steps taken by the property owner(s) to remediate such incidents or offenses, the level of cooperation by the property owner(s), and whether, in the Sheriff's sole discretion, requesting a hearing will have a negative impact on the Sheriff's Office's work in the CRA that outweighs the potential positive impact of abating such public nuisance.

After receipt of the request for a hearing from the Sheriff's Office, the Administrative Board, through its clerk, shall schedule a hearing within forty-five (45) days. The Clerk shall cause written notice of the hearing to be sent by certified mail or hand delivered to the owner of the premises complained of at the owner's last known addresses at least 14 days prior to the scheduled hearing. If the owner of the premises, as listed with the St. Johns County Property Appraiser, is a corporate entity, then the Clerk shall send an additional copy of the written notice of hearing by certified mail to the Registered Agent for the corporate entity. If an attempt to reach the owner by hand delivery or certified mail is unsuccessful, notice of the hearing may be by publication as provided in Chapter 49, Florida Statutes.

The notice of hearing shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and ordinances involved; and
4. A short and plain statement summarizing the incidents complained of.

Section 6. **Hearing**

A. An Administrative Board public hearing on a complaint may consist of the following participants: The Administrative Board, the staff, the County Administrator, the County Attorney's Office, the Sheriff's Office, the complainant, the owner of the place or premises which is the subject of the complaint, and the public. The Administrative Board may hold a hearing on a complaint if the owner of the place or premises is absent from the hearing only if the owner has been properly noticed of the hearing as described in this Ordinance.

B. The order of presentation shall be as follows:

1. The complaining party and witnesses;
2. County Administrator's staff or other County representative;
3. The owner of the place or premises and witnesses;
4. The public;
5. Rebuttal and summation of the owner.

C. All testimony shall be under oath and shall be recorded. To the maximum extent practicable, the hearings shall be informal and the formal rules of evidence do not need to be

observed. The hearings shall be conducted in such a manner that fundamental due process is ensured.

D. The Administrative Board shall consider all of the evidence presented, including the general reputation of the place or premises.

E. The Administrative Board shall act upon each complaint by motion and vote. A place or premises shall be declared a public nuisance only by a majority vote of the Board present.

F. All findings of the Administrative Board shall be based upon the standard of a preponderance of the evidence. The Administrative 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 party bringing the complaint.

G. At the conclusion of the hearing, the Administrative Board shall issue written finding of fact and its conclusions with respect to the issues brought before it.

Section 7. Declaration of Public Nuisance

If the Administrative Board declares a place or premises to be a Public Nuisance, it may enter an order requiring the owner of such place or premises to adopt such procedure or make such improvements as may be appropriate under the circumstances to abate any such nuisance or it may enter an order pursuant to Section 13 of this Ordinance, and immediately prohibit the conduct, operation or maintenance of any activity on the premises which is conducive to such nuisance.

Section 8. Definition of "Controlled Substance"

As used in this Ordinance, the term "controlled substance" includes any substance named or described in Section 893.03, *Florida Statutes*, 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*.

Section 9. Enforcement of Agency Action

An order entered under this Ordinance may be enforced pursuant to administrative procedures contained in Sections 120.69 and 893.138, *Florida Statutes*.

Section 10. Injunctive Relief

The Administrative Board or the County may bring a complaint under Section 60.05, *Florida Statutes*, seeking temporary and permanent injunctive relief against any Public Nuisance described in Section 3 of this Ordinance.

Section 11. Conflict of Laws

This Ordinance does not restrict the right of any person to proceed under Section 60.05, *Florida Statutes*, against any Public Nuisance.

Section 12. Term of Expiration of Order

An order entered by the Administrative Board under this Ordinance shall expire after one (1) year or upon compliance with or rescinding of said order.

Section 13. Administrative Fines and Penalties; Liens; and Costs

A. The Administrative Board, upon finding non-compliance with its order by the set time, or upon finding that a recurring Public Nuisance has been committed, may order the owner to pay a fine in an amount specified in this Section for each day the Public Nuisance continues past the date set by the Administrative Board for compliance, or, in the case of a recurring Public Nuisance, for each day the recurring Public Nuisance continues from the date the recurring Public Nuisance is found to have occurred.

B. A fine imposed pursuant to this section shall not exceed Two Hundred Fifty Dollars (\$250.00) per day for a first occurrence of a Public Nuisance and shall not exceed Five Hundred Dollars (\$500.00) per day for a recurring Public Nuisance. However, total fines imposed pursuant to this Section shall not exceed Fifteen Thousand Dollars (\$15,000.00). In determining the amount of the fine, if any, the Administrative Board shall consider the following factors:

1. The gravity of the Public Nuisance;
2. Any actions taken by the owner to correct the Public Nuisance; and
3. Any previous Public Nuisances created by the owner.

C. A certified copy of an order imposing a fine may be recorded in the public records of St. Johns County and thereafter shall constitute a lien against the land on which the Public Nuisance exists and upon any other real or personal property owned by the owner. Upon petition to the Circuit Court, such order may be enforced in the same manner as a court judgment by the Sheriff, including levy against personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this Section shall continue to accrue until the owner comes into compliance or until the judgment is rendered in a suit to foreclose on a lien filed pursuant to this Section, whichever occurs first. A lien arising from a fine imposed pursuant to this Section runs in favor of the County, and the County may execute a satisfaction or release of a lien pursuant to this Section. After three (3) months from the filing of any such lien which remains unpaid, the Administrative Board may authorize the County Attorney to foreclose on the lien. The County Administrator, or his or her designee, may accept or reject a settlement of such foreclosure case. If accepted, and the amount of the lien foreclosed by such lawsuit is less than Twenty Thousand Dollars (\$20,000.00), the proposed settlement shall be final upon the Court's signature of the final judgment. If the amount of the lien foreclosed is Twenty Thousand Dollars (\$20,000.00) or more, the proposed settlement shall not be binding upon the County until approved by the Board of County Commissioners. No lien

created pursuant to the provisions of this Ordinance may be foreclosed on real property which is a homestead under Fla. Const. Art. X, § 4.

Where an administrative action based on a stolen property nuisance against a property owner operating an establishment where multiple tenants, on one (1) site, conduct their own retail business, the property owner shall not be subject to a lien against its property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within ninety (90) days after notification by registered mail to the property owner of a second stolen property conviction of the tenant.

D. Reasonable costs, including reasonable attorney fees, costs associated with investigations of and hearings on Public Nuisances shall be paid by the owner if the property is adjudicated as a "Public Nuisance."

Section 14. Nuisance abatement fines account

All administrative fines and liens collected pursuant to this Ordinance shall be deposited in a separate revenue account, which is hereby created and designated as the West Augustine CRA Public Nuisance abatement fines account. Monies collected from such fines and liens shall be expended to defray costs of administration of this Ordinance, including investigative and legal expenses, if necessary.

Section 15. Appeals; Venue

Either party may appeal a final administrative order of the Administrative Board to the Circuit Court. Such an appeal shall not be a hearing *de novo*, but shall be limited to appellate-review of the record created before the Administrative Board. An appeal shall be filed within thirty (30) days of rendering of the order to be appealed. Further appeal shall be to the court of competent jurisdiction within thirty (30) days of the Circuit Court's appellate decision. Venue for any such action shall be in St. Johns County, Florida. Venue for any such action shall be in St. Johns County, Florida.

Section 16. Effective Date

This Ordinance shall take effect immediately upon its being filed with the Secretary of State, except for Section 4.D. of this Ordinance, which shall take effect on January 1, 2015.

Section 17. Severability

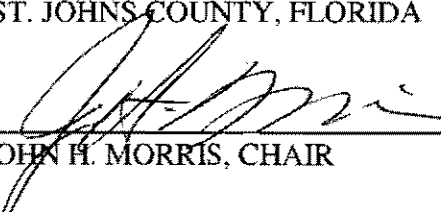
It is the intent of the Board of County Commissioners of St. Johns County, and it is hereby provided, that if any phrase, clause, sentence, subsection, section, or provision of this Ordinance is held to be invalid, or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining phrases, clauses, sentences, subsections, sections, or provisions of this Ordinance.

Section 18. Repeal and Replacement

Any inconsistent Ordinances, Amendments or parts of Ordinances regulating public nuisance within the West Augustine CRA are hereby repealed and replaced by this Ordinance. Ordinance 2012-10 is expressly repealed and replaced by this Ordinance.

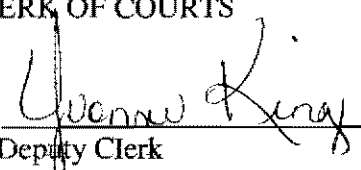
PASSED AND ENACTED by the Board of County Commissioners of St. Johns County, Florida, this 20 day of May, 2014.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: 

JOHN H. MORRIS, CHAIR

ATTEST: CHERYL STRICKLAND
CLERK OF COURTS

By: 

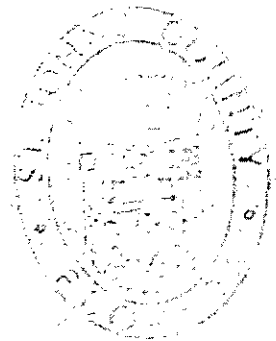
Deputy Clerk

Effective Date:

05/23/14

Rendition Date:

05/22/14



MINUTES AND RECORDS
500 SAN SEBASTIAN VIEW
SAINT AUGUSTINE FL 32084

Ref.#: L1317-14
P.O.#: L1317-14

PUBLISHED EVERY MORNING SUNDAY THRU SATURDAY
ST. AUGUSTINE AND ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,
COUNTY OF ST. JOHNS

Before the undersigned authority personally appeared **MEGAN BECKER**

who on oath says that he/she is an Employee of the St. Augustine Record,

a daily newspaper published at St. Augustine in St. Johns County, Florida:

that the attached copy of advertisement being a **NOTICE OF HEARING**

In the matter of **ORDINANCE 2012-10 - HEARING MAY 20, 2014**

was published in said newspaper on **05/09/2014**

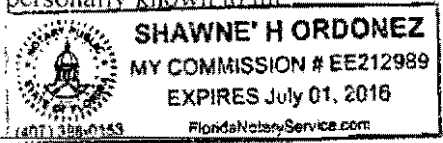
Affiant further says that the St. Augustine Record is a newspaper published at St. Augustine, in said St. Johns County, Florida, and that the said newspaper heretofore has been continuously published in said St. Johns County, Florida, each day and has been entered as second class mail matter at the post office in the City of St. Augustine, in said St. Johns County, for a period of one year preceding the first publication of the copy of advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing the advertisement for publication in the said newspaper.

Sworn to and subscribed before me this _____ day of _____

by *Megan Becker* who is personally known to me
or who has produced as identification

[Signature]

(Signature of Notary Public)



(Seal)

**NOTICE OF A PUBLIC HEARING
BY THE
ST. JOHNS COUNTY BOARD OF
COUNTY COMMISSIONERS**

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of St. Johns County, Florida, will hold a public hearing on **Tuesday, May 20, 2014, at 9:00 a.m.** in the County Auditorium at the County Administration Building, 500 San Sebastian View, St. Augustine, Florida, to consider adoption of the following ordinance:

AN ORDINANCE OF ST. JOHNS COUNTY, FLORIDA, REPEALING AND REPLACING ORDINANCE 2012-10; AND PROVIDING FOR THE EXERCISE OF COUNTY POWERS; PROVIDING FOR THE REGULATION AND CONTROL OF PUBLIC UTILITIES WITHIN THE WEST AUGUSTINE COMMUNITY REDEVELOPMENT AREA OF ST. JOHNS COUNTY, FLORIDA; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF ANY INCONSISTENT AND/OR CONFLICTING ORDINANCES; PROVIDING SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The proposed ordinance is on file in the office of the Clerk of the Board of County Commissioners at the St. Johns County Administration Building, 500 San Sebastian View, St. Augustine, Florida and may be examined by parties interested prior to the public hearing.

Interested parties may appear at the public hearing and be heard with respect to the proposed ordinance.

If a person decides to appeal any decision made by the Board of County Commissioners with respect to any matter considered at the public hearing, he/she will need a record of the proceedings, and for such purposes he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

NOTICE TO PERSONS NEEDING SPECIAL ACCOMMODATIONS AND TO ALL HEARING IMPAIRED PERSONS: In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in the proceedings should contact ADA Coordinator, at (904) 209-0650 at the St. Johns County Administration Building, 500 San Sebastian View, St. Augustine, FL 32084. For hearing impaired individuals: Florida Relay Service: 1-800-955-8770, no later than 5 days prior to the date of the hearing.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA
CHERYL STRICKLAND, ITS
CLERK
By: Yvonne King, Deputy Clerk
L1317-14, May 9, 2014**



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

May 23, 2014

2014 MAY 23 09:11:39

Ms. Cheryl Strickland
Secretary
St. Johns County
500 San Sebastian View
St. Augustine, Florida 32084

Attention: Ms. Yvonne King, Deputy Clerk

Dear Ms. Strickland:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Ordinance No. 2014-29, which was filed in this office on May 23, 2014.

Sincerely,

Liz Cloud
Program Administrator

LC/mrh