

Gainesville Police Department

Inter-Office Communication

Chief Norman B. Botsford

To: Public Safety Committee Date: March 11, 2004

From: Ronald D. Combs
Senior Assistant City Attorney

Subject: Alcohol Establishment – Nuisance Abatement Process

The committee has asked for draft legislation which would offer some control to municipalities over alcohol establishments via inclusion in the Nuisance Abatement Process.

Section 561.02, F.S. provides that “[i]t is the express legislative intent that the state retain **primary regulatory authority** over the activities of licensees under the Beverage Law within the **Division of Alcoholic Beverages and Tobacco** of the Department of Business and Professional Regulation.”

In addition, § 562.45(c) F.S. provides, as is pertinent, that “[a] ... municipality may not enact any ordinance that regulates or prohibits those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law. Except as otherwise provided in the Beverage Law, a local government, when enacting ordinances designed to promote and protect the general health, safety, and welfare of the public, **shall treat a licensee in a nondiscriminatory manner and in a manner that is consistent with the manner of treatment of any other lawful business transacted in this state.**”

These provisions limit what can be done by amending only 893 related to Nuisance Abatement. The following draft amendment would, if enacted, bring two issues under the purview of the Nuisance Abatement Board; one related to alcohol establishments, the other, places that sell alcohol out of residential areas. Both are phrased so that they are applicable to businesses and places generically and not alcohol based and therefore, complying with the nondiscriminatory language of § 562.45.

DRAFT LANGUAGE

893.138 Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal street gang activity.--

(1) It is the intent of this section to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards 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 counties and municipalities under circumstances when a pending or repeated violation continues to exist.

(2) Any place or premises that has been used:

(a) On more than two occasions within a 6-month period, as the site of a violation of s. 796.07;

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

(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;

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

(e) On more than two occasions within a 6-month period, as the site of a violation of s. 812.019 relating to dealing in stolen property

(f) On more than two occasions within a 6-month period, as a site requiring 3 or more police officers to quell a crowd disturbance whether inside or outside the establishment; or

(g) On more than two occasions within a 6-month period as the site of the unlicensed commercial activity on property zoned for residential use; [THIS RELATES TO THE SHOT HOUSES].

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.

- (3) Any county or municipality may, by ordinance, create an administrative board to hear complaints regarding the nuisances described in subsection (2). Any employee, officer, or resident of the county or municipality may bring a complaint before the board after giving not less than 3 days' written notice of such complaint to the owner of the place or premises at his or her last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises shall have an opportunity to present evidence in his or her defense, the board may declare the place or premises to be a public nuisance as described in subsection (2).
- (4) If the 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 as may be appropriate under the circumstances to abate any such nuisance or it may enter an order immediately prohibiting:
- (a) The maintaining of the nuisance;
 - (b) The operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof; or
 - (c) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.
- (5) An order entered under subsection (4) shall expire after 1 year or at such earlier time as is stated in the order.
- (6) An order entered under subsection (4) may be enforced pursuant to the procedures contained in s. 120.69. This subsection does not subject a municipality that creates a board under this section, or the board so created, to any other provision of chapter 120.
- (7) The board may bring a complaint under s. 60.05 seeking temporary and permanent injunctive relief against any nuisance described in subsection (2).
- (8) This section does not restrict the right of any person to proceed under s. 60.05 against any public nuisance.
- (9) As used in this section, the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of s. 817.563 or any imitation controlled substance defined in s. 817.564.

(10) The provisions of this section may be supplemented by a county or municipal ordinance. The ordinance may include, but is not limited to, provisions that establish additional penalties for public nuisances, including fines not to exceed \$250 per day; provide for the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances; provide for continuing jurisdiction for a period of 1 year over any place or premises that has been or is declared to be a public nuisance; establish penalties, including fines not to exceed \$500 per day for recurring public nuisances; provide for the recording of orders on public nuisances 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; provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. 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. Where a local government seeks to bring an administrative action, based on 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 registered mail to the property owner of a second stolen property conviction of the tenant. The total fines imposed pursuant to the authority of this section shall not exceed \$15,000. Nothing contained within this section prohibits a county or municipality from proceeding against a public nuisance by any other means.