



1015 Cultural Park Blvd.
Cape Coral, FL

AGENDA FOR THE NUISANCE ABATEMENT BOARD

October 11, 2018

3:00 PM

Council Chambers

1. MEETING CALLED TO ORDER

2. ROLL CALL

A. Bradbury, Gilbert, Hoover, Latham, Marvin, Owens, Wolf and
Alternates Cramer and Richardson

3. PUBLIC INPUT

4. HEARINGS

5. BUSINESS

- (1) Members Introductions
- (2) Election of Chair and Vice Chair
- (3) Sunshine Laws Presentation - City Attorney Menendez
- (4) Purpose/Overview of Board Duties - Chief of Police Newlan

6. DATE AND TIME OF NEXT MEETING

A. To be determined (TBD)

7. ADJOURNMENT

In accordance with the Americans with Disabilities Act and Florida Statutes 286.26, persons needing a special accommodation to participate in this proceeding should contact the City Clerk's Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0411 for assistance, if hearing impaired, telephone the Florida Relay Service Numbers 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

If a person decides to appeal any decision made by the Board/Commission/Committee with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for

such purpose, he 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 based.

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

Per Ordinance 37-17, the hearing shall, to the extent possible, be conducted as follows:

Conduct of hearings; board orders.

1. The City Attorney, or designee, shall present cases before the Board. The City Council shall appoint legal counsel to represent the Board. All hearings shall be open to the public and minutes shall be kept by the City Clerk, or designee. The City Clerk, or designee, shall provide clerical and administrative support as may be reasonably required for the proper performance of the Board's duties. All oral testimony shall be taken under oath. The general public may be given an opportunity to present oral or written communications.
2. Before the Board may hear a complaint, the Board shall make a finding that the notice requirements set forth in this section have been met. In no case shall the Board proceed to hear any complaint unless the notice requirements have been met.
3. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The Board may consider any relevant evidence, including evidence of the general reputation of the place or premises. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be ordinarily admissible in a state court.
4. Each party shall have the following rights:
 - a. To call and examine witnesses.
 - b. To introduce documentary evidence, exhibits, or physical evidence.
 - c. To cross-examine opposing witnesses on any relevant matter.
 - d. To impeach any witness.
 - e. To submit rebuttal evidence.
 - f. To be represented by counsel.
5. The owner and any occupant 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 public nuisance complaint.
6. The burden of proof shall be with the City to show by a preponderance of evidence that a public nuisance exists. The 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 itself to support a finding of a public nuisance.
7. After the conclusion of the hearing, the Board shall issue a written order containing findings of fact based upon evidence of record, conclusions of law, and proper relief consistent with the powers granted in this section.
8. If the Board finds and declares a place or premises to be a public nuisance, the Board may enter an order immediately prohibiting:
 - a. The maintaining of the public 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 or any business or activity on the premises which is conducive to such public nuisance.
 - d. An order of the Board shall automatically expire after one (1) year, or at such earlier time as stated in the order. The Board may retain jurisdiction to modify its order prior to the expiration of such order.
 - e. An order of the Board may be enforced pursuant to the procedures contained in Section 120.69, Florida Statutes. This subsection does not subject the City or the Board to any other provision of Chapter 120, Florida Statutes. Administrative liens; fines; costs. In the event that the Board finds a place or premises to be a public nuisance and issues an order pursuant to Subsection 2-120.50(g), the Board shall assess against the owner of the place or premises the reasonable costs, including reasonable attorney's fees, which the City has incurred in the preparation, investigation, and presentation of the case. In addition to the relief authorized in Section 2-120.50(g)8., a Board order may include, but is not limited to, the following:
 1. Establish penalties for public nuisances, including fines not to exceed \$250.00 per day;
 2. Provide for continuing jurisdiction for a period of one (1) year over any place or premises that has been or is declared to be a public nuisance;
 3. Establish penalties, including fines not to exceed \$500.00 per day for recurring public nuisances;
 4. 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;
 5. Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order;

6. Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney's fees, associated with the recording of orders and foreclosure.

All costs and/or fines assessed by the Board shall be due and payable thirty (30) days after the written order of the Board has been rendered or such other time as the Board may direct. The total fines imposed pursuant to the authority of this section shall not exceed \$15,000.00. No lien created pursuant to the provisions of this section may be foreclosed on real property, which is homestead under Article X, Section 4 of the state constitution. Where the City seeks to bring an administrative action, based on a stolen property public 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 public nuisance within ninety (90) days after notification, by certified mail, with return receipt requested, to the property owner, of a second stolen property conviction of the tenant. Nothing contained within this section prohibits the City from proceeding against a public nuisance by any other means.

Item Number:	2.A.
Meeting Date:	10/11/2018
Item Type:	Roll Call

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Bradbury, Gilbert, Hoover, Latham, Marvin, Owens, Wolf and Alternates Cramer and Richardson

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Item Number:	5.(1)
Meeting Date:	10/11/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Members Introductions

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Item Number:	5.(2)
Meeting Date:	10/11/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Election of Chair and Vice Chair

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Item Number:	5.(3)
Meeting Date:	10/11/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Sunshine Laws Presentation - City Attorney Menendez

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

Item Number:	5.(4)
Meeting Date:	10/11/2018
Item Type:	Business

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Purpose/Overview of Board Duties - Chief of Police Newlan

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

Pursuant to Section 893.138, Florida Statutes, the Cape Coral Council created a Nuisance Abatement Board. (see attachment)

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ City of Cape Coral Code of Ordinance 2-120.50 Nuisance Abatement Board	Backup Material

Nuisance Abatement Board

Pursuant to Section 893.138, Florida Statutes, the Cape Coral City Council created a nuisance abatement board. It is the intent of this Division 13 to establish the nuisance abatement board to promote, protect, and improve the health, safety, and welfare of the citizens of the City of Cape Coral by providing an equitable, expeditious, and effective method to reduce the use of property within the City for the unlawful sale, delivery, manufacture, cultivation, or possession of controlled substances; prostitution; gang activity; or stolen property and other crimes as defined by this ordinance. There are seven members and two alternates on this Board and the hearings will be held on an as needed basis.

- (6) Evaluate and advise the City Council on issues forwarded to the Youth Council for advice.

(i) *Reporting.* The Youth Council shall make recommendations to the City Council by written memoranda, on the first day of October, January, March, and May of each year, or more frequently as deemed necessary by the City Council. The Youth Council should make every effort to attend the meetings of the City Council where the recommendations or written memoranda of the Youth Council are to be presented or considered.

(Ord. 47-16, § 4, 9-26-2016)

DIVISION 13. NUISANCE ABATEMENT BOARD

§ 2-120.50 Nuisance Abatement Board.

(a) *Creation and intent.* Pursuant to F.S. § 893.138, the Cape Coral City Council hereby creates a nuisance abatement board. It is the intent of this Division 13 to establish the nuisance abatement board to promote, protect, and improve the health, safety, and welfare of the citizens of the City of Cape Coral by providing an equitable, expeditious, and effective method to reduce the use of property within the city for the unlawful sale, delivery, manufacture, cultivation, or possession of controlled substances; prostitution; gang activity; or stolen property.

(b) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BOARD. The Nuisance Abatement Board of the City of Cape Coral.

CONTROLLED SUBSTANCE. Any substance named or described in Schedules I—V

of F.S. § 893.03; 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.

COUNCIL. The City Council of the City of Cape Coral.

OWNER. The legal or equitable title holder of the place or premises that is the subject of a complaint filed with the Nuisance Abatement Board.

PLACE or PREMISES. The land and its appurtenances, structures, and fixtures thereon, as such land is described or contained in a deed or instrument of conveyance and recorded in the official records of Lee County, Florida.

PUBLIC NUISANCE. Any place or premises that has been used:

- (1) On more than two occasions within a six-month period, as the site of a violation of F.S. § 796.07;
- (2) 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;
- (3) On one occasion, as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and such place or premises have 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 F.S. § 874.03;
- (5) On more than two occasions within a six-month period, as the site of a violation of F.S. § 812.019 relating to dealing in stolen property; or

- (6) On two or more occasions within a six-month period, as the site of a violation of F.S. ch. 499.
- (7) A public nuisance shall also include any pain management clinic, as described in F.S. § 458.3265 or 459.0137, which has been used on more than two occasions within a six-month period as the site of a violation of:
 - a. F.S. § 784.011, 784.021, 784.03, or 784.045 relating to assault and battery;
 - b. F.S. § 810.02 relating to burglary;
 - c. F.S. § 812.014 relating to theft;
 - d. F.S. § 812.131 relating to robbery by sudden snatching; or
 - e. F.S. § 893.13 relating to the unlawful distribution of controlled substances.

It shall be prima facie evidence that a public nuisance violation occurred at a place or premises pursuant to this section where an arrest for a violation of any of the unlawful activities described above has been made at the place or premises.

RECURRING PUBLIC NUISANCE. The violation of a provision of this section by a person who has previously been found to have violated or who has admitted violating, the same provision within five years prior to the violation.

(c) *Membership; terms of office; forfeiture of office; removal; vacancies.* The Nuisance Abatement Board shall consist of seven members. All members shall be residents of the City of Cape Coral and shall be appointed by a majority vote of the City Council. The term of office for each member shall be two years, or until a successor is appointed. In addition to the aforesaid seven members, two alternate members shall be ap-

pointed by a majority vote of the City Council to serve as alternates for the term of one year. Such alternate members shall be residents of the city and shall substitute for absent members on a rotating basis. When substituting for an absent member, an alternate member may vote and participate in all discussions of the Board in the same manner and to the same extent as the other members of the Board. When not substituting for an absent member(s), alternate members shall not vote on any matter before the Board, but may participate in all discussions of the Board in the same manner and to the same extent as other members of the Board. Board members and alternate members shall be subject to the forfeiture of office provisions of § 2-58 of the Cape Coral Code of Ordinances. Whenever a vacancy shall occur on the Board, the City Council shall fill the vacancy for the remainder of the term as soon as practicable after such vacancy occurs.

(d) *Quorum; election of officers; rules; compensation.*

- (1) The presence of four or more members shall constitute a hearing quorum.
- (2) Members of the Board shall annually elect a chairperson and vice-chairperson from among its members, each of whom shall serve until a successor is elected and qualified. The chairperson shall preside at all meetings and exercise all the usual rights, duties, and prerogatives of chairperson. The vice-chairperson shall perform the duties of the chairperson in the absence or disability of the chairperson. Vacancies of either office shall be filled by an existing Board member for the unexpired term by a new election of the members.
- (3) Robert's Rules of Order shall serve as guidance for all meetings of the Board.

The Board may adopt its own procedural rules and regulations as may be deemed necessary, providing that such rules and regulations shall not be contrary to the spirit and intent of the laws of the City of Cape Coral.

- (4) Board members shall serve without compensation.

(e) *Initiation of procedures.* Any employee, officer, or resident of the city may file a complaint with the City Manager's office with regard to any public nuisance, as defined in this section. Notwithstanding the foregoing, no member of the Board may file such complaint. The City Manager, or designee, shall review the complaint and determine whether substantial, competent evidence supports a finding that criminal activity that might constitute a public nuisance is occurring at the subject premises. If substantial, competent evidence exists, the City Manager, or designee, shall promptly provide written notice to the owner(s) of the premises of the complaint and a summary of the evidence of criminal activity. The notice shall be served on the owner in the same manner as the notice of hearing as provided in this section. The owner(s) shall be provided a reasonable time from receipt of the notice to take action to abate the public nuisance. If after notice is provided and a violation of the same public nuisance occurs again at the premises within six months of the date of such notice, the City Manager, or designee, shall promptly request a hearing before the Board. Notwithstanding the foregoing, if substantial, competent evidence exists that the public nuisance complaint creates an immediate threat to the public health, safety, and welfare or the property is a recurring public nuisance, the City Manager, or designee, shall provide written notice to the owner(s) of the premises of the complaint with a summary of the evidence of the public nuisance, and may promptly request a hearing before the Board.

(f) *Hearing notice.* After receipt of a request for a hearing from the City Manager, or designee, the Board, through its clerk, shall promptly schedule a hearing. Written notice of the hearing shall be provided to the owner(s) in accordance with §§ 2-85(d)—(g), Cape Coral Code of Ordinances, at least ten calendar days prior to the scheduled hearing. The notice of hearing shall include the following:

- (1) The time, date, place, and nature of the hearing;
 - (2) A reference to this section;
 - (3) A short and plain statement summarizing the facts that form the basis of the complaint;
 - (4) A statement that "Failure to attend the hearing may result in an order being issued adverse to your 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 F.S. ch. 286 that if a person decides to appeal any decision made by the Board with respect to any matter considered at such hearing, he or she will need a record of the proceedings, and that, for such purpose, he or 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.
- (g) *Conduct of hearings; Board orders.*
- (1) The City Attorney, or designee, shall present cases before the Board. The City

Council shall appoint legal counsel to represent the Board. All hearings shall be open to the public and minutes shall be kept by the City Clerk, or designee. The City Clerk, or designee, shall provide clerical and administrative support as may be reasonably required for the proper performance of the Board's duties. All oral testimony shall be taken under oath. The general public may be given an opportunity to present oral or written communications.

- (2) Before the Board may hear a complaint, the Board shall make a finding that the notice requirements set forth in this section have been met. In no case shall the Board proceed to hear any complaint unless the notice requirements have been met.
- (3) Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The Board may consider any relevant evidence, including evidence of the general reputation of the place or premises. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be ordinarily admissible in a state court.
- (4) Each party shall have the following rights:
 - a. To call and examine witnesses.
 - b. To introduce documentary evidence, exhibits, or physical evidence.
 - c. To cross-examine opposing witnesses on any relevant matter.
 - d. To impeach any witness.
 - e. To submit rebuttal evidence.
 - f. To be represented by counsel.
- (5) The owner and any occupant 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 public nuisance complaint.
- (6) The burden of proof shall be with the city to show by a preponderance of evidence that a public nuisance exists. The 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 itself to support a finding of a public nuisance.
- (7) After the conclusion of the hearing, the Board shall issue a written order containing findings of fact based upon evidence of record, conclusions of law, and proper relief consistent with the powers granted in this section.
- (8) If the Board finds and declares a place or premises to be a public nuisance, the Board may enter an order immediately prohibiting:
 - a. The maintaining of the public 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 or any business or activity on the premises which is conducive to such public nuisance.
 - d. An order of the Board shall automatically expire after one year, or at such earlier time as stated in the

order. The Board may retain jurisdiction to modify its order prior to the expiration of such order.

- e. An order of the Board may be enforced pursuant to the procedures contained in F.S. § 120.69. This subsection does not subject the City or the Board to any other provision of F.S. ch. 120.

(h) *Administrative liens; fines; costs.* In the event that the Board finds a place or premises to be a public nuisance and issues an order pursuant to § 2-120.50(g), the Board shall assess against the owner of the place or premises the reasonable costs, including reasonable attorney's fees, which the city has incurred in the preparation, investigation, and presentation of the case.

In addition to the relief authorized in § 2-120.50(g)(8), a Board order may include, but is not limited to, the following:

- (1) Establish penalties for public nuisances, including fines not to exceed \$250 per day;
- (2) Provide for continuing jurisdiction for a period of one year over any place or premises that has been or is declared to be a public nuisance;
- (3) Establish penalties, including fines not to exceed \$500 per day for recurring public nuisances;
- (4) 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;
- (5) Provide that recorded orders on public nuisances may become liens against the real property that is the subject of the order;

- (6) Provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney's fees, associated with the recording of orders and foreclosure.

All costs and/or fines assessed by the Board shall be due and payable 30 days after the written order of the Board has been rendered or such other time as the Board may direct. The total fines imposed pursuant to the authority of this section shall not exceed \$15,000. No lien created pursuant to the provisions of this section may be foreclosed on real property, which is homestead under Article X, Section 4 of the State Constitution. Where the city seeks to bring an administrative action, based on a stolen property public 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 public nuisance within 90 days after notification, by certified mail, with return receipt requested, to the property owner, of a second stolen property conviction of the tenant. Nothing contained within this section prohibits the CITY from proceeding against a public nuisance by any other means.

(i) *Appeals.* An aggrieved party, including the City Council, may appeal a final administrative order of the Board to the Circuit Court of the 20th Judicial Circuit. Such appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created by the Board. An appeal shall be filed within 30 calendar days of the date of the written order being appealed. No appeal may be sought beyond the 30-calendar-day filing time as set out herein.

(j) *Rights preserved.* This Division 13 does not limit, restrict, or abridge the rights of any person to proceed under F.S. § 60.05 against

any public nuisance, nor does this division prohibit any jurisdiction from proceeding against a public nuisance by any other lawfully available means.

(Ord. 37-17, § 1, 11-6-2017)

Item Number:	6.A.
Meeting Date:	10/11/2018
Item Type:	Date and Time of Next Meeting

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

To be determined (TBD)

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION: