

ORDINANCE NO. 8692-15

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA, RELATING TO THE ABATEMENT OF DRUG-RELATED, PROSTITUTION-RELATED, STOLEN-PROPERTY-RELATED, AND CRIMINAL-GANG RELATED PUBLIC NUISANCES; CREATING ARTICLE I IN CHAPTER 20, CLEARWATER CODE OF ORDINANCES, TO ESTABLISH AN ADMINISTRATIVE BOARD, PURSUANT TO SECTION 893.138, FLORIDA STATUTES, WITH THE AUTHORITY TO IMPOSE ADMINISTRATIVE FINES AND OTHER ADMINISTRATIVE PENALTIES IN ORDER TO ABATE THE ABOVE-DESCRIBED PUBLIC NUISANCES; PROVIDING FOR THE APPOINTMENT AND TERMS OF THE MEMBERS OF THE BOARD; PROVIDING FOR THE POWERS AND PROCEDURES OF THE BOARD; PROVIDING FOR THE ISSUANCE AND ENFORCEMENT OF ORDERS; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA:

Section 1. Article I is hereby created in Chapter 20, Clearwater Code of Ordinances, as follows:

ARTICLE I. NUISANCE ABATEMENT BOARD

Sec. 20.01. Creation; composition; conditions of office; code of ethics.

(1) There is hereby created and established pursuant to F.S. § 893.138(4) a board to be known and designated as the nuisance abatement board of the City of Clearwater to hear complaints regarding the nuisances described in F.S. § 893.138(2) and (3).

(2) Such board shall consist of seven members and shall be subject to the conditions contained in Chapter 2, Article III, Division 1 of the Clearwater Code of Ordinances.

(3) The members of the board shall be considered local officers for purposes of F.S. § 112.3145 and be subject to, and comply with, all applicable sections of Chapter 112, Part III, Florida Statutes, Code of Ethics for Public Officers and Employees.

Sec. 20.02. Definitions; powers and duties.

(1) As used in this article:

Board means the nuisance abatement board of the City of Clearwater.

City Attorney means the City Attorney for the City of Clearwater.

Controlled substance means any substance named or described in F.S. § 893.03, as well as any substance sold in lieu of a substance named or described in F.S. § 893.03 in violation of F.S. § 817.563, or any "imitation controlled substance" as defined in F.S. § 817.564.

Effective term means the term of one year from the date of entry by the board of an order requiring the owner of a place or premises declared by the board to be a public nuisance to adopt procedures to abate the nuisance, or a shorter term if the order provides for its expiration in less than one year. Any order of the board declaring a recurring nuisance relating to nuisance activity on the same property with the same property owner shall not extend the effective term.

Operator means the person operating a place or premises subject to this article. The term "operator" includes, but is not limited to, owners, tenants, subtenants, and persons having operational control over the place or premises.

Owner means the owner of the real property upon which the place or premises is located. In cases where the owner and the operator are the same person, the terms "owner" and "operator" are used interchangeably in this article.

Place or premises means real property and its appurtenances and structures thereon as described in the deed or other instrument of conveyance as recorded in the Public Records of Pinellas County, Florida. The term "place" or "premises" includes but is not limited to parking lots and other areas open to the general public or to invitees or licensees.

Prosecuting attorney means the City Attorney, a regular Assistant City Attorney, or a Special Assistant Attorney who shall prosecute cases before the board.

Public nuisance or public nuisance conduct means the conduct described in subsection (5) of this section.

Recording secretary means the City Clerk or Deputy City Clerk.

Recurring public nuisance conduct means any single or multiple instance of the conduct described in subsection (5) of this section occurring during the effective term of an order entered by the board.

Respondent means the owner, operator, and any other person against whom a complaint is brought pursuant to this article.

Special Assistant Attorney means a private attorney who is in good standing with the Florida Bar Association and who is appointed by the City Council to prosecute cases before the board.

(2) The board shall have the power to adopt rules for the administration and conduct of its hearings. Such rules shall be designed to facilitate the efficient administration of this article and shall always ensure fundamental due process.

(3) The board shall have the power to subpoena respondents and witnesses to its hearings. Such subpoenas may be served by the police department, or by such other persons as the board may appoint.

(4) The board shall have the power to subpoena evidence, records and other material relevant to the proceedings.

(5) The board shall hear complaints alleging that any place or premises constitutes a public nuisance, and may find said place or premises, or any part thereof, to be a public nuisance, upon clear and convincing evidence that said place or premises has been used:

- (a) 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, all within a six-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- (b) On more than two occasions within a six-month period, as the site of a violation of F.S. § 796.07, relating to prostitution and prostitution-related activities;
- (c) 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;
- (d) By a criminal gang for the purpose of conducting a pattern of criminal gang activity as defined by F.S. § 874.03;
- (e) 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

- (f) On more than two occasions within a six-month period, any pain management clinic, as described in F.S. § 458.3265 or F.S. § 459.0137, as the site of violation of:
1. F.S. § 784.011, § 784.021, § 784.03, or § 784.045, relating to assault and battery;
 2. F.S. § 810.02, relating to burglary;
 3. F.S. § 812.014, relating to dealing in theft;
 4. F.S. § 812.131, relating to robbery by sudden snatching; or
 5. F.S. § 893.13, relating to the unlawful distribution of controlled substances.

(6) The prosecuting attorney may file a formal complaint with the board using information provided by the police department. The formal complaint will allege the facts necessary to demonstrate that a place or premises is the site of public nuisance conduct.

- (a) In the formal complaint, the prosecuting attorney shall name the owner and, if appropriate, the operator as respondents. If a place or premises is leased to or under the operational control of more than one person, a failure to name all such persons as respondents shall not prejudice the right of the City to proceed against those persons who, in the judgment of the prosecuting attorney, are responsible for the occurrence of public nuisance conduct at the place or premises.
- (b) The board, through its recording secretary, shall schedule a hearing and send a copy of the complaint and the notice of hearing by certified mail, return receipt requested, or by hand delivery, to each respondent at the last known address of such respondent. The notice, if mailed, shall be postmarked at least ten business days prior to the scheduled hearing. If an attempt to reach the respondent by hand delivery or certified mail is unsuccessful, notice of the hearing may be made by publication as provided in F.S. ch. 49. Regardless of the method of service, notice shall provide each respondent not less than three days' notice of the hearing.
- (c) 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.
 4. A copy of the complaint attached to or provided with the notice.

(7) The board shall conduct a public hearing on the complaint and receive evidence pertaining to the conduct described in the complaint.

(8) The owner and each respondent shall have the opportunity to appear before the board, in person and/or through legal counsel, to offer evidence in defense of or in mitigation against the complaint.

(9) The prosecuting attorney shall present evidence before the board on behalf of the City.

(10) All parties shall have an opportunity to present evidence and argument on all issues involved, to conduct cross examination and submit rebuttal evidence, and to be represented by counsel. In addition:

(a) The board may consider any evidence, including but not limited to evidence of the general reputation of the place or premises. All testimony shall be given under oath. All testimony shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings. Orders of the board shall be based upon clear and convincing evidence supported by competent and substantial evidence.

(b) The board shall consider evidence relating to the comprehensive plan, zoning regulations, and the uses, interim and permanent, that could be made of the property should it become necessary to close the property in order to rid the property of the existing public nuisance conduct.

(c) The prosecuting attorney shall have the burden of proving the existence of any unlawful public nuisance conduct by competent and substantial evidence sufficient to meet the clear and convincing standard of proof in any case brought by the prosecuting attorney.

(d) If the respondent has been properly noticed in regard to the hearing before the board and if any respondent fails to appear, the board may proceed with a hearing in absentia on the merits of the alleged violation. Any findings or order resulting from such hearing are valid and binding upon the respondents who have been properly noticed in regard to the hearing.

(11) At the conclusion of the hearing and after considering all evidence presented at such hearing, the board shall issue findings of fact based upon the evidence presented and made part of the record that a public nuisance does not exist or that an unlawful public nuisance does exist.

(a) If the board finds that the allegations of the complaint have not been proven, the board shall dismiss the complaint.

(b) If the board finds that a sufficient number of the allegations of the complaint have been proven, the board may declare the property to be an unlawful public nuisance.

(c) If the board declares that the property is an unlawful public nuisance, the board may then consider the appropriate remedy, at the same meeting or at a later regular meeting or special meeting called for such purpose. The board may, following its consideration of the appropriate remedy, order any one of the following:

1. The discontinuance of the nuisance;

2. The closing of the place or premises or a portion thereof for any period up to one year in order to rid the place of the public nuisance. Such order shall contain findings as to the type of interim use that could be engaged in on the property and still terminate the public nuisance. A respondent may seek a stay or modification of the order of closure where:

a. The respondent can demonstrate that such respondent intends to implement a use other than the one that had furthered the creation of the public nuisance;

b. The respondent can demonstrate the implementation of the use will not impede the termination of the public nuisance;

3. The prohibition of conduct, operation, or maintenance of any business or activity at the place or premises, and/or business or activity that is conducive to the maintenance of such nuisance. A respondent subject to this remedy may seek a stay or modification of the order of closure where it is demonstrated that the business activity is different from that which created the public nuisance and will not impede termination of the public nuisance;

4. The implementation of mitigation strategies that the board deems appropriate and reasonably related to the abatement of the public nuisance conduct; and

5. The implementation of any other procedures the board deems appropriate to abate the public nuisance conduct in a particular case.
- (d) Upon declaring that the property is an unlawful public nuisance, the board may:
1. Impose a fine not to exceed \$250.00 per day for each day conduct occurred upon which the board based its finding of a public nuisance and a fine not to exceed \$500.00 for each subsequent finding of recurring public nuisance conduct occurring on the premises during the time the board retains jurisdiction over the premises. If two or more respondents are fined, the total amount of the fines shall not exceed the maximum amount per day authorized by this subsection. The respondent must satisfy the fine by making payment to the City. Unpaid fines shall accrue interest as provided in sec. 20.03(3). The board may suspend such fines, in whole or in part, contingent upon a respondent's compliance with other terms or conditions of the order, and may later terminate the suspension and impose such fines upon a showing that the respondent has not complied with such term or condition of the order;
 2. Award reasonable costs associated with the investigation and hearing on the public nuisance, including an attorney's fee, investigative costs, and costs of recording of its order. The respondent must pay the award of costs and fees to the City. Unpaid costs and fees shall accrue interest as provided in section 20.03(3). The board may suspend such costs and fees, in whole or in part, contingent upon compliance with other terms or conditions of the order, and may later terminate the suspension and impose such costs and fees upon a showing that the respondent has not complied with such term or condition of the order.
- (e) If the board finds two or more respondents responsible for a public nuisance, those respondents will be jointly and severally responsible for complying with the actions ordered in subsection (11)(c) of this section and for satisfying the fines imposed and costs and fees awarded in subsection (11)(d) of this section.
- (f) The total fine imposed pursuant to this section shall not exceed \$15,000.00 during the effective term of any order. If two or more respondents are fined, the total amount of the fines shall not exceed \$15,000.00 during the effective term of the order.

(12) The findings and orders shall be by motion adopted by a majority of those present and voting. Any motion failing to obtain the required vote shall preclude the issuance of such findings and order. Any order shall require the approval of a majority of the members of the board present and voting, shall contain findings of fact and conclusions of law, and shall state the action or actions required by or relief granted by the board. Such order shall be reduced to writing, executed by the presiding chair of the board, and filed with the recording secretary of the board. A copy of the executed order shall be mailed or hand delivered to each party within five working days after execution by the presiding chair of the board.

(13) The board may retain jurisdiction for one year after the order's effective date to modify the order where just cause is found to exist.

(14) The board may request the City to bring a complaint under F.S. § 60.05, seeking an injunction against any nuisance described herein. The board, after ordering any of the remedies authorized by this section, may suspend the remedy and may lift the suspension at any time while the board has jurisdiction whether such remedy was initially imposed or not. The board shall give the owner notice and an opportunity to be heard before lifting a suspended remedy or imposing a new remedy. Lifting a suspended remedy or imposing a new remedy shall not operate to extend the one-year jurisdiction of the board.

Sec. 20.03. Enforcement of orders.

(1) Any order issued by the board under the provisions of sec. 20.02(11)(c) shall expire one year after its effective date or at such earlier time as is stated in the order. However, any fines imposed or costs and fees awarded under sec. 20.02(11)(d) shall continue to be an indebtedness owed to the City until satisfied and shall not expire one year after the effective date of the order. Such fines, costs, and fees will become a lien against the property upon the recording of the order as provided in subsection (2) of this section.

(2) Any order issued by the board declaring a place or premises to be a public nuisance that imposes fines, costs, or attorney's fees under the provisions of section 20.02(11)(d) shall be recorded in the public records, and shall become a lien against the real property that is the subject of the order. However, where the nuisance abatement action is based on a stolen property nuisance, and is brought 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 registered mail to the property owner of a second stolen property conviction of the tenant.

(3) Fines, costs, or attorney's fees imposed under the provisions of section 20.02(11)(d) shall be due and payable upon the date of the order of the board imposing any and all fines, costs, or attorney's fees. Fines, costs, or attorney's fees may be paid in full without interest during the first 30 calendar days after the date of the order of the board. Thereafter, interest at the rate established by the comptroller of the State pursuant to F.S. §§ 55.03 and 687.01 shall accrue upon any unpaid amount of fine and costs. The interest rate in effect on the date of the order of the board shall remain in effect until the fine and costs are paid. If the board suspends a fine, costs, or both, interest shall begin to accrue 30 calendar days after the date that the board may terminate the suspension and impose the fines or costs, or both, in whole or in part.

(4) Any lien recorded against real property may be foreclosed by the City and the owner of such real property shall be liable for all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. However, no lien created pursuant to the provisions of this section may be foreclosed on real property that is a homestead under Section 4, Article X of the Florida Constitution.

(5) An order issued by the board under the provisions of sec. 20.02(11)(c) may be enforced pursuant to the procedures contained in F.S. § 120.69.

(6) All powers and rights conferred by this Article shall be in addition to and supplemental to those conferred by any other general or special laws governing public nuisances and shall be liberally construed to effectuate the purpose of this Article.

Sec. 20.04. Appeals by respondent.

An order of the board shall be subject to judicial review in the manner provided by law.

Section 2. This ordinance shall take effect immediately upon adoption.

MAR 05 2015

PASSED ON FIRST READING

MAR 19 2015

PASSED ON SECOND AND FINAL
READING AND ADOPTED

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George N. Cretekos
Mayor

Approved as to form:

Robert J. Surette

Robert J. Surette
Assistant City Attorney

Attest:

Rosemarie Call

Rosemarie Call
City Clerk

