

## **PUBLIC NUISANCE ABATEMENT BOARD**

### **ORDINANCE NO. 2009-4176**

**An ordinance of the City of Sanford, Florida providing for a public nuisance abatement board relating to drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity in accordance with, and in implementation of, the provisions of Section 893.138, *Florida Statutes*; providing for penalties and remedies; providing for processes and procedures; providing for implementing administrative actions; providing for the repeal of Section 18-61 of the *City Code*; providing for conflicts; providing for a savings provision; providing for codification in the *City Code*; providing for severability and providing for an effective date.**

**Be it enacted by the People of the City of Sanford, Florida:**

**Section 1. Local administrative action to abate drug-related, prostitution-related, or stolen-property-related public nuisances and criminal gang activity.** A new section of the *City Code of the City of Sanford* is created to read as follows:

(a). The City Commission is hereby created as a public nuisance abatement board pursuant to the provisions of Section 893.138, *Florida Statutes*. Nothing contained within this Ordinance prohibits the City from proceeding against a public nuisance by any means set forth in this Ordinance or in other controlling law.

(b). The board shall have the power to:

- (1). Adopt rules for the conduct of its hearings and establish procedures;
- (2). Take testimony and receive documentary evidence;
- (3). Issue orders having the force of law consistent with authority contained herein and as set forth in Section 893.138, *Florida Statutes*.

(c). The City Attorney shall serve as legal counsel for the board and may assist the board in establishing facts and eliciting evidence and the City Clerk shall be the secretary of the board.

(d). The board shall hear complaints and may declare any place or premises that has been used:

- (1). On more than two (2) occasions within a six-month period, as the site of a

violation of Section 796.07, *Florida Statutes*;<sup>1</sup> or

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

(3). On one (1) 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 (1) occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance; or

(4). By a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined by Section 874.03, *Florida Statutes*;<sup>2</sup> or

(5). On more than two (2) occasions within a six-month period, as the site of a violation of Section 812.019, *Florida Statutes*,<sup>3</sup> to be a public nuisance, which may be abated in accordance with the procedures set forth herein.

(e). As used in this Section, the term *controlled substance* means any substance listed in Section 893.03, *Florida Statutes*, and includes 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*.

(f). Any employee, officer or resident of the City may bring a complaint before the board. Such complaint shall be in writing and filed with the secretary of the board. Upon receipt of the complaint, the secretary shall notify the Mayor who may, after consultation with the Police Chief, call a hearing of the board within twenty-one (21) days following receipt of the complaint. If the Mayor concludes, after consultation with the Police Chief, that the complaint does not demonstrate probable cause that the facts support a finding of the circumstances set forth in Section 2(d), the complaint will not be brought before the board. Such determination shall be reported to the City Commission at a City Commission meeting. The board must furnish a notice of the complaint to the owner of the place or premises, at his last known address, in writing, by U.S. mail, certified return receipt requested, or by personal service not less than three (3) days prior to a scheduled hearing before the board. The notice shall contain the owner's name, the address and legal description of the property, the date, time and place of the hearing and shall have the complaint attached.

(g). The board shall conduct a hearing on the complaint, receiving any evidence, including evidence of the general reputation of the place or premises. The owner of the place or premises shall have an opportunity to present evidence in his, her or its defense.

(h). All testimony shall be under oath and recorded. Formal rules of evidence

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<sup>1</sup> Relating to prostitution.

<sup>2</sup> Relating to gang related offenses.

<sup>3</sup> Relating to dealing in stolen property.

shall not apply, but due process shall be observed and govern the proceedings.

(i). After receiving evidence, the board may adopt an order establishing findings of fact and conclusions of law and may declare the place or premises to be a public nuisance.

(j). If the board finds the existence of a public nuisance, the board 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:

- (1). The maintaining of the nuisance;
- (2). The operating or maintaining of the place or premises, including, but not limited to, the closure of the place or premises or any part thereof; or
- (3). The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.

(k). Any such board order shall expire after one (1) year or at such earlier time as is stated in the order.

(l). An order entered under Section may be enforced pursuant to the procedures contained in Section 120.69, *Florida Statutes*,<sup>4</sup> as well as any other legal remedy available to the City such as, but not limited to, the provisions of Section 60.05, *Florida Statutes*, and the City may seek temporary and permanent injunctive relief against any nuisance. The City Attorney may prosecute such action on behalf of the board. Additionally the City may engage in any other code enforcement activity permitted by law and may use the order issued under this Section as part of, and as evidence in, a condemnation proceeding relating to dilapidated, unsanitary, unsafe or uninhabitable structures.

(m). Additionally, in supplementation of the provisions of Section 893.138, *Florida Statutes*, the board may, by written order, assess additional penalties for public nuisances, including fines not to exceed \$250.00 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 one (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 \$500.00 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; provided, however, that no lien created pursuant to the provisions of this Ordinance may be foreclosed on real property which is a homestead under Section 4,

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<sup>4</sup> This provision is part of the *Administrative Procedures Act* generally applicable to State agencies and allows for the filing of an enforcement action in the Circuit Court.

Article X of the *Constitution of the State of Florida*. When the City 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 ninety (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 Subsection of this Ordinance shall not exceed \$15,000.00.

**Section 2. Implementing Administrative Actions.**

The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative rules.

**Section 3. Conflicts/Repealer.**

(a). All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

(b). Section 18-61 of the *City Code of the City of Sanford* is hereby repealed.

**Section 4. Savings.**

The prior actions of the City of Sanford in implementation of Articles I, II, III and IV of Chapter 18 of the *City Code of the City of Sanford* as well as all code enforcement activities of the City relating thereto are hereby ratified and affirmed.

**Section 5. Severability.**

If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

**Section 6. Codification.**

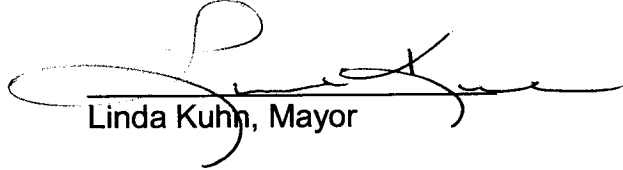
This Ordinance shall be codified in the *City Code of the City of Sanford*; provided, however, that Sections 3, 4, 5, 6 and 7 shall not be codified. The Code Codifier is granted broad and liberal authority to change section numbers in the current *City Code* and other appropriate actions as set forth in Section 1-10 of the *City Code*.

**Section 7. Effective Date.**

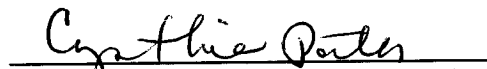
This Ordinance shall take effect immediately upon passage and adoption.

Passed and adopted this 22<sup>nd</sup> day of June, 2009.


**City Commission of the City of  
Sanford, Florida  
Seminole County, Florida**

  
Linda Kuhn, Mayor

Attest:

  
Cynthia Porter, Acting City Clerk

Approved as to form and  
legality:

  
William L. Colbert, Esquire  
City Attorney