

ORDINANCE NO. 5866

PROPOSED ORDINANCE NO. 21-012

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LAKELAND, FLORIDA RELATED TO NUISANCE ABATEMENT; AMENDING ARTICLE IV OF CHAPTER 38 OF THE CITY CODE OF THE CITY OF LAKELAND, FLORIDA; MAKING FINDINGS; ADDING CRITERIA UPON WHICH A NUISANCE CAN BE BASED; INCREASING TOTAL FINE THAT MAY BE IMPOSED FOR A NUISANCE; ESTABLISHING CONDITIONS FOR THE ABATEMENT OF A NUISANCE UPON RENTAL PROPERTY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 893.138, Florida Statutes, creates an administrative procedure by which the City of Lakeland can abate certain nuisance activity that is related to a pattern of criminal activity occurring on a property; and

WHEREAS, the aforesaid statute has been recently amended to include additional types of criminal activity which may be considered a public nuisance; and

WHEREAS, the City's Nuisance Abatement Board has been an effective tool for the City of Lakeland Police Department at reducing crime and enhancing the quality of life for the citizens of Lakeland; and

WHEREAS, the City Commission wishes to adopt the newly expanded provisions of F.S. 893.138;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKELAND, FLORIDA:

SECTION 1. The foregoing findings are true and correct and are hereby adopted and made a part hereof.

SECTION 2. Section 38-82 of the City Code is hereby amended as follows, with the following strikethrough language to be deleted, and the underlined language added:

Sec. 38-82. - Findings.

The city commission does hereby find that the illegal sale, delivery, manufacture, and cultivation of controlled substances is a threat to the health, safety and welfare of the citizens of the city. Prostitution, ~~and criminal street-gang activity,~~ and repeated occurrences of violent criminal acts are also threats to the health, safety and welfare of the citizens of the city. A pattern of illegal activity often arises and is associated with certain places or premises within the corporate limits of the city. A pattern of illegal activity associated with a place or premises within the corporate limits of the city serves to encourage future illegal activity on or about these particular places or premises. Such illegal activity is injurious to the health, safety and welfare of the citizens of the city, and corrupts the public morals. It is necessary, in order to provide an expeditious and effective method of eliminating illegal activity, that a nuisance abatement board be created pursuant to F.S. § 893.138.

SECTION 3. Section 38-86(a) of the City Code is hereby amended as follows, with the following strikethrough language to be deleted and the underlined language added:

Sec. 38-86. - Same—Enforcement procedures and hearings.

- (a) The nuisance abatement board shall hear complaints and may declare that any place or premises which has been used:
- (1) On more than two occasions within a six-month period as the site of the unlawful sale, delivery, manufacture, or cultivation of a controlled substance;
 - (2) On more than two occasions within a six-month period as the site of a violation of F.S. § 796.07;
 - (3) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony, and has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of a controlled substance, all within a six-month period;
 - (4) By a criminal street gang for the purpose of conducting a pattern of criminal street-gang activity; ~~or~~
 - (5) 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;

- (6) On two or more occasions within a 6-month period as the site of a violation of chapter 499;
- (7) On more than two occasions within a 6-month period as the site of a violation of any combination of the following:
 - i. Section 782.04, relating to murder;
 - ii. Section 782.051, relating to attempted felony murder;
 - iii. Section 784.045(1)(a)2., relating to aggravated battery with a deadly weapon; or
 - iv. Section 784.021(1)(a), relating to aggravated assault with a deadly weapon without intent to kill.
- (8) By any pain-management clinic, as described in F.S 458.3265 or F.S. 459.0137, and which has been used on more than two occasions within a 6-month period as the site of a violation of:
 - i. Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery;
 - ii. Section 810.02, relating to burglary;
 - iii. Section 812.014, relating to theft;
 - iv. Section 812.131, relating to robbery by sudden snatching; or
 - v. Section 893.13, relating to the unlawful distribution of controlled substances.
- ~~(5)~~(9) Which otherwise tends to annoy the community or injure the health of the community, or becomes manifestly injurious to the morals or manners of the people; constitutes a public nuisance, and may be abated in accordance with the procedures set forth in this section.

SECTION 4. Section 38-87 of the City Code is hereby amended as follows, with

the strikethrough language to be deleted and the underlined language added:

Sec. 38-87. - Same—Powers.

The nuisance abatement board shall have the power to:

- (1) Adopt rules for the conduct of its hearings and establish procedure.
- (2) Take testimony under oath.
- (3) Issue orders having the force of law consistent with authority contained in this article.
- (4) Impose a fine not to exceed \$250.00 per day for a public nuisance, provided; however, total fines imposed pursuant to this article shall not exceed ~~\$7,500.00~~ \$15,000.00;

- (5) Impose a fine not to exceed \$500.00 per day for a recurring public nuisance; provided, however, total fines imposed pursuant to this article shall not exceed ~~\$7,500.00~~ \$15,000.00;
- (6) Order the payment of reasonable costs, including reasonable attorneys' fees associated with investigations of, and hearings on, public nuisances;
- (7) Record orders of the board in the public records, which orders shall become liens against the real property which is the subject of the order;
- (8) Foreclose upon property subject to a lien, except homestead property under Section 4, Article X, of the Florida Constitution, and recover costs, including reasonable attorneys' fees, associated with the recording of orders and foreclosure.
- (9) Retain jurisdiction for a period of one year over any place or premises that has been or is declared to be a public nuisance.
- (10) If the place or premises constituting the nuisance is not occupied by the owner thereof, then the owner shall have a reasonable time in which to abate the nuisance before the board imposes the fine described in paragraph (4) or (5). All time during which the owner has had actual notice of the nuisance shall be considered in determining a reasonable time. If requested by the owner, members of the police department will provide testimony in any action brought to abate the nuisance. Notwithstanding any other law, a rental property that is declared a nuisance under this section may not be abated if the nuisance was committed by someone other than the property owner and the property owner commences rehabilitation of the property within 30 days after the property is declared a nuisance and completes the rehabilitation within a reasonable time thereafter.
- (11) Where an action before the Board is 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.

SECTION 5. It is the intent of the Lakeland City Commission that the provisions of this ordinance shall become and be made a part of the City of Lakeland's Code of Ordinances, and that the sections of this ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. Should any section, paragraph, sentence, clause or phrase of this Ordinance conflict with any section, paragraph, sentence, clause or phrase of any prior City of Lakeland Ordinance, Resolution, or Code provision, then in that event the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 7. If any one or more of the covenants, agreement or provisions of this Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Ordinance.

SECTION 8. This Ordinance shall take effect immediately upon its passage in the manner provided by law.

PASSED AND CERTIFIED AS TO PASSAGE this 15th day of March, A.D. 2021.

SARA ROBERTS MCCARLEY,
MAYOR PRO TEM

ATTEST: _____
KELLY S. KOOS, CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS: _____
PALMER C. DAVIS
CITY ATTORNEY