

ORDINANCE NO. 2019-16

AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, CREATING ARTICLE VII, ENTITLED “PUBLIC NUISANCE ABATEMENT”, WITHIN CHAPTER 7, ENTITLED “HEALTH, SANITATION AND NUISANCES” TO ABATE CERTAIN PUBLIC NUISANCES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Greenacres, Florida (the “City”) is a duly constituted municipality having such home rule power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, section 893.138, Florida Statutes, entitled “Local administrative action to abate drug-related, prostitution-related, or stolen-property related public nuisances and criminal gang activity” provides a process whereby municipalities can abate nuisances related to drugs, prostitution, stolen property, gang activity and pain management clinics; and

WHEREAS, section 893.138, Florida Statutes, provides the general process for abating such nuisances and affords the City the ability to supplement the statutory process by ordinance; and

WHEREAS, the City desires to adopt the process set forth in section 893.138, Florida Statutes, to abate certain nuisances and supplement the same as set forth herein; and,

WHEREAS, the City Council of the City of Greenacres has determined that the inclusion of this Nuisance Abatement process in its Health, Sanitation and Nuisances code is beneficial to the City and provides another mechanism to address nuisances; and

WHEREAS, the City Council finds it is in the best interest of the citizens of the City of Greenacres and serves a valid public purpose to amend the Health, Sanitation and Nuisances code as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are incorporated into this Ordinance as true and correct statements.

Section 2. That City of Greenacres' Municipal Code Chapter 7 entitled "Health, Sanitation and Nuisances" is amended with the creation of Article VII as follows:

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ARTICLE VII. – PUBLIC NUISANCE ABATEMENT

Sec. 7-300. - Creation; intent; applicability; jurisdiction.

- (a) Pursuant to Chapter 166 and section 893.138, Florida Statutes, the city hereby creates the city public nuisance abatement process and designates a special magistrate to hear public nuisance complaints. It is the intent of this article to establish a public nuisance abatement process to promote, protect, and improve the health, safety and welfare of the citizens of the city by providing an equitable, expeditious and effective method to abate public nuisances. The special magistrate shall have authority to hold hearings and assess fines against property owners and issue orders having the force of law in accordance with the terms and conditions herein set and under the authority of Chapter 166 and section 893.138, Florida Statutes. The jurisdiction of the public nuisance abatement special magistrate shall not be exclusive.
- (b) This article is not intended to restrict the right of any person or the city to proceed under section 60.05, Florida Statutes, or any other legal process for an injunction against any public nuisance or enforcement of the city's code of ordinance through other legal processes.

Sec. 7-301. - Definitions.

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

Controlled substance. Includes any controlled substance named or described in section 893.03, Florida Statutes; any substance sold in lieu of a controlled substance in violation of section 817.563, Florida Statutes, or any imitation controlled substance as defined in section 817.564, Florida Statutes.

Florida Statutes. Means the applicable chapter or section of the Florida Statutes at the time this article became effective and at any time thereafter as of the time such chapter or section is duly amended.

Public nuisance. In accordance with section 893.138, Florida Statutes, includes:

- (1) Any place or premises within the city that has been used:
 - a. On more than two (2) occasions within a six-month period, as the site of a violation of section 796.07, Florida Statutes, which prohibits prostitution;
 - b. 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;
 - c. 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;
 - d. By a criminal gang for the purpose of conducting criminal gang activity as defined by section 874.03, Florida Statutes;
 - e. On more than two (2) occasions within a six-month period, as the site of a violation of section 812.019, Florida Statutes, relating to dealing in stolen property.
 - f. On two or more occasions within a six month period, as the site of a violation of chapter 499 (Florida's Drug and Cosmetic Act).
- (2) Any pain-management clinic in the city, as described in section 458.3265 or section 459.0137, Florida Statutes, which has been used on more than two (2) occasions within a six-month period as the site of a violation of:
 - a. Section 784.011, 784.021, 784.03, or 784.045, Florida Statutes, relating to assault and battery;
 - b. Section 810.02, Florida Statutes, relating to burglary;
 - c. Section 812.014, Florida Statutes, relating to theft;
 - d. 812.131, Florida Statutes, relating to robbery by sudden snatching; or
 - e. 893.13, Florida Statutes, relating to the unlawful distribution of controlled substances.

Special magistrate or magistrate. A licensed Florida attorney hired by the city who has been authorized to hear code compliance and/or other public hearings for the city.

Sec. 7-302. - Initiation of procedures.

- (a) Any employee, officer, law enforcement officer, or resident of the city may file a complaint with the city attorney's office with regard to any public nuisance. The city attorney 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 attorney or designee shall promptly provide written notice to the owner(s) of the premises of the complaint with a description of the criminal activity. The notice shall be served on the owner by the city attorney or designee in

the same manner as the notice of hearing as provided in this article. The owner shall be provided a reasonable time from receipt of the notice to take action to abate the public nuisance. If after notice is provided, the criminal activity constituting a public nuisance continues at the premises, the city attorney or designee shall promptly schedule a hearing before the special magistrate. If substantial, competent evidence exists that the complained of subject premises is a public nuisance or the property is a repeat public nuisance, the city attorney or designee shall provide written notice to the owner(s) of the premises of the complaint; a description of the public nuisance; and, may promptly set the matter for hearing.

- (b) The city shall give written notice of every hearing to the owner(s) at least ten (10) days prior to the scheduled hearing. Notice shall include the following:
- (1) The time, date, place and nature of the hearing;
 - (2) A reference to this article;
 - (3) A short and plain statement summarizing the incidents which form the basis of the complaint;
 - (4) A statement that "failure to attend 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 examination; and
 - (7) A conspicuous statement reflecting the requirements of section 286.0105, Florida Statutes, that if a person decides to appeal any decision made by the special magistrate 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.
- (c) All notices required by this article shall be provided to the owner(s) consistent with the requirements for notice provided in section 162.12, Florida Statutes, regarding notices for code enforcement cases, except that if any notice sent by certified mail is not signed as received within five (5) days after the date of mailing, notice may be provided by posting as described in section 162.12(2)(b), Florida Statutes.

Sec. 7-303. - Conduct of hearings.

- (a) The special magistrate shall adopt rules, as necessary, for the conduct of the hearings. All hearings and proceedings shall be open to the public and minutes shall be kept. All testimony shall be taken under oath. The special magistrate shall be provided with administrative assistance from the code compliance division as needed.
- (b) The special magistrate shall proceed to hear complaints on the agenda for the day scheduled which may be with code compliance cases and/or other public hearings. Before the special magistrate may hear a public nuisance abatement complaint, the special magistrate must make a finding that the notice requirements as set forth herein have been satisfied. In no case shall the public nuisance abatement special

magistrate proceed to hear any complaint unless the notice requirements set forth herein have been met.

- (c) Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The special magistrate may consider any evidence, including evidence of the general reputation of the 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 admissible in a state court.
- (d) The city and the owner shall have the following rights:

 - (1) To call and examine witnesses.
 - (2) To introduce documentary evidence, exhibits, or physical evidence.
 - (3) To cross-examine opposing witnesses on any relevant matter.
 - (4) To impeach any witness.
 - (5) To submit rebuttal evidence.
 - (6) To be represented by counsel.
- (e) The owner of the premises in question may introduce evidence as to any remedial measures taken to ameliorate the conditions which led to the public nuisance complaint.
- (f) All findings of the special magistrate shall be based on a preponderance of the evidence. 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 unless it would be admissible in a civil action. The initial burden of proof shall be on the city.
- (g) At the conclusion of the hearing, the special magistrate shall issue findings of fact and conclusions of law with respect to the issues before it.
- (h) If the special magistrate finds that a public nuisance does exist on the premises, the special magistrate may declare the premises in whole or in part a public nuisance. Upon such declaration, the special magistrate may enter an order immediately prohibiting:

 - (1) The maintaining of the nuisance;
 - (2) Subject to supporting evidence, the operating or maintaining of the place or premises including the closure of the place or any part thereof; or
 - (3) Subject to supporting evidence, the conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance.
- (i) The special magistrate may also impose other measures for the abatement of the public nuisance which may include, but shall not be limited to, commencement of eviction action(s) pursuant to Chapter 83, Florida Statutes; performance of criminal background checks for prospective tenants and tenants renewing leases; posting of "no trespassing" signs; continuing jurisdiction over the place or premises for a period of one (1) year; imposition of fines not to exceed two hundred fifty dollars (\$250.00) per day for an initial violation and fines not to exceed five hundred dollars (\$500.00) per day for a repeat public nuisances as set forth in this article; payment

of reasonable costs, including reasonable costs associated with investigations of, notice of and hearings on the public nuisance; the recording of orders on public nuisances that may become liens against the real property that is the subject of the order; payment of reasonable costs and attorney fees incurred in any action to enforce an order of foreclosure based upon same; and, any other measure authorized under section 893.138, Florida Statutes. The special magistrate may include in the order a reasonable time to comply with the abatement measures. A copy of the order imposed shall be hand delivered or mailed regular U.S. mail to the property owner.

- (j) An order entered under this section shall expire after one (1) year or at such earlier time as is stated in the order.

Sec. 7-304. - Enforcement.

- (a) The special magistrate, upon notification that an order entered on a public nuisance has not been complied with or, upon finding that a repeat public nuisance exists, may impose a fine in an amount specified in this article for each day of non-compliance past the date set by the special magistrate for compliance, or, in the case of a repeat nuisance, for each day the repeat nuisance continues past the date of notice to the owner of such repeat nuisance. A hearing shall not be necessary for issuance of the order imposing the fine. A copy of the order imposed shall be hand delivered or sent regular U.S. mail to the property owner.
- (b) If a fine is to be imposed, the owner(s) shall be given twenty (20) days' notice within which to request a hearing to challenge the fine amount imposed by the order. If such a hearing is not timely requested, the city may record a certified copy of the order in the official records of Palm Beach County and thereafter the order shall constitute a lien as set forth in this article. The hearing to challenge the fine amount imposed by the order shall be requested in writing to code compliance and shall be limited to a consideration of the severity of the public nuisance; action taken to abate the public nuisance; and, any prior public nuisances complaints or orders against the owner. The owner shall bear the burden of proof at such hearing to show cause why the fine imposed in the order is not appropriate. If a request for hearing to challenge the fine amount is timely received by code compliance, a hearing will be set and notice of the hearing shall be sent to the owner. All orders entered by the special magistrate at this hearing which impose a fine and/or administrative costs may be recorded in the official records of Palm Beach County and thereafter the orders shall constitute a lien.
- (c) The total fines imposed pursuant to this section shall not exceed fifteen thousand dollars (\$15,000.00).
- (d) A certified copy of an order imposing a fine or other penalties may be recorded in the official records and thereafter shall constitute a lien against the land on which the nuisance exists or existed. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of the state, including execution and levy against the personal property of the owner or operator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the owner brings the property into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine pursuant to this section runs in favor of the city and the city may

execute a satisfaction or release of lien entered pursuant to this section. After three (3) months from the filing of any such lien which remains unpaid, the special magistrate may authorize the foreclosure of the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under section 4, Article X of the State Constitution.

- (e) In addition to the foregoing, the special magistrate may authorize the city to file a complaint under section 60.05, Florida Statutes, seeking a permanent injunction against any place, property or premises found to be a public nuisance. The special magistrate may further authorize the city to institute enforcement proceedings under section 120.69, Florida Statutes, and seek any other appropriate relief as may be provided or permitted. However, this subsection does not subject the city or the special magistrate to any other provisions of Chapter 120, Florida Statutes.

Sec. 7-305. - Appeal.

An aggrieved party, including the local governing body, may appeal a final order of the special magistrate to the circuit court. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the special magistrate. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

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Section 3. Repeal of Conflicting Ordinances

All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.

Section 4. Inclusion in Code

It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Greenacres.

Section 5. Severability.

If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Greenacres that any such unconstitutional, invalid, inapplicable, inoperative or void portion or

portions of this ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

Section 5. Effective Date

This ordinance shall take effect within five (5) days of its adoption.

Passed on the first reading this 4th day of November, 2019.

PASSED AND ADOPTED on the second reading this 2nd day of December, 2019.

Voted

Joel Flores
Mayor

Judith Dugo
Deputy Mayor

Attest:

Quintella L. Moorer, CMC
City Clerk

John Tharp
Council Member, District I

Peter Noble
Council Member, District II

Jonathan Pearce
Council Member, District IV

Paula Bousquet
Council Member, District V

Approved as to Form and Legal Sufficiency:

Glen J. Torcivia
City Attorney

