

ORDINANCE NO. 4137

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PINELLAS PARK, PINELLAS COUNTY, FLORIDA, CREATING CHAPTER 2, ARTICLE IX FOR THE CREATION OF A NUISANCE ABATEMENT BOARD; PROVIDING FOR THE COMPOSITION OF SUCH BOARD; PROVIDING FOR DEFINITIONS; PROVIDING FOR INITIAL REVIEW BY THE CITY MANAGER; SETTING FORTH THE POWERS AND DUTIES OF THE NUISANCE ABATEMENT BOARD; PROVIDING FOR APPEALS; PROVIDING ATTENDANCE AND QUORUM REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE INCLUSION OF THIS ORDINANCE IN THE CODE OF ORDINANCES OF THE CITY OF PINELLAS PARK, FLORIDA; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Pinellas Park Police Department periodically identifies certain properties in the city that are repeatedly the site of criminal activity;

WHEREAS, the State Legislature, pursuant to Florida Statute §893.138, has recognized the need for local governments to declare certain properties as public nuisances, and has expressly authorized the creation of administrative boards with the authority to impose administrative fines and other noncriminal penalties in order to abate such nuisance; and

WHEREAS, **this** ordinance is the least restrictive means for the City to promote, protect, and improve the health, safety, and welfare of its citizens while not infringing upon any individual private property rights.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PINELLAS PARK, FLORIDA:

SECTION ONE: That the foregoing recitals are hereby approved and incorporated into this Ordinance by the City Council as legislative findings of fact of the governing body of the City of Pinellas Park.

SECTION TWO: That Chapter 2, Article IX, of the "Code of Ordinances" of the City of Pinellas Park, Florida, is hereby created to read as follows:

ARTICLE IX. - NUISANCE ABATEMENT BOARD

Sec. 2-901. Creation; composition; term of office; code of ethics.

- (a) There is hereby created and established a board to be known and designated as the nuisance abatement board.
- (b) Such board shall consist of five members, of which at least three members are residents of the City, and two members who do not have to be residents of the City if they are owners of businesses with a brick and mortar location in the City of Pinellas Park, serving without pay, appointed by City Council.
- (c) The terms of members of the board shall be for three years. Members may serve no more than two consecutive full terms.
- (d) 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, State statutes (F.S. § 112.311 et seq.), Code of Ethics for Public Officers and Employees.

Sec. 2-902. Definitions.

As used in this article:

Board means the nuisance abatement board of the City of Pinellas Park.

City Attorney means the City Attorney of the City of Pinellas Park. 0

(1)Board attorney means the Attorney retained for the purpose of advising the board regarding the organization of the board, the conduct of its hearings, and the exercise of its powers. The Board Attorney shall not prosecute cases before the board and shall not exercise supervision over the prosecuting attorney when acting in that capacity.

(2)Prosecuting attorney means the City Attorney, or Assistant City Attorney, who shall prosecute cases before the board.

Controlled substance means any substance named or described in F.S. § 893.03; any substance sold in lieu of a controlled substance in violation of F.S. § 817.563; any imitation controlled substance defined in F.S. § 817.564; or any legend drug or prescription drug as defined in F.S. § 499.003.

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.

Public nuisance conduct means the conduct described in subsection (e) of this section.

Recurring public nuisance conduct means any single or multiple instance of the conduct described in subsection (e) 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.

Sec. 2-903. Initial review required.

Prior to a complaint being filed with the board, the City Manager shall review the facts and circumstances surrounding the alleged nuisance, as presented by the police department. If, in his/her sole discretion, the City Manager determines such matter should be brought to the board for its consideration, the City Manager shall direct the prosecuting attorney to file a complaint with the board, pursuant to the procedure described below. No complaint may be brought to the board without City Manager approval.

Sec. 2-904. Powers and duties.

- (a)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.
- (b)The board shall have the power through its Chairman or Vice Chairman to subpoena respondents and witnesses to its hearings. Such subpoenas shall be issued and signed by the Board Chairperson or the Vice Chairperson. Such subpoenas may be served by a sworn law enforcement officer of the Pinellas Park Police Department, or by a licensed process server.
- (c)The board shall have the power through its Chairman or Vice Chairman to subpoena evidence, records, and other material relevant to the proceedings. Such subpoenas shall be issued and signed by the Board Chairperson or the Vice Chairperson. Such subpoenas may be served by a sworn law enforcement officer of the Pinellas Park Police Department, or by a licensed process server.
- (d)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:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) By a criminal gang for the purpose of conducting a pattern of 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;
- (6) On more than two occasions within a six-month period, as the site of a violation of any combination of the following:
- a. F.S. § 782.04, relating to murder;
 - b. F.S. § 782.051, relating to attempted felony murder;
 - c. F.S. § 784.045(1)(a)2., relating to aggravated battery with a deadly weapon; or
 - d. F.S. § 784.021(1)(a), relating to aggravated assault with a deadly weapon without intent to kill; or
- (7) 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:
- 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 dealing in 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.

(e)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
a place or premises is the site of public nuisance conduct.

(1)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.

(2)The board, through the City Clerk, 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.

(3)The notice of hearing shall include:

a. A statement of the time, place and nature of the hearing.

b. A statement of the legal authority and jurisdiction under
which the hearing is to be held.

c. A reference to the particular sections of the statutes
and ordinances involved.

- d. A copy of the complaint attached to or provided with the notice (except when notice is provided by publication as provided in F.S. ch. 49).
- (f)The board shall conduct a public hearing on the complaint and receive evidence pertaining to the conduct described in the complaint.
- (g)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.
- (h)The prosecuting attorney shall present evidence before the board on behalf of the City. In any case brought by an employee, officer or resident of the City, the prosecuting attorney shall assist in the presentation of evidence before the board.
- (i)All parties shall have an opportunity to present evidence and argument on all issues involved, conduct cross examination and submit rebuttal evidence and to be represented by counsel. In addition:
- (1)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 on audio tape or by other means. 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.
- (2)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.
- (3)The prosecuting attorney shall have the burden of proving the existence of an unlawful public nuisance by competent and substantial evidence sufficient to meet the clear and convincing standard of proof in any case brought by the prosecuting attorney.
- (4)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 of the hearing.

(j)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.

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

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

(3)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 or all of the following:

a. The discontinuance of the nuisance;

b. 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:

1. 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;

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

c. The prohibition of conduct, operation, or maintenance of any business or activity at the place or premises, and/or business or activity which 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 than that which created the public nuisance and will not impede termination of the public nuisance;

- d. Require the respondent to screen potential tenants or subtenants through a written rental application form, verify information on the application, conduct a criminal record check on each prospective tenant or subtenant, and/or verify identity of applicant through State drivers license, State identification card, or other comparable form of identification;
- e. If not included in the lease or other written agreement used by the owner, establish rules of conduct relating to criminal activity at the place or premises, violation of which shall be grounds for eviction;
- f. The place or premises be maintained and operated in compliance with all applicable Codes and ordinances;
- g. The respondent to attend meetings of an appropriate neighborhood group or association;
- h. The respondent to maintain contact and cooperate with the assigned community police officer in carrying out the provisions of the board's order;
- i. That a CPTED (crime prevention through environmental design) survey be made of the place or premises and to implement recommendations reasonably related to eliminating factors conducive to criminal conduct; and
- j. Any other procedure the board deems appropriate to abate a nuisance in a particular case.

(4) Upon declaring that the property is an unlawful public nuisance, the board may:

- a. 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. The board may suspend such fines, 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 fines upon a showing that the respondent has not complied with such term or condition of the order;

b. 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. 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.

(5)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(j)(3) of this section and for satisfying the fines imposed and costs and fees awarded in subsection (j)(4) of this section.

(6)If the respondent fails to substantially comply with the board's order, upon hearing and appropriate finding, the board may assess an additional fine not to exceed \$100.00 per day for each day of non-compliance. If two or more respondents are fined, the total amount of the additional fines shall not exceed \$100.00 per day for each day of non-compliance. In addition, if the board previously suspended the imposition of fines or costs, the board may terminate the suspension and impose the fines or costs, or both, in whole or in part.

(k)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 City Clerk's office. 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.

(l)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.

(m)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. 2-905. Enforcement of orders.

(a)Any order issued by the board under the provisions of section 2-904(j)(3) 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 section 2-904(j)(4) 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 (b) of this section.

(b)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 sections 2-904(j)(4) and 2-904(j)(5) 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 the owner's 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.

(c) Fines, costs, or attorney's fees imposed under the provisions of sections 2-904(j)(4) and 2-904(j)(5) 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.

(d) 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 which is a homestead under section 4, article X of the Florida Constitution.

(e) When any business person, party or entity is found to be erecting, establishing, continuing, maintaining ownership or to be leasing the use of any building, places, or premises located in the City and in which the health of the community is threatened or the morals and welfare of the people are injured and in which any public nuisance exists, as defined in this section and in F.S. chs. 823, 893, or 796 or any of the Code sections as stated herein, such business persons, parties or entities may be sued by the City Attorney in the name of the State or by any citizen of the City for such relief and damages as may be recognized by law.

(1) The City may bring a complaint under F.S. § 60.05 and seek a permanent injunction against any public nuisance.

(2) All powers and rights conferred by this section 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 chapter.

Sec. 2-906. Appeals.

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

Sec. 2-907. Attendance, quorum.

(a) A member must be present for at least 75 percent of the meetings or the chair shall declare the member's office vacant. A member must be present for at least 75 percent of the meeting to be considered present.

(b) A quorum of the board shall consist of three or more members, and an affirmative vote of a majority of those present and voting shall be necessary to pass any motion or adopt any order.

SECTION THREE: The provisions of this ordinance shall be deemed severable, and should any court of competent jurisdiction declare any part of this ordinance unconstitutional or invalid, the remaining parts hereof shall not, in any way, be affected by such determination as to the invalid part.

SECTION FOUR: 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 ACode of Ordinances@ of the ACity of Pinellas Park@ and the publisher of the Code of Ordinances may renumber, reclassify or otherwise insert this Ordinance in an appropriate place to accomplish such intention, and the word A ordinance@ may be changed to Asection,@ Aarticle@ or other appropriate word.

SECTION FIVE: This Ordinance shall be in full force and effect immediately after its passage and approval in the manner provided by law.

FIRST READING THE _____ DAY OF _____, 2021.

PUBLISHED THE _____ DAY OF _____, 2021.

PUBLIC HEARING THE _____ DAY OF _____, 2021.

PASSED THIS _____ DAY OF _____, 2021.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS _____ DAY OF _____, 2021.

Sandra L. Bradbury
MAYOR

ATTEST:

Diane M. Corna, MMC
CITY CLERK

