

ORDINANCE NO. 991015
0-00-34

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3
4 AN ORDINANCE OF THE CITY OF GAINESVILLE, FLORIDA, RELATING TO
5 PUBLIC NUISANCE ABATEMENT; AMENDING SECTION 16.91 OF THE CODE
6 OF ORDINANCES TO INCLUDE ARRESTS AND CONVICTIONS FOR THE
7 UNLAWFUL SALE OF SUBSTANCES IN LIEU OF CONTROLLED
8 SUBSTANCES, THE UNLAWFUL SALE OF IMITATION CONTROLLED
9 SUBSTANCES, THE VIOLATION OF FEDERAL NARCOTICS LAWS AND
10 CONSPIRACY TO VIOLATE FEDERAL NARCOTICS LAWS, AND
11 VIOLATIONS OF STATE GAMBLING LAWS AS GROUNDS CONSTITUTING A
12 PUBLIC NUISANCE WHEN 2 OR MORE ARRESTS AND CONVICTIONS HAVE
13 OCCURRED IN A 6 MONTH PERIOD FOLLOWED BY AN ADDITIONAL
14 ARREST; AMENDING SECTIONS 16-92 THROUGH 16-96 AND CREATING
15 NEW SECTIONS 16-97 AND 16-98; CREATING THE NUISANCE ABATEMENT
16 BOARD; PROVIDING FOR PROCEDURES AND THE CONDUCT OF
17 HEARINGS; PROVIDING FOR POST HEARING PROCEEDINGS AND THE
18 ENFORCEMENT OF ORDERS; PROVIDING FOR APPEALS; PROVIDING
19 DIRECTIONS TO THE CODIFIER; PROVIDING A SEVERABILITY CLAUSE;
20 PROVIDING A REPEALING CLAUSE; AND PROVIDING AN IMMEDIATE
21 EFFECTIVE DATE.
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24 **WHEREAS**, the City Commission finds that the sale of substances in lieu of controlled
25 substances and the sale of imitation controlled substances have the same negative impact on the
26 community as the unlawful sale of controlled substances; and

27 **WHEREAS**, the City Commission finds that local drug violations that are prosecuted
28 under federal law have the same negative impact on the community as those prosecuted under
29 state law; and

30 **WHEREAS**, the City Commission finds that illegal gambling has a deleterious affect on
31 the community; and

32 **WHEREAS**, the Florida Legislature by section 893.138, Fla. Stat. (1999), has authorized
33 cities and counties to create a nuisance abatement board to hear and take action on complaints
34 regarding public nuisances; and

1 have occurred; and where two (2) or more violations of such state or federal provisions
2 ~~which~~ have resulted in two (2) or more criminal convictions arising out of separate
3 incidents, ~~have occurred~~ within ~~the twelve~~ a 6-month period of time, prior to the
4 commencement of a proceeding, in accordance with this article. It shall be prima facie
5 evidence that violations are occurring where an arrest for a violation of any of the
6 provisions of Chapter 893, Florida Statutes, or any federal narcotics law, or conspiracy to
7 violate any federal narcotics law, has been made within thirty (30) days, prior to the
8 issuance of notice, in accordance with this article.

9 (2) Any structure or portion thereof, as defined in ~~F.S.~~ § 810.011, Fla. Stat., or any piece,
10 parcel, tract, or plot of land or portion thereof, where violations of any of the unlawful
11 activities set forth in Chapter 796, Florida Statutes, (Prostitution) are occurring, and
12 where two (2) or more criminal convictions arising out of separate incidents, have
13 occurred within a ~~twelve~~ 6-month period of time, prior to the commencement of a
14 proceeding, in accordance with this article. It shall be prima facie evidence that
15 violations are occurring where an arrest for a violation of any of the unlawful activities
16 set forth in Chapter 796, Florida Statutes, has been made within thirty (30) days, prior to
17 the issuance of notice, in accordance with this article.

18 (3) Any structure or portion thereof, as defined in § 810.011, Fla. Stat., or any piece, parcel,
19 tract, or plot of land or portion thereof, where violations of any of the unlawful activities
20 set forth in Chapter 849, Florida Statutes, (Gambling) are occurring, and where two (2) or
21 more criminal convictions arising out of separate incidents, have occurred within a 6-
22 month period of time, prior to the commencement of a proceeding in accordance with this
23 article. It shall be prima facie evidence that violations are occurring where an arrest for a

1 violation of any of the unlawful activities set forth in Chapter 849, Florida Statutes, has
2 been made within thirty (30) days, prior to the issuance of notice in accordance with this
3 article.

4 ~~(3)~~(4). For the purpose of this article, "conviction" shall be defined and applied in accordance
5 with the provisions of Section 3.701(d) of the Florida Rules of Criminal Procedure.

6 **~~Sec. 16-92. Appointment of hearing officer.~~**

7 ~~The city manager is authorized to request a hearing officer from the State Division of~~
8 ~~Administrative hearings or appoint another independent person admitted to the practice of law in the~~
9 ~~State of Florida, and qualified to act as a hearing officer, to conduct hearings pursuant to this article.~~

10 **~~Sec. 16-93. Powers of hearing officer.~~**

11 ~~(a) — Notice and service:~~

12 ~~(1) — Prior to the issuance of an order by the city manager, pursuant to section 16-94, the hearing~~
13 ~~officer shall give written notice of violation, and opportunity for a hearing to the owner, lessor,~~
14 ~~lessee and mortgagee of record, if any, on file in the official records of Alachua County, Florida,~~
15 ~~of a structure or portion thereof, as defined in F.S. § 810.011, or any piece, parcel, tract, or plot~~
16 ~~of land or portion thereof, wherein the public nuisance is being conducted, maintained or~~
17 ~~permitted.~~

18 ~~(2) — The written notice of violation shall be deemed completed if personally delivered, and if the~~
19 ~~same cannot be delivered personally within the city, then service shall be deemed complete upon~~
20 ~~sending same by certified mail, return receipt requested, to the last known address of the owner,~~
21 ~~lessor, lessee and mortgagee, of record, if any, on file in the official records of Alachua County,~~
22 ~~Florida~~

1 ~~(3) — Service of process may be made by any officer authorized by law to serve process or a duly~~
2 ~~appointed law enforcement officer of the Gainesville Police Department. The person serving~~
3 ~~process shall promptly make proof of service by affidavit, and in any event within the time~~
4 ~~during which the person served must respond to the process. Failure to make proof of service~~
5 ~~shall not affect the validity of the service.~~

6 ~~(4) — The lack of knowledge of, acquiescence, or participation in, or responsibility for, a public~~
7 ~~nuisance on the part of the owners, lessors, lessees, mortgagee of record, if any, on file in the~~
8 ~~official records of Alachua County, Florida, and all those persons in possession of, or having~~
9 ~~charge of as agent or otherwise, or having any interest in the property, real or personal, used in~~
10 ~~conducting or maintaining the public nuisance, shall not be a defense by such owners, lessors,~~
11 ~~lessees, mortgagees of record, and such other persons.~~

12 ~~(b) — If after notice and opportunity for a hearing, the hearing officer finds no public nuisance to exist,~~
13 ~~he/she will dismiss all charges.~~

14 ~~e) — If after notice and opportunity for a hearing, the hearing officer finds the existence of a public~~
15 ~~nuisance, the hearing officer shall submit written recommendations or a final order to the city~~
16 ~~manager.~~

17 ~~(d) — The hearing officer shall have all the powers to this end, including power to subpoena.~~

18 ~~**Sec. 16-94. Powers of city manager.**~~

19 ~~(a) — The city manager shall approve, modify or reject the recommendation or final order of the~~
20 ~~hearing officer, and shall be authorized:~~

21 ~~(1) — To order the discontinuance of such activity at the structure or portion thereof, as defined in F.S.~~
22 ~~§ 810.011, or any piece, parcel, tract, or plot of land or portion thereof, where such public~~
23 ~~nuisance exists, and/or~~

1 ~~(2) — To order the closing of the structure or portion thereof, as defined in F.S. § 810.011, or any piece,~~
2 ~~parcel, tract, or plot of land or portion thereof, to the extent necessary to abate the nuisance.~~

3 ~~b) — Orders of the city manager issued pursuant to this section shall be posted at the structure or~~
4 ~~portion thereof, as defined in F.S. § 810.011, or any piece, parcel, tract, or plot of land or portion~~
5 ~~thereof, where a public nuisance exists or is occurring in violation of law, and shall be mailed to~~
6 ~~the owner of record thereof within one (1) business day of the posting.~~

7 ~~e) — Five (5) business days after the posting of an order issued pursuant to this section, and upon the~~
8 ~~written directive of the city manager, law enforcement officers of the Gainesville Police~~
9 ~~Department are authorized to act upon and enforce such orders.~~

10 ~~(d) — Where the city manager issues an order closing a structure or portion thereof, as defined in F.S. §~~
11 ~~810.011, or any piece, parcel, tract, or plot of land or portion thereof, pursuant to subsection (b)~~
12 ~~of this section, such closing shall be for such period as the city manager may direct, but in no~~
13 ~~event shall the closing be for a period of more than one (1) year from the posting of the order,~~
14 ~~pursuant to subsection (c) of this section. If the owner, lessor, lessee or mortgagee of record~~
15 ~~shall:~~

16 ~~(1) — File a bond in an amount determined by the city manager of which may not exceed the~~
17 ~~value of the property ordered to be closed, and~~

18 ~~(2) — Submit proof satisfactory to the city manager that the nuisance has been abated and will~~
19 ~~not be created, maintained or permitted for such period of time as the structure or portion~~
20 ~~thereof, as defined in F.S. § 810.011, or any piece, parcel, tract, or plot of land or portion~~
21 ~~thereof, has been directed to be closed by the order of the city manager, then the city~~
22 ~~manager may vacate the provisions of the order that direct the closing of the structure or~~

1 portion thereof, as defined in F.S. § 810.011, or any piece, parcel, tract, or plot of land or
2 portion thereof.

3 ~~(e) — A closing, directed by the city manager pursuant to this section shall not constitute an act of~~
4 ~~possession, ownership or control by the city of the closed location.~~

5 **Sec. 16-95. Penalty.**

6 ~~(a) — It shall be a misdemeanor for any person to use or occupy or to permit any other person to use or~~
7 ~~occupy any structure or portion thereof, as defined in F.S. § 810.011, or any piece parcel, tract or~~
8 ~~plot of land or portion thereof, ordered closed by the city manager. Mutilation or removal of a~~
9 ~~posted order of the city manager shall be punishable by a fine of five hundred dollars (\$500.00),~~
10 ~~or by imprisonment for a term not exceeding sixty (60) days, or both, as provided in section 1-9,~~
11 ~~Code of Ordinances, City of Gainesville, provided such order contains therein a notice of such~~
12 ~~penalty.~~

13 ~~(b) — Intentional disobedience or resistance to any provision of the orders issued by the city manager,~~
14 ~~pursuant to this section, in addition to any other punishment prescribed by law, shall be a~~
15 ~~misdemeanor punishable by a fine of five hundred dollars (\$500.00), or by imprisonment for a~~
16 ~~term not exceeding sixty (60) days, or both, as provided in section 1-9, Code of Ordinances, City~~
17 ~~of Gainesville.~~

18 **Sec. 16-96. Rules and regulations.**

19 ~~— The city commission shall adopt by resolution rules and regulations to carry out and give full~~
20 ~~effect to the provisions of this article. (Ord. No. 3479, § 1, 10-17-88).~~

21 **Sec. 16-92. Nuisance Abatement Board**

22 (a) Created; membership; compensation.

1 (1) The nuisance abatement board of the city is hereby created to serve as a quasi-judicial
2 forum in which controversies over the existence of public nuisances may be resolved in
3 the public interest with due process of law. This board shall consist of five persons.
4 Members of the Gainesville city commission shall serve ex officio as members of the
5 nuisance abatement board.

6 (2) Members shall serve without compensation but may be reimbursed for such travel,
7 mileage and per diem expenses as may be authorized by the city attorney.

8 **(b)** Organization; hearings; quorum; administrative staff support, board case files, documents; legal
9 counsel.

10 (1) The members of the board shall elect a chair who shall be a voting member from among
11 the members of the board. The member elected chair shall serve as chair for a term of
12 one year and may be re-elected to serve an additional term or terms as chair.

13 (2) The presence of three members shall constitute a quorum of the board. The affirmative
14 vote of at least three members shall be necessary to take action.

15 (3) The board is authorized to establish its own rules of procedure.

16 (4) The chair of the board may call hearings of the board. Hearings may also be called by
17 written notice signed by at least three members of the board. The clerk of the board may
18 also set hearing dates. Minutes shall be kept of all hearings and all hearings shall be open
19 to the public. The city commission, by and through the city attorney, shall budget and
20 appropriate necessary expenses which may be reasonably required by the board for the
21 proper performance of its duties.

22 (5) The clerk of the code enforcement board shall serve as clerk of the nuisance abatement
23 board. The clerk shall be the custodian of all board case files and documents pertaining

1 thereto and shall have the authority to certify other documents issued by the board; the
2 clerk shall adopt and use an official seal for this purpose; the clerk is also empowered to
3 administer oaths to witnesses appearing before said board, and to issue subpoenas in the
4 name of the board for service of process by any city police officer.

5 (6) The city attorney or designee shall serve as legal counsel to the board. The city manager
6 may retain special counsel to act as prosecutor and present cases before the board

7 **Sec. 16-93. Procedures.**

8 (a) Written complaint; reports.

9 (1) Any police officer making an arrest or substantiating an incident or occurrence of any
10 statutory violation(s) or violations of section(s) set forth herein or any public service aide
11 substantiating an incident or occurrence of a breach of any section(s) set forth herein and
12 pursuant to information or independent observation, shall submit a copy of every such
13 report and/or offense incident report to the chief of police or designee who shall process
14 all such reports and determine when the requisite number of occurrences or violation have
15 taken place as set forth in section 16-91.

16 (b) Processing; review of case.

17 (1) In each case where such determination has been made in accordance with subsection (a)
18 above, the case shall be processed through the office of the chief of police.

19 (2) The chief of police, when he or she believes that a public nuisance as defined in section
20 16.91 exists, shall request the clerk of the board to prepare a case folder for a complaint
21 and request a hearing before the board.

22 (c) Hearings; hearing notices.

1 (1) The clerk of the nuisance abatement board shall schedule the hearings and issue hearing
2 notices: (a) by sending written notice of the hearing to the owner and/or operator by
3 certified mail, return receipt requested or (b) by hand delivering the written notice to the
4 owner and/or operator of the premises at their last known address at least 15 calendar
5 days prior to the scheduled hearing. If an attempt to serve notice upon the owner(s)
6 and/or operators(s) by hand delivery or certified mail is unsuccessful, service of the notice
7 of the hearing may be made by posting as provided in § 162.12(2)(b), Fla. Stat., such
8 posting to take place not less than ten days before the scheduled hearing date. The owner
9 and/or operator shall be responsible for providing notice, to any tenant, lessee or lessor, of
10 the hearing.

11 (2) The notice of hearing shall include:

12 a. Statement of the time, place, and nature of the hearing;

13 b. Statement of the legal authority and jurisdiction under which the hearing is to be
14 held;

15 c. Reference to the particular sections of the statutes and/or ordinances involved; and

16 d. Short and plain statement of facts summarizing the incidents complained.

17 **Sec. 16-94. Conduct of Hearings.**

18 (a) The chief of police, or designee, or a prosecutor, shall present evidence before the board on
19 behalf of the city. All parties shall have an opportunity to present evidence and argument on all
20 issues involved, conduct cross examination, submit rebuttal evidence, and to be represented by
21 legal counsel.

22 (b) The board may consider any evidence, including evidence of the general reputation of the place
23 or premises. All testimony shall be given under oath and shall be recorded. Formal rules of

1 evidence shall not apply, but fundamental due process shall govern the proceedings. Orders of
2 the board shall be based upon competent and substantial evidence.

3 (c) The city shall have the burden of proving the existence of an unlawful public nuisance by the
4 greater weight of the evidence.

5 (d) If the alleged violator(s) has been properly noticed in regard to the hearing before the board and
6 fails to appear, the board may proceed with a hearing in absentia on the merits of the alleged
7 violation. Any findings or orders resulting from such hearing are valid and binding upon the
8 owner and/or operator.

9 **Sec. 16-95. Post hearing.**

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

13 (b) Upon finding that an unlawful public nuisance does exist the board shall enter an order as
14 follows:

15 (1) Require the owner and/or operator of such place or premises to adopt such procedure as
16 may be appropriate under the circumstances to abate any such nuisance;

17 (2) Discontinue the nuisance;

18 (3) Close the place or premises, or any part thereof; or

19 (4) Prohibit the conduct, operation, or maintenance of any business or activity on the
20 premises, and/or business or activity which is conducive to the maintenance of such nuisance which
21 prohibition may include the suspension or revocation of any city occupational license issued or renewed
22 pursuant to the provisions of chapter 25 of this Code of Ordinances.

23 (5) The board may order any combination of subsections (b)(1), (2), (3) or (4).

1 (c) In addition to the actions provided in subsection (b) above, the board may assess fines not to
2 exceed \$250 per day, and for recurring public nuisances fines not to exceed \$500 per day. The
3 order assessing fines shall be recorded in the public records of the county and shall become a lien
4 against the real property that is the subject of the order. The total fines imposed pursuant to this
5 section shall not exceed \$7,500. The city attorney is authorized to foreclose on the property
6 subject to the lien and recovery of all costs, including reasonable attorney fees, associated with
7 the recording of the order and foreclosure. No lien created pursuant to this section may be
8 foreclosed on real property which is a homestead under sec. 4, article X of the State Constitution.

9 (d) In the event that the board declares a place or premises to be a nuisance and issues an order
10 pursuant to subsection 16-95(b) or (c) above, the board shall assess against the owner of the place
11 or premises the cost which the city has incurred in the preparation, investigation and presentation
12 of the case. These costs shall be due and payable ten days after the written order of the board has
13 been filed. A certified copy of an order imposing costs may be recorded in the public records and
14 thereafter shall constitute a lien against the land on which the violation exists or, if the violator
15 does not own the land, upon any other real or personal property, owned by the violator; and it
16 may be enforced in the same manner as a court judgment by the sheriffs of this state including
17 levy against the personal property, but shall not be deemed to be a court judgment except for
18 enforcement purposes. After one year from the filing of any such lien which remains unpaid, the
19 city may foreclose or otherwise execute on the lien. Interest shall accrue on the unpaid costs at
20 the legal rate of interest set forth in. § 55.03, Fla. Stat., as may be amended from time to time.

21 (e) An order entered pursuant to subsection (b) shall expire after one year or at such earlier time as
22 stated in the order. The board may retain jurisdiction to modify the orders prior to the expiration
23 of the orders, where just cause is found to exist.

1 (f) The board may recommend that the city file a complaint under § 60.05, Fla. Stat., seeking
2 temporary and permanent injunctive relief against any nuisance described herein.

3 **Sec. 16-96. Enforcement of orders.**

4 (a) The city attorney is authorized to initiate proceedings in the circuit court for willful disobedience
5 or failure to comply with any order of the board.

6 (b) Further, the city attorney is authorized to initiate proceedings in any county, state or federal
7 forum for the suspension or revocation of any permits, licenses, concessions or contracts held or
8 awarded to the violator including contracts awarded under § 24.112, Fla. Stat., (lottery retailers)
9 and including licenses for the sale of beverages issued under §561.19, Fla. Stat., where the
10 existence of such permits licenses, concessions or contracts is conducive to the maintenance of
11 such nuisance.

12 (c) Orders of the nuisance abatement board issued pursuant to this chapter shall be posted at the
13 place, building, or premises where the public nuisance exists, existed or is occurring, in violation
14 of the law and shall be sent by certified mail to the owner of record and/or operator of such place
15 building, or premises within two business days of the posting.

16 **Sec. 16-97. Appeals.**

17 An aggrieved party, including the city, may appeal a final order of the nuisance abatement board
18 to the circuit court. Such an appeal shall not be a hearing *de novo* but shall be limited to appellate
19 review of the record created before the nuisance abatement board. An appeal shall be filed within 30
20 days of the date of the written order being appealed.

21 **Sec. 16-98. Article Construction.**

1 All powers and rights conferred by this article shall be in addition to and supplemental to those
2 conferred by any other general or special laws governing public nuisances and shall be liberally
3 construed to effectuate the purpose of this article.

4 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of this Ordinance
5 shall become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and that
6 the Sections and Paragraphs of this Ordinance may be renumbered or relettered in order to accomplish
7 such intentions.

8 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or
9 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the
10 validity of the remaining portions of this ordinance.

11 **Section 4.** All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict,
12 hereby repealed.

1 **Section 5.** This ordinance shall be effective immediately upon final adoption.

2 **PASSED AND ADOPTED** this 13th day of March, 2000.

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PAULA M. DeLANEY
MAYOR

9 ATTEST:

Approved as to form and legality

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13 KURT M. LANNON
14 CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY **MAR 14 2000**

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16 This Ordinance passed on first reading this 28th day of February, 2000.

17 This Ordinance passed on second reading this 13th day of March, 2000.