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ORDINANCE _____
0-00-51

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4 An ordinance of the City of Gainesville, Florida, amending
5 Chapter 16, Article V entitled Public Nuisance Abatement;
6 amending, creating and renumbering 16-91 through 16-99.3
7 inclusive of the Code of Ordinances; establishing a purpose and
8 intent; defining statutory authority, providing definitions;
9 appointing the code enforcement board members as ex officio
10 members of the nuisance abatement board; modifying remedies
11 and fines; requiring city commission approval before closure
12 order is final; providing for appeal; providing directions to the
13 codifier; providing a severability clause; providing a repealing
14 clause; and providing an immediate effective date.
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17 **WHEREAS**, at the meetings on August 6, 2001, and September 17, 2001, the
18 Community Development Committee discussed revisions to the Nuisance Abatement Ordinance
19 and on November 5, 2001 the Community Development Committee, after input from citizens,
20 requested the City Attorney's Office to draft an ordinance amending the Nuisance Abatement
21 Ordinance for presentation to the City Commission.

22 **WHEREAS**, at least 10 days notice has been given once prior to adoption by publication
23 in a newspaper of general circulation notifying the public of this proposed ordinance and or a
24 Public Hearing in the City Commission Auditorium in City Hall, City of Gainesville; and

25 **WHEREAS**, a Public Hearing was held pursuant to the published notice described at
26 which hearing the parties in interest and all others had an opportunity to be and were, in fact,
27 heard;

28 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
29 **CITY OF GAINESVILLE, FLORIDA:**

30 **Section 1.** Sections 16-91 through 16-94 of the Code of Ordinances of the City of
31 Gainesville are repealed in their entirety, and new Sections 16-91 through 16-94 inclusive are

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1 created and added to the Code of Ordinances, existing Sections 16-95 through 16-98 inclusive
2 are renumbered and amended, and new sections 16-99 through 16-99.3 are created and added to
3 the Code of Ordinances to read:

4 ARTICLE V. PUBLIC NUISANCE ABATEMENT

5 ~~Sec. 16-91. Declaration of public nuisance.~~

6 ~~For the purpose of this article the following are declared to be public nuisances:~~

7 ~~(1) Any structure or portion thereof, as defined in F.S. § 810.011, or any piece, parcel,~~
8 ~~tract, or plot of land or portion thereof, where violations of any of the provisions of F.S. Ch. 893,~~
9 ~~(Florida Comprehensive Drug Abuse Prevention and Control Act), F.S. § 817.563 (Sale of~~
10 ~~substances in lieu of controlled substances named in Chapter 893, Fla. Stat.), F.S. § 817.564~~
11 ~~(imitation controlled substances), any federal narcotic law, or conspiracy to violate any federal~~
12 ~~narcotic law are occurring or have occurred; and where two or more violations of such state or~~
13 ~~federal provisions have resulted in two or more criminal convictions arising out of separate~~
14 ~~incidents, within a six-month period of time prior to the commencement of a proceeding in~~
15 ~~accordance with this article. It shall be prima facie evidence that violations are occurring where~~
16 ~~an arrest for a violation of any of the provisions of F.S. Ch. 893, or any federal narcotics law, or~~
17 ~~conspiracy to violate any federal narcotics law, has been made within 30 days prior to the~~
18 ~~issuance of notice in accordance with this article.~~

19 ~~(2) Any structure or portion thereof, as defined in F.S. § 810.011, or any piece, parcel,~~
20 ~~tract, or plot of land or portion thereof, where violations of any of the unlawful activities set~~
21 ~~forth in F.S. Ch. 796, (Prostitution) are occurring, and where two or more criminal convictions~~
22 ~~arising out of separate incidents, have occurred within a six-month period of time, prior to the~~
23 ~~commencement of a proceeding, in accordance with this article. It shall be prima facie evidence~~

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1 ~~that violations are occurring where an arrest for a violation of any of the unlawful activities set~~
2 ~~forth in F.S. Ch. 796, has been made within 30 days, prior to the issuance of notice, in~~
3 ~~accordance with this article.~~

4 ~~(3) Any structure or portion thereof, as defined in F.S. § 810.011, or any piece, parcel,~~
5 ~~tract, or plot of land or portion thereof, where violations of any of the unlawful activities set~~
6 ~~forth in F.S. Ch. 849 (Gambling) are occurring, and where two or more criminal convictions~~
7 ~~arising out of separate incidents, have occurred within a six-month period of time, prior to the~~
8 ~~commencement of a proceeding in accordance with this article. It shall be prima facie evidence~~
9 ~~that violations are occurring where an arrest for a violation of any of the unlawful activities set~~
10 ~~forth in F.S. Ch. 849 has been made within 30 days, prior to the issuance of notice in accordance~~
11 ~~with this article.~~

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

14 **Sec. 16-91. Purpose and intent.**

15 It is the intent of this ordinance to promote, protect, and improve the health, safety, and welfare
16 of the citizens of the City of Gainesville by creating an administrative board with authority to
17 impose administrative fines and other non-criminal penalties to provide an equitable,
18 expeditious, effective, and inexpensive method of abating drug, prostitution, criminal street gang
19 and stolen property related nuisances.

20 **Sec. 16-92. Statutory authority.**

21 (a) This ordinance is enacted pursuant to F.S. § 893.138. The provisions of F.S. § 893.138,
22 as they may be amended from time to time, and any other applicable general law shall govern

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1 the administration of the nuisance abatement board and any activities pertaining to nuisance
2 abatement that are governed by the ordinance.

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4 (b) If any portion of this ordinance is inconsistent with any existing or future general law, the
5 provisions of general law shall govern and shall supersede this article to the extent of the
6 inconsistency.

7 Sec. 16-93. Definitions.

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

10 *Complainant* shall mean the City of Gainesville.

11 A complaint may be filed with the city by a resident of the city or any occupant of real property
12 within the city who is aggrieved by an alleged nuisance.

13 *Controlled substance* shall have the same meaning as stated in F.S. §§ 893.02 and 893.138 and
14 any other applicable provision of general law, as may be amended from time to time. Further, as
15 used in this section, “*controlled substance*” includes any substance sold in lieu of a controlled
16 substance in violation of § 817.563 or any imitation controlled substance defined in §817.564.

17 *Nuisance abatement board* shall mean the Gainesville Nuisance Abatement Board which is also
18 referred to herein as “board”.

19 *Operator* shall mean the person operating a place or premises subject to this article.

20 *Owner* shall mean the owner of the place or premises that is alleged to be a public nuisance. In
21 cases where the owner and the operator are the same person, the terms “owner” and “operator”
22 are used interchangeably.

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1 Place or premises shall mean the land and its appurtenances, structures and fixtures thereon, as
2 such land is described or contained in a deed or instrument of conveyance and recorded in the
3 official Records of Alachua County.

4 Public nuisance shall mean the conduct described in Section 16-94 of the article

5 Recurring public nuisance shall mean a second or other additional occurrence of a public
6 nuisance during the effective term of an order entered by the nuisance abatement board.

7 **Sec. 16-94. Declaration of public nuisance.**

8 For the purpose of this article the following are declared to be public nuisances:

9 Any structure or portion thereof, as defined in F.S. § 810.011, or any piece, parcel, tract, or plot
10 of land or portion thereof, which has been used:

11 (1) On more than two occasions within a six month period as the site of the unlawful
12 sale, delivery, manufacture, or cultivation of any controlled substance. It shall be prima facie
13 evidence that violations are occurring where an arrest for a violation of any of the provisions of
14 F.S. Ch. 893, or any federal narcotics law has been made within 30 days, prior to the issuance of
15 notice, in accordance with this article:

16 (2) On one occasion as the site of the unlawful possession of a controlled substance,
17 where such possession constitutes a felony and that has been previously used on more that one
18 occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled
19 substance;

20 (3) On more than two occasions within a six month period as the site of a violation of
21 F.S. Ch. 796, relating to prostitution and prostitution related activity. It shall be prima facie
22 evidence that violations are occurring where an arrest for a violation of any of the unlawful

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1 activities set forth in F.S. Ch. 796, has been made within 30 days, prior to the issuance of notice,
2 in accordance with this article:

3 (4) On more than two occasions within a six month period by a criminal street gang
4 for the purpose of conducting a pattern of criminal street gang activity as defined by F.S. §
5 874.03; and

6 (5) On more than two occasions within a six month period as the site of a violation of
7 F.S. § 812.019 relating to dealing in stolen property.

8 **Sec. 16-~~9295~~. Nuisance abatement board.**

9 ~~(a) Created; membership; compensation.~~

10 (a) ~~(1)~~ The nuisance abatement board of the city is hereby created to serve as a quasi-
11 judicial forum in which controversies over the existence of public nuisances may be resolved in
12 the public interest with due process of law. ~~This board shall consist of five persons.~~ Members of
13 the ~~city commission~~ code enforcement board shall serve ex officio as members of the nuisance
14 abatement board.

15 (b) Each member of the code enforcement board shall be a member of the nuisance
16 abatement board during his or her term of office. ~~(2)~~ Members shall serve without
17 compensation but may be reimbursed for such travel, mileage and per diem expenses as may be
18 authorized by the city attorney, subject to funds budgeted and appropriated.

19 ~~(b) (c) Organization; hearings; quorum; administrative staff support, board case files,~~
20 ~~documents; legal counsel.~~

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

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

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

5 (4) The chair of the board may call hearings of the board. Hearings may also be called
6 by written notice signed by at least ~~three~~ four members of the board. The clerk of the board may
7 also set hearing dates. Minutes shall be kept of all hearings and all hearings shall be open to the
8 public. The city commission, by and through the city attorney, shall budget and appropriate
9 necessary expenses ~~which~~ that may be reasonably required by the board for the proper
10 performance of its duties.

11 (5) The clerk of the code enforcement board shall serve as clerk of the nuisance
12 abatement board. The clerk shall be the custodian of all board case files and documents
13 pertaining thereto and shall have the authority to certify other documents issued by the board;
14 the clerk shall adopt and use an official seal for this purpose; the clerk is also empowered to
15 administer oaths to witnesses appearing before said board, and to issue subpoenas in the name of
16 the board for service of process by any city police officer.

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

20 **Sec. 16-9396. Procedures.**

21 (a) Written complaint; reports.

22 (1) Any police officer making an arrest or substantiating an incident or occurrence of
23 any statutory violation(s) or violations of section(s) set forth herein or any public service aide

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1 substantiating an incident or occurrence of a breach of any section(s) set forth herein and
2 pursuant to information or independent observation, shall submit a copy of every such report
3 and/or offense incident report to the chief of police or designee who shall process all such reports
4 and determine when the requisite number of occurrences or violation have taken place as set
5 forth in section 16-~~91~~94.

6 (b) Processing; review of case.

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

9 (2) The chief of police, when he or she believes that a public nuisance as defined in
10 section 16-~~91~~94 exists, shall request the clerk of the board to prepare a case folder for a
11 complaint and request a hearing before the board.

12 (c) Hearings; hearing notices.

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

22 (2) The notice of hearing shall include:

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

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- 1 b. Statement of the legal authority and jurisdiction under which the hearing is to
2 be held;
- 3 c. Reference to the particular sections of the statutes and/or ordinances
4 involved; and
- 5 d. Short and plain statement of facts summarizing the incidents complained.

6 **Sec. 16-9497. Conduct of hearings.**

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

11 (b) The board may consider any evidence, including evidence of the general reputation of the
12 place or premises. All testimony shall be given under oath and shall be recorded. Formal rules of
13 evidence shall not apply, but fundamental due process shall govern the proceedings. Orders of
14 the board shall be based upon competent and substantial evidence.

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

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

21 **Sec. 16-9598. Post-hearing Orders.**

22 (a) At the conclusion of the hearing and after considering all evidence presented at such
23 hearing, the board is authorized to issue findings of fact based upon the evidence presented and

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1 made part of the record that a public nuisance does not exist or that an unlawful public nuisance
2 does exist.

3 (b) Upon finding that an unlawful public nuisance does exist the board shall enter an order as
4 follows: requiring the owner of such place or premises to adopt such procedure as may be
5 appropriate under the circumstances to abate any such nuisance or it may enter an order
6 immediately prohibiting:

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

10 (2) ~~(1) Discontinue the~~ The maintaining of the nuisance;

11 (3) ~~(2) The operating or maintaining of the place or premises, including the closure of~~
12 ~~Close the place or premises, or any part thereof; or~~

13 (4) ~~(3) Prohibit the~~ The conduct, operation, or maintenance of any business or activity on
14 the premises, and/or business or activity which is conducive to the maintenance of
15 such nuisance, which prohibition may include the suspension or of any Any city
16 occupational license tax certificate issued or renewed pursuant to the provisions of
17 Chapter 25 of this Code of Ordinances- shall not operate as authority to conduct
18 business during any period in which the conduct of any business or business activity
19 is prohibited.

20 (4) The board may order any combination of subsections (b)(1), (2) or (3) ~~or (4)~~, but
21 shall endeavor to use the least restrictive method believed necessary to abate the
22 nuisance.

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1 (e)(c) An order entered pursuant to ~~subsection (b)~~ § 16-98 shall expire after one year or at such
2 earlier time as stated in the order. The board may retain jurisdiction to modify the orders prior to
3 the expiration of the orders, where just cause is found to exist.

4 (d) Before the board can order the closure of a place or premises or any part thereof, the
5 board must make a factual finding:

6 (1) That the respondent did not abate the nuisance after being ordered by the nuisance
7 abatement board to do so; or

8 (2) That the respondent did not substantially comply with an appropriate order issued
9 by the nuisance abatement board; or

10 (3) That the respondent continued to maintain an ongoing nuisance; or

11 (4) That closure is the only effective option in eradicating the nuisance.

12 Such finding is to be supported by a written order setting forth the factual bases for this
13 determination.

14 (e) A nuisance shall be deemed to be or have been abated when the board finds by a
15 preponderance of the evidence that the causes of the nuisance have been eliminated or

16 suppressed to such a degree that an additional predicate violation as set forth in subsections 16-
17 94 is not likely to reoccur.

18 Sec. 16-99. Administrative fines; costs and liens

19 (e)(a) In addition to the actions provided in subsection (b) above, the board may assess fines
20 not to exceed \$250.00 per day, and for recurring public nuisances fines not to exceed \$500.00
21 per day. The order assessing fines shall be recorded in the public records of the county and shall
22 become a lien against the real property that is the subject of the order. The total fines imposed

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1 pursuant to this section shall not exceed ~~\$7,500.00~~ \$15,000. In determining the amount of the
2 fine, if any, the nuisance abatement board shall consider the following factors:

3 (1) The gravity of the public nuisance;

4 (2) Any actions taken by the owner to correct the public nuisance: and

5 (3) Any previous public nuisance created, maintained or otherwise occurring in or on
6 the premises.

7 The city attorney is authorized to foreclose on the property subject to the lien and recovery of all
8 costs, including reasonable attorney fees, associated with the recording of the order and
9 foreclosure. No lien created pursuant to this section may be foreclosed on real property which is
10 a homestead under section 4, article X of the State Constitution.

11 ~~(d)~~(b) In the event that the board declares a place or premises to be a nuisance and issues an
12 order pursuant to subsection ~~16-95(b)~~ or (e) 16-98 above, the board shall assess against the
13 owner of the place or premises the cost which the city has incurred in the preparation,
14 investigation and presentation of the case, including reasonable attorney fees. These costs shall
15 be due and payable ten days after the written order of the board has been filed. A certified copy
16 of an order imposing costs may be recorded in the public records and thereafter shall constitute a
17 lien against the land on which the violation exists or, if the violator does not own the land, upon
18 any other real or personal property, owned by the violator; and it may be enforced in the same
19 manner as a court judgment by the sheriffs of this state including levy against the personal
20 property, but shall not be deemed to be a court judgment except for enforcement purposes. After
21 one year from the filing of any such lien which remains unpaid, the city may foreclose or
22 otherwise execute on the lien. Interest shall accrue on the unpaid costs at the legal rate of interest
23 set forth in. F.S. § 55.03, as may be amended from time to time.

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

3 **Sec. ~~16-96~~ 16-99.1. Enforcement of orders.**

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

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

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

16 **Sec. ~~16-9799.2~~. Appeals.**

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

21 Notwithstanding the foregoing, if the nuisance abatement board orders the closing of a place or
22 premises, or any part thereof, such order may be appealed to the city commission by the city
23 manager or designee or the owners or operators of the premises within 10 days of the rendition

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1 of the order by the nuisance abatement board prior to the order becoming a final administrative
2 order of the nuisance abatement board. The appeal to the city commission shall not be a de-novo
3 review but a review based upon the record of the board. The commission may hear oral
4 argument upon majority vote of the commission.

5 **Sec. 16-9899.3. Article construction.**

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

9 Nothing contained in this ordinance shall prohibit the City of Gainesville from abating such
10 public nuisances by any other means.

11 This subsection does not restrict the right of any person to proceed under F.S. § 60.05 against
12 any public nuisance.

13 **Section 2.** If any section, sentence, clause or phrase of this ordinance is held to be
14 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no
15 way affect the validity of the remaining portions of this ordinance.

16 **Section 3.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
17 such conflict hereby repealed.

18 **Section 4.** This ordinance shall become effective immediately upon adoption.
19

20 **PASSED AND ADOPTED** this _____ day of _____ 2002.

21
22 _____
23 THOMAS D. BUSSING
24 MAYOR
25
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1 ATTEST

APPROVED AS TO FORM AND LEGALITY

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KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

This Ordinance passed on first reading this _____ day of _____, 2002.

This Ordinance passed on second reading this _____ day of _____, 2002.