

EXHIBIT 1

ORDINANCE NO.

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION
OF THE CITY OF HALLANDALE BEACH, FLORIDA,
AMENDING CHAPTER 15, "PUBLIC NUISANCE
ABATEMENT," REVISING THE PROCESS FOR FILING
COMPLAINT, PROCEDURES FOR HEARING AND OTHER
UPDATES; AND PROVIDING FOR SEVERABILITY,
CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, Florida Statutes Sec. 893.138 provides for a local administrative process to abate certain criminal related public nuisances; and

WHEREAS, the City wishes to revise the existing nuisance abatement structure to provide for more active monitoring and use of enforcement tools with respect to properties that may be subject to the public nuisance provisions; and

WHEREAS, it is in the best interests of the health, safety and welfare of the residents of the City that action be taken to prevent ongoing behaviors that impact the community; and

WHEREAS, the Mayor and City Commission have determined that the amendments are within the police power of the City to enact and are otherwise in the best interests of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. **Incorporation of Recitals.** The foregoing "Whereas" clauses are confirmed as true and incorporated herein.

SECTION 2. **Text Amendment to Regulations** Chapter 15, "Public Nuisance Abatement", of the Code is amended as follows:

Chapter 15 PUBLIC NUISANCE ABATEMENT

~~ARTICLE I. GENERAL PROVISIONS~~

Sec. 15-1. Intent.

- (a) It is the intent of this ~~article-chapter~~ to promote, protect, and improve the health, safety, and welfare of the citizens of the City of Hallandale Beach through an administrative

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nuisance abatement board with authority to impose administrative fines and other non-criminal penalties to abate specified public nuisances within the city.

(b) Jurisdiction and powers. The nuisance abatement board as created in chapter 2, article III, division 6 shall have the powers as delineated in this ~~article~~chapter, F.S. § 893.138 and Florida law which shall include, but not be limited to, the following:

(1) Adopt rules of procedure for the administration and conduct of its hearings. Such rules shall not be inconsistent with state or local law.

(2) Jurisdiction to hear and decide complaints alleging that a place or premises constitutes a public nuisance pursuant to the terms and procedures in this ~~article~~chapter.

(3) The power to subpoena respondents, witnesses and evidence, records and other material relevant to the proceedings and take testimony under oath. Subpoenas may be served by the city police department or by such other person provided by law.

(4) Issue orders having the force and effect of law, which include, but are not limited to, the prohibition, enjoinder or abatement of public nuisances, including the establishment and levy of fines.

(c) All powers and rights conferred by this chapter 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. Nothing contained in this chapter shall prohibit the City from abating such public nuisances by any other means.

Sec. 15-2. Definitions.

The following words, terms and phrases, when used in this ~~article~~chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning. Terms not defined herein shall be read in accordance with their definitions and use in Florida Statutes relating to public nuisances:

~~Complainant shall mean the City of Hallandale Beach.~~

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

Nuisance abatement board shall mean the City of Hallandale Beach Nuisance Abatement Board which is also referred to herein as "board."

Operator or occupant shall mean the person operating or occupying a place or premises subject to this ~~article~~chapter.

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Owner shall mean the record owner of the place or premises that is the site of a public nuisance. In cases where the owner and the operator are the same person, the terms "owner" and "operator" are used interchangeably.

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

~~Prostitution shall have the same meaning as stated in F.S. § 796.07, as may be amended, means the giving or receiving of the body for sexual activity for hire, but excludes sexual activity between spouses.~~

Public nuisance shall mean the conduct described in ~~section 15-3 of this article and~~ Florida Statutes as the basis for a declaration of public nuisance, as they may be renumbered or amended from time to time, and other relevant provisions of Florida law. Generally, but not limited to, a public nuisance shall mean any place or premises which has been the site on more than two occasions within a six-month period:

- (1) The unlawful sale or delivery of controlled substances as defined by law; or
- (2) A youth and street gang for the purpose of conducting a pattern of youth and street gang activity as defined by law; or
- (3) Prostitution, or solicitation of prostitution as defined by law; or
- (4) Illegal gambling as defined by law; or
- (5) Murder; or
- (6) Attempted felony murder; or
- (7) Aggravated battery with a deadly weapon; or
- (8) Aggravated assault with a deadly weapon without intent to kill; or
- (9) Declared to be a nuisance under F.S. §§ 823.05 or 823.10, as they may be renumbered or amended from time to time.

~~Recurring public nuisance shall mean a single or multiple instance of conduct described in section 15-3 of this article occurring during the effective term of a previous order entered by the nuisance abatement board.~~

~~ARTICLE II. ABATEMENT OF PUBLIC NUISANCES~~

Sec. 15-3. Declaration of public nuisance.

- (a) Conduct described in Florida Statutes, as may be amended, and other applicable Florida law as the basis for a declaration of public nuisance shall constitute a public nuisance pursuant to this City Code and be subject to abatement pursuant to this chapter. ~~For the purpose of this article the following are declared to be public nuisances~~

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and may be abated pursuant to the procedures provided in section 15-6. Any place or premises that has been used:

(1) ~~On more than two occasions within a six-month period as the site of a violation of F.S. ch. 796, relating to prostitution and prostitution related activity. It shall be prima facie evidence that violations are occurring where an arrest for a violation of any of the unlawful activities set forth in F.S. ch. 796, has been made within 30 days, prior to the issuance of notice, in accordance with this article;~~

(2) ~~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. It shall be prima facie evidence that violations are occurring where an arrest for a violation of any of the provisions of F.S. ch. 893, or any federal narcotics law has been made within 30 days, prior to the issuance of notice, in accordance with this article;~~

(3) ~~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 as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;~~

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

(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.~~

(b) ~~Any pain management clinic, as described in F.S. §§ 458.3265 or 459.0137, as may be amended, which has been used on more than two occasions within a six-month period as the site of violation of:~~

(1) ~~F.S. §§ 784.011, 784.021, 784.03, or 784.045, relating to assault and battery;~~

(2) ~~F.S. § 810.01, relating to burglary;~~

(3) ~~F.S. § 812.014, relating to dealing in theft;~~

(4) ~~F.S. § 812.131, relating to robbery by sudden snatching; or~~

(5) ~~F.S. § 893.13, relating to the unlawful distribution of controlled substances;~~

~~may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this article.~~

(c) ~~Any place or premises under Florida law defined as a public nuisance.~~

Sec. 15-4. Initiation of proceedings.

(a) The city may bring a complaint before the board alleging a nuisance as that term is defined in section 15-3. A complaint brought by the city before the board shall contain sufficient facts to identify the precise nature of the alleged nuisance. The board shall provide not less than three days' written notice of such complaint to the owner of the place or premises complained against, at the last known address of the

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owner. The written notice shall be served on the owner by certified mail, return receipt requested; by personal service through a process server; or by hand delivery. If service upon the owner is unsuccessful, service of the written notice may be made by posting as provided in F.S. ch. 162, such posting to take place no less than ten days before the scheduled hearing date. The written notice shall include the date, time and place of the public hearing on the complaint and brief description of the facts alleged to constitute a nuisance. Any police officer making an arrest or substantiating an incident or occurrence of any statutory violation(s) or violations which may form the basis for a finding of public nuisance or any public service aide substantiating an incident or occurrence of a breach of the same, and pursuant to information or independent observation, shall submit a copy of every such report and/or offense incident report to the chief of police or designee who shall process all such reports and determine when the requisite number of occurrences or violation have taken place as set forth herein.

(1) In each case where the chief of police makes the determination that there is a reasonable basis for the finding of a public nuisance, the chief shall provide written notice by certified mail to the owner of the property by certified mail at the owner's last known address at least three (3) days prior proceeding pursuant to this section.

(2) After providing the requisite notice, the chief of police shall file a complaint with the city clerk to convene a hearing of the Board.

(b) Alternatively, any employee, officer or resident of the city may file a complaint with the chief of police or designee with regard to a public nuisance. No member of the board may file a complaint.

(1) Each complainant must provide written notice of his complaint to the owner of the property by certified mail at the owner's last known address at least three (3) days prior to the filing of the complaint.

(2) Any complaint filed shall specify the date of each unlawful activity alleged and the nature of the evidence the complainant will introduce to prove that such unlawful activity occurred. The police department shall provide the owner of the place or premises and any operator or occupant identified in the complaint written notice of the complaint at the last known address not later than ten (10) calendar days after the complaint is filed. Such notice shall advise each owner, operator, and occupant of his or her procedural rights and obligations under this Ordinance.

(3) The police department, in consultation with the city attorney, shall investigate all complaints made pursuant to this subsection to determine whether such property potentially constitutes a public nuisance and whether to refer such property to the Board by filing the complaint with the city clerk. A complaint determined by the chief of police to be unsubstantiated will not be filed for consideration of the board. All final determinations regarding citizen

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191 complaints shall be communicated to the complainant by the police
192 department.

193 (c) Upon receipt of a complaint, the clerk shall schedule a hearing of the board. The
194 clerk shall give written notice of every hearing by certified mail or hand delivery to
195 the owner(s) and operator(s) at the last known addresses at least fifteen (15) days
196 prior to the scheduled hearing. If an attempt to reach an owner or operator by
197 certified mail or hand delivery is unsuccessful, notice of the hearing may be by
198 publication as provided in Florida Statutes, Chapter 49. Notice shall include the
199 following:

200 (1) The time, date, place and nature of the hearing;

201 (2) A reference to the City Nuisance Abatement Ordinance;

202 (3) A short and plain statement summarizing the incidents which form the basis
203 of the complaint;

204 (4) A statement that "failure to attend may result in an order being issued
205 adverse to your interests";

206 (5) A statement that all parties may be represented by counsel;

207 (6) A statement that all parties shall be given an opportunity to present evidence
208 in support of their position, submit rebuttal evidence, and conduct cross-
209 examination; and

210 (7) A conspicuous statement reflecting the requirements of Florida Statutes,
211 Chapter 286, that a person deciding to appeal any decision of the board is
212 responsible for the making of a verbatim record of the proceedings.

213 **Sec. 15-5. Hearing procedures.**

214 (a) The hearing before the board shall be a public hearing. To the maximum extent
215 practicable, the hearings shall be informal and formal rules of evidence shall not apply.
216 All testimony shall be given under oath and shall be recorded. The hearings shall be
217 conducted in such a manner that fundamental due process is ensured.

218 (b) The board shall consider any and all evidence presented, including the general
219 reputation of the place or premises, which shall be admissible. All parties shall have an
220 opportunity to present evidence and argument, conduct cross examination, submit
221 rebuttal evidence, and to be represented by legal counsel.

222 (c) The city shall have the burden of proving the existence of an unlawful public nuisance
223 by preponderance of the evidence.

224 (d) ~~The lack of knowledge of or nonparticipation in the conduct of a public nuisance on the~~
225 ~~part of the owner or occupant shall not be a defense.~~

226 (e) The board shall act upon each complaint by motion and vote. A place or premises shall
227 be declared a public nuisance by a majority vote of the board present. ~~All findings of~~
228 ~~the board shall be based upon the standard of a preponderance of the evidence.~~
229 Orders of the board shall be based upon competent and substantial evidence.

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(f) ~~(e)~~ The board may ~~hold the public~~ proceed with the hearing on a complaint ~~although in the absence of the owner of the place or premises complained against is absent from the hearing~~ so long as the owner has ~~received~~ been provided notice of the hearing as required herein pursuant to section 15-4. Any findings or orders resulting from such hearing are valid and binding upon the owner and/or occupant.

~~(g) At the conclusion of the public hearing, the board may take any action provided for in section 15-6.~~

Sec. 15-6. Penalties.

(a) If the board declares a place or premises a public nuisance ~~after a public hearing~~, the board ~~may~~ shall enter an order requiring the owner of such place or premise to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance. ~~including, but not limited to:~~ The board shall endeavor to use the least restrictive method believed necessary to abate the nuisance.

~~(1) An order immediately prohibiting:~~

~~a. The maintaining of the nuisance;~~

~~b. The operating or maintaining of the place or premises, including the closure of the place or premises, or any part thereof;~~

~~c. The conduct, operation, or maintenance of any business or activity which is conducive to the maintenance of such nuisance. Any city business tax receipt issued or renewed pursuant to the provisions of chapter 18 of this Code shall not operate as authority to conduct business during any period in which the conduct of any business or business activity is prohibited.~~

(1) If the chief of police believes that the nuisance persists and has not been abated after issuance of the order, the city may request a second hearing which shall be scheduled and noticed by the clerk in the same manner as the first hearing.

(2) After a second hearing, the board may order any additional procedures or restrictions as permitted by law. However, before the board can order the closure of a place or premises or any part thereof, the board must make a factual finding by a standard of clear and convincing evidence that:

a. The respondent did not abate the nuisance after being ordered by the board to do so;

b. The respondent did not substantially comply with an appropriate order issued by the board;

c. The respondent continued to maintain an ongoing nuisance; or

d. Closure is the only effective option in eradicating the nuisance. Such finding is to be supported by a written order setting forth the factual bases for this determination.

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268 ~~(2) An order immediately requiring:~~

- 269 a. ~~Potential tenants to complete a written rental application utilizing a form~~
270 ~~adopted by the board;~~
- 271 b. ~~The owner to verify information provided in written rental application form;~~
- 272 c. ~~The owner to conduct a criminal records check on each prospective tenant;~~
- 273 d. ~~The owner to verify the identity of applicant(s) through Florida Driver's~~
274 ~~License, Florida Identity Card, or other comparable form of identification.~~
- 275 e. ~~The owner to establish rules of conduct relating to certain activity within the~~
276 ~~rental unit, curtilage or common areas, violation of which shall be grounds for~~
277 ~~eviction;~~
- 278 f. ~~The owner of the premises to maintain and operate the premises in~~
279 ~~compliance with all applicable city and county ordinances and Florida law;~~
- 280 g. ~~The owner to attend meetings of an appropriate neighborhood or association;~~
- 281 h. ~~The owner to permit a Crime Prevention Through Environmental Design~~
282 ~~(C.P.T.E.D.) study to be made of the premises and to implement~~
283 ~~recommendations reasonably related to eliminating factors conducive to~~
284 ~~criminal conduct; or~~
- 285 i. ~~The owner to take any other reasonable action to abate the nuisance in a~~
286 ~~particular case.~~

287 ~~(3) An order immediately implementing:~~

288 ~~Any other procedure(s) that the board deems appropriate to abate the nuisance in~~
289 ~~a particular case.~~

- 290 (b) In addition to any procedure mandated by order of the board, ~~penalty or other sanction~~
291 ~~imposed by this article~~, the board may enter a ~~an~~ separate order:

- 292 (1) Imposing a fine not to exceed \$250.00 per day for each day conduct occurred
293 upon which the board based its findings of a public nuisance;
- 294 (2) Imposing a fine not to exceed \$500.00 per day for recurring public nuisance
295 conduct occurring on the premises;
- 296 (3) Imposing a fine not to exceed \$100.00 per day for each day the owner of the
297 premises fails to comply with an order of the board; or
- 298 (4) Requiring the owner of the premises to pay the reasonable costs including
299 attorney's fees associated with the investigation of, and hearings on public
300 nuisances and recording of orders.

- 301 (c) An order mandating conduct or procedure issued by the board shall expire after one
302 year or at such earlier time as stated in the order. This expiration shall not apply to
303 orders or those portions of orders imposing fines and costs.

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- (d) Any order declaring a place or premises to be a public nuisance shall be recorded in the Broward County Records Division and shall become a lien against the real property that is the subject of the order.
- (e) After one year from the filing of any such lien which remains unpaid, the city attorney is authorized to foreclose on the property or otherwise execute on the lien and to recover all recording and litigation costs, including reasonable attorney fees. ~~Any lien recorded against the real property pursuant to this section 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.~~
- (f) No lien created pursuant to the provisions of this ~~article~~ chapter may be foreclosed on real property which is a homestead under Section 4, Article X of the Florida Constitution.
- (g) The total fines imposed pursuant to this ~~article~~ chapter shall not exceed \$15,000.00 during the effective term of any order.
- (h) An order entered under this ~~article~~ chapter may be enforced pursuant to the procedures contained in F.S. § 120.69.
- (i) ~~The board or~~ city may bring a complaint under F.S. § 60.05, seeking temporary and permanent injunctive relief against any nuisance ~~described in section 15-3 as permitted by law.~~ This ~~article~~ chapter does not limit, restrict nor abridge the rights of any person to proceed under F.S. § 60.05, against any public nuisance.

Sec. 15-7. Enforcement of orders.

- (a) The city attorney is authorized to initiate contempt proceedings in the circuit court for the 17th Judicial Circuit for failure to comply with any order of the board.
- (b) The city attorney is authorized to initiate proceedings in any county, state or federal forum for the suspension or revocation of any permits, licenses, concessions or contracts held or awarded to the violator including contracts awarded under F.S. § 24.112 as may be amended (lottery retailers) and including licenses for the sale of beverages issued under F.S. § 561.19, as may be amended, where the existence of such permits licenses, concessions or contracts is conducive to the maintenance of such nuisance.
- (c) Orders of the board shall be posted at the place, building, or premises where the public nuisance exists, existed or is occurring and shall be sent by certified mail to the owner of record and/or operator of such place, building, or premises within two business days of the posting.
- (d) The police department shall be authorized to act upon and enforce such orders in accordance with this ~~article~~ chapter no earlier than five business days after the posting of the board order.

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SECTION 3. **Conflict.** All ordinances, parts of ordinances, resolutions, or parts of resolutions in conflict herewith are hereby repealed, to the extent of the conflict.

SECTION 4. **Severability.** Should any provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part that is declared to be invalid.

SECTION 5. **Codification.** It is the intention of the Mayor and City Commission that the provisions of this ordinance be incorporated into the Code of Ordinances; to effect such intention the words "ordinance" or "section" may be changed to other appropriate words.

SECTION 6. **Effective Date.** This Ordinance shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED on 1st reading on _____, 20__.

PASSED AND ADOPTED on 2nd reading on _____, 20__.

JOY F. COOPER
MAYOR

SPONSORED BY: COMMISSIONER ANABELLE LIMA-TAUB
ATTEST:

JENORGEN GUILLEN
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY
FORM

JENNIFER MERINO
CITY ATTORNEY