

painting, sheetrock, and other activities that are not horizontal construction.

(c) *Exemptions for pre-approved city events or activities:*

- (1) It shall not be a violation of section 38-155(a) or section 38-155(b) if the noise at issue relates to or is produced as a result of pre-approved city events or activities. Such exemptions include, but are not limited to, activities and events sponsored by, conducted by, or permitted by the city.  
(Code 1988, § 11-61; Ord. No. 05-36, § 12, 7-14-05; Ord. No. 12-33, § VI, 6-28-12)

#### **Sec. 38-166. Reserved.**

**Editor's note**—Ord. No. 12-33, § VII, adopted June 28, 2012, repealed § 38-166, which pertained to permit required for sound trucks and sound amplifying devices and derived from § 3-7 of the 1988 Code.

#### **Secs. 38-167—38-199. Reserved.**

### **ARTICLE V. DRUG, PROSTITUTION, CRIMINAL STREET GANGS AND STOLEN PROPERTY RELATED PUBLIC NUISANCES**

#### **Sec. 38-200. Short title.**

This article may be cited as the "Winter Garden Drug Sales and Nuisance Abatement Ordinance".  
(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-201. Intent.**

It is the intent of this article to promote, protect, and improve the health, safety, and welfare of the citizens of the city by creating an administrative board with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of abating drug, prostitution, stolen property and criminal street gang activities constituting public nuisances in the city.  
(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-202. Statutory authority.**

(a) This article is enacted pursuant to F.S. § 893.138, as amended. The provisions of F.S. § 893.138, as they may be amended from time to time, and any other applicable general law shall govern the administration of the nuisance abatement board and any activities pertaining to nuisance abatement.

(b) If any portion of this article is inconsistent with any existing or future general law, the more stringent shall apply to the extent that such application is not inconsistent with the Florida Statutes.  
(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-203. Definitions.**

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

*City attorney* means the person who serves as legal counsel to the city commission or any police officer or assistant city attorney who serves on such person's behalf.

*Complainant* means the person who files a complaint alleging that a place or premises constitutes a public nuisance.

*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.

*Place or premises* means the land and its appurtenances, structures and fixtures thereon, as such land is described or contained in a deed or instruments of conveyance and recorded in the Official Records of Orange County, Florida.

*Nuisance abatement board* means the City of Winter Garden Nuisance Abatement Board which is also referred to herein as "board".

*Owner* means the owner of the place or premises that is alleged to be a "public nuisance".

*Police department* means the Winter Garden Police Department.

Public nuisance means any place or premises that is alleged to have been used:

- (1) On more than two occasions within a six-month period as the site of a violation of F.S. § 796.07, that pertains to prostitution;
- (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;
- (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) By a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined by F.S. § 874.03; or
- (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.

*Recurring public nuisance* means a second or other additional occurrence of a public nuisance during the effective term of an order entered by the nuisance abatement board.

(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-204. Board created; manner of abolishment.**

There is hereby created the "City of Winter Garden Nuisance Abatement Board," as provided in this article. The nuisance abatement board may be abolished by ordinance.

(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-205. Organization.**

The nuisance abatement board shall consist of the members of the City of Winter Garden Code Enforcement Board. All matters relating to the composition and appointment of members of the board, term length, vacancies, removal, officers,

quorum, and compensation shall be made in accordance with applicable law and chapter 2, article II of the Winter Garden Code of Ordinances. (Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-206. Legal counsel and case presentation.**

(a) The city attorney or other legal counsel may be appointed by the city commission in accordance with applicable law and ordinances to be counsel to the nuisance abatement board.

(b) The police department or code enforcement department may represent the city by presenting cases before the nuisance abatement board.

(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-207. Jurisdiction.**

(a) The nuisance abatement board shall have jurisdiction to hear and decide complaints alleging that a place or premises constitutes a public nuisance, as defined herein. The nuisance abatement board shall have continuing jurisdiction for a period of one year over any place or premises that has been or is declared to be a public nuisance pursuant to this article.

(b) It is the legislative intent of this article to provide an additional or supplemental means to abate drug, prostitution, fencing and criminal street gang activities which create public nuisances in the city. Nothing contained in this article shall prohibit the city commission from abating such public nuisances by any other means. (Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-208. Enforcement procedure.**

(a) Any employee, officer or resident of the city may bring a complaint alleging that a place or premises constitutes a public nuisance, as defined herein, before the board through notification of the police department.

(b) Such complaint shall be reviewed by the police department for legal sufficiency. Except as provided in subsections (c) and (d), if the police department deems the complaint sufficient to support a legal finding of existence of a public nuisance, the police department shall notify the owner and said notice shall provide a reasonable

length of time to correct the alleged public nuisance. Should the alleged public nuisance continue beyond the time provided for correction, the police department shall notify the nuisance abatement board and request a hearing. The nuisance abatement board, through its clerical staff, shall schedule a hearing, and written notice of the complaint and such hearing shall be hand delivered or delivered by certified mail, return receipt requested, to the owner at his or her last known address, not less than three days prior to the date of the hearing. If an attempt to reach the owner by hand-delivery or certified mail is unsuccessful, notice of the hearing may be made by publication as provided in F.S. ch. 49, as it may be amended from time to time, as long as such notice provides the owner or an agent of the owner, i.e., a property



management company, with not less than three days notice prior to the date of the hearing. Further, not less than three days prior to the date of the hearing, copies of any evidence submitted to the nuisance abatement board shall also be provided to the owner and any other parties to the nuisance abatement action. If the public nuisance is corrected and then recurs or if the public nuisance is not corrected by the time provided for correction by the police department, the case may be presented to the nuisance abatement board although the public nuisance has been corrected prior to the nuisance abatement board hearing, and the notice shall so state.

(c) If a recurring public nuisance is found, the police department shall notify the owner but is not required to provide a reasonable length of time to correct the public nuisance. The police department, upon notifying the owner of a recurring public nuisance, shall notify the nuisance abatement board and request a hearing. The nuisance abatement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to section 38-208(b). The case may be presented to the nuisance abatement board although the recurring public nuisance has been corrected prior to the board hearing, and the notice shall so state.

(d) If the police department has reason to believe a public nuisance or the condition causing a public nuisance presents a serious threat to the public health, safety, and welfare or the police department has reason to believe a public nuisance is irreparable or irreversible in nature, the police department shall make a reasonable effort to notify the owner and shall immediately notify the nuisance abatement board, request a hearing and provide notice pursuant to section 38-208(b).

(e) If the police department reviews a complaint and elects not to proceed with it because of legal insufficiency or other concerns, the complainant may proceed to bring the complaint before the board. The complainant shall notify the nuisance abatement board and request the nuisance abatement board to schedule a hearing. The complainant shall then comply with the provisions of this article and any such other rules or procedures

which shall be adopted by the nuisance abatement board pertaining to delivery of notice and conduct of the hearing.

(f) This subsection does not restrict the right of any person to proceed under chapter 38 against any public nuisance.

(Ord. No. 02-05, § 1, 3-28-02)

### **Sec. 38-209. Conduct of hearing.**

(a) Upon request of the police department, city attorney or complainant, or at such other times as may be necessary, the chairman of the nuisance abatement board shall call a hearing of the nuisance abatement board. A hearing also shall be called upon by written notice signed by at least four members of the nuisance abatement board.

(b) Minutes shall be kept of all hearings by the nuisance abatement board, and all hearings and proceedings shall be open to the public. Clerical and administrative personnel, as may be reasonably required by the nuisance abatement board for the proper performance of its duties, shall be provided by such department as the city commission or city manager may designate from time to time.

(c) The nuisance abatement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The board shall conduct a hearing on the complaint, receiving evidence pertaining to the alleged public nuisance. The board may also receive and consider evidence of the general reputation of the place or premises which is the subject of the complaint. The nuisance abatement board may take testimony from the complainant, investigating law enforcement officers, code inspectors, the owner, nearby residents and/or businesses and any other relevant witnesses. The owner may appear in person as well as through his or her legal counsel and shall have an opportunity to present evidence in his or her defense. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(d) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all the other evidence of a type commonly relied upon by rea-

sonable prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of this state. The burden of proof shall be upon the police department, city attorney, or complainant to show, by a preponderance of the evidence, that a public nuisance exists.

(e) Any member of the nuisance abatement board, or the counsel to the nuisance abatement board, may inquire of any witness before the nuisance abatement board. The police department, city attorney, or complainant, and the alleged violator or his attorney, shall be permitted an inquiry of any witness before the nuisance abatement board and to present brief opening and closing statements.

(f) At the conclusion of the hearing, and based on the evidence of record and conclusions of law, the board may find and declare that the place or premises has been used as alleged in the complaint and that such place or premises thereby constitutes a public nuisance. The finding shall be by motion approved by a majority of those members present and voting, except that at least four members of the nuisance abatement board must vote in order for the action to be official. The board in its discretion may continue the hearing in order to receive additional evidence, testimony, or for any other reason the board deems appropriate before ruling on the complaint. If the board does not find that the allegations of the complaint have been proven, it shall enter an order dismissing the complaint.

(g) If the board finds and declares the existence of a public nuisance, the board shall enter an order requiring the owner to adopt such procedures as may be appropriate under the circumstances to abate the public nuisance and at its discretion it may also enter an order mandating one or more of the following:

- (1) Immediately prohibiting the maintaining of the nuisance; or
- (2) Immediately prohibiting the operating or maintaining of the place or premises; or

- (3) Immediately prohibiting the conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance; or
- (4) Requiring the owner to immediately close the place or premises or any part thereof.

Such order shall expire after one year or at such earlier time as is stated in the order. The order may include a notice that it must be complied with by a specific date and that a fine may be imposed, in accordance with section 38-211 of this article.

(h) Before the board can order the closure of a place or premises, the board must make a factual finding:

- (1) That the respondent did not abate the nuisance after being ordered by the nuisance abatement board to do so; or
- (2) That the respondent did not substantially comply with an appropriate order issued by the nuisance abatement board; or
- (3) That the respondent continued to maintain an ongoing nuisance; or
- (4) That closure is the only effective option in eradicating the nuisance.

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

A certified copy of such order shall be recorded in the public records of Orange County and shall constitute notice to any subsequent purchasers, successors in interest or assigns and the findings therein shall be binding upon the owner and any subsequent purchasers, successors in interest or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the nuisance abatement board shall issue an order acknowledging compliance which shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

- (i) If the city prevails in prosecuting a case before the nuisance abatement board, the city shall be entitled to recover its costs,



including reasonable attorney's fees, incurred in prosecuting the case before the nuisance abatement board.  
(Ord. No. 02-05, § 1, 3-28-02)

**Sec. 38-210. Powers of the board.**

The nuisance abatement board shall have the power to:

- (1) Adopt rules for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the police department.
- (3) Take testimony under oath.
- (4) Issue orders having the force of law to command whatever steps are necessary to abate a public nuisance, including the filing of a complaint under F.S. § 60.05, to seek temporary or injunctive relief against any public nuisance.

(Ord. No. 02-05, § 1, 3-28-02)

**Sec. 38-211. Administrative fines; liens.**

(a) In addition to any other remedy which may be available, the nuisance abatement board, upon finding noncompliance with its order by the set time, or upon finding that a recurring public nuisance has been committed, may order the owner to pay a fine in an amount specified in this section for each day the public nuisance continues past the date set by the nuisance abatement board for compliance, or, in the case of a recurring public nuisance, for each day the recurring public nuisance continues from the date the recurring public nuisance is found to have occurred.

(b) A fine imposed pursuant to this section shall not exceed \$250.00 per day for a first occurrence of a public nuisance and shall not exceed \$500.00 per day for a recurring public nuisance. However, total fines imposed pursuant to this article shall not exceed \$15,000.00 per property. In determining the amount of the fine, if any, the nuisance abatement board shall consider the following factors:

- (1) The gravity of the public nuisance;

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

(3) Any previous public nuisances created by the owner.

The nuisance abatement board may reduce a fine imposed pursuant to this section.

(c) A certified copy of an order imposing a fine shall be recorded in the public records of Orange County and thereafter shall constitute a lien against the property on which the public nuisance exists and upon any other real or personal property owned by the owner. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs on this state, including levy against personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this article shall continue to accrue until the owner comes into compliance or until the judgment is rendered in a suit to foreclosure on a lien filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city, and the city may execute a satisfaction or release of lien pursuant to this section. After three months from the filing of any such lien which remains unpaid, the nuisance abatement board may authorize the city attorney to foreclose on the lien. After the suit for foreclosure has been filed, any offer of settlement may be accepted or rejected by the city manager, or his or her designee, on behalf of the city. Acceptance of a settlement offer wherein the amount of the lien foreclosed by such lawsuit is greater than \$15,000.00, shall not be binding upon the city until approved by the city commission. No lien created pursuant to the provisions of this article may be foreclosed on real property which is a homestead under Fla. Const. Art. X, § 4.

(Ord. No. 02-05, § 1, 3-28-02)

**Sec. 38-212. Duration of lien.**

No lien provided under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose

on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorneys' fee, that it incurs in the foreclosure. The city shall be entitled to all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-213. Nuisance abatement fines account.**

All administrative fines and liens collected pursuant to this article shall be deposited in a separate revenue account, which is hereby created and designated as the nuisance abatement fines account. Monies collected from such fines and liens shall be expended to defray costs of administration of this article, including investigative and legal expenses, if necessary.

(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-214. Appeals.**

An aggrieved party, including the city commission, may appeal a final administrative order of the nuisance abatement board to the Ninth Judicial Circuit Court in and for Orange County, Florida. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the nuisance abatement board. An appeal shall be filed within 30 days of execution of the order to be appealed.

Notwithstanding the foregoing, if the nuisance abatement board orders the closing of a property, such order must be approved by the city commission prior to becoming a final administrative order of the nuisance abatement board.

(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 38-215. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this article is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article, and to this end

the provisions of this article are declared severable. The city commission declares that it would have adopted this article and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

(Ord. No. 02-05, § 1, 3-28-02)

#### **Sec. 32-216. Nonexclusivity.**

This article is not the exclusive basis for the enforcement of violations of this Code, the city ordinances or the abatement or removal of public nuisances. All other procedures, provisions, ordinances, statutes and laws relating to the violation, enforcement of this Code, the city ordinances or the abatement or removal of public nuisances are and shall be available to the city, its commission, boards, authorized officers and employees.

(Ord. No. 02-05, § 1, 3-28-02)