



COUNTY ATTORNEY'S OFFICE
JEFFREY J. NEWTON, County Attorney

201 South Rosalind Avenue 3rd Floor
Reply To: Post Office Box 1393
Orlando, FL 32802-1393
407-836-7320 Fax 407-836-5888

Public Hearing

MEMORANDUM

TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*
Sawsan Mohiuddin, Assistant County Attorney *AMC fasm*
Contact: (407) 836-7320

DATE: October 5, 2020

RE: **Public Hearing for Board Meeting on October 13, 2020**
to consider an Ordinance Relating to Public Nuisances in Orange
County, Florida; Amending the Definitions in Chapter 28 of the Orange
County Code Pertaining to Drug Sales and Nuisance Abatement;
Providing an Effective Date.

I. EXPLANATION & SUMMARY:

Pursuant to section 893.138, Florida Statutes, the Board of County Commissioners adopted Ordinance No. 99-01 on January 12, 1999, which established the "Orange County Drug Sales and Nuisance Abatement Ordinance". The Florida Legislature recently amended section 893.138, Florida Statutes, to include a combination of violent offenses which would qualify a place or premises to be abated or enjoined. The attached ordinance amends the definitions section of Chapter 28 of the Orange County Code to include these additional offenses provided for by general law.

If you have any questions, please do not hesitate to contact Sawsan Mohiuddin or me.

II. ACTION REQUESTED:

AN ORDINANCE RELATING TO PUBLIC NUISANCES IN ORANGE COUNTY, FLORIDA; AMENDING THE DEFINITIONS IN CHAPTER 28 OF THE ORANGE COUNTY CODE PERTAINING TO DRUG SALES AND NUISANCE ABATEMENT TO ALLOW FOR A COMBINATION OF CERTAIN VIOLENT OFFENSES OCCURRING ON MORE THAN TWO OCCASIONS WITHIN A SIX-MONTH PERIOD TO BE DECLARED A PUBLIC NUISANCE; AND PROVIDING AN EFFECTIVE DATE.

Attachment

c: Byron W. Brooks, AICP, County Administrator

Deputy County Attorney
Joel D. Prinsell

Senior Assistant County
Attorneys

Elaine M. Asad
Lila McHenry

Assistant County
Attorneys

Roberta Alfonso
Cristina T. Berrios
Linda Brehmer-Lanosa
Whitney E. Evers
Georgiana Holmes

Aleas Koos
Katherine W. Latorre

Scott McHenry
Mohiuddin
Dylan Schott
Scott Shevenell
Stephanie Stone
Adolphus Thompson

Legal Administrative
Supervisor

Anna M. Caban

Senior Paralegal
Melessia Lofgren

Paralegals
Maria Vargas, ACP
Gail Stanford

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ORDINANCE NO. 2020-

AN ORDINANCE RELATING TO PUBLIC NUISANCES IN ORANGE COUNTY, FLORIDA; AMENDING THE DEFINITIONS IN CHAPTER 28 OF THE ORANGE COUNTY CODE PERTAINING TO DRUG SALES AND NUISANCE ABATEMENT TO ALLOW FOR A COMBINATION OF CERTAIN VIOLENT OFFENSES OCCURRING ON MORE THAN TWO OCCASIONS WITHIN A SIX-MONTH PERIOD TO BE DECLARED A PUBLIC NUISANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to section 893.138, Florida Statutes, the Board of County Commissioners adopted Ordinance No. 99-01 on January 12, 1999, which established the "Orange County Drug Sales and Nuisance Abatement Ordinance"; and

WHEREAS, effective July 1, 2020, the Florida Legislature amended section 893.138, Florida Statutes, to include a combination of violent offenses which would qualify a place or premises to be abated or enjoined; and

WHEREAS, the Board of County Commissioners desires to amend the definitions section of Chapter 28 of the Orange County Code to include these additional offenses provided for by general law.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1: Amendment to Section 28-103. Section 103 of Chapter 28, Article IV of the Orange County Code, otherwise known as the "Drug Sales and Nuisance Abatement Ordinance", is hereby amended as follows with additions shown by underlines and deletions by strike-throughs.

Section 28. 103. Definitions.

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

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

36 *Controlled substance* shall have the same meaning as stated
in F.S. §§ 893.03 and 891.138 and any other applicable provision of
general law, as may be amended from time to time.

38 *County attorney* shall mean the person who serves as legal
counsel to the board of county commissioners or any deputy or
40 assistant county attorney who serves on such person's behalf.

42 *Nuisance abatement board* shall mean the Orange County
Nuisance Abatement Board which is also referred to herein as
"board".

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

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

50 *Property* shall mean anything of value, and includes:

52 (1) Real property, including things growing on, affixed
to, and found in land.

54 (2) Tangible or intangible personal property including
rights privileges, interests and claims.

56 (3) Services.

58 *Public nuisance* shall mean any place or premises that is
alleged to have been used:

60 (1) By a criminal street gang for the purpose of
conducting a pattern of criminal street gang activity as defined by
F.S. § 874.03;

62 (2) On more than two (2) occasions within a six-month
period, as the site of a violation of F.S. § 796.07, that pertains to
prostitution;

64 (3) On more than two (2) occasions within a six-month
period, as the site of the unlawful sale, delivery, manufacture or
66 cultivation of any controlled substance; or

68 (4) On one (1) 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
70 one (1) occasion as the site of the unlawful sale, delivery,
manufacture or cultivation of any controlled substance; or

72 (5) On more than two (2) occasions within a six-month
period, as the site of a violation of F.S. 812.019 relating to dealing
74 in stolen property; or

76 (6) On more than two occasions within a six-month
period, as the site of a violation of any combination of the following:

- 78 1. F.S. § 782.04, relating to murder;
2. F.S. § 782.051, relating to attempted felony
murder;
80 3. F.S. § 784.045(1)(a)2., relating to aggravated
battery with a deadly weapon; or
82 4. F.S. § 784.021(1)(a), relating to aggravated
assault with a deadly weapon without intent to kill.

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

88 *Services* shall mean anything of value resulting from a persons'
physical or mental labor or skill, or from the use, possession, or
presence of property, and includes:

- 90 (1) Repairs or improvements to property.
92 (2) Professional services.
(3) Private, public, or government communication,
transportation, power, water or sanitation services.
94 (4) Lodging accommodations.
(5) Admissions to places of exhibition or entertainment.

96 *Sheriff's Office* shall mean the Office of the Orange County
Sheriff.

98 *Stolen property* shall mean property that has been the subject of
any criminally wrong taking.

100 *Value* shall mean value determined according to any of the
following:

102 (1) a. Value means the market value of the property
at the time and place of the offense or, if such cannot be
104 satisfactorily ascertained, the cost of replacement of the property
within a reasonable time after the offense.

106 b. The value of a written instrument that does
not have a readily ascertainable market value in the case of
108 instrument such as a check, draft or promissory note, is the amount
due or collectible or is, in the case of any other instrument which
110 creates, releases, discharges, or otherwise affects any valuable legal
right, privilege, or obligation, the greatest amount of economic loss
112 that the owner of the instrument might reasonably suffer by virtue
of the loss of the instrument.

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c. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner, suffered by reason of losing an advantage over those who do not know of or use the trade secret.

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(2) If the value of the property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than one hundred dollars (\$100.00).

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(3) Amounts of value of separate properties involved in thefts committed pursuant to one (1) scheme or course of conduct, whether the thefts are from the same person or from several persons, may be aggregated in determining the grade of the offense.

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Section 2. Effective Date. This ordinance shall take effect upon its passage and as

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provided by law.

ADOPTED this _____ Day of October 2020.

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ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

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By: _____
Jerry L. Demings
Orange County Mayor

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DATE: _____

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ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

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By: _____
Deputy Clerk

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