

PROPOSED

ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE ABATEMENT OF PUBLIC NUISANCES; AMENDING VARIOUS SECTIONS OF CHAPTER 20, ARTICLE VII, DIVISION 7 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); CHANGING THE PROCEDURES BY WHICH PUBLIC NUISANCE ABATEMENT MATTERS ARE HEARD AND RESOLVED BY THE CONSUMER PROTECTION BOARD; REQUIRING ANY FINDING THAT A PLACE OR PREMISES IS A PUBLIC NUISANCE BE SUPPORTED BY A CERTIFIED CONVICTION; ALLOWING THE CONSUMER PROTECTION BOARD TO ENTER FINAL ORDERS; PROVIDING FOR JUDICIAL REVIEW OF THE CONSUMER PROTECTION BOARD'S FINAL ORDERS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, Chapter 20, Article VII, Division 7 of the Broward County Code of Ordinances ("Code") authorizes the Broward County Consumer Protection Board to sit as the Broward County Drug, Prostitution, and Criminal Street Gang-Related Public Nuisance Abatement Board and hear public nuisance matters pursuant to Section 893.138, Florida Statutes; and

WHEREAS, the Code sets forth the procedures applicable to public nuisance abatement matters brought before the Consumer Protection Board; and

WHEREAS, the Board of County Commissioners of Broward County, Florida ("Board"), desires to amend Chapter 20, Article VII, Division 7 of the Code in order to provide more efficient and comprehensive procedures for the Consumer Protection Board to follow in resolving public nuisance abatement matters so that public nuisances

1 in Broward County may be abated in an equitable, expeditious, and effective manner;
2 and

3 WHEREAS, the Board finds that the revisions to the Code as set forth herein are
4 necessary and in the best interest of Broward County,
5

6 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
7 BROWARD COUNTY, FLORIDA:
8

9 Section 1. Section 20-176.121 of the Broward County Code of Ordinances is
10 hereby amended to read as follows:

11 **Sec. 20-176.121. Transfer of the Broward County Drug, Prostitution, and Youth,
12 and Street Gang-Related ~~Public~~ Nuisance Abatement Board's Roles and
13 Responsibilities to the Consumer Protection Board.**

14 Pursuant to Section 893.138, Florida Statutes, ~~as may be amended from time to~~
15 ~~time~~, the Board of County Commissioners of Broward County hereby transfers the roles
16 and responsibilities of the Broward County Drug, Prostitution, and Youth and Street
17 Gang-Related Nuisance Abatement Board to the Consumer Protection Board.
18 The Consumer Protection Board shall meet ~~in its capacity~~ as the Broward County Drug,
19 Prostitution, and Criminal Street Gang-Related Public Nuisance Abatement Board when
20 hearing public nuisance abatement matters pursuant to
21 Chapter 20, Article VII, of the Broward County Code of Ordinances.
22

23 Section 2. Section 20-176.123 of the Broward County Code of Ordinances is
24 hereby amended to read as follows:

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underscored type are additions.

1 **Sec. 20-176.123. Certain drug, prostitution, and criminal street gang-related**
2 **activities declared public nuisances.**

3 The Board of County Commissioners of Broward County hereby declares that
4 any place or premises ~~which~~ that is used as follows may be declared a public nuisance,
5 and such nuisance may be abated pursuant to the procedures provided herein:

6 . . .

- 7 (3) On one (1) occasion as the site of the unlawful possession of a controlled
8 substance, where such possession constitutes a felony, and that has also
9 ~~been previously~~ used on more than one (1) occasion within the previous
10 year as the site of the unlawful sale, delivery, manufacture, or cultivation
11 of any controlled substance;

12 . . .

13
14 Section 3. Section 20-176.124 of the Broward County Code of Ordinances is
15 hereby repealed in its entirety and replaced to read as follows:

16 [Underlining omitted]

17 **Sec. 20-176.124. Definitions.**

18 *Board or Consumer Protection Board* means the Consumer Protection Board
19 meeting in its capacity as the Broward County Drug, Prostitution, and Criminal Street
20 Gang-Related Public Nuisance Abatement Board.

21 *Commission* means the Board of County Commissioners of Broward County.

22 *Consumer Protection Administrator* means the person designated by the Director
23 of the Division to perform the clerical duties, and other such duties as provided herein,
24

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1 necessary to carry out the activities of the Consumer Protection Board on behalf of the
2 Division.

3 *Controlled substance* includes any substance sold in lieu of a controlled
4 substance in violation of Section 817.563, Florida Statutes, or any imitation controlled
5 substance defined in Section 817.564, Florida Statutes.

6 *Criminal street gang activities* means criminal gang-related activities, as defined
7 in Section 874.03, Florida Statutes.

8 *Delivery* means the actual, constructive, or attempted transfer from one (1)
9 person to another of a controlled substance, whether or not there is an agency
10 relationship.

11 *Division* means the Environmental and Consumer Protection Division of Broward
12 County, or its successor agency.

13 *Hearing panel* means the three (3) members of the Consumer Protection Board
14 selected pursuant to the procedures listed in Section 20-176.127(b).

15 *Manufacture* has the meaning set forth in Section 893.02(15)(a), Florida Statutes.

16 *Operator* means a tenant, lessee, or person having control or possession of the
17 place or premises that is the subject of a complaint filed with the Division.

18 *Owner* means the owner of a place or premises that is the subject of a complaint
19 filed with the Division.

20 *Party* means a complainant, owner, or operator, or the Division acting on behalf
21 of a complainant.

22 *Unlawful sale, delivery, manufacture, or cultivation of a controlled substance*
23 means a sale, delivery, manufacture, or cultivation of a drug, narcotic, or other
24 substance that is unlawful under Chapter 893, Florida Statutes.

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1
2 Section 4. Section 20-176.126 of the Broward County Code of Ordinances is
3 hereby amended to read as follows:

4 **Sec. 20-176.126. Initiation of proceedings.**

5 (a) Any employee, officer, or resident of the county may file a complaint with
6 the ~~Consumer Protection Board~~ Division with regard to public nuisances described in
7 Section 20-176.123. No member of the Consumer Protection Board may file a
8 complaint with the ~~Board~~ Division. ~~All complaints shall be filed with the Consumer~~
9 ~~Protection Administrator.~~ Each At least three (3) days before filing a complaint, the
10 ~~complainant must~~ shall provide written notice of ~~his/her~~ the complaint to the owner(s)
11 ~~and occupant(s) if not owner-occupied, of the place or premises that is the subject of the~~
12 complaint at the owner's last known address ~~at least three (3) days prior to the~~
13 ~~scheduled hearing date.~~ Any complaint filed shall specify the date of each unlawful
14 activity alleged and the nature of the evidence the complainant will introduce to prove
15 that such unlawful activity occurred. The Division shall provide the owner of the place
16 or premises and any operator or occupant identified in the complaint written notice of
17 the complaint at the last known address not later than ten (10) calendar days after the
18 complaint is filed. Such notice shall advise each owner, operator, and occupant of his
19 or her procedural rights and obligations under this Ordinance.

20 (b) Within thirty (30) calendar days after a complaint is filed, the Division shall
21 begin an investigation of the alleged public nuisance. The purpose of the investigation
22 will be to obtain information concerning the events or transactions that relate to the
23 alleged public nuisance identified in the complaint and to develop the factual information
24 necessary for the Division to determine whether there is reasonable cause to believe

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1 the place or premises that is the subject of the complaint constitutes a public nuisance.
2 In conducting its investigation, the Division is permitted to take discovery to the same
3 extent permitted parties in civil actions before the federal or state courts within Broward
4 County.

5 (c) Upon the conclusion of its investigation, the Division shall determine,
6 based on the totality of the circumstances gathered, whether reasonable cause exists to
7 believe the place or premises that is the subject of the complaint constitutes a public
8 nuisance. If the Division determines that no such reasonable cause exists, the Division
9 shall issue a Dismissal and Notice of Rights to each of the parties informing them of the
10 Division's determination and their rights, if any, to proceed in a court of competent
11 jurisdiction. If the Division determines that there is such reasonable cause, the Division
12 shall, on behalf of the complainant, file the complaint along with the basis for the
13 Division's reasonable cause determination with the Consumer Protection Administrator
14 for further proceedings before the Consumer Protection Board.

15 ~~(b)~~ (d) ~~The Consumer Protection Board Administrator shall schedule a hearing~~
16 ~~for each complaint which alleges that a~~ for which the Division has determined there is
17 reasonable cause that the place or premises was used on more than two (2) occasions,
18 ~~within a six (6) month period, as the site of an unlawful sale, delivery, manufacture,~~
19 ~~cultivation, or felony possession of any controlled substances, or as the site of a~~
20 ~~violation of Section 796.07, Florida Statutes, as may be amended from time to time, or~~
21 ~~is a place or building used by a criminal street gang for the purpose of conducting a~~
22 ~~pattern of criminal street gang-related activities~~ identified therein constitutes a public
23 nuisance as described in Sections 20-176.123(1)-(5). ~~Said complaint shall specify the~~
24

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1 ~~date of each unlawful activity, and the nature of the evidence the complaint will~~
2 ~~introduce to prove that such unlawful activity occurred.~~

3 ~~(e) (e) The Consumer Protection Board, through the Consumer Protection~~
4 ~~Administrator, Division shall give written notice of every scheduled hearing by certified~~
5 ~~mail or hand delivery to the each owner(s), and operator(s), and occupant(s) if not~~
6 ~~owner occupied, at the last known address(es) at least ten (10) days prior to the~~
7 ~~scheduled hearing. If an attempt to reach an owner or operator, and occupant(s) if not~~
8 ~~owner occupied, by certified mail or hand delivery is unsuccessful, notice of hearing~~
9 ~~may be made by publication as provided in Chapter 49, Florida Statutes, as may be~~
10 ~~amended from time to time. Notice shall include the following:~~

11 . . .

12
13 Section 5. Section 20-176.127 of the Broward County Code of Ordinances is
14 hereby amended to read as follows:

15 **Sec. 20-176.127. Conduct of hearings.**

16 (a) The Consumer Protection Board shall adopt rules for the conduct of its
17 hearings pursuant to Chapter 20, of the Broward County Code of Ordinances, ~~as may~~
18 ~~be amended from time to time.~~ All hearings and proceedings shall be open to the
19 public, and minutes shall be kept. All testimony shall be taken under oath and shall be
20 recorded.

21 (b) Assignment of Hearing Panel.

22 (1) All hearing panels under this Ordinance shall be composed of three (3)
23 members of the Consumer Protection Board and such composition shall
24 be assigned on a random basis based upon the rules adopted by the

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1 Consumer Protection Board, so that the work involved in hearing public
2 nuisance abatement matters is fairly and equitably distributed among the
3 members of the Consumer Protection Board.

4 (2) The Consumer Protection Administrator's duties pursuant to this
5 Ordinance are ministerial only. Therefore, the Consumer Protection
6 Administrator shall not have any power or discretion in determining the
7 members of the Consumer Protection Board to whom any administrative
8 hearing is assigned, except that the Consumer Protection Board may
9 authorize the Consumer Protection Administrator to assign members to
10 serve on a hearing panel to avoid a conflict of interest or in the event an
11 assigned member is unavailable.

12 ~~(b)~~ (c) ~~The Consumer Protection Board~~ Hearing panels shall proceed to hear
13 complaints on the agenda for the day scheduled for the public hearings. Before the
14 ~~Consumer Protection Board~~ hearing panel may hear a complaint, the ~~Board~~ hearing
15 panel must make a finding that the notice requirements as set forth in
16 Section 20-176.126 have been satisfied. In no case shall may the ~~Consumer Protection~~
17 ~~Board~~ hearing panel proceed to hear any complaint unless the notice requirements set
18 forth in Section 20-176.126 have been met. All complaints and any supporting evidence
19 shall be presented to the hearing panel by the Division acting in its sole discretion and
20 on behalf of the complainant.

21 ~~(e)~~ (d) Formal rules of evidence shall not apply, but fundamental due process
22 shall be observed and shall govern the proceedings. The ~~Consumer Protection Board~~
23 hearing panel may consider any evidence, including evidence of the general reputation
24 of the place or premises. All evidence of a type commonly relied upon by reasonably

1 prudent persons in the conduct of their affairs shall be admissible whether or not such
2 evidence would be admissible in a State of Florida ~~C~~ourt.

3 ~~(d)~~ (e) Each party, with the Division acting on behalf of the complainant, shall
4 have the following rights:

5 . . .

6 ~~(e)~~ (f) The owner of the place or premises in question may introduce evidence as
7 to any remedial measure taken to ameliorate the conditions ~~which~~ that led to the
8 unlawful activity on ~~his/her~~ the premises.

9 ~~(f)~~ (g) All findings of the ~~Consumer Protection Board~~ hearing panel shall be
10 based on a preponderance of evidence. The ~~Board~~ hearing panel shall not find that a
11 place or premises is a public nuisance as defined herein unless the ~~Board~~ hearing panel
12 has received a certified copy of the convictions for the activity ~~which~~ that constitutes a
13 public nuisance pursuant to Section 20-176.123, said activity having occurred at the
14 place or premises ~~which~~ that is subject of the complaint; ~~or unless the Board has~~
15 ~~received the sworn testimony of a law enforcement officer who observed said activity at~~
16 ~~the place or premises in question. These~~ This shall be the minimum ~~bases~~ basis for
17 such a finding, ~~and in either case, the Board.~~ Notwithstanding receipt of a certified copy
18 of the conviction for the activity that constitutes a public nuisance, the hearing panel
19 may nevertheless rely on rebuttal evidence, impeachment evidence, or other factors to
20 find that no unlawful activity took place or that no public nuisance was maintained.
21 Hearsay evidence may be used for the purpose of supplementing or explaining other
22 evidence, but it shall not be sufficient in itself to support any finding unless it would be
23 admissible in a civil action. The burden of proof shall be on the ~~complaining party~~
24 Division.

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1 ~~(g)~~ (h) Recommended Orders.

2 (1) At the conclusion of the hearing, the ~~Consumer Protection Board~~ hearing
3 panel shall issue a recommended order to the ~~pertinent jurisdiction,~~
4 including findings of fact and conclusions of law with respect to the issues
5 before it Consumer Protection Board. The hearing panel's recommended
6 order shall include:

7 a. The date, time, and place of the hearing;

8 b. All appearances entered at the hearing; and

9 c. Findings of fact and conclusions of law with respect to the issues
10 addressed by the hearing panel.

11 ~~(h)~~ (2) If the ~~Consumer Protection Board~~ hearing panel declares a place or
12 premises to be a public nuisance, pursuant to ~~Subsection 20-176.123(4),~~ it
13 may enter a recommended order requiring that, if adopted, would require
14 the owner of such place or premises to adopt such procedure as may be
15 appropriate under the circumstances to abate any such nuisance, or it
16 may enter a recommended order ~~immediately prohibiting that, if adopted,~~
17 would immediately prohibit:

18 ~~(1)~~ a. The maintaining of the public nuisance;

19 ~~(2)~~ b. The operating or maintaining of the place or premises, including the
20 closure of the place or premises or any part thereof; or

21 ~~(3)~~ c. The conduct, operation, or maintenance of any business or activity
22 on the premises ~~which~~ that is conducive to such nuisance.

23 ~~A recommended order of the Consumer Protection Board expires after one (1) year, or~~
24 ~~at such earlier time as cited in the order.~~

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1 (i) ~~(3)~~ The ~~Consumer Protection Board~~ hearing panel, additionally, shall have the
2 authority to recommend penalties for public nuisances, including fines not
3 to exceed Two Hundred Fifty Dollars (\$250-00) per day or Five Hundred
4 Dollars (\$500-00) per day for recurring public nuisances.

5 (4) The hearing panel shall file its recommended order, together with a record
6 of the hearing, with the Consumer Protection Administrator. A copy of the
7 recommended order shall be served upon each of the parties. Upon the
8 filing of the recommended order by the hearing panel, the hearing panel
9 shall no longer have jurisdiction to rule on any matter related to the
10 charge.

11 (5) A recommended order of the hearing panel expires after one (1) year, or
12 at such earlier time as may be provided in the recommended order.

13 (i) *Exceptions.*

14 (1) Any owner, operator, or occupant may file written exceptions in response
15 to a recommended order that recommends a finding that the place or
16 premises that is the subject of the complaint constitutes a public nuisance.
17 Neither the Division nor the complainant may file an exception to a
18 recommended order.

19 (2) Exceptions shall be based solely on the record of the hearing and shall not
20 include the presentation of any new evidence or testimony.

21 (3) Exceptions shall be filed with the Consumer Protection Administrator no
22 later than twenty-one (21) calendar days after the date of the filing of the
23 recommended order with the Consumer Protection Administrator, unless
24

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1 written permission to take additional time is granted by the Chair of the
2 Consumer Protection Board.

3 (4) Where exceptions have been filed by an owner, operator, or occupant, the
4 Division may file a written response to such exceptions no later than
5 fourteen (14) calendar days after service of the exceptions, unless written
6 permission to take additional time is granted by the Chair of the Consumer
7 Protection Board.

8 (j) Final Orders.

9 (1) ~~The governing board of the jurisdiction~~ Consumer Protection Board shall
10 consider the recommended order of the ~~Consumer Protection Board~~
11 hearing panel, written exceptions, and responses thereto, and by a
12 majority vote determine whether to adopt the ~~Consumer Protection~~
13 ~~Board's~~ hearing panel's decision in whole, adopt a modified version, or
14 decline to adopt the ~~Consumer Protection Board's~~ hearing panel's
15 recommended order. ~~The governing board of the jurisdiction shall be,~~
16 ~~within municipalities, the city commission, and within the unincorporated~~
17 ~~area, the county commission.~~ In considering the hearing panel's
18 recommended order, the Consumer Protection Board shall accept all
19 factual determinations of the hearing panel that are supported by
20 competent, substantial evidence in the record of the hearing and shall not
21 substitute its judgment for that of the hearing panel as to the weight of the
22 evidence on any disputed finding of fact. This proceeding shall not be a
23 de novo review but shall instead be confined to the record of the hearing,
24 the recommended order, written exceptions, and written responses

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1 thereto, if any. The Consumer Protection Board's determination shall be
2 memorialized in a written decision that resolves all issues addressed by
3 the hearing panel.

4 (2) In addition to adopting recommended orders of the ~~Consumer Protection~~
5 ~~Board~~ hearing panel, in whole or modified, orders adopted by the
6 ~~jurisdiction~~ Consumer Protection Board may also provide for the payment
7 of reasonable costs, including reasonable attorney's fees associated with
8 investigations of and hearings on public nuisances; provide for the
9 Consumer Protection Board's continuing jurisdiction for a period of one (1)
10 year over any place or premises that has been or is declared to be a
11 public nuisance; provide for the recording of orders on public nuisances so
12 that notice is given to subsequent purchasers, successors in interest, or
13 assigns of the real property that is the subject of ~~the~~ such orders; provide
14 for the recovery of all costs associated with the recording of orders; and
15 provide that recorded public nuisance orders ~~on public nuisances~~ may
16 become liens against the real property ~~that is the subject of~~ to the such
17 orders; ~~and provide for the foreclosure of property subject to a lien and the~~
18 ~~recovery of all costs, including reasonable attorney fees, associated with~~
19 ~~the recording of orders and foreclosure. No lien created pursuant to the~~
20 ~~provisions of this section may be foreclosed on real property which is a~~
21 ~~homestead under Sec. 4, Article X, of the State Constitution. The total~~
22 fines imposed pursuant to the authority of this section shall not exceed
23 Five Thousand Dollars (\$5,000.00). ~~Nothing contained within this section~~
24

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1 prohibits any jurisdiction from proceeding against a public nuisance by any
2 other means.

3 (3) In adopting recommended orders of the hearing panel, in whole or
4 modified, the Consumer Protection Board may also recommend to the
5 governing board of the jurisdiction the foreclosure of real property that
6 becomes subject to a lien as a result of being declared a public nuisance
7 and the recovery of all costs, including reasonable attorney's fees,
8 associated with the foreclosure.

9
10 Section 6. Section 20-176.128 of the Broward County Code of Ordinances is
11 hereby amended to read as follows:

12 **Sec. 20-176.128. Enforcement.**

13 The Consumer Protection Board may, by a majority vote, recommend to the
14 governing board of the jurisdiction ~~may~~ that it authorize the Office of the County
15 Attorney or the city attorney, depending on whether the jurisdiction is the unincorporated
16 area or a municipality~~or~~, to bring a complaint under Section 60.05, Florida Statutes, ~~as~~
17 ~~may be amended from time to time~~, seeking a permanent injunction against any place,
18 property, or premises found to be a public nuisance. The Consumer Protection Board
19 may further seek any other appropriate relief as may be provided or permitted by law.
20 Nothing contained within this Ordinance prohibits any jurisdiction from proceeding
21 against a public nuisance by any other means.

22
23 Section 7. Section 20-176.129 of the Broward County Code of Ordinances is
24 hereby created to read as follows:

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1 **Sec. 20-176.129. Judicial review.**

2 Any party to an administrative hearing before the Consumer Protection Board
3 may petition for judicial review of the Consumer Protection Board's final order by filing a
4 writ of certiorari to the Circuit Court of the 17th Judicial Circuit in and for Broward
5 County, Florida. Such petition shall not be for a hearing de novo but shall instead be
6 limited to seeking appellate review of the record created before the Consumer
7 Protection Board. The time frame for filing the petition will be governed by the
8 applicable Florida Rules of Appellate Procedure. The party filing the petition shall serve
9 a copy of the petition to all other parties to the hearing and to the Consumer Protection
10 Board.

11
12 Section 8. **Severability.**

13 If any portion of this Ordinance is determined by any court to be invalid, the
14 invalid portion will be stricken, and such striking will not affect the validity of the
15 remainder of this Ordinance. If any court determines that this Ordinance, in whole or in
16 part, cannot be legally applied to any individual, group, entity, property, or circumstance,
17 such determination will not affect the applicability of this Ordinance to any other
18 individual, group, entity, property, or circumstance.

19
20 Section 9. **Inclusion in the Broward County Code of Ordinances.**

21 It is the intention of the Board of County Commissioners that the provisions of
22 this Ordinance become part of the Broward County Code of Ordinances as of the
23 effective date. The sections of this Ordinance may be renumbered or relettered and the
24

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1 word "ordinance" may be changed to "section," "article," or such other appropriate word
2 or phrase to the extent necessary in order to accomplish such intention.

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Section 10. Effective Date.

This Ordinance is effective as of the date provided by law.

ENACTED
FILED WITH THE DEPARTMENT OF STATE
EFFECTIVE

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

PROPOSED

By /s/ Keoki M. Baron 07/20/18
Keoki M. Baron (date)
Assistant County Attorney

By /s/ Annika E. Ashton 07/20/18
Annika E. Ashton (date)
Senior Assistant County Attorney

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