

## Chapter 672 - PUBLIC NUISANCE ABATEMENT BOARD

**Sec. 672.01. - Statement of Legislative Intent; Declaration of Public Nuisance.**

In addition to the burden placed on the City's limited police and fire and rescue resources, public nuisance properties present health, safety and quality of life concerns and exist when the persons responsible for such properties fail to take corrective actions to abate nuisance activities or a nuisance condition. Public nuisance properties have a significant adverse effect on the quality of life, safety and health of the neighborhoods where they are located. Public nuisance properties are a financial and operational burden on the City by generating repeated calls for service to the properties. Public nuisance properties adversely affect the value of adjacent properties. The Public Nuisance Abatement Board is created to address and reduce nuisance activities and/or nuisance conditions that disrupt quality of life and repeatedly occur or exist at properties. Pursuant to the City's police powers, public nuisance properties are hereby declared to constitute a public nuisance and are subject to enforcement and abatement as described herein. The nuisance abatement process hereinafter set forth may be used by the City in conjunction with any and all legal actions available to the City.

It is the City's intent:

1. To identify public nuisance activities and public nuisance conditions.
2. To hold accountable those persons responsible for such nuisance activities and/or conditions on the property.
3. To assist victims of crime and penalize those who commit crimes or those who permit conditions to exist that give rise to crime or excessive calls for service to the Sheriff and JFRD.
4. To establish rules, procedures, and penalties to address property owners that have public nuisance issues and fail to take corrective measures.
5. To work in partnership with the owners to address the negative results caused by public nuisance activities and/or conditions and to improve the vitality of neighborhoods by addressing excessive calls for service to the Sheriff and JFRD.
6. To encourage owners and operators to cooperate by classifying calls for service made by the owners or operators which demonstrate their good-faith commitment to abate nuisance activities and/or conditions on their property such that the self-reported actions will not be included as nuisance activity responses.
7. To establish a means for the City to abate public nuisance properties in the event the owner is unwilling or unable to correct such conditions in a timely manner.
8. To establish the cost of City response and enforcement services to the property owners identified as owning public nuisance properties and enable the City to recoup such costs.

(Ord. 2021-83-E, § 2)

**Sec. 672.02. - Creation; composition; term of office.**

- (a) Pursuant to the authority granted in F.S. § 893.138, and the City's home rule authority, there is hereby created and established a board to be known and designated as the Public Nuisance Abatement Board.
- (b) The Board shall consist of nine members.

- (c) Except as modified herein, the members of the Board shall be appointed pursuant to and be governed by Chapter Ordinance Code.
- (d) Board members shall have the following employment or qualifications and term lengths:
- (1) One member shall be a JSO officer appointed by the Sheriff, no term length;
  - (2) One member shall be a JFRD employee appointed by the Fire Chief, no term length;
  - (3) One member shall be an employee of the City's Neighborhoods Department appointed by the Director of the Neighborhoods Department, no term length;
  - (4) One member shall be a Florida Bar licensed attorney in good standing appointed by the Mayor, three-year term length, may serve two successive full terms;
  - (5) One member shall be a developer, property manager or realtor with extensive experience with commercial property operations appointed by the Mayor, three-year term length, may serve two successive full terms;
  - (6) One member shall be a developer, property manager or realtor with extensive experience with multi-family residential property operations appointed by the Mayor, three-year term length, may serve two successive full terms;
  - (7) One member shall be an individual with extensive experience in public health services or child protective services appointed by the Mayor, three-year term length, may serve two successive full terms; and
  - (8) Two members shall be community advocates appointed by the Council President; however, such members shall be prohibited from voting on any property located within their community, two-year term length, may serve two successive full terms.

All members shall be confirmed by the Council in accordance with Chapter 50, Ordinance Code.

(Ord. 2021-83-E, § 2)

**Sec. 672.03. - Definitions.**

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

*Board* means the Public Nuisance Abatement Board created in this Chapter.

*City* shall mean the City of Jacksonville, Florida, excluding the Second, Third, Fourth and Fifth Urban Services Districts.

*Controlled substance* means any substance named or described in F.S. § 893.03; any substance sold in lieu of a controlled substance defined in F.S. § 817.563; any imitation controlled substance defined in F.S. § 817.564; or any legend drug or prescription drug as defined in F.S. § 499.003.

*Effective term* means the term of one year from the date of entry by the Board of an order requiring the owner of a place or premises declared by the Board to be a public nuisance to adopt procedures to abate the nuisance, or a shorter term if the order provides for its expiration in less than one year. Any order of the Board declaring a recurring nuisance relating to nuisance activity on the same property with the same property owner shall not extend the effective term.

*Operator* means the person operating a place or premises subject to this article. The term "operator" includes, but is not limited to, owners, managers, tenants, subtenants, and persons having operational control over the place or premises.

*Owner* means the owner of the real property upon which the place or premises is located. In cases where the owner and the operator are the same person, the terms "owner" and "operator" are used interchangeably in this article.

*Place or premises* means real property and its appurtenances and structures thereon as described in the deed or other instrument of conveyance as recorded in the public records of the City. The term "place" or "premises" includes but is not limited to parking lots, curtilage and other areas open to the general public or to invitees or licensees.

*Public nuisance conduct* means the conduct described in Section 672.04.

*Recurring public nuisance conduct* means any single or multiple instance of the conduct described in Section 672.04 occurring during the effective term of an order entered by the Board.

*Respondent* means the owner, operator, and any other person against whom a complaint is brought pursuant to this Chapter.

(Ord. 2021-83-E, § 2)

#### Sec. 672.04. - Declaration of public nuisance.

For the purpose of this Chapter, any place or premises, or any part thereof, within the boundaries of the City which has been used for the following purposes is declared to be a public nuisance:

- (1) On more than two occasions within a six-month period, as the site of a violation of F.S. § 796.07, relating to prostitution and prostitution-related activities;
- (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 within a six-month period 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 one occasion within a six-month period by a criminal gang for the purpose of conducting criminal gang activity as defined by F.S. § 874.03;
- (5) On one occasion within a six-month period as the site of a violation of F.S. § 787.06, relating to human trafficking;
- (6) 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; or
- (7) On more than two occasions within a six-month period, any pain management clinic, as described in F.S. § 458.3265 or F.S. § 459.0137, as the site of a violation of:
  - a. F.S. § 784.011, 784.021, 784.03, or 784.045, relating to assault and battery;
  - b. F.S. § 810.02, relating to burglary;
  - c. F.S. § 812.014, relating to dealing in theft;
  - d. F.S. § 812.131, relating to robbery by sudden snatching; or

e. F.S. § 893.13, relating to the unlawful distribution of controlled substances.

- (8) On more than two occasions within a six-month period, as the site of a forcible felony as described in F.S. § 776.08 (treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual).

(Ord. 2021-83-E, § 2)

Sec. 672.05. - Board powers and duties.

- (a) The Board shall serve as a quasi-judicial forum in which a determination regarding the existence of public nuisance conduct may be resolved in the public interest with due process of law.
- (b) The Board shall have the power to adopt or establish rules of procedure for the administration and conduct of its hearings. Such rules shall be designed to facilitate the efficient administration of this Chapter and shall always ensure fundamental due process.
- (c) The members of the Board shall elect a chair who shall be a voting member from among the members of the Board. The member elected chair shall serve as chair for a term of one year and may be re-elected to serve an additional term or terms as chair.
- (d) The presence of five members shall constitute a quorum of the Board. The affirmative vote of at least a majority of those members present and voting shall be necessary to take action.
- (e) The City may call hearings of the Board and all hearings shall be open to the public.
- (f) The Neighborhoods Department shall be the custodian of all Board case files and documents pertaining thereto. The Director of the Neighborhoods Department shall designate an individual to serve as clerk to the Board, who shall be empowered to administer oaths to witnesses appearing before the Board, to issue subpoenas in the name of the Board for service of process by any JSO officer or designated agent and shall have the authority to certify other documents issued by the Board.
- (g) The General Counsel shall designate assistants general counsel to represent the Board and to present cases before the Board and to represent the City in the event of appellate review of orders issued by the Board.

(Ord. 2021-83-E, § 2)

Sec. 672.06. - Procedures.

- (a) *Written complaint; reports.* Any law enforcement officer making an arrest or substantiating an incident or occurrence of any statutory violation(s) or violations of Section(s) set forth herein and pursuant to information or independent observation, may submit a copy of every such report and/or offense incident report to the Sheriff or designee, who shall process all such reports and, in consultation with the Office of General Counsel, determine when the requisite number of occurrences or violations have taken place as set forth in Section 672.04. Additionally, a citizen complaint can be made by a property or business owner located within one mile of any location to allege that a particular property is a public nuisance. The Sheriff shall investigate all complaints made pursuant to this subsection to determine whether such property constitutes a public nuisance and whether to refer such property to the Board. All final determinations regarding citizen complaints shall be communicated to the complainant by the Sheriff.

**(b) Processing; review of case.**

- (1) In each case where such determination has been made in accordance with subsection (a) of this Section, the case shall be processed through the Sheriff's Office.
- (2) When the Sheriff, in consultation with the Office of General Counsel, believes that a public nuisance as defined in Section 672.04 exists, he or she may request the Board clerk to prepare a case folder for a complaint and request a hearing before the Board.

**(c) Hearings; hearing notices.**

- (1) The Board clerk shall schedule the hearings and issue hearing notices at least 15 calendar days prior to the scheduled hearing date:
  - (i) By sending written notice of the hearing to the owner and/or operator by certified mail, return receipt requested to the address for the property designated by the owner for receipt of tax bills as listed on the Tax Collector's website; or
  - (ii) By hand delivering the written notice to the owner and/or operator of the premises at their last known address.

If an attempt to serve notice upon the owners and/or operators by certified mail or hand delivery is unsuccessful, service of the notice of the hearing may be made by conspicuously posting the notice at the subject property, such posting to take place not less than ten days before the scheduled hearing date. The owner and/or operator shall be responsible for providing notice to any tenant, lessee or lessor of the hearing.

- (2) The notice of hearing shall include a complaint stating the following:
  - (i) The time, place and nature of the hearing.
  - (ii) The legal authority and jurisdiction under which the hearing is to be held.
  - (iii) Reference to the relevant Section(s) of the statute(s) and ordinance(s) involved in the determination of a public nuisance.
  - (iv) A short and plain statement of facts giving rise to the complaint.

(Ord. 2021-83-E, § 2)

**Sec. 672.07. - Conduct of hearings.**

- (a) The Board shall conduct a hearing on the complaint and receive evidence pertaining to the conduct described in the complaint.
- (b) The Office of General Counsel attorney shall present evidence before the Board on behalf of the City.
- (c) All parties shall have an opportunity to present evidence and argument on all issues involved, conduct cross examination, submit rebuttal evidence and to be represented by counsel. In addition:
  - (1) The Board may consider any evidence, including but not limited to evidence of the general reputation of the place or premises. All testimony shall be given under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings. Orders of the Board shall be based upon competent and substantial evidence submitted for the Board's consideration at the hearing.
  - (2) The City shall have the burden of proving the existence of an unlawful public nuisance by the greater

weight of the evidence.

- (d) If the respondent has been properly noticed for the hearing before the Board and fails to appear, the Board may proceed with a hearing in absentia on the merits of the alleged violation. Any findings or orders resulting from such hearing are valid and binding upon the respondents.

(Ord. 2021-83-E, § 2)

Sec. 672.08. - Remedies, orders and jurisdiction.

- (a) At the conclusion of the hearing and after considering all evidence presented at such hearing, the Board shall issue findings of fact based upon the evidence presented and made part of the record that a public nuisance does not exist or that an unlawful public nuisance does exist.
- (1) If the Board finds that the allegations of the complaint have not been proved, the Board shall dismiss the complaint.
- (2) If the Board finds that a sufficient number of the allegations of the complaint have been proved, the Board may declare the property to be an unlawful public nuisance.
- (b) If the Board declares that the property is an unlawful public nuisance, the Board shall then consider the appropriate remedy, at the same meeting or at a later regular meeting or special meeting called for such purpose. The Board may, following its consideration of the appropriate remedy and endeavoring to use the least restrictive method believed necessary to abate the nuisance, enter an order:
- (1) Immediately prohibiting the maintaining of the nuisance;
- (2) Immediately prohibiting the operating or maintaining of the place or premises, including the closure of the place or premises or any part thereof;
- (3) Immediately prohibiting the conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance;
- (4) Requiring the owner of such place or premises to adopt such procedure(s) as may be appropriate under the circumstances to abate any such nuisance; or
- (5) Any combination of subsection (b)(1), (2), (3), or (4) of this Section.
- (c) Upon declaring that the property is an unlawful public nuisance, the Board may also:
- (1) Impose a fine not to exceed \$250.00 per day for each day conduct occurred upon which the Board based its finding of a public nuisance and a fine not to exceed \$500.00 per day for each subsequent finding of recurring public nuisance conduct occurring on the premises during the time the Board retains jurisdiction over the premises. If two or more respondents are fined, the total amount of the fines shall not exceed the maximum amount per day authorized by this subsection. The respondent must satisfy the fine by making payment to the City. Unpaid fines shall accrue interest as provided in F.S. § 55.03. The Board may suspend such fines, in whole or in part, contingent upon compliance with other terms or conditions of the order, and may terminate the suspension and impose such fines upon a showing that the respondent has not complied with such term or condition of the order. If the Board terminates the suspension, interest that has accumulated during the time of suspension shall also be due and owing;
- (2) Award reasonable costs associated with the investigation and hearing on the public nuisance, including attorney's fees, investigative costs, and costs of recording of its order. The respondent must pay the award of costs and fees to the City. Unpaid costs and fees shall accrue interest as provided in F.S. § 55.03.

The Board may suspend such costs and fees, in whole or in part, contingent upon compliance with the other terms or conditions of the order, and may later terminate the suspension and impose such costs and fees upon a showing that the respondent has not complied with such term or condition of the order. If the Board terminates the suspension, interest that has accumulated during the time of suspension shall also be due and owing.

- (d) If the Board finds two or more respondents responsible for a public nuisance, those respondents will be jointly and severally responsible for complying with the actions ordered under this Section and for satisfying the fines imposed and costs and fees awarded.
- (e) The total fine imposed pursuant to this Section shall not exceed \$15,000.00 during the effective term of any order. If two or more respondents are fined, the total amount of the fines shall not exceed \$15,000.00 during the effective term of the order.
- (f) The findings and orders of the Board shall be reduced to writing, executed by the presiding chair of the Board, and filed with the Board clerk. A copy of the executed order shall be mailed or hand delivered to each party within five working days after execution by the presiding chair of the Board. This time period is procedural in nature, and the failure to comply with this time period shall not invalidate any Board order.
- (g) The Board may retain jurisdiction for one year after the order's effective date to modify the order where just cause is found to exist.
- (h) The Board may request the City to bring a complaint under F.S. § 60.05, seeking an injunction against any nuisance described herein.
- (i) The Board, after ordering any of the remedies authorized by this Section, may amend the remedy if additional safeguards are necessary, may suspend the remedy for good cause shown, and may rescind the suspension at any time while the Board has jurisdiction, whether such remedy was initially imposed or not. The Board shall give the owner notice and an opportunity to be heard before rescinding a suspended remedy or imposing a new remedy. Rescinding a suspended remedy or imposing a new remedy shall not operate to extend the one-year jurisdiction of the Board; however, nothing shall prevent the City from filing a new complaint if there has been a substantial change in circumstances or if new nuisance activities have occurred.

(Ord. 2021-83-E, § 2)

Sec. 672.09. - Enforcement of orders.

- (a) Any order issued by the Board under the provisions of Section 672.08 shall expire one year after its effective date or at such earlier time as is stated in the order. However, any fines imposed or costs and fees awarded shall continue to be an indebtedness owed to the City until satisfied and shall not expire one year after the effective date of the order. Such fines, costs, and fees will become a lien against the property upon the recording of a certified copy of the order.
- (b) A certified copy of any order issued by the Board declaring a place or premises to be a public nuisance that imposes fines, costs, or attorney's fees under Section 672.08 shall be recorded in the public records, and shall become a lien against the real property that is the subject of the order.
- (c) Fines, costs, or attorney's fees imposed under the provisions of Section 672.08 shall be due and payable upon the date of the order of the Board imposing any and all fines, costs, or attorney's fees. Fines, costs, or attorney's fees may be paid in full without interest during the first 30 calendar days after the date of the

order of the Board. Thereafter, interest at the rate established by the comptroller of the state pursuant to F.S. §§ 55.03 and 687.01, shall accrue upon any unpaid amount of fine and costs. The interest rate in effect on the date of the order of the Board shall remain in effect until the fine and costs are paid.

- (d) Any lien recorded against real property 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. However, no lien created pursuant to the provisions of this Section may be foreclosed on real property which is a homestead under Section 4, Article X of the Florida Constitution.
- (e) The City may bring a complaint under F.S. § 60.05 and seek a permanent injunction against any public nuisance.
- (f) The City is authorized to enforce any orders entered under this Chapter in the circuit court, pursuant to the procedures contained in F.S. § 120.69.
- (g) The City 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 respondent, including contracts awarded under F.S. § 24.112 (lottery retailers) and including licenses for the sale of beverages issued under F.S. § 561.19, where the existence of such permits, licenses, concessions or contracts is conducive to the maintenance of such nuisance.
- (h) Orders shall be posted at the place, building, or premises where the public nuisance exists, existed or is occurring in violation of the law and shall be sent by certified mail to the owner and/or operator of such place, building, or premises within two business days of the posting.
- (i) All powers and rights conferred by this Section 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.

(Ord. 2021-83-E, § 2)

#### Sec. 672.10. - Appeals.

An order of the Board shall be subject to judicial review in the manner provided by law.

(Ord. 2021-83-E, § 2)

#### Sec. 672.11. - Deposit of fines, fees, costs and interest awards.

Any monies received pursuant to this Chapter shall be deposited into the City's Nuisance Abatement Lien Special Revenue Fund for those uses as established in Section 111.470, Ordinance Code.

(Ord. 2021-83-E, § 2)