

ORDINANCE #2020-4

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, ORANGE COUNTY, FLORIDA AMENDING ORDINANCE #2010-17, CREATING A NUISANCE ABATEMENT HEARING OFFICER, PROVIDING FOR THE QUALIFICATIONS, TERM, REMOVAL, APPOINTMENT, JURISDICTION, AND POWERS OF THE HEARING OFFICER; PROVIDING FOR ENFORCEMENT PROCEDURES, ~~PAYMENT METHOD~~ METHOD OF PAYMENT OF FINES AND COSTS, COURT ADMINISTRATIVE HEARINGS, AND PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Eatonville Town Council desires to establish a Nuisance Abatement Ordinance with a Hearing Officer.

NOW THEREFORE BE IT ~~RESOLVED~~ ENACTED BY THE TOWN OF EATONVILLE, FLORIDA AS FOLLOWS:

Section 2.187 (a): Creation, Composition: Hearing Officer

1. There is hereby created a Nuisance Abatement Hearing Officer for the Town of Eatonville, Florida, who shall be appointed by the Town Council. The Hearing Officer shall be appointed by the Town Council. The Hearing Officer shall be appointed to serve a term of three (3) years. Nothing shall prevent the Town Council from re-appointing a Hearing Officer for a second term.
2. The appointment of the Nuisance Abatement Hearing Officer shall be made solely on the basis of professional experience in the areas of law and property rights. The Hearing Officer shall not be a property owner in the Town of Eatonville, a resident of the Town, or related by family ties, or business to any property owner in the Town of Eatonville.
3. An appointment to fill a vacancy of the Hearing Officer shall be for the remainder of the unexpired term of office.
4. The Hearing Officer shall be suspended and/or removed for cause by the Town Council. The Hearing Officer may terminate his/her appointment by giving the Town Council thirty (30) day notice. The Town Council may terminate the appointment of the Hearing Officer by giving the Hearing Officer a thirty (30) day notice.
5. Regular meetings of the Hearing Officer shall occur at least once a month, but the Hearing Officer may hear cases as often as necessary. Special meetings may be convened by the Hearing Officer upon giving notice thereof to the public. The notice of a special meeting shall be given at least ~~twenty-four hours (24)~~ fourteen (14) days prior to the meeting time.
6. Minutes shall be maintained of all meetings and hearings held by the Hearing Officer, and all meetings, hearings and proceedings shall be open to the public.

7. The Nuisance Abatement Hearing Officer may adopt rules and regulations necessary to carry out provisions of this Ordinance, subject to approval by the Town Council. Such rules shall not be inconsistent with this Ordinance and the rules of procedure adopted by the Town Council. Such rules shall be designed to facilitate the efficient administration of this Ordinance.
8. The Hearing Officer shall be compensated for his/her time; not to exceed twenty (20) hours in any month. Payment shall be paid by the Town of Eatonville within thirty (30) days of the submission of a monthly invoice to the Finance Department.
9. The Hearing Officer is not an employee of the Town of Eatonville for purposes of benefits, leave or other enumeration.

Section 2.187 (b): Legal Advisor to the Hearing Officer

1. An Attorney may be appointed by the Town Council to attend meetings of the Hearing Officer and to assist the Hearing Officer in the conduct of hearings.
2. The attorney shall review each complaint regarding an alleged public nuisance.

Section 2.187 (c): Jurisdiction

1. The Hearing Officer shall have the jurisdiction to hear and decide alleged public nuisances and may issue violations of said public nuisances.
2. The following violations, on premises or a place, are Public Nuisances and are subject to Nuisance Complaints:
 - a). On more than two (2) occasions within a ~~six~~ three-month period, as the site of a violation of Section 796.07, Florida Statutes.
 - b). On more than two (2) occasions within a ~~six~~ three-month period, as the site of the unlawful sale, delivery, manufacture or cultivation of any controlled substance.
 - c). 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.
 - d). By a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined by Section 874.03, Florida Statutes.
 - e). On more than two occasions within a ~~six~~ three-month period, as the site of a violation of Section 812.019, Florida Statutes, relating to dealing in stolen property.
 - f). On more than two (2) occasions within a six three month period, the site of a citation/violation of operating or causing to be operated any source of sound from any occupancy in such a manner as to create a sound level which exceeds 50 decibels

(between 10:00 P.M., to 7:00 A.M.,) for residential and 55 decibels (between 7:00 A.M., and 10:00 P.M.,) for residential or exceeds 60 decibels at a commercial/business rate.

3. The jurisdiction of the Hearing Officer shall not be exclusive. Nothing in this Ordinance shall be construed to prohibit the Town from enforcing its codes and Ordinances by any other means including, but not limited to a summons, a notice to appear in County Court, issuance of citation, a civil action for injunctive relief, or demolition.

4. The Nuisance Abatement Hearing Officer shall have continuing jurisdiction for a period of one (1) year over any place or premises that has been or is declared to be a public nuisance pursuant to this Ordinance.

Section 2.188 (a): Procedure

1. Any employee, officer or resident of the Town of Eatonville may file a Nuisance Abatement Complaint with the police department for further investigation by the Criminal Investigation Division (CID). Complaints determined to be valid will be forwarded by the police department representative to the Town Clerk for official filing with the Nuisance Abatement Officer.
2. Any person filing a Nuisance Abatement Complaint must comply with the provisions contained herein.
3. ~~The Complaint is filed with the Town Clerk.~~ Initial nuisance complaints shall be brought to the police department for further investigation by the Criminal Investigation Division (CID). Once the police department has concluded its investigation and validated the complaint, the police department representative will forward all pertinent documentation to the Town Clerk for official filing with the Nuisance Abatement Officer. The nuisance abatement officer shall hear complaints and may declare any place or premises that has been used on more than two occasions within a six-month period as the site of the unlawful sale or delivery of controlled substances or as the site of a violation of F.S. § 796.07, or any place or building used by a youth and street gang for the purpose of conducting a patter of youth and street gang activity to be a public nuisance, which may be abated in accordance with the procedures set forth herein.
4. The complaint together with sworn supporting statements shall be reviewed by the Legal Counsel of the Hearing Officer, after the initial complaint was filed with and validated by the Police Department.
5. If the reviewing attorney has reason to believe a public nuisance exists on the place or premises, a formal notice of hearing may be filed.
6. *If a formal notice of hearing is filed, the hearing shall be conducted by the Hearing Officer.*

7. A hearing shall be set for the next scheduled hearing date unless that date is less than fourteen (14) days from the date of the Notice. If so, then the hearing date shall be at the next scheduled hearing date or at a Special Hearing date but at least fourteen (14) but no more than forty-five (45) days from the date of the Notice.
8. A copy of the Complaint and written notice of the hearing shall be sent via certified mail, return receipt requested, or by hand delivery to the owner of the place or premises complained of, at the last known address of such owner. 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 Chapter 49, Florida Statutes, as amended. Notice, whether by certified mail, hand delivery or publication must be provided at least ~~three~~ ~~(3)~~ fourteen (14) days prior to the scheduled hearing.
9. The Hearing Officer shall conduct a public hearing on the complaint and may receive and consider any evidence, including evidence of the general reputation of the place or premises which is the subject of the complaint.
10. All testimony at the hearing shall be under oath. The Hearing Officer shall not be bound by the formal rules of evidence and may consider hearsay testimony; however, the Hearing Officer shall act to ensure fundamental due process in his/her hearing process.
11. The owner of the place or premises shall have the opportunity to appear before the Hearing Officer in person and/or through legal counsel, to offer evidence in his/her defense.
12. At the conclusion of the Hearing based on the evidence received, the Hearing Officer may find and declare upon the preponderance of the evidence that the place or premises has been used as alleged in the complaint and that such place or premises thereby constitutes a public nuisance as described in Section 2.187 (c) (2) of this Ordinance. The Hearing Officer in his/her discretion may continue the hearing in order to receive additional evidence, testimony or for any other reason he/she deems appropriate before ruling on the complaint. If the Hearing Officer does not find that the allegations of the complaint have been proven, he/she shall enter an order dismissing the complaint.
13. If the Hearing Officer finds and declares a place or premises to be a public nuisance, it may enter an order imposing fines and costs pursuant to Section 2.189 of this Ordinance, requiring the owner of such place or premises to adopt such procedure as may be appropriate under the circumstances to abate any public nuisance, and/or the Hearing Officer may enter an order immediately prohibiting.

4. As used in this Ordinance, the term "recurring public nuisance conduct" mean any single or multiple instance of the conduct described in 2.187 (c) (2) occurring during the effective term of an order entered by the Hearing Officer.

Section 2.189: Fines, Penalties, Costs, Liens and Foreclosure

1. The Nuisance Abatement Hearing Officer, in addition to the powers and duties available in Section 2.187, may:
 - a). Order the owner of a residential property to pay a fine not to exceed two hundred fifty dollars (\$250.00) per day for each day and the owner of a business property to pay a fine not to exceed one thousand dollars (\$1,000.00) per day for each day, conduct occurred upon which the Hearing Officer based his/her finding of a public nuisance, or
 - b). Order the owner of residential property to pay a fine not to exceed five hundred dollars (\$500.00) per day and the owner of a business property to pay a fine not to exceed two thousand dollars (\$2,000) for recurring public nuisance conduct, occurring on the place or premises.
2. The Nuisance Abatement Hearing Officer may order the owner of property declared to be a public nuisance to pay reasonable costs, including reasonable attorney fees associated with the investigation of and hearings on public nuisances and recording of the order.
3. In determining the amount of any fine, the Nuisance Abatement Hearing Officer may consider the following factors, including but not limited to:
 - a). the gravity of the public nuisance;
 - b). any actions taken by the owner to abate the public nuisance; and
 - c). any previous public nuisance violations committed by the owner.
- 4). A certified copy of an order imposing a fine may be recorded in the Public Records of Orange, Florida and thereafter shall constitute a lien against the real property that is the subject of the order. A fine imposed pursuant to this Section shall continue to accrue until the owner abates the public nuisance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this section, whichever comes first. Total fines, excluding costs, imposed pursuant to this Ordinance shall not exceed fifteen hundred dollars (\$1,500) during the effective term of any order imposed by the Hearing Officer. The Nuisance Abatement Hearing Officer may authorize the Town's attorney to foreclose on any such lien. No lien created pursuant to the provision of this section may be foreclosed on real property which is a homestead under Section 4, Article X of the State of Florida Constitution.
- 5). Where the Town seeks to bring an administrative action, based on a stolen property nuisance against a property owner operating an establishment where multiple tenants, on one

- 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 on the premises which is conducive to such nuisance.

An order entered under this Section shall expire after one (1) year or such earlier time as is stated in the order.

14. Before the Hearing Officer can order the closure of a place or premises, he/she must make the following factual findings.

- a). That the owner did not abate the nuisance after being ordered by the Hearing Officer to do so, or
- b). That the owner did not substantially comply with an appropriate order issued by the Hearing Officer; or
- c). That the owner continued to maintain an ongoing nuisance; or
- d). That closure is the only effective option in eradicating the nuisance, such findings to be supported by a written order setting forth the factual basis for this determination.

15. The Hearing Officer may bring a Complaint, under Section 60.05, Florida Statutes, seeking temporary and permanent injunctive relief against any public nuisance described in Section 2.187 (c) (2) of this Ordinance. The Town's Attorney shall prosecute such action on behalf of the Hearing Officer. This section does not restrict the right of any person enumerated in Section 60.06, Florida Statutes to proceed under Section 60.05, Florida Statutes, against any public nuisance.

Section 2.188 (b): Definitions

1. As used in this Ordinance, the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of Section 817.563, Florida Statutes, or any imitation controlled substance defined in Section 817.564, Florida Statutes as amended.
2. As used in this Ordinance, the terms "place or premises" mean the land and its appurtenances and structures thereon as such land is described or contained in the deed or instrument of conveyance as same in recorded in the Public Records of Orange County, Florida.
3. As used in this Ordinance, the term "public nuisance" means the conditions described in Section 2.187 (c) (2) of this Ordinance.

Orlando Sentinel

MEDIA GROUP

633 North Orange Avenue
MP 130
Orlando, FL 32801

Account Name: Town Of Eatonville
Account Number: CU00106004
Attn: Cathy Williams

To Whom It May Concern:

This is to confirm that the advertisement for Town Of Eatonville published in *The Orlando Sentinel* on the following dates.

Publication Date: Jun 27, 2020

Ad Caption: Ordinance 2020-4

Section: Local

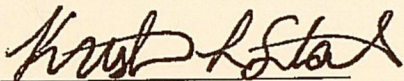
Size: 1/8 (3 x 5.25)

Order ID: 6705367

Cost: \$573.50

Should you need further information, please feel free to contact me.

Sincerely,

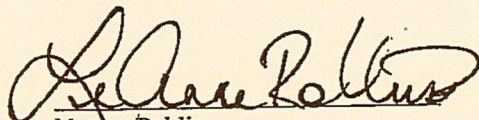


Account Representative
The Orlando Sentinel

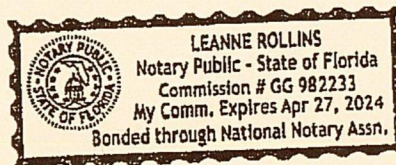
/mdu

State of Florida
County of Orange

The foregoing instrument was acknowledged before me this 30 day of June, 2020, by Kristen Stahl, who is personally known to me.



Notary Public
State of Florida at Large



site, conduct their own retail business, the property owner shall not be subject to a lien against his/her property or prohibition of the operation provision if the property owner evicts the business declared to be a public nuisance within ninety (90) days after notification by registered mail to the property owner of a second stolen property conviction of the tenant.

6). In addition to the costs which may be imposed, the Town may recover all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. If the Town is unsuccessful the opposing party can be awarded attorney's fees.

Section 2.190: Effective Date

That this Ordinance and the rules, regulations, provisions, requirements order, and matters established and adopted hereby shall take effect and be in full force and effect immediately upon its passage and adoption.

SECTION THREE: CONFLICTS: Any Ordinance or parts of thereof in conflict with this Ordinance is hereby repealed.

SECTION FOUR: SEVERABILITY: If any section, part of section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative, void, such holdings of invalidity, shall not effect the remaining portions of this Ordinance without such unconstitutional, invalid, or inoperative part therein; and the remainder of this Ordinance after exclusion of such part or parts shall be deemed to be held invalid as if such part or parts had not been included therein or if this Ordinance or any provision thereof shall be held inapplicable to any person, group of person, kind of property, circumstances, or set of circumstances such hold shall not affect the applicability thereof to any other person or property or circumstances.

SECTION FIVE: EFFECTIVE DATE: This Ordinance shall become effective immediately upon its passage and adoption.

FIRST READING held this 16TH day of JUNE 2020. A.D.


| | AYE: | NAYE: | ABSENT: |
|-----------------------------|--------|-------|---------|
| Eddie Cole, Mayor: | X_____ | _____ | _____ |
| Vice Mayor Rodney Daniels: | X_____ | _____ | _____ |
| Councilwoman Angie Gardner: | X_____ | _____ | _____ |
| Councilman Theo Washington: | X_____ | _____ | _____ |
| Councilman Tarus Mack: | X_____ | _____ | _____ |

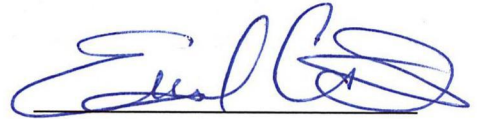
SECOND AND FINAL READING held this 7th day of _____ 2020. A.D.

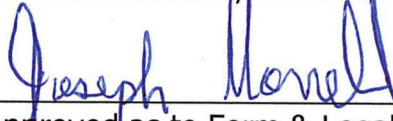
| | AYE: | NAYE: | ABSENT: |
|-----------------------------|---------|---------|---------|
| Eddie Cole, Mayor: | X _____ | _____ | _____ |
| Vice Mayor Rodney Daniels: | X _____ | _____ | _____ |
| Councilwoman Angie Gardner: | X _____ | _____ | _____ |
| Councilman Theo Washington: | _____ | X _____ | _____ |
| Councilman Tarus Mack: | _____ | X _____ | _____ |

PASSED AND ADOPTED this 7th day of JULY, 2020. A.D.

ATTEST:


 Cathlene Williams, Town Clerk


 Eddie Cole, Mayor


 Approved as to Form & Legality
 Joseph Morrell, Town Attorney