

*DIVISION 2. NUISANCE ABATEMENT BOARD PROCEDURE<sup>1</sup>*

**Subdivision I. In General**

**Secs. 26-111—26-126. Reserved.**

**Subdivision II. Nuisance Abatement Board**

**Sec. 26-127. Creation.**

There is hereby created a public nuisance abatement board, hereinafter called "the board," pursuant to F.S. § 863.188.

(Ord. No. 96-12, § 1(1.1), 12-17-1996)

**Sec. 26-128. Membership.**

- (a) The board shall consist of seven town council appointed members serving without pay, two to be mayoral appointments.
- (b) The terms of the initial members of the board shall be staggered, with four members appointed for a term of two years and three members appointed for a term of one year; thereafter, all terms will be for two years.
- (c) The board shall elect a chair and a vice-chair and may conduct business with a quorum of four members.

(Ord. No. 96-12, § 1(1.2), 12-17-1996)

**Sec. 26-129. Powers.**

The board shall have the power to:

- (1) Adopt rules for the conduct of its hearings and establish procedures;
- (2) Take testimony and receive documentary evidence;
- (3) Issue orders having the force of law consistent with authority contained herein.

(Ord. No. 96-12, § 1(1.3), 12-17-1996)

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<sup>1</sup>State law reference(s)—Nuisance abatement board, F.S. § 893.138.

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**Sec. 26-130. Legal counsel; secretary.**

- (a) The city attorney shall serve as legal counsel for the board and may assist the board in establishing facts and eliciting evidence.
- (b) The town clerk shall be the secretary of the board.

(Ord. No. 96-12, § 1(1.4), 12-17-1996)

**Secs. 26-131—26-146. Reserved.**

**Subdivision III. Declaring A Public Nuisance**

**Sec. 26-147. Complaints.**

The nuisance abatement board 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 pattern of youth and street gang activity to be a public nuisance, which may be abated in accordance with the procedures set forth herein.

(Ord. No. 96-12, § 2(2.1), 12-17-1996)

**Sec. 26-148. Who may bring grievance or objection.**

Any employee, officer or resident or the town may bring a complaint before the board. Written notice of said complaint must be furnished to the owner of the place or premises, at his last known address, not less than three days prior to a scheduled hearing before the board.

(Ord. No. 96-12, § 2(2.2), 12-17-1996)

**Sec. 26-149. Notification.**

Upon receipt of the complaint, the town clerk shall notify the chair who may call a hearing of the board within 21 days following receipt of the complaint. The board must furnish a notice of the complaint to the owner of the place or premises, at the owner's last known address, in writing, by U.S. mail, certified return receipt requested, or by personal service not less than three days prior to a scheduled hearing before the board. The notice shall contain the owner's name, the address and legal description of the property, the date, time and place of the hearing and shall have the complaint attached.

(Ord. No. 96-12, § 2(2.3), 12-17-1996)

**Secs. 26-150—26-165. Reserved.**

**Subdivision IV. Public Hearing**

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**Sec. 26-166. Evidence.**

The board shall conduct a public hearing on the complaint, receiving any evidence, including evidence of the general reputation of the place or premises. The owner of the place or premises shall have an opportunity to present evidence in his defense.

(Ord. No. 96-12, § 2(2.4), 12-17-1996)

**Sec. 26-167. Testimony, due process.**

All testimony shall be under oath and recorded. Formal rules of evidence shall not apply, but due process shall be observed and govern the proceedings.

(Ord. No. 96-12, § 2(2.5), 12-17-1996)

**Sec. 26-168. Finding.**

At the conclusion of the hearing, and based on the evidence received, the board may find and declare that the place or premises have been used as alleged in the complaint and that such place or premises thereby constitutes a public nuisance.

(Ord. No. 96-12, § 2(2.6), 12-17-1996)

**Secs. 26-169—26-184. Reserved.**

**Subdivision V. Declaration of Public Nuisance and Remedies**

**Sec. 26-185. Finding of nuisance denoted.**

If the board finds and declares the existence of a public nuisance, the board may enter an order:

- (1) Immediately prohibiting the maintaining of the nuisance;
- (2) Immediately prohibiting the operating;
- (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, agent, or other person in charge 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.

(Ord. No. 96-12, § 2(2.7), 12-17-1996)

**Sec. 26-186. Order of closure.**

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

- (1) The respondent did not abate the nuisance after being ordered by the nuisance abatement board to do so;

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- (2) That the respondent did not substantially comply with an appropriate order issued by the nuisance abatement board;
  - (3) The responded continued to maintain an ongoing nuisance; or
  - (4) That closure is the only effective option in eradicating the nuisance, such finding to be supported by a written order setting forth the factual basis for this determination.

(Ord. No. 96-12, § 2(2.8), 12-17-1996)

**Sec. 26-187. Board may seek temporary, permanent injunctive relief.**

The nuisance abatement board may bring a complaint, under F.S. § 60.05, seeking temporary and permanent injunctive relief against any nuisance described in section 2-783. The town attorney may prosecute such action on behalf of the nuisance abatement board.

(Ord. No. 96-12, § 2(2.9), 12-17-1996)

**Secs. 26-188—26-210. Reserved.**