

**ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE
2210.0, CRIMINAL NUISANCE ABATEMENT BOARD**

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RESCINDS:	N/A
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POLICY:

It is the policy of the Orlando Police Department (OPD) to utilize the criminal nuisance abatement process to promote, protect, and improve the health, safety, and welfare of Orlando residents and visitors. The purpose of this directive is to provide an efficient and orderly process to abate criminal nuisances.

PROCEDURES:

1. DEFINITIONS

Criminal Nuisance: A piece of real property, like a convenience store, abandoned lot, or motel, where certain types of criminal or gang activity occur. Oftentimes, there must be three arrests for the same type of criminal activity on a property within a six month period for the property to be a criminal nuisance. Criminal nuisance is further defined by section 893.138, Florida Statutes and section 2.188, City of Orlando Code and by section 2.1 below.

Criminal Nuisance Abatement: Efforts to eliminate the activity that causes a property to be a criminal nuisance. For example, criminal nuisance abatement may include installing lighting, fencing, or cameras and hiring an off-duty police officer.

Criminal Nuisance Abatement Board (CNAB): A body of five members appointed by the Mayor and subject to confirmation by City Council that has the authority to declare a property a criminal nuisance and to order the owner of the property take action to abate the nuisance and to pay fines and reasonable costs.

Office: Office of the City Prosecutor

Qualifying Event: The first qualifying event is a criminal violation specified in City Code s. 2.188 or an instance of criminal gang activity. Subsequent qualifying events are an event of the same character as the first or if at a pain-management clinic, an additional violation of one of the crimes enumerated in City Code s. 2.188(1)(f).

2. REQUIREMENTS FOR CASE SUBMISSION

In order to submit a criminal nuisance abatement case to the Office of the City Prosecutor, the property must meet the criteria for criminal nuisance defined in Florida Statute s. 893.138(2) and City Code s. 2.188(1) and a lieutenant must

approve. Additionally, most cases will not be accepted unless three qualifying events occur within the five months prior to submission of the case package.¹

2.1 CRITERIA FOR CRIMINAL NUISANCE

“Any place or premises that has been used:

(a) On more than two occasions within a six month period, as the site of a violation of Section 796.07, Florida Statutes[, Prohibiting Prostitution and Related Acts];

(b) 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;

(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 month period, as the site of a violation of Section 812.019, Florida Statutes, relating to dealing in stolen property; or

(f) Any pain-management clinic, as described in § 458.3265 or § 459.0137, Florida Statutes, which has been used on more than two occasions within a 6-month period as the site of a violation of:

1. Section 784.011, § 784.021, § 784.03, or § 784.045, Florida Statutes, relating to assault or battery;
2. Section 810.02, Florida Statutes, relating to burglary;
3. Section 812.014, Florida Statutes, relating to dealing in theft;
4. Section 812.131, Florida Statutes, relating to robbery by sudden snatching; or
5. Section 893.13, Florida Statutes, relating to the unlawful distribution of controlled substances, may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in this section.”

2.2 LIEUTENANT APPROVAL

Prior to approving submission, the lieutenant must review the case package to ensure there is sufficient evidence to satisfy the statutory criteria for criminal nuisance. In addition, the lieutenant should consider whether any improvements to the property (e.g. additional lighting or hiring security officers) are likely to prevent or decrease the ongoing criminal activity. Finally, the lieutenant should consider the property owner’s present and existing willingness to improve security conditions voluntarily.

3. CASE PACKAGE REQUIREMENTS

Criminal Nuisance Abatement case packages submitted to the Office of the City Prosecutor must contain the following information:

¹ This timeframe allows the Office one (1) month to provide adequate notice to the property owner, and afford the owner with an opportunity to abate the nuisance voluntarily.

- (1) Arrest affidavits from all qualifying events,
- (2) Information related to the property and property owner, and
 - Include a Property Appraiser Property Record Card and Location Information. You may obtain this document by searching the property's address on Orange County Property Appraiser website www.ocpafil.org. This document provides the owner name, the property name, and mailing address for the owner.
 - If the property owner is a corporation or legal entity, search the property owner on Sunbiz, <https://dos.myflorida.com/sunbiz/search/>; and include the results of the search in the case package. This provides business addresses and contact information for the registered agent, officers, and directors.
 - Include the contact information via a D.A.V.I.D. search of property owner if property owner is a person, if property owner is a corporation of the registered agent and all officers and directors.
- (3) Preliminary recommendations for abating conduct.
 - The primary purpose of criminal nuisance abatement is to encourage properties to take action to end the activity occurring on the property that creates a criminal nuisance. The Office needs officers to assist in making recommendations for the property to implement in order to end criminal nuisance activity because criminal nuisance abatement cases are often time sensitive and the Office does not have sufficient resources to entirely develop abatement recommendations for all criminal nuisance abatement cases. Therefore, before submitting a case, officers should consider and begin to develop recommendations that may help to end the activity that causes the property to be a criminal nuisance. Recommendations do not have to be fully developed and the Office is available to assist in making recommendations at 407.246.2356 and OrlandoCityProsecutor@orlando.gov. Additionally, the Office will consider whether additional recommendations should be made or whether recommendations are likely to abate the issue when making a filing decision.
 - Examples of recommendations: (arranged from least severe regulation imposed on the property to most severe)
 - Provide trespass authorization to OPD
 - Report loitering or trespass activity to OPD
 - Complete an on-site security inspection and implement any recommendations from the survey
 - Post "No Trespassing" signs and/or signs warning of surveillance cameras
 - Improve lighting
 - Install surveillance video
 - Provide OPD access to surveillance video
 - Install fencing or landscaping to make an area where conduct associated with the criminal nuisance occurs difficult to access. (This measure may be appropriate when criminal nuisance activity occurs behind the business or in a far corner of a business parking lot.)
 - Install design features, like planters, or implement other measures to make it difficult to congregate in areas where conduct associated with criminal nuisance occurs. (This measure may be appropriate when criminal nuisance activity occurs within the curtilage of the business.)
 - Attempt to hire off-duty officers
 - Hold monthly meetings with employees to remind employees of efforts to abate criminal nuisance activity and keep a log of these meetings
 - Conduct criminal background checks for prospective and existing employees
 - Terminate existing employees and decline to hire prospective employees with criminal history related to the activity creating a criminal nuisance on the property
 - Stop selling items or services associated with criminal nuisance
 - Adjust operating hours
 - Closure of the business (note: per the City Code, this remedy is not available unless and until other remedies have been attempted unsuccessfully.)

4. DELIVERY OF CASE PACKAGES

Officers must submit criminal nuisance abatement case packages to the Office by email at OrlandoCityProsecutor@orlando.gov using the subject line "URGENT CNAB Case Submission" or by interoffice mail. If officers submit cases by interoffice mail, the officer must call 407.246.2356 or email OrlandoCityProsecutor@orlando.gov using the subject line "URGENT CNAB Case Submission" to inform the Office that the case package has been sent interoffice mail so the Office can follow up if the case package is not received.

5. FILING DECISION

5.1 ASSIGNING A CASE NUMBER

Once the Office receives a criminal nuisance abatement case package, the Office will assign the case package a case number and digitally log the case into case management software. Cases will be assigned a number based on the four digit calendar year in which the case is received, the letters CN (an abbreviation for criminal nuisance), and the sequence that the case was received within the calendar year. For example, the first criminal nuisance abatement case received in 2019 will be assigned the number 2019-CN-1.

5.2 FILING CRITERIA

The Office will consider the following five factors when determining whether to pursue a criminal nuisance abatement case:

- (1) Whether the property meets the criteria for criminal nuisance defined in Florida Statute s. 893.138(2) and City Code s. 2.188(1) and discussed in Section 2 above?
- (2) Is CNAB likely to find the property is a criminal nuisance based on the available evidence?
- (3) Do the actions or inaction of the property owner or person or entity in control of the property unreasonably contribute to the criminal nuisance?
- (4) Is it likely that recommendations or sanctions will improve the criminal nuisance?
- (5) Is taking action in the best interest of the City?

5.3 TASKING

The Office may need additional information to determine whether to pursue a criminal nuisance abatement case. If so, the officer will be tasked for this information by email. The Office will specify the deadline for completion of the tasking by email. Failure to comply with a tasking before the specified deadline creates the risk that notice cannot be provided to the property in time to file the case before CNAB.

5.4 MANDATORY RECOMMENDATION MEETING

Before the Office pursues a criminal nuisance abatement case, officers must meet by phone or in person with a member of the Office to assist in further developing recommendations for the property owner to abate the criminal nuisance. This meeting allows the Office to learn additional context for the case that may assist in developing additional recommendations. The officer may call 407.246.2356 to have a telephonic meeting. If a member of the Office is available and has reviewed the case, then the meeting will occur at the time of the call. If not, the Office will schedule a time for a telephonic meeting. To schedule an in person meeting, send an email to OrlandoCityProsecutor@orlando.gov using the subject line, "URGENT CNAB recommendation meeting".

5.5 CONSULTATION WITH OTHER DEPARTMENTS

The Office may consult with other OPD departments or City of Orlando departments as appropriate when developing recommendations for criminal nuisance abatement. For example, the Office may consult with Code Enforcement.

6. EFFECTING NOTICE

6.1 TIME PERIOD FOR VOLUNTARY ABATEMENT

If the Office elects to pursue a criminal nuisance abatement case, the property owner must be afforded “an adequate opportunity to voluntarily abate a nuisance” before penalties are imposed against a property owner pursuant to city ordinances promulgated under Fla. Stat. s. 893.138.² Reasonable time to voluntarily abate a criminal nuisance will depend on the recommendations and the circumstances. In most cases, the Office will allow the property owner thirty (30) days to abate the nuisance voluntarily, prior to requesting enforcement action by the CNAB.

6.2 CONTENTS OF NOTICE

The notice sent by the Office to the property will normally include the following information:

- (1) OPD believes a criminal nuisance exists on your property and the basis for that conclusion
- (2) OPD has referred the matter to Office
- (3) Office has authority to file complaint with CNAB
- (4) In order to voluntarily abate the criminal nuisance, the owner must return the consent agreement or provide a proposal to abate criminal nuisance within fourteen (14) days of the sending of the notice
- (5) Failure to return the consent agreement or a proposal to abate the criminal nuisance could lead to the property being brought before CNAB

6.3 SERVICE OF NOTICE

The Office will determine the appropriate recipient(s) of the notice. Depending on the circumstances, it may be appropriate to provide notice to a business owner (who is leasing the property) and the property owner.

The Office will provide the notice by certified mail, hand delivery, or posting. If the Office determines that hand delivery is appropriate, then the Office will contact the lieutenant who approved submission of the case package. The lieutenant will ensure that the notice is delivered by hand within seven (7) calendar days of receiving the request from the Office. The delivery, including any unsuccessful attempts, will be documented by an information report.

Any informational reports relating to the delivery of notice must be submitted to the Office. These reports must be submitted by email attachment and sent to OrlandoCityProsecutor@orlando.gov. The subject line must say, “CNAB Report of Service.” As an alternative to email, any officer may deliver the informational report(s) by hand to the Office.

7. MONITORING COMPLIANCE

² *Maple Manor, Inc. v. City of Sarasota*, 813 So.2d 204 (Fla. 2d DCA 2002). See also *Powell v. City of Sarasota*, 857 So.2d 326 (Fla. 2d DCA 2003) (holding that “adequate opportunity to abate a nuisance necessarily includes [1] notice that criminal activity is occurring, coupled with a reasonable amount of time to end the criminal activity, OR [2] owner had knowledge of the criminal activity that constituted the nuisance for a substantial period of time without making efforts to abate the nuisance.”).

7.1 RESPONSIBILITY FOR MONITORING COMPLIANCE

The section commander or lieutenant who supervises the officer(s) who submit the initial CNAB complaint will be responsible for monitoring the property's future compliance with any consent agreement, property's abatement plan, or CNAB order. The section commander or lieutenant may delegate this responsibility.

7.2 TIMING OF COMPLIANCE EVALUATIONS

Compliance with a consent agreement, property's abatement plan, or CNAB order will be initially evaluated fourteen (14) days after receipt of a consent agreement and evaluated again twenty eight (28) days after receipt of consent agreement or property's abatement plan or CNAB order. After the initial 14-day and 28-day evaluations, the property will thereafter be monitored for compliance every ninety (90) days, starting with 90 days beyond the 28-day evaluation. The 90-day evaluations will occur three times. Notwithstanding the previous paragraph, the Office may extend or modify the time period for compliance evaluation.

7.3 REPORTING OF COMPLIANCE EVALUATIONS

The lieutenant or section commander is responsible for ensuring that they or their designee create an informational report describing the property's compliance or non-compliance with the CNAB order and that the informational report is submitted to the Office. Informational reports related to compliance evaluations must be submitted by email attachment and sent to OrlandoCityProsecutor@orlando.gov. The subject line must say, "CNAB Compliance Report." As an alternative to email, any officer may deliver the informational report(s) by hand to the Office.

8. HEARINGS BEFORE CNAB

8.1 TIME AND LOCATION OF HEARINGS

Hearings before CNAB are held on the 2nd Tuesday of March, June, September, and December at 4:00 P.M. Typically, hearings occur at City of Orlando Council Chambers located on the second floor of City Hall.

8.2 FILING CASES

When appropriate, the Office will file the formal complaint with the Secretary to CNAB. Typically, CNAB will schedule a hearing within 10 days after receiving the complaint for the next meeting of CNAB.³ In some instances, the Office may request that the hearing be scheduled for the following CNAB meeting.⁴

8.3 PRESENTATION OF EVIDENCE

The Office may offer arrest affidavits or other police reports into evidence at CNAB hearings.⁵ In some cases, however, the Office may determine that an officer's live testimony is required. In such cases, the Office will submit a notice of hearing to Witness Management to be delivered to the testifying officer. The Office will coordinate with Witness Management to ensure the availability of officers at CNAB hearings. In the event of a conflict between a notice of a CNAB hearing and other notices or subpoenas, officers should resolve any scheduling conflicts in according with OPD Policy and Procedure 2105, Witness Management and Subpoenas. If an officer's live testimony could compromise his or her status as an undercover officer, the Office will consult with the division commander who supervises the witness, and reach agreement as to how to proceed.

8.4 CNAB ORDERS

³ City Code s. 2.188(7) "Within 10 days after receiving the complaint, the Board ... shall schedule a hearing"

⁴ City Code s. 2.188(11) states that CNAB "may continue the hearing ... for any other reason [CNAB] deems appropriate before ruling on the complaint."

⁵ See City Code 2.188(9) (expressly allowing CNAB to consider hearsay evidence).

“If [CNAB] finds and declares a place or premises to be a public nuisance it may enter an order imposing”:

- (1) Fines,⁶
 - a. \$250/day for each day conduct occurred, upon which the board based its finding of a public nuisance
 - b. \$500/day for conduct occurring during the effective term of an order
- (2) Costs⁷
 - a. “... reasonable costs, including reasonable attorney fees associated with the investigation of and hearings on public nuisances, and recording of the order.” City Code s. 2.189(3)
- (3) Requiring the owner of property to adopt such procedure as may be appropriate under the circumstance to abate any such nuisance,⁸
- (4) The maintaining of the nuisance,⁹
- (5) The operating or maintaining of the place or premises, including the closure of the place or premises,¹⁰
- (6) The conduct, operation, or maintenance of any business activity on the premises which is conducive to such notice.¹¹

CNAB orders generally last for one year unless a shorter time period is stated in the order.¹²

8.5 REPORTING BY OFFICE TO CNAB

At each quarterly meeting, the Office will provide an update to CNAB. This update will be presented in written format, and a copy provided to each CNAB board member. A member of the Office will attend in person to present the update. The quarterly update will detail the status of ongoing CNAB cases, including cases involving voluntary compliance.

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⁶ City Code s. 2.189.

⁷ City Code s. 2.189.

⁸ City Code s. 2.188(12).

⁹ City Code s. 2.188(12).

¹⁰ City Code s. 2.188(12), CNAB must make factual finding of failure to comply with prior order and this must be the only effective option to eradicate the nuisance or any part thereof.

¹¹ City Code s. 2.188(12).

¹² City Code s. 2.188(12).