NORTH MIAMI
FLORIDA
776 N.E. 125 Street, North Miami, Florida 33161

Council Report

To: The Honorable Mayor and City Council

From: Karen Muir, Risk Manager

Date: ~~June 23, 2015~~ July 14, 2015 (Second Reading)

RE: **AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 12, OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, ENTITLED "NUISANCES", BY AMENDING ARTICLE III, ENTITLED "MAINTENANCE OF SWALE AREAS", SPECIFICALLY AT SECTION 12-10 ENTITLED "STANDARD OF MAINTENANCE" TO PROHIBIT THE PLACEMENT OF ITEMS ON TREES IN THE SWALE AREA; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFCTIVE DATE.**

RECOMMENDATION

It is recommended that the Mayor and the City Council of the City of North Miami, Florida amend Chapter 12, of the city of North Miami Code of Ordinances entitled "Nuisances", by amending Article 3, entitled "Maintenance of Swale Areas", specifically at Section 12-10 entitled "Standard of Maintenance to prohibit the placement of any items on trees located in the swale area.

BACKGROUND

Risk Management staff recently performed inspections within Keystone Point and discovered several swings and similar apparatus that were placed on City trees within swale areas.

The swings serve as attractive nuisances and pose inherent risks to those using them (primarily children), pedestrians and motorists. If left uncorrected, the City is exposed to potential liability from any injuries arising due to use of these swings currently existing on public right of way.

Although the City's current regulations address the standard of maintenance for swale areas, they do not prohibit the placement of items in swale. Amending the Code of Ordinances to place language that clearly establish regulations prohibiting the placement of items in swale areas will enable Code Enforcement to effectively execute their function to ensure that swale areas are devoid of attractive nuisances for the well-being of the City of North Miami at large.

Attachments
Ordinance
Photos of swings taken in swale areas

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 12, OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, ENTITLED "NUISANCES", BY AMENDING ARTICLE III, ENTITLED "MAINTENANCE OF SWALE AREAS", SPECIFICALLY AT SECTION 12-10, ENTITLED "STANDARD OF MAINTENANCE" TO PROHIBIT THE PLACEMENT OF SWINGS AND SIMILAR APPARATUS ON TREES IN THE SWALE AREA; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, a recent inspection of the City revealed that swings and similar apparatus are being placed on trees located in the swale area; and

WHEREAS, this practice serves as an attractive nuisance because it poses an inherent risk to children and passersby who choose to operate said equipment and who may become injured on the public rights of way; and

WHEREAS, the City of North Miami's current regulations address the standard of maintenance for swale areas, but do not include any prohibition on the placement of swings or similar apparatus in swale areas; and

WHEREAS, the Mayor and City Council desire to amend the Code of Ordinances to clearly establish regulations to prohibit the placement of swings or similar apparatus in the City's swale areas.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. **Amendments to Chapter 12 Code of Ordinances.** The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 12, of the City of North Miami Code of Ordinances entitled "Nuisances", by amending Article 3, entitled "Maintenance of Swale Areas", specifically at Section 12-10, entitled "Standard of Maintenance" as follows:

CHAPTER 12. NUISANCES

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ARTICLE 3. MAINTENANCE OF SWALE AREAS

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Sec. 12-10. Standard of maintenance.

(a) Swale areas will be considered maintained if all of the following requirements are met:

(1) Areas must be kept free from any accumulation of debris, litter, decayed vegetable matter, filth, rubbish, trash, discarded building materials, glass, or any other materials which are dangerous to the public health, safety and welfare;

(2) Areas must not be allowed to become overgrown with untended vegetation as defined in this chapter.

(b) Sodding of the swale area shall be permitted. All such sodded areas shall be kept in good condition. The paving of any swale shall be prohibited.

(c) The placement of swings or similar apparatus on trees located in the swale area shall be prohibited.

(~~e~~d) Owner shall only permit parking of motor vehicles in swale area if it does not damage the sod or paved material on the swale.

(~~d~~e) No more than two (2) motor vehicles shall be allowed to park on the swale area at a time. Said parking shall be parallel to roadside and in the direction of the authorized traffic movement.

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Section 2. **Repeal.** All ordinances or parts of ordinances in conflict herewith are repealed.

Section 3. **Conflicts.** In the event that the provisions of this Ordinance are in conflict with any other ordinance, rule or regulation, the provisions of this Ordinance shall prevail.

Section 4. **Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Codification.** It is the intention of the City Council of the City of North Miami and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of this

Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 23 day of June, 2015.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of _____, 2015.

_____
DR. SMITH JOSEPH
MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

_____
ROLAND C. GALDOS, ESQ.
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Sponsored by: _____

Vote:

Mayor Smith Joseph, D.O., Pharm. D.	_____ (Yes)	_____ (No)
Vice Mayor Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilman Scott Galvin	_____ (Yes)	_____ (No)
Councilman Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilman Alix Desulme	_____ (Yes)	_____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.