

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, REPEALING IN ITS ENTIRETY, CHAPTER 12 OF THE CODE OF ORDINANCES, ENTITLED NUISANCES AND CREATING IN LIEU THEREOF, A NEW CHAPTER 12 ENTITLED "NUISANCES" TO INCLUDE DEFINITIONS OF TERMS PERTAINING THERETO; PROVIDING FOR THE REGULATION OF UNSAFE BUILDINGS AND STRUCTURES; WEEDS AND RUBBISH; BURGLAR ALARMS; PUBLIC NUISANCES; MAINTENANCE OF SWALE AREAS; NOISE CONTROL REGULATIONS; PENALTIES AND FEES FOR NON-COMPLIANCE; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, the City Manager is recommending the repeal of the City of North Miami's ("City") existing Nuisance Regulations under Chapter 12 of the City's Code of Ordinances; and

WHEREAS, the City is desirous of updating its nuisance regulations to address the growing problems in the community.

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

Section 1. Chapter 12 of the City Code of Ordinances, entitled "Nuisances" is repealed in its entirety and created in lieu thereof a new Chapter 12 entitled "Nuisances" which shall read as follows:

Chapter 12

NUISANCES

ARTICLE I. IN GENERAL

Section 12-1. Definitions.

- (a) Abatement means the removal, stoppage, prostration, or destruction of that which causes or constitutes a nuisance, whether by breaking or pulling it down, or otherwise destroying, or effacing it.

- (b) Owner means the owner of record based on the Miami-Dade Property Appraiser's record or any person with legal, financial or equitable interest in the property on which the alleged public nuisance exists at the time of the violation.
- (c) Property means any real property, premises, structure or location on which a public nuisance is alleged to exist.
- (d) Public nuisance means any fence, wall, shed, deck, house, garage, building, structure or any part of any of the aforesaid; or any tree, pole, smokestack; or any excavation, hole, pit, sidewalk subspace, dock or landing dock; or any lot, land, yard, premise or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the City, in any one or more of the following particulars:
- (1) By reason of being a menace, threat and/or hazard to the general health and safety of the community.
 - (2) By reason of being a fire hazard.
 - (3) By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property.
 - (4) By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.
 - (5) Summary abatement means abatement of the nuisance by the City, or a contractor employed by the City, by removal, repair, or other acts without notice to the owner, agent, or occupant of the property except for the notice required by this Ordinance.

Section 12-2. Nuisances prohibited.

No person, owning, leasing, renting or occupying land in the city shall permit or maintain any nuisance which tends to annoy the community or injure the health of the citizens. Nuisances shall include but not be limited to pets of any kind or any other animal or insect that unreasonably causes annoyance to neighbors or other persons, or constitutes a health hazard.

Section 12-3. Nuisances pertaining to vacant stores and offices, enumerated; abatement; penalty.

- (a) Any owner or lessee shall keep clean the inside and outside of premises of vacant stores and offices. Such owner or lessee shall keep the premises clean and free from any

accumulation of debris, rubbish or trash including keeping the outside of the premises painted and in good state of repair and the windows clean and free from any lettering or sign advertising of the previous business or profession.

- (b) If any commercial property is vacant for more than 15 days, all glass surfaces visible to the public shall be kept clean and the interior of such vacant store shall be screened from public view in one of the following ways until the property is occupied:

 - (1) All glass surfaces visible to the public shall be covered with white 60-pound weight paper. OR
 - (2) Decorative displays of merchandise currently available within the city, merchandise of the future tenant of the vacant store, public service displays, or festival and current holiday displays, provided that screening of the remainder of the vacant store shall be placed immediately behind the decorative display.
- (c) Outdoor signs painted on or affixed to such premises advertising a previous business or profession shall be removed or completely obliterated after the premises become occupied once more, and new identification is erected. "Completely obliterated" means not only complete removal of old signage such that it will not be visible once the new signage is erected, but also that restoration of the wall area upon which the signage was affixed shall be in the same color, texture, materials, etc. as the rest of the wall. The building official shall make the removal or obliteration of previous signage a permit condition for the new signage.
- (d) All sidewalk overhangs attached to commercial buildings shall be structurally sound and free of rust, discoloration, peeling, chipping, cracking, fading, sagging or dirt. All awnings shall be without tears or holes and free of dirt, discoloration, fading, or cracking. All lettering or signage on overhangs shall conform to the requirements provided in the Sign Code of Miami-Dade County and the City's Land Development Regulations.
- (e) Noncompliance with the provisions set forth in this Section, is hereby declared to be a public nuisance or constituting a menace to life, property, public health, public welfare and a fire hazard.
- (f) The owner or lessee shall within fifteen (15) days after written notice by the building department of the city of the existence of the condition described in (a) above comply with the terms and provisions of this section.

Section 12-3.1. Graffiti and Commercial Exterior Maintenance Standards.

- (a) All exterior surfaces of structures used for non-residential purposes, whether vacant or occupied, shall be painted as often as necessary with a protective coating, which is designed for exterior use or is approved by the building official, so that deterioration or peeling shall not occur.

- (b) The existence of deteriorated, peeling or improperly maintained paint on such exterior surfaces is declared to be a public nuisance.
- (c) The maintenance or allowance of graffiti to exist for more than forty-eight (48) hours on a non-residential property and/or fixtures, or seven (7) calendar days on a residential property and/or fixture, is prohibited.
- (d) Whenever the city becomes aware of the existence of graffiti on any property, a code enforcement officer is authorized, upon such discovery, to give, or cause to be given, notice to take corrective action to the property owner or the property owner's agent or manager.
- (1) Non-residential property. For non-residential property, the property owner or the property owner's agent or manager shall take corrective action within forty-eight (48) hours from the receipt or delivery of the notice given pursuant to this section.
- (2) Residential property. For residential property, the property owner, or property owner's agent shall take corrective action within seven (7) days from the receipt or delivery of the notice given pursuant to this section.
- (3) Declaration of emergency. The city manager is authorized to declare an emergency due to increased gang activity in defacing property and/or fixtures in the city with graffiti. Upon the declaration of an emergency by the city manager the time period for abating graffiti shall be shorten to twenty-four (24) hours for both non-residential and residential property and fixtures.
- (4) City's abatement of graffiti. ~~During any declaration of an emergency~~ Pursuant to this section, the city may enter on to the private property for the purpose of abating the nuisance created by the graffiti and may abate the graffiti by painting over such graffiti. Entry on private property by the city to abate the graffiti shall not constitute trespass nor subject the city to any liability.
- (e) The city will waive painting permit requirements for abating graffiti, subject to the use of the same colored exterior paint to correct the violation.
- (f) Graffiti abatement will consist of:
- (1) Painting of the wall as it pertains to the area cited, and/or non-permanent structure defaced or affected by graffiti, provided the area cited matches the pre-existing texture of the entire wall.
- (2) Pressure-cleaning or any other method that will successfully remove graffiti from a wall, and/or non-permanent structure, without causing damage to the exterior of the structure.
- (g) Notice of a violation shall be given as provided under Florida Statutes and shall have substantially the following form:

DATE

NOTICE TO REMOVE GRAFFITI

TO THE OWNER, AGENT OF THE OWNER, OR PERSON MANAGING THE PROPERTY DESCRIBED BELOW:

YOUR ATTENTION IS DIRECTED TO THE PROVISIONS OF CHAPTER 46, ARTICLE VI- CHAPTER 12, ARTICLE I, SECTION 12-3.1 OF THE CITY CODE OF NORTH MIAMI, FLORIDA. YOU ARE NOTIFIED THAT GRAFFITI WHICH IS DECLARED A NUISANCE IN THE CITY OF NORTH MIAMI EXISTS ON PREMISES SPECIFICALLY DESCRIBED AS . YOU ARE ADVISED THAT WITHIN (48 HOURS-COMMERCIAL, OR 7 CALENDAR DAYS-RESIDENTIAL) FROM THE RECEIPT OF THIS NOTICE, YOU MUST REMOVE THE GRAFFITI FROM THE PROPERTY AND THEREAFTER TO KEEP THE PROPERTY FREE FROM GRAFFITI.

DATED AT NORTH MIAMI, FLORIDA THIS DAY OF 20 .

OFFICER

- (h) The owner or lessee of such structures used for commercial or residential purposes shall within fifteen (15) ten (10) days after written notice by the code enforcement department of the city of the existence of the condition described in (b) above, comply with the terms and provisions of this section-or the nuisance may be abated by the city. On expiration of the ten (10) days the city may cause all remaining graffiti to be removed, and shall file with the finance department a statement showing the charges to be assessed against the property for payment of the work including ten(10) percent or ten dollars (\$10.00), whichever is the greater amount, for notice, inspection, and incidentals. The total amount assessed shall become a lien against the property enforceable under the laws of the State of Florida.
- (i) Penalties. Violations of this section shall be subject to civil penalties pursuant to chapter 2, division 5.3 of the Code.

Section 12-4. Nuisance caused by swimming pools prohibited.

- (a) It is hereby declared a nuisance for any person to have, keep, maintain, cause or permit within the city a swimming pool which does not meet the water clarity standard which allows clear visibility from the water's surface to the pool bottom. It shall be unlawful for any such person to maintain such swimming pool in such a manner as to create a breeding ground for mosquitoes.

- (b) All swimming pools shall be maintained to ensure the disinfection of all pool water pursuant to applicable health standards under state law and county ordinance.
- (c) Barrier Specifications: No swimming pool shall be installed, constructed, reconstructed or structurally altered unless there is erected a safety barrier as hereinafter provided:
- (1) The safety barrier shall take the form of a wooden fence, a wire fence, a rock wall, a concrete block wall, or other materials so as to enable the owner to blend the same with the style of architecture planned or in existence on the property.
 - (2) The height of the safety barrier shall be not less than four (4) feet and not higher than five (5) feet. The safety barrier shall be erected either around the swimming pool or around the premises on which the swimming pool is erected; in either event, it shall enclose the area entirely, prohibiting unrestrained admittance to the enclosed area. Provided, however, swimming pools located at multifamily dwelling uses as defined in Chapter 29, Article 4, shall have safety barriers erected around such swimming pools.
 - (3) Gates shall be of the spring lock type and shall be equipped with a safety lock and shall be locked when the swimming pool is not in use.
 - (4) In the wooden type fence, the boards, pickets, louvers, or other such members, shall be spaced, constructed and erected, so as to make the fence unclimbable and impenetrable. The term "unclimbable", as used herein means any fence normally unable to be ascended by a toddler.
 - (5) Walls, whether of rock or block type, shall be erected to make them unclimbable, as defined in subsection (5) above. Provided, however, broken glass or other sharp materials shall not be used in the wall.
 - (6) Wire fences shall be the two-inch chain link or diamond weave unclimbable type, as defined in subsection (5) above, or of an approved equal, with top rail. They shall be of a heavy, galvanized material and may be vinyl coated. Provided, however, barbed wire shall not be used.
 - (7) If premises where the swimming pool is located or to be installed is already enclosed in substantial conformity with this section, it shall not be necessary to erect any additional safety barriers around the pool; however, the plans submitted shall show such existing enclosure in detail and in the event the building inspector finds, upon actual inspection, that the enclosure is not adequate to prevent small children gaining access to the pool, the plans shall be revised and an adequate barrier provided before a certificate of occupancy is issued.
 - (8) It shall be the responsibility of both the owner and the occupant (if different from the owner) of the premises upon which the swimming pool is located to maintain the same and the safety devices required by this section in good and safe condition at all times. Provided, however, with regard to swimming pools located

at multifamily dwelling uses as defined in Chapter 29, Article 4, it shall be the sole responsibility of the owner and manager of the premises upon which the swimming pool is located to maintain the same and the safety devices required by this section in good and safe condition at all times.

- (9) It shall be within the discretion of the building official to refuse approval of any barrier which, in his opinion, does not furnish the safety requirements in this article, that it is high enough and so constructed to keep children from getting over or through it.
- (d) Upon complaint, if the code enforcement officer finds and determines that a swimming pool within the city does not meet the standard set out in (a) and (b) above, the code enforcement officer shall notify the property owner in the manner prescribed for notice pursuant to F.S. Chapter 162 and section 2-104 of the Code of Ordinances of the City of North Miami. Such notice shall demand that the property owner cause the condition to be remedied. If the property owner is not in possession of the property, a notice shall also be sent to the lessee, tenant, occupant or possessor of the property.
- (e) In addition to the notice, the code enforcement officer shall cause to be posted in a conspicuous place upon the lot, lots, or tract of land, vacant or occupied, a notice to serve as warning that a swimming pool hazard exists.
- (f) The person notified by the code enforcement officer shall within ten (10) days after written notice by the code enforcement officer of the conditions described in (a) and (b) above comply with the terms and provisions of this same section.
- (g) Any person, natural or corporate, who fails to comply with the terms and provisions of (a) and (b) within ten (10) days of the date the notice was served shall be in violation of this section of the Code.
- (h) Should such person, natural or corporate, fail to remedy the condition, the building official shall have the power to declare such swimming pool a hazard to the health, safety, and welfare of the citizens of the city and shall be authorized to cause the condition to be remedied by either cleaning, boarding, or taking any other action necessary to to correct the hazard and the reasonable costs thereof shall be a lien against the property upon which such swimming pool is located. Such lien shall be handled and collected in the manner prescribed for the collection of liens pursuant to Article IV of Chapter 2 of the Code of Ordinances of the City of North Miami.
- (i) Nothing in this section shall prevent the city from taking immediate action to abate any public nuisance and the city is hereby authorized (but not required) to take such action where there is a public health or public safety issue.
- (j) This section may also be enforced in conjunction with the minimum housing standard of the city as set forth in Chapter 5, Article III, Housing Standards.

Section 12-5. Trash, debris, garbage disposal in canals prohibited.

It shall be unlawful for the owner or occupant of any lot or any other person to dump, dispose or otherwise place in any canal, bay or other waterway in the city any trash, debris, garbage or any other type of waste material.

Section 12-6. Replacement of storefronts.

(a) Restrictions.

(1) It shall be unlawful for any person owning, leasing, renting or occupying a business premises in the City of North Miami to fail to repair, place or rebuild the plate glass window or other storefront of any such business premises which has been broken, damaged, destroyed or removed within a period of ten (10) days after such breakage, damage, destruction or removal occurs.

(2) Business establishments may have installed thereon securely fastened plywood boarding to temporarily cover up the broken, damaged, destroyed or removed plate glass window or storefront for a period of time not to exceed ten (10) days, provided that the repair or replacement of such glass and storefront is timely made in compliance with subsection (1) above.

(3) It shall be unlawful for any person enumerated in subsection (1) above, to install or maintain or to cause or allow the installation or maintaining of any plywood or other boarding or covering in place of any such plate glass window or storefront for a period of more than ten (10) days.

(b) Computation of time. In computing the ten-day period of time prescribed or allowed by this section, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in which event the ten-day period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

(c) Incentive. As an incentive to timely compliance with this section, applicable routine building permit fees of the city may be waived by the building official for repair or replacement timely undertaken and completed pursuant to this section.

Section 12-7. Prohibition of vegetable gardens located in front yards of residential property.

(a) No person owning, leasing, renting or occupying any premises in the city shall cause, allow or permit the planting, cultivation, growth or maintenance of a vegetable garden in the front yard of any such premises which is used, intended to be used or occupied as a residence.

(b) For the purposes of this section, front yard shall be defined as a yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building.

Section 12-8. Regulations regarding the distribution of unsolicited printed matter on private residential property.

- (a) It shall be unlawful for any person, firm, corporation, or any agent or employee of any person, firm, or corporation to distribute or deliver or cause the distribution or delivery to the yards or grounds of any house, or multifamily residential structure, or any porch, or doorstep or vestibule, or any public hallway, thereof, or upon any other residential property in the city, any unsolicited handbill, circular, booklet, poster or any other advertising literature of any kind where the owner or occupant of such residential property has either:
- (1) Previously expressed his or her desire, orally or in writing, to such person, firm or corporation, not to receive such unsolicited printed matter); or
 - (2) Posted a sign conspicuously on the residential property which clearly indicates that the occupant or owner does not desire to receive such unsolicited printed matter. Provided, however, that such printed matter may be personally delivered or handed to such owners or occupants of such residential property who are willing to accept the same.
- (b) It shall be unlawful for any person to distribute or place any unsolicited handbill, circular, booklet, flyer, or any other advertising literature on any motor vehicle by any means whatsoever, when such motor vehicle is parked, standing, stopped or located in a public street, highway, parking lot, or place.
- (c) It shall be unlawful for any person to knowingly authorize or employ any person to distribute or place any handbill on any motor vehicle by any means whatsoever when such motor vehicle is parked, standing, stopped or located in a public street, highway, parking lot, or place.

Section 12-9. Unsafe Building and Structures nuisance abatement.

- (1) Nuisances described--Authority to abate.
- (a) The existence of any condition of blight, including but not limited to, an abandoned building or structure, an attractive nuisance, a building or structure in a state of disrepair sufficient to result in inadequate weather protection or so deteriorated as to foster decay or termite infestation, inadequate maintenance such that the property constitutes a fire hazard or other dangerous condition or is likely to harbor vermin, or an accumulation of solid waste or of discarded or unused materials or equipment stored so as to be visible from a public right-of-way or neighboring property.
 - (b) Any condition pertaining to building maintenance or upkeep that violates any provision of the currently adopted uniform building, housing, mechanical, plumbing, or national electrical code, the uniform code for the abatement of dangerous buildings, or any other federal, state or local codes.

(c) Failure to exterminate building or structure on a regular basis to eliminate the presence of vermin, rodents, insects, termites, and other pests in such a manner that it affects neighboring buildings and structures.

(2) Notice to abate.

(a) The notice shall be substantially in the following form:

NOTICE TO ABATE UNSAFE OR UNLAWFUL CONDITION

(Name and address of person notified)

As owner, agent, lessee or other person occupying or having charge or control of the building or premises at, you are hereby notified that the undersigned pursuant to section 12-9(1) of the City of North Miami Municipal Code has determined that there exists upon or adjoining the building or premises the following condition(s) contrary to the provisions of section 12-9(1).

You are hereby notified to abate the condition(s) to the satisfaction of the undersigned within days of the date of this notice or to appear at the office of the at, North Miami, Florida, on _____, 20_____, at o'clock _____m., and show cause, if any you have, why the condition(s) should not be abated by the city, and the expenses thereof charged to you as a personal obligation and/or made a lien upon the property. Abatement is to be accomplished in the following manner:

Dated:

By:

(3) Notice to Property Owner

(a) The property owner shall be given notice of the unsafe condition of the building or structure and shall have 72 hours to either remove, or cause or contract to be removed such building or structure or to abate, or cause or contract to be abated, any such nuisance. The code enforcement officer shall notify the property owner in the manner prescribed for notice pursuant to F.S. ch. 162, and section 2-104 of the Code of Ordinances of the City of North Miami. The owner of real property as shown on the latest equalized assessment roll shall be conclusively deemed to be the proper person and address for mailing of notice of any hearing or order pursuant to this chapter and the failure of any addressee to receive notice shall not invalidate any notice or order so issued. Any duly issued notice or order shall be conclusively deemed to be adequate notice to any and all occupants, users, or possessors of the property or its contents, and the failure of any such person to see, read, understand or otherwise receive the notice shall not invalidate any of the proceedings.

(b) Condemnation of Unsafe Buildings and Structures.

In case of failure of the owner, agent, or occupant to take the steps required in this article to secure, make safe or removed the building or structure or abate the nuisance as herein required, the building official shall condemn the building or structure and serve notice of such condemnation upon the proper owner and/or occupants. The Building Official shall commence condemnation proceeding in accordance with the Miami-Dade County Code of Ordinances to proceed with the removal of such building or structure or to abate any such nuisance. Cost of such removal or abate shall be the responsibility of the property owner.

(c) Emergency action.

When in the opinion of the Building Official, there is actual or immediate danger of the failure or collapse of a building or structure, or there is a health, windstorm or fire hazard, he may order the occupants to vacate, temporarily close for use or occupancy the rights of way thereto, sidewalks, streets or adjacent buildings or nearby area and institute such other temporary safeguards, including securing the building or structure, as he may deem necessary under the circumstances, and may employ the necessary labor and materials to perform the required work as expeditiously as possible. Costs incurred in the performance of such emergency work shall be recorded as a lien against the property involved.

(4) Violation--Penalties.

Civil. The director of Code Enforcement, or the building official, may issue a notice of civil penalty and/or administrative fine to be levied against any person or entity which has maintained, created, caused, permitted or violated any condition set forth in section 12-9(1) or any order of the city department with respect to the property, pursuant to the procedures set forth in the North Miami Code of Ordinances.

ARTICLE II. WEEDS, BRUSH AND RUBBISH

Section 12-21. Definitions.

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

Untended Vegetation shall mean Grass, Weeds, Underbrush, or other vegetation in excess of eight (12) inches in height from the ground.

Rubbish shall mean any unsightly material, waste product, refuse, trash or waste lumber left, piled or scattered that may become a breeding place for flies, mosquitoes or vermin or that may give off unpleasant odors or create a health or fire hazard where located.

Accumulated Trash shall mean any trash, garbage, rubbish, filth, which is allowed or caused to be accumulated upon any public or private property.

Section 12-22. Declaration of nuisance.

Untended vegetation, Rubbish and accumulated trash as defined in section 12-21 is hereby declared to be a nuisance; dangerous to the public health and safety; in violation of this article and subject to imposition of penalties as set forth in Section 12-23.

Section 12-23. Notice for removal.

- (a) Notice shall be given by the code enforcement officer to the last known owner, of any lot, lots or tract of land occupied or vacant within the city which has untended vegetation, rubbish, or accumulated trash in violation of section 12-22 that all overgrown grass, sod or weeds must be cut and that all dry brush accumulated trash or rubbish must be removed. Such owner or occupant shall be given ten (10) days from the mailing of such notice to abate the nuisance or the nuisance will be abated by the city. The entire cost thereof, plus ten (10) percent or ten dollars (\$10.00) whichever is the greater amount for notice, inspection and incidentals, will be assessed against the property.
- (b) Authority to enter upon. Specific authority is granted to the City to enter upon the property upon the expiration of the ten (10) days and cause all such untended vegetation, accumulated trash or rubbish not cut or removed to be cut or removed, and shall file with the finance department a statement showing the charges to be assessed against such lot, or tract of land, vacant or occupied for payment of the work including ten (10) percent or ten dollars (\$10.00) whichever is the greater amount to cover cost of notice, inspection and incidentals.
- (c) In addition to the notice prescribed herein, the city shall cause to be posted in a conspicuous place on the lot, lots or tract of land vacant or occupied a notice as herein prescribed. The posting of notice shall be done not less than ten (10) days prior to the removal, cutting of such weeds, brush, grass and rubbish by the city.

Section 12-24. Cost.

- (a) The cost incurred or expended by the city for cutting and removing high grass and weeds, accumulated trash, and rubbish shall be levied and imposed against lots and parcels on which such cuttings and removal is done by the city pursuant to a fee schedule on file in the city clerk's office.
- (b) The sum shall include labor, equipment utilized and administrative costs for each cutting and shall have the same effect as a lien for services against the property.

ARTICLE III. MAINTENANCE OF SWALE AREAS*

DIVISION 1. GENERALLY

*Cross references: Housing standards, § 5-41 et seq.

Sections 12-36--12-45. Reserved.

DIVISION 2. SWALE AREAS

Section 12-46. Duty of abutting owner to maintain.

It shall be the duty and obligation of all owners and/or occupants of lots in the city to maintain and keep in a clean, litter-free and mowed condition, the swale areas between the public right-of way and the property line which includes the sidewalk adjacent and contiguous to their lots. The duty hereby imposed upon such property owner shall not extend to any property other than that included within the lot lines of the property owned by him as projected to include the swale area.

Section 12-47. Standard of maintenance.

(a) Swale areas will be considered maintained if all 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 section 12-21.

(b) Sodding of the swale area shall be permitted in accordance with section 17-51. All such paved areas shall be kept in good condition. The paving of any swale shall be prohibited.

(c) 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) No more than two 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.

Section 12-48. Declaration of nuisance.

Swale areas which are not maintained in accordance with the provisions set forth in section 12-47 are hereby declared to be nuisances; detrimental and dangerous to the public health, safety and welfare; in violation of this article and subject to penalties.

Section 12-49. Removal; publication of notice; work by city; assessing costs and expenses.

- (a) The city shall cause notice to be given to the abutting property owner and/or occupant that all untended vegetation must be removed in the swale areas, and that all debris, trash, and litter shall be removed. The notice shall state that if abutting property owner fails to do so within ten (10) days of the mailing of such notice, the same will be removed by the city and the entire cost thereof, plus ten (10) percent or ten dollars (\$10.00) whichever is the greater amount for notice, inspection and incidentals, will be assessed.
- (b) On the expiration of the time, the city shall then perform the necessary removal operations and shall assess the cost of said removal against the property. Such assessment, if not paid, shall become a lien against the property.
- (c) In the event motor vehicles are allowed to park on the swale area which damages the sod and/or paved material, the City shall give notice that all motor vehicle parking in the swale area must cease until such time as the swale area is returned to the proper conditions. Continued parking of motor vehicles on damaged swale areas will subject motor vehicles to be towed at the owner's expense and could result in penalties to property owner.
- (d) If any tree, shrub, or other obstruction on a swale area within the city creates an emergency situation involving a potential danger to the health, safety, and welfare of the community, the city shall perform removal operations immediately.

ARTICLE IV. NOISES

Section 12-51 Noise control regulations.

(1) Definitions and standards.

Terminology. All terminology used in this ordinance, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

Ambient noise shall mean the all-encompassing noise associated with a given environment, usually being a composite of sounds with many sources near and far.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or DBA.

Commercial area means any area designated for commercial uses under the zoning ordinance of the city.

Commercial purpose shall mean and include the making of noise for the purpose of advertising any business, or any goods, or any services, or for the purpose of attracting the attention of the public to or advertising for, or soliciting patronage of customers to or for any performance, show, entertainment, exhibition, or event, or for the purpose of

demonstrating any sound producing equipment, or for the purpose of conducting a business.

Construction means any site preparation, assembly erection, substantial repair, alteration, or similar action, but excluding demolition.

Decibel (Db) means a unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

Demolition means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Fixed mechanical equipment shall mean mechanical equipment, such as an air conditioning unit, water cooling tower, swimming pool pump, irrigation pump, well water pump, fan, power generator or other similar power source equipment, permanently affixed to real property, as distinguished from temporary, portable, non-fixed mechanical equipment.

Noise disturbance means any sound which endangers or injures the safety or health of humans or animals, or annoys or disturbs a reasonable person of normal sensitivities, or endangers or injures personal or real property.

Noise sensitive zone means any area designated pursuant to this ordinance for the purpose of ensuring exceptional quiet.

Noncommercial purpose shall mean the making of noise for other than a commercial purpose. Noncommercial purpose shall mean and include, but shall not be limited to, philanthropic, political, patriotic, and charitable purposes.

Person means any individual, association, partnership, or corporation.

Real property boundary means a line along the ground surface, and its vertical extension, which separates the real property owned by one (1) person from that owned by another person, but not including intra-building real property divisions.

Residential area means an area designated and used for any residential use under the zoning ordinance of the city or an area within which are situated conforming, or legal nonconforming residential uses.

Sound-amplifying equipment shall mean any machine or device for the amplification of the human voice, music, or any other sound, including but not limited to public address systems. The term sound-amplifying equipment shall not include standard automobile radios when used and heard only by the occupants of the vehicle in which the automobile radio is installed. Sound-amplifying equipment, as used in this chapter, shall not include warning devices of authorized emergency vehicles or horns or other warning devices or any vehicle used only for traffic safety purposes or security alarm systems of any vehicle.

Sound level meter shall mean an instrument or apparatus including a microphone, an amplifier, an output meter, and weighting networks for the measurement of sound pressure. The output meter accurately reads sound pressure level when properly calibrated, and the instrument is of type 2 or better, as specified in the American National Standards Institute Publication S1.4-1971.

Sound truck shall mean any motor vehicle, or any other vehicle regardless of motive power, whether in motion or stationary, having mounted thereon, or attached thereto, any sound-amplifying equipment.

Weekday means any day Monday through Friday which is not a legal holiday.

Section 12-52. Prohibited acts.

Noise disturbances are prohibited. No person shall knowingly make, continue, or cause to be made or continued, or permit any other person on his property to do so, any noise disturbance. Noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way shall be exempt from the operation of this section.

Section 12-53. Specific prohibitions.

The following acts, and the causing thereof, are declared to be in violation of this section:

- a. Radios, television sets, musical instruments and similar devices. Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:
 1. Between the hours of 11 p.m. and 7 a.m. the following day in such a manner as to create a noise disturbance across a real property boundary or within a noise sensitive zone;
 2. In such a manner as to create a noise disturbance at twenty-five (25) feet when operated in or on a motor vehicle on a public right-of-way or public space;
 3. This section shall not apply to noncommercial spoken language covered under paragraph b. below.

- b. Loudspeakers and public address systems. Using or operating for any purpose any loudspeaker, sound amplifying equipment, public address system, or similar device (1) such that the sound therefrom creates a noise disturbance across a real property boundary or within a noise sensitive zone; or (2) between the hours of 10 p.m. and 7 a.m. the following day on a public right-of-way or public space, not including any city sponsored or sanctioned activity.
- c. Deliveries. Delivery of goods, materials, wares, merchandise and articles of like nature for resale to any business, store or commercial enterprise located within one hundred (100) feet of any residential area between the hours of 10:00 p.m. and 7:00 a.m. daily.
- d. Loading and unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of 10 p.m. and 7 a.m. the following day in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone.
- e. Construction. Operating or permitting the operation of any tools or equipment used in construction, drilling or demolition work between the hours of 9 p.m. and 8 a.m. the following day on weekdays or at any time on weekends or holidays, such that the sound therefrom creates a noise disturbance across a residential real property boundary or within a noise sensitive zone, except for emergency work of public service utilities.
- f. Boat repairs and testing. Repairing, rebuilding, modifying, or testing any boat in such a manner as to cause a noise disturbance across a residential real property boundary or within a noise sensitive zone between the hours 10:00 p.m. and 7:00 a.m. daily.
- g. Operate any machinery, equipment, pump, fan, air-conditioning apparatus, or similar mechanical device in any manner so as to create any noise which would cause the noise level across the property line of any residential property to exceed the ambient noise level by more than five (5) decibels based on a reference sound pressure of 0.0002 microbars as measured in any octave band center frequency, in cycles per second, as follows: 63, 125, 250, 500, 1,000, 2,000, 4,000, and 8,000, and for the combined frequency bands, "A" band. No permanent standby generator shall be operated at a decibel level which exceeds 72.
- h. Commercial Maintenance Equipment. The commercial operation of maintenance equipment (including but limited to pressure cleaners, blowers, sweepers, or vacuums) which creates a Plainly Audible sounds within 100 feet of any residential area between the hours of 10 p.m. and 7 a.m.
- i. Power tools and landscaping equipment. The operation of noise-producing lawn mowers, lawn edgers, weed trimmers, chippers, leaf blowers, chain saws, power tools, and other noise-producing tools used outdoors in residential areas between the hours of 10 p.m. and 7 a.m. the following day so as to cause a noise disturbance across a residential real property boundary.

- j. Vehicle repairs. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, or similar device used outdoors in residential areas between the hours of 10 p.m. and 7 a.m. the following day so as to cause a noise disturbance across a residential real property boundary.
- k. Sound amplifying equipment.
 - 1. Operation or use of sound amplifying equipment, whether such equipment is fixed or movable, or is mounted upon any sound truck, so as to cause a noise disturbance across a residential real property boundary. Noncommercial public speech and public assembly activities conducted on any public right-of-way shall be exempt from the operation of this subsection unless such speech or assembly activity tends to incite an immediate breach of the peace;
 - 2. The production of any amplified noise, as measured by a sound level meter using the A-weighting scale, which exceeds an ambient noise level of fifty (50) dBA at the nearest property line of the impacted residential property by more than five (5) decibels for more than one (1) continuous minute out of a ten (10) minute period, shall be prima facie evidence that such noise constitutes a "noise disturbance" as defined above.
 - 3. In any event, the volume of sound shall be so controlled that it will not be unreasonably loud, raucous, jarring, disturbing, or a nuisance to reasonable persons of normal sensitiveness within the area of audibility.
- l. Sound trucks prohibited. Operating or using the sound amplification devices of any sound truck upon any public street or right-of-way between the hours of 10:00 p.m. of one day and 7:00 a.m. of the next day.
- m. Motorboats. Operating or permitting the operation of any un-muffled motorboat in any lake, river, stream, intracoastal waters, or other waterway in such manner unnecessary or unreasonable noise and as to not exceed a sound level of 90 dBA at fifty (50) feet or fifteen (15) meters of the nearest shoreline, whichever distance is less.
- n. Canals. Canals are hereby declared noise sensitive zones and noise restrictions provided within this chapter shall apply in canals.
- o. Movable mechanical equipment. Operating or permitting the operation of any such equipment including trucks, portable generators, forklifts, cranes, pile drivers and commercial machinery and vehicles of any kind, in such a manner as to create any noise which would cause the noise level across the property line of any residential property to exceed the ambient noise level by more than five (5) decibels based on a reference sound pressure of 0.0002 microbars as measured in any octave band center frequency in cycles per second, as follows: 63, 125, 250, 500, 1,000, 2,000, 4,000 and 8,000, and for the combined frequency bands, "A" band between 8:00 p.m. and 7:00 a.m.

- p. Horns, signaling devices, etc. The sounding of any horn, signaling device, or alarm on any motor vehicle or motorboat for any unnecessary and unreasonable period of time.
- g. False Burglar Alarms. False Burglar Alarms as defined in Article 5.

Section 12-54. Exemptions.

This ordinance shall not be applicable to the activities of law enforcement personnel in the discharge of their duties.

Section 12-55. Enforcement

- (a) Noise Measurement. For the purpose of determining and classifying any noise as excessive and unnecessary noise, or as an unusually loud noise, which is hereby declared to be unlawful and prohibited under this chapter, test measurements using a sound level meter may be applied; provided, however, a violation of this chapter may occur without the occasion of the measurements being made as therein provided.
- (b) Penalties. Violation of these chapter provisions shall constitute a public nuisance and shall be subject to the issuance of a civil violation ticket in accordance with Section 2-109 of the city code.

Section 12-567. Railroad signals prohibited at designated crossings during certain hours.

- (a) It shall be unlawful and a public nuisance for any person operating a railroad train of a railroad company operating wholly within this state to blow or activate or permit to be blown or activated any horn or whistle from the railroad train after 10:00 p.m. and before 6:00 a.m. on any day when the railroad train is within the city.
- (b) The provisions of this section shall be applicable only to railroad train crossings at grade which are equipped with train-activated automatic control devices which shall include an operating ringing bell, flashing light signals and automatic crossing gates on both sides of the railroad train tracks.
- (c) If any person violates any of the provisions of this section, such person, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) in the discretion of the court. Each day or portion thereof of continuing violation shall be deemed a separate violation of this section.
- (d) Signs shall be posted by the city for pedestrians and motor vehicles at each railroad grade crossing stating: "Caution Trains Do Not Sound Horns or Whistles from 10:00 p.m. to 6:00 a.m."

ARTICLE V. BURGLAR ALARMS*

Section 12-81. Definitions.

For the purpose of this article, whenever any of the following words or terms are used herein, they shall have the meanings ascribed to them in this section:

Alarm shall mean any device which is used in a building or premises for the detection of unauthorized entry, burglary or any other criminal activity, and which when activated emits a sound, signal or message to alert others and to which the Police Department may reasonably be expected to respond.

Alarm business shall mean any person engaged in the business of selling, leasing, monitoring, maintaining, servicing, repairing, altering, replacing, removing or installing any alarm for any building, place or premises.

Alarm user shall mean any person using an alarm or occupying and controlling a premise or building, or a portion of a premises or building, served by an alarm. Alarm user shall include the property owner.

Automatic telephone dialing alarm system means any automatic dialing device or any automatic telephone dialing alarm system and shall include any system which, upon being activated, automatically transmits by telephone or telephone line to the North Miami Police Department, a recorded message or co-signal indicating a need for emergency response; or a system which, upon activation, connects to an answering service whose function is to transmit to the North Miami Police Department a need for emergency response. However, public coin telephone alarmsystems, alarm systems which are utilized by governmental departments or agencies, alarm systems which transmit to the North Miami Police Department live voices capable of two-way communication or alarm systems which are automatically answered by the physical response of a private security or alarm service agency to the premises are expressly excluded from the definition of the term "automatic telephone dialing alarm system" as used in this article.

Class "A" alarms shall mean all those alarms activated by illegal entry or in response to criminal activity and includes alarms activated solely by an act of nature not contributed to by faulty design, maintenance, installation or use.

False alarms means an alarm signal eliciting a response from the police department when no emergency or actual or threatened criminal activity requiring immediate response exists. This definition includes alarm signals activated intentionally in non-emergency situations or through inadvertence, neglect, accident, alarm testing, mechanical failure, and faulty installation or maintenance. This definition of false alarms does not include an alarm signal caused solely by unusually violent conditions of nature nor does it include other extraordinary circumstances not reasonably subject to control by the alarm user, i.e., storms, floods, other "acts of God," disruptions caused by extended power outage or faults in transmission lines provided by local telephone company.

Section 12-82. Operation standards and Deactivation of Nuisance Alarms.

- (a) All audible alarm systems operating continuously in excess of thirty (30) minutes are hereby declared to be a public nuisance ("nuisance alarm").
- (b) All alarm systems must have an automatic reset which silences the annunciator within thirty (30) minutes after activation and which will not sound again as a result of the same event that resulted in the original activation.
- (c) All alarm systems must be maintained in a manner that will reduce or eliminate false alarm dispatches and audible alarm systems classified as a nuisance alarm.
- (d) A law enforcement officer shall have the authority to take the necessary steps to disconnect a nuisance alarm in the event that the persons authorized to enter the premises and deactivate the alarm system cannot be reached within one (1) hour or fails to appear within one (1) hour of notification to silence the nuisance alarm.
- (e) All costs incurred in disconnecting the alarm system shall be the responsibility of the alarm user and shall constitute a charge and lien against the real property of the alarm user. The alarm user will assume all liabilities that arise from the city or the city's entry onto the premises and disconnection of the alarm system. Such amount owed shall constitute a lien against the premises to the same extent and character as a lien for special assessment, and with the same penalties and same rights of collection, foreclosure, sale and forfeiture as obtained for special assessment liens.

Section 12-83. Alarm permit required.

No person shall have an alarm system installed to be operational, or use an existing alarm serving a premises or a building or portion thereof, occupied or controlled by such person, unless an alarm permit in the form of a decal has been issued hereunder and is in force, authorizing the use of such alarm. Such alarm permit shall constitute a regulatory license. For any alarm existing prior to the effective date of this ordinance, an alarm permit application shall be made within 60 days of the effective date thereof.

Section 12-84. Application for permit.

- (a) Application for alarm permits shall be made to the City of North Miami on forms provided by the City. The application shall be signed by the alarm user and shall provide the following information:
 - (1) Name, address and telephone number of the alarm user.
 - (2) Address and telephone number of the alarm user's premises or building to be served by the alarm.
 - (3) The name, address and telephone number of the person in charge of the premises or building served by the alarm.

- (4) The name, address and telephone number of the person or entity installing, monitoring, and maintaining such alarm.
 - (5) An agreement by the alarm user, binding upon the alarm user's heirs and successor's in interest, to promptly pay or lawfully contest any penalties assessed against the alarm user for any excessive number of false alarms as described by this section.
- (b) An amended application shall be filed within ten days after any change in the information provided in such application. Upon such amendment, a new alarm permit shall be issued without charge or fee.

Section 12-85. Term of permit; fee; nontransferable.

An alarm permit shall have a term of one year from date of issuance, such term to begin on October 1 and end September 30. Any alarm permit issued after October 1 will be valid through the next September 30. A fee shall be charged to the alarm user by the city for such permit issued, including successive renewal permits, to defray the cost of regulation. No alarm permit issued pursuant to this section shall be transferable or assignable and shall cover only one building or premises.

Section 12-86. Issuance of permit.

An alarm permit shall be mailed to the alarm user at the address of the alarm user stated on the application within ten days after receipt of such completed application by the building and inspection department.

An alarm permit shall be denied if:

- (1) The requested information is not supplied on the application.
- (2) Material information on the application is incorrect.
- (3) Any person or entity listed on the application does not possess any required occupational or regulatory license to conduct the activities under this section.

Section 12-87. Decal required.

Each alarm permit holder shall be issued an alarm decal by the City of North Miami. Such decal shall be displayed in a conspicuous place visible to the outside of the premises covered by such permit.

Section 12-88. Excessive false alarms declared a public nuisance.

The emission of more than three (3) false alarms within any twelve month period of time is excessive and constitutes a serious nuisance, and is hereby declared to be unlawful and a violation of this section. No person shall allow, permit, cause or fail to prevent the emission for

any reason by any alarm used by him or any alarm serving a premises or building occupied and controlled by such person of more than three (3) false alarms within any twelve month period of time.

Section 12-89. False alarm service charge; collection; exceptions.

- (a) For response to excessive false alarms by the police department, the alarm user shall be charged a service fee by the city of twenty-five dollars (\$25.00) for the first false alarm in excess of three (3) false alarms in any twelve-month period, fifty dollars (\$50.00) for the second false alarm in excess of three (3) in any twelve-month period, and one hundred dollars (\$100.00) for the third and each successive false alarm in excess of three (3) in any twelve-month period. The chief of police or his designee shall determine whether a false alarm has occurred and the frequency of such false alarms, and the city shall notify alarm users of amounts owed to the city and shall make demand pursuant to the provisions of this section.
- (b) The alarm user shall have thirty (30) days from the date of the notice of the false alarm fee in which to pay the fee.
- (c) The false alarm service fee will be declared to be a debt due to the City, and such amount shall constitute a lien against the premises to the same extent and character as a lien for special assessment, and with the same penalties and same rights of collection, foreclosure, sale and forfeiture as obtained for special assessment liens.

Section 12-90. Interference with police department telephone trunk lines prohibited; alarm business central office required; identification required.

- (a) No person shall use or cause to be used any automatic telephone dialing alarm system, or other electronic device or attachment that automatically selects a public primary telephone trunk line of the police department or other department or bureau of the city, and then reproduces any prerecorded message to report any burglary, unauthorized entry or other emergency.
- (b) No person shall provide a private alarm service system programmed to a central alarm reception office unless it shall have the central office staffed at all times, twenty-four (24) hours a day including holidays.
- (c) Any staff member of a private alarm service system reporting an alarm activation to which police response is requested shall identify himself and state the name and telephone number of the alarm business by which such response is requested.

Section 12-90. Enforcement; Exemptions.

- (a) To the extent allowed by law, the city may utilize the provisions of section 2-266 et seq. to impose and enforce liens in aid of the enforcement hereof and collection of service charges hereunder. The city may initiate action before the code enforcement board of the

city to obtain compliance with this article and payment of service charges assessed by the city hereunder.

- (b) Exemptions: This article shall not apply to fire alarm signals or to alarms attached to motor vehicles or attached to publicly owned property.

ARTICLE VI. PUBLIC NUISANCES

Section 12-91. Public nuisances.

- (a) Any place or premises that has been used:
- (1) On more than two (2) occasions within a six-month period as the site of a violation of F.S. § 796.07;
 - (2) On more than two (2) occasions within a six-month period as the site of the unlawful sale, delivery, manufacture or cultivation of any controlled substance;
 - (3) On one (1) 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 (1) occasion as the site of the unlawful sale, delivery, manufacture or cultivation of any controlled substance;
 - (4) On more than two (2) occasions within a six-month period, as the site of a violation of [F.S.] § 812.019 relating to dealing in stolen property; or
 - (5) By a criminal street gang for the purpose of conducting a pattern of criminal street gang activity, as defined by F.S. § 874.03, may be declared to be a public nuisance, and such nuisance may be abated as provided by this Code.

As used in this Code, the term "controlled substance" includes any substance sold in lieu of a controlled substance in violation of F.S. § 817.563, or any imitation controlled substance defined in F.S. § 817.564.

Section 12-92. Nuisance abatement board.

- (a) (1) The nuisance abatement board is to serve as a quasi-judicial forum in which controversies over the existence of public nuisances may be resolved in the public interest while according due process of law. The board shall consist of five (5) individuals whose residences are located within the city and/or who own businesses within the city and who are appointed by the city council. All members shall serve a term of two (2) years. The mayor and each city councilmember may each nominate one (1) member for appointment to the board. Upon expiration of a term, subsequent appointments for two (2) years shall be made. Any member may be reappointed by the city council for not more than four (4) consecutive terms. Appointments to fill a vacancy shall be for the remainder of the unexpired term.

- (2) Three (3) affirmative votes of the city council shall be required to remove any board member, and no cause need be shown for removal. Any board member who has two (2) consecutive unexcused absences shall automatically forfeit board membership.
- (3) Members shall serve without compensation but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the city manager.
- (b) (1) The members of the board shall elect a chairperson who shall be a voting member from among the members of the board. The presence of three (3) members shall constitute a quorum of the board. The board is authorized to establish its own rules of procedures.
- (2) The chairperson of the board may call hearings of the board. Hearings may also be called by written notice signed by at least three (3) members of the board. The clerk of the board may also set future hearing dates. The board shall attempt to convene no less frequently than once every month but may meet more frequently than once every month as the board may deem necessary.
- (3) Any aggrieved person may request a continuance of the hearing. The Board may grant a continuance of any hearing for good cause.
- (4) Minutes shall be kept of all hearings and all hearings shall be open to the public. The city council, by and through the city manager shall provide all necessary clerical and administrative staff support to the board, including space and necessary expenses which may be reasonably required by the board for the proper performance of its duties, including retaining special counsel to represent the administration in the prosecution of any action.
- (5) The city manager shall designate clerical and administrative personnel as may be reasonably required for the proper performance of the board's duties. The clerk so designated in writing by the city manager shall be the custodian of all board case files and documents pertaining thereto and shall have the authority to certify orders and other documents issued by the board; the clerk shall adopt and use an official seal for this purpose; and the clerk is also empowered to administer an oath to witnesses appearing before the board.
- (6) The city attorney or designee shall represent the board.

Section 12-93. Procedures.

- (1) Any employee, officer, or resident of the municipality may bring a complaint before the board after giving not less than three (3) days' written notice of such complaint to the owner of the place or premises at his last known address. After a hearing in which the board may consider any evidence, including evidence of the general reputation of the place or premises, and at which the owner of the premises shall have an opportunity to

present evidence in his defense, the board may declare the place or premises to be a public nuisance as described in Section 12-91.

"Notice" as used in this subsection shall be given to the owner at the owner's last known address by mailing through the use of certified mail of written material informing the owner of the complaint to be filed, or by hand delivery. Where hand delivery or such mail notice is not feasible, notice shall be by posting at the premises. A certificate of hand delivery or posting completed by a city employee or officer shall be prima facie evidence of compliance with this notice provision.

(2) The complaint shall state facts that reasonably tend to establish the existence of a public nuisance located within the city. Such complaint of a public nuisance shall only be for those matters as enumerated in this Section 2-91 [12-91].

(3) The notice of hearing shall include:

- a. Statement of the time, place and nature of the hearing;
- b. Statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. Reference to the particular sections of the statutes and/or ordinances involved; and
- d. A short and plain statement of facts summarizing the incidents complained of.

Section 12-94. Conduct of hearings.

(a) All parties shall have an opportunity to present evidence and argument on all issues involved, conduct cross-examination and submit rebuttal evidence, and to be represented by counsel retained by such parties.

(b) The board may consider any evidence, including 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.

(c) [Reserved.]

(d) If the alleged violator(s) has been properly noticed in regard to 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 violator(s) to the same extent as if the violator had been present.

Section 12-95. Post hearing.

(a) At the conclusion of the hearing and after considering all evidence presented at such hearing, the board is authorized to 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. Upon finding that an unlawful public nuisance does exist, the board may enter an order requiring the owner of such place or premises to adopt such procedures as may be appropriate under the circumstances to abate such nuisance or it may enter an order immediately prohibiting:

- (1) The maintaining of the nuisance;
 - (2) The operating or maintaining of the place or premises, including requiring the closure of the place or premises or any part thereof; or
 - (3) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance. Any order entered shall expire after one (1) year or at such earlier time as is stated in the order.
- (b) The board may establish additional penalties for public nuisances including fines not to exceed two hundred fifty dollars (\$250.00) per day; provide for the payment of reasonable costs, including reasonably attorney fees associated with investigations of and hearings on public nuisances; provide for 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, and establish penalties, including fines not to exceed five hundred dollars (\$500.00) per day for recurring public nuisances. Total fines imposed by this section shall not exceed the statutory limit provided in section 893.138, Florida Statutes.
- (c) The city shall provide for the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order; provide that recorded orders on public nuisances constitute liens against the real property that is the subject of the order, and provide for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney's fees, associated with the recording of orders and foreclosure. No lien created pursuant to the provisions of this section may be foreclosed on real property which is a homestead under § 4, Art. X of the State Constitution. The total fines imposed pursuant to the authority of section 12-95 shall not exceed fifteen thousand dollars (\$15,000.00). Nothing contained within this Section 12-95 prohibits the city from proceeding against a public nuisance by any other means.
- (d) Where a local government seeks to bring an administrative action, based on a stolen property nuisance against a property owner operating an establishment where multiple tenants, on one (1) site, conduct their own retail business, the property owner shall not be subject to a lien against his property or the prohibition of operation provision if the property owner evicts the business declared to be a nuisance within ninety (90) days after notification by registered mail to the property owner of a second stolen property conviction of the tenant.
- (e) The findings and orders shall be by motion approved by a majority of those present and voting.

- (f) The Board or City may bring a complaint seeking a temporary or permanent injunction against any public nuisance.

Section 12-96. Collection by department of finance.

The department of finance shall be responsible for billing and collecting fees under this chapter and shall keep such records as will reasonably be sufficient to support the fees charged. The department of finance is authorized to include the fees on the water bill of the owner or occupant of the premises served. The fee shall be itemized separately.

Section 12-97. Appeals.

An aggrieved party, including the city, may appeal a final order of the nuisance abatement board to the Appellate Division of the Circuit Court of the Eleventh Judicial Circuit. This action shall not be a hearing de novo. This action shall be filed within thirty (30) days of the rendition of the written order of the board.

Section 12-98. Legal Action.

The city attorney may institute appropriate action to restrain, prevent, enjoin, abate or correct any and all violations under this article, and to take such other legal action as may be necessary to carry out the terms and provisions of this article. Nothing in this article shall prohibit the City from instituting a civil action in a court of competent jurisdiction to seek injunctive relief to enjoin nuisances which are not listed in Section 12-91.

* * * * *

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

Section 3. Conflict. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are repealed.

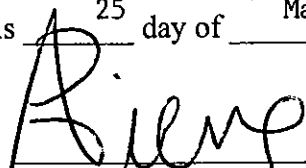
Section 4. Severability. If any word, clause, phrase, sentence, paragraph or Section of this Ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or Section of this Ordinance.

Section 5. Codification. The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 6. Effective Date. This Ordinance shall be 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 11 day of May, 2010.

PASSED AND ADOPTED by a 4-0 vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this 25 day of May, 2010.



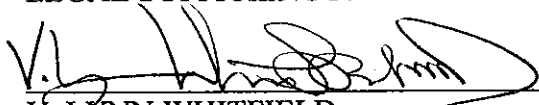
ANDRE D. PIERRE
MAYOR

ATTEST:



ALIX DESULME
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



V. LYNN WHITFIELD
CITY ATTORNEY

SPONSORED BY: CITY ATTORNEY

Moved by: Councilman Galvin

Seconded by: Councilman Blynn

Vote:

Mayor Andre D. Pierre	<u>X</u>	(Yes)	_____	(No)
Vice Mayor Jean Rodrigue Marcellus	_____	(Yes)	_____	(No) Absent
Councilperson Michael R. Blynn	<u>X</u>	(Yes)	_____	(No)
Councilperson Scott Galvin	<u>X</u>	(Yes)	_____	(No)
Councilperson Marie Erlande Steril	<u>X</u>	(Yes)	_____	(No)

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