

ORDINANCE NO. 957

AN ORDINANCE OF THE CITY OF NORTH MIAMI, FLORIDA AMENDING ORDINANCE NO. 891 REGARDING CHAPTER 12 OF THE CITY'S CODE OF ORDINANCES ENTITLED "NUISANCES" BY AMENDING CHAPTER 12 TO PROVIDE FOR THE NUISANCE ABATEMENT BOARD TO EXERCISE JURISDICTION OVER CERTAIN PUBLIC NUISANCES; TO PROVIDE FOR CONFORMITY WITH STATE LAW; PROVIDING FOR REPEAL, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of North Miami has established, pursuant to State law, a Nuisance Abatement Board (Board) to exercise jurisdiction to help abate public nuisances in the City; and

WHEREAS, amendments to State law which have occurred since the initial establishment of the Board necessitates amendments to the City's existing code.

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

Section 1. Section 12-91 of the City Code entitled "Public Nuisances" is hereby amended as follows:

(a) Any place or premises that has been used on more than two occasions, within a 6-month period:

(i) As the site of a violation of Section 796.07, Florida Statute;

(ii) As the site of the unlawful sale, delivery, manufacture or cultivation of any controlled substance;

(iii) 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; or

(iv) Any place or building used by a criminal street gang for

the purpose of conducting a pattern of criminal street gang activity, 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 Section 817.563, Florida Statutes, or any imitation controlled substance defined in Section 817.564, Florida Statutes.

~~(a) Any building, place or premises located in the city which has been used on three (3) or more occasions, documented by substantiated incidence as the site of the unlawful sale or delivery of controlled substances, or for any act as defined in Chapter 893 of the Florida Statutes, and where there has been at least one (1) criminal conviction for the acts defined in F.S. Chapter 893, within a six month period from the date of the first substantiated incident, at the same location, is hereby declared to be an unlawful public nuisance. In the absence of a certified conviction at the premises, the allegations of Chapter 893 related public nuisance must be substantiated by three (3) documented instances within a six month period from the date of the first documented instance in order to support a finding of public nuisance at the premises.~~

~~(b) Any building, place or premises located in the city which has been used on three (3) or more occasions, documented by substantiated incidence as the site of the prohibited activities in section 849 of the Florida Statutes, defined as, gambling, maintaining a gambling house, illegal betting, bookmaking~~

~~activities, gambling promotion, possession and/or use of gambling devices, and where there has been at least one (1) criminal conviction for the acts defined in F.S. Chapter 849 related public nuisance must be substantiated by three (3) documented instances within a six month period from the date of the first documented instance in order to support a finding of public nuisance at the premises.~~

~~(c) Any building, place or premises located in the City which has been used on three (3) or more occasions, documented by substantiated incidence as the site of the prohibited activities in Section 796 of the Florida Statutes defined as, keeping, leasing or letting a house of ill fame and/or allowing a premises or room to be used for the purpose of prostitution, lewdness or assignation, forcing, compelling or coercing another to become a prostitute and/or deriving support from the proceeds of prostitution and where there has been at least one (1) criminal conviction for the acts defined in F.S. Section 796 within a six month period from the date of the first substantiated incident, at the same location, is hereby declared to be an unlawful public nuisance. In the absence of a certified conviction at the premises, the allegations of Chapter 796 related public nuisance must be substantiated by three (3) documented instances within a six month period from the date of the first documented instances in order to support a finding of public nuisance at the premises.~~

~~(d) Any building, place or premises located in the city which has been used for acts enumerated in Chapter 823 of the Florida~~

~~Statutes, which concern public nuisance offenses on three (3) or more occasions documented by substantiated incidence as the site of the prohibited activity defined as those acts which tend to annoy the community or injure the health of city citizens in general or corrupt the public morals, and which have occurred as singular acts in violation of F.S. Chapter 823 or in any collective combination of the various sections thereunder, and where there has been at least one (1) criminal conviction for such acts within a six month period from the date of the first substantiated incident is further declared to be an unlawful public nuisance. IN the absence of a certified conviction at the premises, the allegations of Chapter 823 related public nuisance must be substituted by three (3) documented instances within a six month period from the date of the first documented instance in order to support a finding of public nuisance at the premises.~~

~~(c) Any building, place or premises located in the city which has been used for acts enumerated in Chapter 812 (Theft, Robbery and Related Crimes) of the Florida Statutes, on three (3) or more occasions documented by substantiated incidence as the site of the prohibited activity as defined in Chapter 812, F.S., and where there has been at least one (1) criminal conviction for such acts within a six month period from the date of the first substantiated incident, at the same location, is further declared to be an unlawful public nuisance. In the absence of a certified conviction at the premises, the allegation of Chapter 812 related public nuisance must be substantiated by three (3) documented instances~~

~~within a six month period from the date of the first documented instance in order to support a finding of public nuisance at the premises.~~

~~(f) Any building, place or premises located in the City which has been used on five (5) or more occasions, documented by substantial incidents as the site of prohibited activity enumerated in section 29-4(e), Noise Control Regulations, and/or the site of prohibited activities defined in Chapter 5, Division 2, North Miami Housing Standards, and have occurred either as the same repeated acts in violation of such Code sections or in any collective combination of acts involving said Code provisions and where it can be established by substantial incidence that the same property was used for such acts on five (5) or more occasions within a six month period from the date of the first substantiated incident, is hereby declared to be an unlawful public nuisance.~~

~~(g) Any building, place or premises located in the city which has been used on three (3) or more occasions, as documented by substantiated incidence as the site of the prohibited activities as defined in Section 874 of the Florida Statutes, for the purpose of conducting a pattern of your or street gang activity and where there has been at least one (1) criminal conviction for a violation of Florida Statutes or a conviction wherein the penalty was reclassified pursuant to F.S. Section 874.04 within a six month period form the date of the first substantiated incident, at the same location, is hereby declared to be an unlawful public nuisance. In the absence of a certified conviction at the~~

~~premises, the allegations of Chapter 874 related public nuisances must be substantiated by three (3) documented instances within a six month period form the date of the first documented instance in order to support a finding of public nuisance at the premises.~~

~~(h) For the purpose of this article "substantiated incident" shall mean any legally prohibited activity and/or occurrence enumerated herein for which a city police officer or the sworn law enforcement officer of another jurisdiction has been dispatched to investigate or which an officer independently arrives at a location and makes a personal observation of a use of property in violation of the law an enumerated herein or independently verified such use from another person, and makes a report of the prohibited activity regardless of whether such occurrence results in an arrest of any individual for the prohibited activity; or in the case of a breach of the above referenced Code sections, shall mean such acts may be verified by observation or report form a code enforcement officer or a public serve aide employed by the police department.~~

~~(i) For the purpose of this article "conviction" is hereby defined and applied in accordance with the provisions of Rule 3.701(d)(2) of the Florida Rules of Criminal Procedure.~~

~~(j) For the purpose of this article "operator" means a tenant, lessee, lessor, owner or person having possession or charge of as agent or otherwise having interest in or control of the building, place or premises.~~

~~(k) For the purpose of this article "complaint" shall mean the official process by which cases are initiated and brought~~

~~before the nuisance abatement board.~~

Section 2. Section 12-92, styled "Creation of Nuisance Abatement Board" is hereby amended as follows:

Section 12-92. ~~Creation of~~ Nuisance abatement board.

(a) (1) The nuisance abatement board is ~~hereby created~~ 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~~ This board shall consist of five (5) individuals who 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. ~~commencing upon the date of January 26, 1993.~~ The mayor and each city council member may each nominate one (1) member for appointment to the board. Upon expiration of ~~initial~~ a terms, 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) 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, ~~as provided herein.~~ Minutes shall be kept of all hearings and all hearings shall be open to the public. ~~The board may obtain advice from independent legal counsel who shall be appointed by the city council.~~ 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.

(3) 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 designed 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; ~~said~~ the clerk shall adopt and use an official seal for this purpose; ~~said~~ and the clerk is also empowered to administer an oath to witnesses appearing before ~~said~~ the board, ~~and to issue subpoenas in the name of the board for service of process by any~~

~~city police officer.~~

(4) The City Attorney or designee thereof shall represent the board. ~~city as prosecutor and present cases before the board and shall not therefore act as counsel for the board.~~

Section 3. Section 12-93 styled "Procedures" is hereby amended as follows:

(1) Any employee, officer, or resident of the municipality may bring a complaint before the board after giving not less than 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 subsection 12-91.

~~(a) (1) Any employee, officer of the city or any person doing business in the city or any resident to the city, may file a written complaint under oath with the police department after giving not less than three (3) days notice of such complaint to the owner of the place or premises regarding a public nuisance as defined herein. Notice of the complaint shall be sent to the owner at his/her last known address. "Notice" as used in this subsection shall be given to the owner operator at the owner's operator's last known address by mailing through the use of certified mail of written material informing the owner operator 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 complainant 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 Section 2-91.~~this article.~~

~~(3) Any police officer making an arrest or substantiating an incident or occurrence of any statutory violation(s) or Code section(s) set forth herein or any public service aide or code enforcement officer substantiated an incident or occurrence of a breach of any Code section(s) set forth herein and pursuant to information or independent observation or verification from another person shall submit a copy of every such report and/or offense incident report to the office of the chief of police or designee thereof who shall process all such reports and determine when the requisite number of occurrences or violations have taken place as set forth in this article.~~

~~(b) (1) In each case where such determination has been made in accordance with subsection (a) above, the case shall be processed through the office of the chief of police and forwarded to the city attorney for his/her determination that such case is sufficient for presentation to the board for its consideration and disposition as provided herein.~~

~~(2) The city attorney, or designee thereof, upon receipt of~~

~~verification by the office of the chief of police that all administrative prerequisites have been satisfied shall direct the clerk of the board to prepare a case folder for a complaint related to the maintenance of the public nuisance as defined in this article. The city attorney or designee thereof prior to presenting a case to the board shall review said case for legal sufficiency and, if applicable, shall promptly notify the clerk of the board of any legal insufficiencies in the case.~~

~~(c) (1) The clerk of the nuisance abatement board, shall schedule all hearings and issue hearing notices serving the same:~~

~~a. By sending written notice of said hearing by certified mail, return receipt requested; or b. by hand delivering said written notice to the operator of the premises at the operator's last known address at least fifteen (15) calendar days prior to the scheduled hearing. A shorter period of seven (7) day's notice may be utilized upon certification from the chief of police that a serious threat to the public health, safety or welfare exists, which warrants the shorter period of notice. If an attempt to serve notice upon the owner(s) and operator(s) by hand delivery or certified mail is unsuccessful, service of the notice of the hearing may be made by publication as provided in chapter 49 of the Florida Statutes.~~

- (2) 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 4. Section 12-94, styled Conduct of hearings, is hereby amended as follows:

(a) ~~The city attorney, or designee thereof, shall present evidence before the board on behalf of the city.~~ 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 presented 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) The city attorney or his designee shall have the burden of proving the existence of an unlawful public nuisance by clear and convincing evidence.~~

(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 said violator(s) to the same extent as if the violator had been present.

Section 5. Section 12-95, styled Post hearing, is hereby amended as follows:

(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 ~~shall immediately~~ may enter an order any one (1) or all of the following: 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:

(a) The maintaining of the nuisance;

(b) The operating or maintaining of the place or premises, including requiring the closure of the place or premises or any part thereof; or

(c) 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 1 year or at such earlier time as is stated in the order.

~~(1) The discontinuance of the nuisance,~~

~~(2) The closing of the place or premises,~~

~~(3) The prohibition of conduct, operation, or maintenance of any business or activity on the premises, and/or business or activity which is conducive to the maintenance of such nuisance which prohibition may include the suspension or~~

~~revocation of any city occupational license issued or renewed pursuant to the provisions of the Code Chapter 11.~~

~~(4) The payment to the city by the violator(s) of a fine of two hundred fifty dollars (\$250.00) for an initial finding by the board of the existence of a public nuisance and five hundred dollars (\$500.00) for each subsequent finding in at or on the same premises, for each day, pursuant to F.S. Section 823.01 and 775.083(e) or (5) the board may order any combination of subsection a(1), (2), (3), or (4) hereinabove.~~

(b) The findings and orders shall be by motion approved by a majority of those present and voting. ~~Any motion failing to obtain the required vote shall preclude the issuance of said findings and order.~~

~~(c) An order entered pursuant to this chapter, (other than the fine imposed) shall expire after one (1) year or at such earlier time as state din the order. The board's order may be recorded in the official records ; shall constitute a lien as to the amount of fine, court costs and attorney fees; shall be of a duration of upon to twenty (20) years; and may be foreclosed in the same manner as a mortgage lien. The board may retain jurisdiction to modify or continue said orders prior to the expiration of said orders, where just cause is found to exist.~~

~~(d) The board may direct the city attorney to bring a suit under Section 60.05 of the Florida Statutes seeking a permanent~~

~~injunction against any nuisance described herein.~~

~~(e) The board may direct the city attorney to bring a suit for appointment of a receiver of the property.~~

~~(f) The board may direct the city attorney to bring a suit for boarding up and securing a property. This shall not preclude boarding up and securing by other means.~~

Section 6. Section 12-96, styled Enforcement of orders, is hereby amended by the deletion of the sub-section:

~~(a) The City attorney is authorized to initiate contempt proceedings in the Circuit Court of the Eleventh Judicial Circuit for willful disobedience or failure to comply with any order of the board.~~

~~(b) Further, the city attorney is authorized to initiate proceedings in any county, state or federal forum for the suspension or revocation of any permits, licenses, concessions or contracts held or awarded to the violator including licenses for the sale of beverages issued under Section 561.19 of the Florida Statutes where the existence of such licenses is conducive to the maintenance of such nuisance.~~

~~(c) Orders of the nuisance abatement board issued pursuant to this chapter shall be posted at the place, building, or premises where the public nuisance exists, existed or is occurring, in violation of the law and shall be sent by certified mail to the owner of record of said place, building, or premises within two (2) business days of the posting.~~

~~(d) Five (5) business days after the posting of an order~~

~~issued pursuant to the nuisance abatement board, city police officer shall be authorized to act upon and enforce such orders in accordance with this article.~~

Section 7. Section 12-97, styled Appeals, is hereby amended as follows:

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 ~~Such an appeal~~ shall not be a hearing de novo, ~~but shall be limited to appellate review of the record created before the nuisance abatement board.~~ This action ~~An appeal~~ shall be filed within thirty (30) days of the rendition ~~date~~ of the written order of the Board appealed from.

Section 8. Section 12-98, styled "Enjoining of Nuisances", is hereby amended by the deletion of the sub-section:

~~When any business, person, party or entity is found to be erecting, establishing, continuing, maintaining ownership or to be leasing the use of any building, places or premises located in the city and in which the health of the community is threatened or the morals and welfare of the people are injured and in which any nuisance exists as defined in Section 823, Section 993, Section 796, Section 812 or Section 849 of the Florida Statutes or any of the Code sections as stated herein, such business persons, parties or entities may be sued by the city attorney in the name of the City of North Miami and/or the State of Florida, when authorized by law, for such relief and damages as may be recognized by law.~~

~~(1) The nuisance abatement board may direct the city attorney to bring a suit under Section 60.05 of the Florida Statutes and seek a permanent injunction against any public nuisance.~~

~~(2) All powers and rights conferred by this section shall be in addition to and supplemental to those conferred by any other general or special laws governing public nuisances and shall be liberally construed to effectuate the purpose of this article.~~

Section 9. 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 10. Repeal. All ordinances or parts of ordinances in conflict herewith or inconsistent herewith are hereby repealed.

Section 10. Effective Date. This Ordinance shall be effective immediately upon passage on second reading.

PASSED and ADOPTED on first reading by 4-0 vote of the City Council this 10th day of December, 1996.

PASSED and ADOPTED on second reading by 4-0 vote of the City Council this 14th day of January, 1997.



MAYOR

ATTEST


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY