

**ORDINANCE NO. 1121 – 2021**

**AN ORDINANCE OF THE CITY OF MIAMI SPRINGS, FLORIDA, AMENDING CHAPTER 32 OF THE CITY'S CODE OF ORDINANCES BY CREATING ARTICLE XVII, "NUISANCE ABATEMENT BOARD," AUTHORIZING THE CREATION OF AN ADMINISTRATIVE BOARD WITH THE AUTHORITY TO IMPOSE FINES AND OTHER NONCRIMINAL PENALTIES TO ABATE CERTAIN ACTIVITIES DECLARED PUBLIC NUISANCES PURSUANT TO SECTION 893.138, FLORIDA STATUTES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Springs (the "City") desires to expand its administrative remedies to address certain activities deemed public nuisances that diminish the health, safety and welfare of its residents; and

**WHEREAS**, section 893.138, Florida Statutes, authorizes local governments to create administrative boards with the authority to impose fines and other noncriminal penalties in order to deter public nuisances as described by section 893.138(2), Florida Statutes; and

**WHEREAS**, the City desires to create a nuisance abatement board with the power to issue orders that mitigate and/or cure the effects of a public nuisance within privately owned properties within the City; and

**WHEREAS**, the City Council finds that this proposed Ordinance serves to address a compelling government interest and to further enhance the protection of the public health, safety and welfare, while recognizing the constitutional interests of an individual to be on public property or at a place of public accommodation.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:<sup>1</sup>**

**Section 1. Recitals.** That the above recitals are confirmed, adopted, and incorporated herein and made a part hereof by reference.

**Section 2. Amending Code.** That Chapter 32 of the Code of Ordinances of Miami Springs, Florida, is hereby amended by creating Article XVII, "Nuisance Abatement Board," which shall read as follows:

Chapter 32 - BOARDS, COMMISSIONS, COMMITTEES

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<sup>1</sup> Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with ~~double-strikethrough~~ and double underline.

ARTICLE XVII. – NUISANCE ABATEMENT BOARD

Sec. 32-101. – Definitions.

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, except where the context clearly indicates a different meaning:

Board means the City of Miami Springs' Public Nuisance Abatement Board.

Complaint means the official process by which cases are initiated and brought before the Board.

Public Nuisance means any place or premises that has been used:

(1) On more than two occasions within a six-month period, as the site of a violation of Section 796.07, Florida Statutes, as amended, entitled "Prohibiting prostitution and related acts";

(2) On more than two occasions within a six-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

(3) 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;

(4) By a criminal gang for the purpose of conducting a pattern of criminal gang-related activity as defined by Section 874.03, Florida Statutes, as amended;

(5) On more than two occasions within a six-month period, as the site of a violation of Section 812.019, Florida Statutes, as amended, relating to dealing in stolen property;

(6) On two or more occasions within a six-month period, as the site of a violation of chapter 499, Florida Statutes, as amended, entitled the "Florida Drug and Cosmetic Act";

(7) On more than two occasions within a six-month period, as the site of a violation of any combination of the following:

(a) Section 782.04, Florida Statutes, relating to murder;

(b) Section 782.051, Florida Statutes, relating to attempted felony murder;

(c) Section 784.045(1)(a)2., Florida Statutes, relating to aggravated battery with a deadly weapon; or

(d) Section 784.021(1)(a), Florida Statutes, relating to aggravated assault with a deadly weapon without intent to kill.

Operator means an owner or person that has control or possession of a building, place, or premise, or an agent in charge of or otherwise having interest in or control of a building, place or premise.

Sec. 32-102. – Public Nuisance Abatement Board.

The City of Miami Springs Public Nuisance Abatement Board is hereby created and established to preside over cases involving Public Nuisances. The Board shall have the power to abate Public Nuisances pursuant to the procedures provided in this article. ~~The Board shall consist of~~

(A) ~~Creation; m~~Membership; terms; compensation.

(1) The Code Compliance Board for the City of Miami Springs ~~is hereby~~ may be designated as the Public Nuisance Abatement Board at the City Council's discretion. Where the City Council designates the Code Compliance Board to serve as the Public Nuisance Abatement Board, the terms of office of Board members shall coincide with the terms of office of the corresponding Code Compliance Board member.

(2) ~~The terms of office of Board members shall coincide with the terms of office of the corresponding Code Compliance Board member. Notwithstanding the provisions of subsection (1) and in the alternative, the Public Nuisance Abatement Board shall be comprised of five voting members.~~

(a) Each City Councilmember shall appoint one member to the Board.

(b) Members of the Board shall be residents of the City and shall possess outstanding reputations for civic pride, integrity, responsibility, and business or professional ability, with interest or experience in abating public nuisances and/or law enforcement.

(c) Upon the expiration of a Board member's term, the City Council member who made the appointment, or their successor in office, shall appoint the Board member to serve during the new Board term. If, for any reason, an appointment should not be made to fill an expired term, the incumbent will continue to serve until their successor has been appointed.

(d) Appointments to fill any vacancy on the Board shall be for the remainder of the unexpired term of office of the Councilmember making the appointment.

(e) A Board member may be removed with or without cause by the affirmative majority vote of the City Council.

(f) Should any Board member fail to attend three consecutive meetings without cause, the City Clerk or designee shall advise the City Council of those absences at the next regularly scheduled Council meeting, at which time the Board member shall be deemed to have been removed and the City Council shall fill the vacancy by appointment, in accordance with the terms of this subsection.

(3) Board 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) *Organization of the Board; administrative staff; quorum.*

- (1) The members of the Board shall elect a chairperson and vice-chairperson, who shall serve in the absence of the chairperson.
- (2) The City shall provide clerical and administrative personnel as may be reasonably required by the Board for the proper performance of its duties.
- (3) The City Attorney's office shall represent the City and present cases before the Board.
- (4) A majority of the Board shall constitute a quorum. All actions of the Board shall be approved by a majority vote of those Board members present at a meeting.

Sec. 32-103. – Notice.

- (A) All notices required by this article must be provided by:
  - (1) Certified mail to the Operator's address listed in the Miami-Dade County Tax Collector's office for tax notices or to the mailing address listed in the Miami-Dade County Property Appraiser's database; or
  - (2) Hand delivery by the sheriff, other law enforcement officer, or process server to the Operator at the Operator's last known address.
- (B) If an attempt to serve notice upon the Operator by hand delivery or certified mail is unsuccessful, service of the notice may be made by posting notice at the building, place, or premises where the Public Nuisance is alleged to exist. Such notice may be posted at least 10 calendar days prior to the hearing on a Public Nuisance complaint.
- (C) Where the Operator is not the owner of the building, place, or premises that is the subject of a Public Nuisance complaint, notice shall also be provided to the owner in accordance with this section.
- (D) Evidence that an attempt has been made to furnish notice as provided in subsection (A), together with proof of posting as provided in subsection (B), if applicable, shall be sufficient to show that the notice requirements of this section have been met, without regard to whether or not the Operator or owner actually received such notice.

Sec. 32-104. – Public Nuisance Complaints.

- (A) Written complaints; reports.
  - (1) Any City employee, City officer, or any City resident may file a written complaint regarding a Public Nuisance with the City Police Department on a form prescribed by the City. The complaint shall state facts that reasonably tend to establish the existence of a Public Nuisance.
  - (2) Any police officer that makes an arrest or substantiates an incident or occurrence of a Public Nuisance shall provide a copy of every such report to the Chief of Police or designee. The Police Department shall process all such reports and determine whether the requisite number of occurrences or violations have taken place to constitute a Public Nuisance.
  - (3) Upon determining that a Public Nuisance exists, the Police Department shall mail written notice of such Public Nuisance to the Operator. The notice shall provide for the Operator to take good faith measures as are appropriate to abate the Public Nuisance within five business days of receipt

of the notice. The Police Department may extend the five days, when requested in writing by the Operator, to allow the Operator to institute or continue actions to abate the Public Nuisance, provided the actions are reasonable. In the event the Operator fails to take reasonable action to abate the Public Nuisance, the Police Department shall request that the clerk for the Board schedule a hearing on the Public Nuisance at the next available hearing date.

(B) Processing; review of case.

- (1) In each case where a determination has been made in accordance with subsection (a) above, the case shall be processed through the Police Department and the Chief of Police or designee, in consultation with the City Attorney, shall determine whether such case is legally sufficient for presentation to the Board for consideration and disposition as provided herein.
- (2) The City Manager, or designee, upon receipt of verification by the Police Department that all administrative prerequisites have been satisfied shall direct the clerk for the Board to prepare a case file for the complaint related to the maintenance of the Public Nuisance.

Sec. 32-105. – Notice of hearings; hearing procedures.

(A) Notice of hearings.

- (1) The clerk for the Board shall schedule all hearings and issue notices for such hearings in accordance with section 32-103 of this article. Emergency meetings of the Board may be called by the City Manager, the Board Chair, or upon written request of at least three Board members.
- (2) Written notice of said hearing shall be provided by the clerk to the Operator and the complainant(s) at least ten calendar days prior to the scheduled hearing.
- (3) The Operator shall be responsible for providing the notice of a hearing to any tenant, lessee, or lessor.
- (4) The notice of hearing shall include a:
  - (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 statutes or ordinances involved; and
  - (d) A copy of the subject complaint(s) of the Public Nuisance(s).

(B) Conduct of Hearings.

- (1) All hearings of the Board shall be open to the public. The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.
- (2) If proper notice was provided, the hearing may proceed in the absence of the Operator.
- (3) All testimony shall be under oath.
- (4) Each case before the Board shall be presented by the City Attorney or designee. The City shall have the burden of proving the existence of a Public Nuisance by clear and convincing evidence.

- (5) The hearing shall not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings.
- (6) The Board may consider any relevant evidence, including evidence of the general reputation of the place or premises.
- (7) Each party shall have the right to call and examine witnesses, to present evidence and argument on all relevant issues involved in the case, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel.
- (8) At the discretion of the Board, the general public may be given an opportunity to present oral testimony or other evidence. If the Board considers such evidence, then all parties shall be given an opportunity to cross-examine, challenge, or rebut it.
- (9) Orders of the Board shall be based upon competent and substantial evidence.
- (10) After considering all the evidence presented at the hearing, the Board may declare the building, place, or premises to be a Public Nuisance.
- (11) Upon finding that a Public Nuisance exists, the Board shall immediately order one or more of the following:
  - (a) Discontinuance of the Public Nuisance;
  - (b) Closing of the building, place, or premises;
  - (c) Prohibition of the conduct, operation, or maintenance of any business or activity on the building, place, or premises which is conducive to the maintenance of the Public Nuisance, which prohibition may include the suspension of any City business tax receipt issued or renewed pursuant to Title XI, Chapter 113, entitled "Business Taxes," of the City Code;
  - (d) Fines not to exceed \$250.00 for each day that the Board finds that the Public Nuisance existed and fines not to exceed \$500.00 per day for recurring Public Nuisances;
  - (e) Any combination of this subsection.
- (12) The total fines imposed pursuant to this ~~section~~ article shall not exceed \$15,000.
- (13) The Board's order may be recorded in the public records of Miami-Dade County, and upon recording shall constitute constructive notice of the Public Nuisance to all subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order.
- (14) Orders of the Board shall be posted at the building, place, or premises where the Public Nuisance exists, existed or is occurring, and shall be sent by certified mail to the Operator and owner of record of such building, place, or premises within two business days of the posting.
- (15) An order entered pursuant to this Article shall expire after one year or at such earlier time as stated in the order. The Board may retain jurisdiction to modify the orders prior to the expiration of the orders where just cause is found to exist.

- (A) Five business days after the posting of an order issued by the Board, the City Police or Code Compliance Division shall be authorized to act upon and enforce such order in accordance with this Article.
- (B) The City may institute proceedings in a court of competent jurisdiction for willful disobedience or failure to comply with any order of the Board.
- (C) 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 Operator including, but not limited to, contracts awarded under section 24.112, Florida Statutes, as amended, and including licenses for the sale of beverages issued under section 561.19, Florida Statutes, as amended, where the existence of such permits, licenses, concessions or contracts is conducive to the maintenance of the Public Nuisance.
- (D) Nothing contained within this Article prohibits the City from proceeding against a Public Nuisance by any other means.

Sec. 32-107. – Costs.

In the event that the Board declares a place or premises to be a Public Nuisance and issues an order pursuant to this Article, the Board shall assess against the owner of the building, place, or premises where the Public Nuisance is found to exist the costs, including but not limited to reasonable attorneys fees, which the City incurred in the investigation, preparation, hearing and presentation of the case. These costs shall be due and payable ten calendar days after the written order of the Board has been filed with the City's Clerk. A certified copy of an order imposing costs may be recorded in the public records and, thereafter, shall constitute a lien against the real property that is the subject of the Board's order and provide for the foreclosure of the property subject to the lien and the recovery of all costs, including but not limited to reasonable attorney fees, associated with the recording of orders and foreclosure. Interest shall accrue on the unpaid costs at the legal rate of interest set forth in section 55.03, Florida Statutes, as amended.

Sec. 32-108. – Appeals.

- (A) An aggrieved party, including the City, may appeal a final order of the Board to the appellate division of the Circuit Court of the Eleventh Judicial Circuit of Florida. Such appeal must be filed within 30 days of rendition of the written order appealed from. An appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Board.
- (B) Unless the findings of the Board are overturned in an appeal pursuant to this section, all findings of the Board shall be admissible in any proceeding to collect unpaid costs and penalties.

Sec. 32-109. – Rights reserved.

This article does not restrict the right of any person, including but not limited to the City, to proceed under section 60.05, Florida Statutes, as amended, to abate a nuisance.

**Section 3. Conflicts.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

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

**Section 5. Codification.** That it is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the City Code, that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

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

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**PASSED ON FIRST READING** on the 28th day of June 2021, on a motion made by Councilwoman Bravo and seconded by Councilman Fajet.

**PASSED AND ADOPTED ON SECOND READING** this 23rd day of August, 2021, on a motion made by Councilwoman Bravo and seconded by Councilman Fajet.

Upon being put to a roll call vote, the vote was as follows:

Vice Mayor Bob Best	<u>YES</u>
Councilwoman Jacky Bravo	<u>YES</u>
Councilman Dr. Walter Fajet	<u>YES</u>
Councilman Dr. Victor Vazquez	<u>YES</u>
Mayor Maria Puente Mitchell	<u>YES</u>

  
\_\_\_\_\_  
MARIA PUENTE MITCHELL  
MAYOR

ATTEST:

  
\_\_\_\_\_  
ERIKA GONZALEZ, MMC  
CITY CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

  
\_\_\_\_\_  
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.  
CITY ATTORNEY