

ORDINANCE No. 2009-14-186

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, CREATING A NUISANCE ABATEMENT BOARD; PROVIDING FOR INTENT AND JURISDICTION; PROVIDING FOR CERTAIN ACTIVITIES TO BE DECLARED A NUISANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR COSTS AND FINES; PROVIDING FOR APPEALS; PROVIDING FOR ENFORCEMENT; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Miami Gardens has the authority to protect the health, safety, and welfare of all of its residents, and

WHEREAS, pursuant to Chapter 893, Florida Statutes, and other relevant laws, the City Council would like to create a Nuisance Abatement Board to prevent the use of real property for the unlawful sale, delivery or possession of controlled substances, prostitution, youth and street gang activity, or other criminal activity as defined by law,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. PURPOSE: The City of Miami Gardens has a compelling interest in preventing real properties located within the City from being public nuisances, thereby negatively affecting the quality of life of the residents of the City of Miami Gardens. The City intends to promote, protect, and improve the health, safety and welfare of the City's residents by creating a Nuisance Abatement Board with the

authority to impose administrative fines and other noncriminal penalties in order to provide an equitable, expeditious, effective and inexpensive method of abating nuisances. It is the intent of this article to provide the city with an additional and supplemental means to abating public nuisances. Nothing contained herein shall preclude the city from abating nuisances under Section 60.05, Florida Statutes or as otherwise provided by law.

SECTION 3. DEFINITIONS: As used herein, the following words shall have the following meanings:

- a. *City Attorney* means the chief legal advisor for the City of Miami Gardens or his/her designee.
- b. *Clerk of the Board* means the person appointed by the City Manager to perform the clerical duties necessary to carry out the activities of the Nuisance Abatement Board
- c. *Complaint* means written documentation either in the form of a state, federal or local law enforcement report, police report, incident report, arrest report, uniform civil violation notice, warning notice, notice of violation, notarized affidavit, or oral or written sworn statement documenting an incident(s) or reasonable belief (as substantiated by local, state, or federal law enforcement, judicial, or government officials) that a public nuisance is being maintained and/or created upon premises within the city.
- d. *Controlled substance* means any drug, narcotic, or other substance identified and prohibited under Chapter 893, Florida Statutes, as amended from time to time.
- e. *Criminal street gang* shall have the same meaning as set forth under Section 874.03, Florida Statutes.
- f. *Criminal street gang activity* shall mean those activities committed by a criminal street gang or member thereof as set forth under Section 874.03, Florida Statutes.
- g. *Dealing in stolen property* shall have the same meaning as that provided under Section 812.019, Florida Statutes.
- h. *Delivery* means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship.
- i. *Owner or Operator* means the owner, tenant, lessee or person having control or possession of the place or premises.

- j. *Nuisance Abatement Board or Board* means the nuisance abatement board of the City of Miami Gardens.
- k. *Place or Premises* means any residential property, commercial property, farm land, industrial land, land, vacant lot, parking area, vessel, motor vehicle, area controlled by a homeowner or condominium or other similar property owners' association, or other property that comes within the control of a business, or business enterprise, or other activity associated with a business.
- l. *Prostitution or prostitution-related activity* means any act constituting a violation of Section 796.07, Florida Statutes.
- m. *Public Nuisance or nuisance* shall be defined as any place or premises within the City of Miami Gardens which has been used as follows
  - (1) On more than two occasions within a 6-month period, as the site of a violation of §796.07, Florida Statutes;
  - (2) On more than two occasions within a 6-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 criminal gang activity as defined by §874.03, Florida Statutes; or
  - (5) On more than two occasions within a 6-month period, as the site of a violation of §812.019, Florida Statutes relating to dealing in stolen property.
- (n) *Recurring public nuisance* means any single or multiple instance of conduct prescribed in Section 893.138, Florida Statutes that occurs during the effective term of an order entered by the nuisance abatement board.
- (o) *Stolen property* shall mean tangible, intangible, personal or real property having any monetary or market value and that has been the subject of any temporary or permanent criminal taking in violation of the laws of the State of Florida.

**SECTION 4. DECLARATION:** Any place or premise within the City of Miami Gardens shall be declared a nuisance, and such nuisance may be abated in accordance with this Ordinance, if the premises have been used as follows:

- (a) On more than two occasions within a 6-month period, as the site of a violation of §796.07, Florida Statutes;
- (b) On more than two occasions within a 6-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- (c) On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- (d) By a criminal gang for the purpose of conducting criminal gang activity as defined by §874.03, Florida Statutes; or
- (e) On more than two occasions within a 6-month period, as the site of a violation of §812.019, Florida Statutes relating to dealing in stolen property

**SECTION 5. CREATION OF BOARD:** the City Council of the City of Miami Gardens hereby creates a "NUISANCE ABATEMENT BOARD", as follows:

**A. PURPOSE.**

The nuisance abatement board shall be a quasi-judicial body that shall make determinations whether places or premises within the City constitute nuisances as defined in Section 3.

**B. MEMBERSHIP.**

- 1. The board shall consist of seven (7) individuals who are residents of the City and/or who own or operate businesses within the city. The Mayor and each Council Member shall appoint a member to the Board, which member shall serve at

the pleasure of the Mayor or Council Member making the appointment. The Mayor and Council Members serving in the at-large Council seats shall appoint members to serve for a two-year initial term. The Council Members serving in Seats 1, 2, 3, and 4 shall appoint members to serve a three-year initial term. Thereafter, each member shall be appointed to serve a two (2) year term, or until his or her successor is appointed, whichever occurs later. Appointments to fill a vacancy shall be for the remainder of the unexpired term.

2. All provisions of Ordinance No. 2005-02-40 (General rules for boards), as amended, not in conflict herewith, shall apply to the Nuisance Abatement Board.

C. GENERAL POWERS.

The nuisance abatement board shall have the powers as delineated in section 893.138, Florida Statutes, which shall include, but not be limited to the following:

- (1) Jurisdiction to hear and decide complaints alleging that a place or a premise constitutes a public nuisance as defined under Section 893.138, Florida Statutes. The nuisance abatement board shall have continuing jurisdiction for a period of one (1) year over any place or premises that has been or is declared a public nuisance pursuant to this article.
- (2) The power to adopt rules of procedure for the administration and conduct of its hearings. Such rules shall not be inconsistent with this article and the rules of procedure adopted by the city council. Any rules adopted by the nuisance abatement board shall facilitate the efficient administration of hearings before it and ensure fundamental due process.
- (3) The power to subpoena respondents, witnesses, and evidence, records and other material relevant to the proceedings, to its hearings and take testimony under oath. Subpoenas may be served by the Miami Gardens Police Department or by such other person provided by law.

- (4) Issue orders having the force and effect of law, which include, but are not limited to, the prohibition, injunction or abatement of public nuisances, including the establishment and levy of fines.

D. REPRESENTATION.

The City Attorney or his/her designee shall represent the city as prosecutor and present cases before the board, and shall not therefore act as counsel for the board. The board shall rely on advice from independent legal counsel who shall be recommended by the City Attorney for appointment by the City Council, for a term not to exceed two (2) years. Board counsel shall serve no more than four (4) consecutive terms. Said attorney can be removed by the City Council upon the recommendation of the City Attorney.

SECTION 6. INITIATION OF PROCEEDINGS

A. COMPLAINT PROCESS.

1. Any employee, officer or resident of the city may file a complaint with the board with regard to nuisances described in Section 3. No member of the board may file a complaint with the board. All complaints shall be filed with the clerk of the board.
2. Upon receipt of a complaint, the same shall be investigated by the Police Department to verify the allegations in the complaint and to gather supporting police reports and documentation. If a complaint is substantiated, the complaint, along with all supporting police reports and documentation, shall be submitted to the City Attorney or his/her designee to determine whether the case meets the requirements of law.
3. Upon notification by the City Attorney's office that a complaint meets the requirements of law, the clerk shall schedule a hearing for each complaint.
4. The clerk shall give written notice of every hearing by certified mail to the address listed on file with the Property Appraiser's office, or hand delivery to the owner(s) and operator(s) at the last known address at least ten (10) days prior to the scheduled hearing. If an attempt to reach an owner or operator by certified mail or hand delivery is unsuccessful, notice of the hearing may be by publication as provided in Florida Statutes, Chapter 49. Notice shall include the following:

- (a) The time, date, place and nature of the hearing;
- (b) A reference to the City of Miami Gardens Nuisance Abatement Ordinance;
- (c) A short and plain statement summarizing the incidents, which form the basis of the complaint;
- (d) A statement that "failure to attend may result in an order being issued adverse to your interests";
- (e) A statement that all parties may be represented by counsel;
- (f) A statement that all parties shall be given an opportunity to present evidence in support of their position, submit rebuttal evidence, and conduct cross-examination; and
- (g) A conspicuous statement reflecting the requirements of Florida Statutes, Chapter 286, that a person deciding to appeal any decision of the board will need to ensure that a verbatim record of the proceedings is made.
- (h) Meetings of the board shall be open to the public, and minutes shall be kept.

*B. Conduct of Hearing*

1. The city attorney, or his/her designee, 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 represented by counsel.
2. 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.

3. The city attorney or his/her designee shall have the burden of proving the existence of an unlawful public nuisance by clear and convincing evidence.
4. If the alleged violator(s) has been given proper notice of 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).

C. *Post Hearing*

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, 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 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, 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 local business tax receipt issued or renewed pursuant any City of Miami Gardens code or ordinance;
4. Any Order entered under this section may be enforced in accordance with §120.69, Florida Statutes.

SECTION 7. PENALTIES. The Board may enter orders as follows:

- A. Levying fines for public nuisances, not to exceed two hundred fifty dollars (\$250.00) per day for first-time violations;
- B. Establish penalties, including fines not to exceed five hundred dollars (\$500.00) per day for recurring public nuisances; and
- C. Order payment of reasonable costs, including reasonable attorney fees

associated with investigations of and hearings on public nuisances;

- D. 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;
- E. Recommend that the City Attorney bring a complaint under §60.05, Florida Statutes and seek a permanent injunction against any public nuisance.

#### SECTION 8. ORDERS

All orders of the Board finding a public nuisance shall be recorded in the public records so as to give notice to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order. Said orders shall become liens against the real property that is the subject of the order. Upon recordation of said orders, the City shall have the right to institute foreclosure proceedings against the property that is subject to a lien for 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 this section shall not exceed fifteen thousand dollars (\$15,000.00).

#### SECTION 9. MULTIPLE COMMERCIAL TENANTS.

Where the City of Miami Gardens 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 commercial business and that the owner is not involved in the business operation, 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. This provision is limited to commercial tenants only.

#### SECTION 10: *ENFORCEMENT*

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.

- A. Orders of the nuisance abatement board issued pursuant to this chapter shall be posted at the place, building, or a premise 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 such place, building, or premises within two business days of the posting.
- B. The Police Department shall be authorized to act upon and enforce such orders in accordance with this ordinance, five (5) business days after the posting of an order issued pursuant to the nuisance abatement board,

#### SECTION 11. 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. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the board. An appeal shall be filed within 30 days of the date of the written order to which the appeal is directed.

#### SECTION 12. GENERAL PROVISIONS

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 chapter.

SECTION 13. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 14. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 15. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 16. EFFECTIVE DATE: This Ordinance shall become effective on October 1, 2009. However, nothing contained herein shall prevent the City from relying upon police reports issued prior to this date in order to substantiate a case.

PASSED ON FIRST READING ON THE 10<sup>th</sup> DAY OF JUNE, 2009.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 24<sup>th</sup> DAY OF JUNE 2009

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, MMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: COUNCILMAN OLIVER GILBERT III AND  
CITY MANAGER DANNY CREW

MOVED BY: Councilman Gilbert  
SECONDED BY: Councilman Campbell

Ordinance No. 2009-14-186

**VOTE: 7-0**

Mayor Shirley Gibson	<u>X</u> (Yes)	___(No)
Vice Mayor Barbara Watson	<u>X</u> (Yes)	___(No)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	___(No)
Councilman Oliver Gilbert, III	<u>X</u> (Yes)	___(No)
Councilman Andre' Williams	<u>X</u> (Yes)	___(No)
Councilwoman Sharon Pritchett	<u>X</u> (Yes)	___(No)
Councilman Aaron Campbell	<u>X</u> (Yes)	___(No)



## City of Miami Gardens Agenda Cover Memo

<b>Council Meeting Date:</b>	June 24, 2009		<b>Item Type:</b>	<b>Resolution</b>	<b>Ordinance</b>	<b>Other</b>	
					X		
<b>Fiscal Impact:</b>	<b>Yes</b>	<b>No</b>	<b>Ordinance Reading:</b>	<b>1<sup>st</sup> Reading</b>		<b>2<sup>nd</sup> Reading</b>	
		X				X	
			<b>Public Hearing:</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>No</b>
		X			X		
<b>Funding Source:</b>	N/A		<b>Advertising Requirement:</b>	<b>Yes</b>		<b>No</b>	
				X			
<b>Contract/P.O. Required:</b>	<b>Yes</b>	<b>No</b>	<b>RFP/RFQ/Bid #:</b>	N/A			
		X					
<b>Sponsor Name</b>	Councilman Oliver Gilbert/Danny O. Crew		<b>Department:</b>	Mayor/Council /City Manager			

### Short Title:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, CREATING A NUISANCE ABATEMENT BOARD; PROVIDING FOR INTENT AND JURISDICTION; PROVIDING FOR CERTAIN ACTIVITIES TO BE DECLARED A NUISANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR COSTS AND FINES; PROVIDING FOR APPEALS; PROVIDING FOR ENFORCEMENT; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

### Staff Summary:

According to the provisions in Chapter 893, Florida Statutes and other relevant laws, the City Council has the authority to create a Nuisance Abatement Board to prevent the use of real property for the unlawful sale, delivery or possession of controlled substances, prostitution, youth and street gang activity, or other criminal activity as defined by law. The attached ordinance proposes the creation of a Nuisance Abatement Board in the City of Miami Gardens.

The main purpose of the board will be to prevent properties located within the City from being public nuisances as well as abating existing nuisances. A public nuisance under this ordinance is defined as:

- (1) On more than two occasions within a 6-month period, as the site of a violation of §796.07, Florida Statutes;
- (2) On more than two occasions within a 6-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 criminal gang activity as defined by §874.03, Florida Statutes; or
- (5) On more than two occasions within a 6-month period, as the site of a violation of §812.019, Florida Statutes relating to dealing in stolen property.

The ordinance provides for board membership and general powers. It also defines the Nuisance Abatement process from complaint to final order and provides specific guidelines for the board to follow as it relates to the declaration of a nuisance and the issuance of fines.

It is anticipated the City Attorney's Office and the Police Department will be primarily responsible for the administration of the Nuisance abatement Process.

**Proposed Action:**

Councilman Oliver Gilbert recommends the approval of the attached ordinance creating a Nuisance Abatement Board.

**Attachment:**

None