



MEMORANDUM ^{PSC}

Agenda Item No. 4 (A)

TO: Honorable Chairperson Barbara
Carey-Shuler, Ed.D. and Members,
Board of County Commissioners

DATE: July 20, 2004

FROM: George M. Burgess
County Manager

SUBJECT: Proposed Amendments to
Sections 2-98.4 through 2-98.11 of
the Miami-Dade County Code,
Pertaining to Nuisance Abatement

RECOMMENDATION

It is recommended that the Board approve the attached ordinance amending Section 2-98.4 through 2-98.11 of the Miami-Dade County Code, pertaining to Nuisance Abatement. The proposed changes would facilitate the administration, enforcement, and coordination with Florida Statute Section 893.138, enabling the utilization of municipal and County Nuisance Abatement Boards and Ordinances.

BACKGROUND

In May 1992, the Board adopted Miami-Dade County Ordinance No. 92-42, Sections 2-98.4 – 2-98.11, pertaining to nuisance abatement. The Nuisance Abatement Ordinance (NAO) established a Nuisance Abatement Board (NAB) to hear complaints from citizens, police officers and employees regarding public nuisance premises. Examples of these premises include sites of multiple incidents involving the sale or delivery of controlled substances, youth or street gang criminal activity, prostitution, lewd and lascivious activity, illegal sale or consumption of alcoholic beverages, gambling, and other criminal activity as identified by Florida Statutes 823.05 and 823.10.

Amendments to State of Florida Statutes and the Miami-Dade Police Department's (MDPD) experience with the NAO since its adoption in 1992, has prompted the proposed amendments to the ordinance. Specifically, amendments to Florida Statute Section 893.138 have further defined public nuisance properties to include sites "dealing in stolen property" and allows the closure of properties and fines to be levied on public nuisance properties. MDPD's experience has also prompted proposed administrative and operational changes to the NAO, including the addition of municipalities contracting police services from MDPD, the addition of public nuisance activities and other areas of investigation by law enforcement and County agencies. The proposed amendments to the NAO are listed as follows:

- 2-98.4 Legislative Findings and Intent:
The existing ordinance applies only to unincorporated Miami-Dade County. The proposed amendment will allow application of the NAO in municipalities whose primary police protection is MDPD, if the municipality has not enacted a Nuisance Abatement Ordinance/Board and if they agree as such. This will enable contracted MDPD personnel to file complaints regarding public nuisance premises in the municipalities and enable the Miami-Dade County Nuisance Abatement

Board to proceed with jurisdiction under this chapter. MDPD staff advised applicable municipalities of their option to adopt this amendment through the League of Cities at its February 5, 2004 meeting and at a January 28, 2004 meeting with officials from all municipalities where MDPD provides primary police services.

- **2-98.5 Definitions:**
The recommended amendments provide for definitions of public nuisance activity to include provisions for the manufacture, cultivation, or possession of controlled substances including illegal pharmaceuticals, designer drugs, or imitation controlled substances; provisions for illegal possession of alcoholic beverages, containers, or open containers; dealing in stolen property; violations of the Miami-Dade County Juvenile Curfew Ordinance; violations of Miami-Dade, state, or federal ordinances, statutes, or code involving minimum housing, unsafe structures, sanitary health nuisances, illegal dumping, environmental regulations, false alarms, and animal regulations; unlicensed practice of medicine, dentistry, funeral services, or health care regulations.

Additional amendments to the NAO include definitions of complaints, owners, types of places or premises or enterprises that may be designated as a public nuisance. These definitions would provide for flexibility in identifying properties and business enterprises that could be utilizing various properties on a continual or rotating basis where only one police report may be identified, but evidence demonstrates that the activity has been continuing for a long period of time. For example, the same enterprise may hold rave parties involving designer drugs at a different location on several occasions.

- **2-98.6 Operating Procedure:**
Recommended revisions will allow for options in notification requirements and flexibility in cases where there is evidence of an immediate threat to the public, health, safety, and welfare; and recurring public nuisances.
- **2-98.7 Public Nuisance Abatement Board:**
When adopted, the NAB consisted of nine members, one member appointed by each County Commissioner. Since its adoption, the Board of County Commissioners has been expanded from nine to thirteen members. This amendment will expand the Board membership to the current allotment of 13 members. Furthermore, the current NAO allows County Commissioners to appoint candidates who reside only in unincorporated Miami-Dade County. The proposed amendment allows for the appointment of residents of Miami-Dade County, but provides an exception for the appointment of a member who does not reside in Miami-Dade County upon a 2/3 vote for waiver of residency. Additionally, the NAO amendments provide for alternate appointments by the Mayor, the County Manager, and the Director of the Miami-Dade Police Department to substitute for absent appointees to prevent quorum difficulties. Additionally, the recommended revisions will provide for terms of office, coordinate expiration of terms of office with the terms of the appointing commissioner; waivers by the Board of County Commissioners; and provisions for attendance, quorum requirements, and voting.

Other recommended revisions include evidentiary presentations; enforcement orders, including closure, requirements of other Miami-Dade County Ordinances or Florida Statutes, and recommendations by other concerned parties, including law enforcement, the NAB, Miami-Dade

officials, and other state and/or federal officials; and extension of jurisdiction upon findings that the owner has not complied with NAB orders or there have been additional activities.

- 2-98.8 Fines, Costs, and Recording:

The existing ordinance specifies that costs for the preparation, presentation, and investigation of the case shall be ordered by the Nuisance Abatement Board upon the finding that the premises is a public nuisance. Upon amendment of Florida Statute 893.138, governmental entities through their Nuisance Abatement Board may now order fines as well as costs. Recommended revisions will provide for a prehearing settlement that will include negotiations with the owner for reimbursement of costs associated with the investigation of the nuisance complaints, preparation of the notification to the owners, and investigation of the owner's plans to abate the nuisance activity; provisions for fines levied by the NAB; provisions for costs, including all investigative costs of evidentiary incidents and costs incurred by Miami-Dade County and other agencies; provisions for flexibility in the assessment of costs by the NAB; provisions for recording of orders, fines, and costs as liens on the premises or any other property of the owners; provisions for administrative costs, filing and recording fees, and fees required to record lien satisfactions.

- 2-98.10 Enforcement:

Amendments in the enforcement of the NAO include, enforcement fines of \$250 per day for failure to comply with the NAB Orders to abate the nuisance activity; fines of \$500 and/or imprisonment of not more than 60 days in the county jail for an owner or person who hinders, or obstructs any county or state official in the discharge of his/her duties under this chapter; provisions for county officials to secure the premises and levy the costs against the owner who fails to close the property and secure it as ordered by the NAB.

- Section 10:

Provides for retroactive application of newly adopted amendments where applicable.

The Miami-Dade County Nuisance Abatement Board approved all proposed amendments to the Nuisance Abatement Ordinance at its January 29, 2004 meeting.



Susanne M. Torriente
Assistant County Manager

MEMORANDUM

TO: Honorable Chairperson Barbara
Carey-Shuler, Ed.D. and Members,
Board of County Commissioners

DATE:

FROM: George M. Burgess

County Manager

SUBJECT: Fiscal Impact Report for the
Proposed Amendment to Sections
2-98.4 through 2-98.11 of the
Miami-Dade County Code,
Pertaining to Nuisance Abatement

The proposed amendments to Sections 2-98.4 through 2-98.11 of the Miami-Dade County Code concerning Nuisance Abatement will have a fiscal impact on Miami-Dade County, as indicated below:

- While the revised Nuisance Abatement Ordinance will allow for the collection of fines and associated costs ordered, the revenue cannot be accurately estimated in advance. Currently, once a premises is declared a public nuisance, costs can be ordered by the Nuisance Abatement Board (NAB). But, under the proposed amendments, a pre-hearing settlement, including costs, can be arranged with the owner and approved by the NAB prior to declaring the premises a public nuisance. Monthly, Miami-Dade Police Department (MDPD) staff issues approximately three notifications on properties not yet declared public nuisances. It is estimated that the pre-hearing settlement agreements will have a fiscal impact of at least \$500 a month. Additionally, the Florida State Statutes allow Nuisance Abatement Boards to levy fines in increments of \$250 per day for continuing violations once a premises is declared a public nuisance, in addition to costs. The NAB, though, has the flexibility to reduce/increase costs based upon several factors, including the cooperation of an owner, having an effect on potential revenue.
- Amendments to the NAO, including expanding it to municipalities where MDPD provides primary police services, the expanded definition of a public nuisance and the implementation of pre-hearing settlement conferences, is anticipated to increase the workload in the Nuisance Abatement Unit. The Unit is requesting the addition of an Administrative Officer 1 for FY 2004-2005. The new AO1 position, along with the purchase of certain anticipated computer and software needs, has a potential fiscal impact of up to \$85,000. Based on MDPD's experience with the abatement of public nuisance properties, this fiscal impact will result in cost savings associated with reduced calls, less crime and disturbances on these properties, and increased collection of fines and costs made by responsible property owners.

Although the exact fiscal impact can not be determined at this time, MDPD will continue to monitor the impact and attempt to mitigate the costs through collection of fines, to the extent allowed by the Nuisance Abatement Board.



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE:

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor

Agenda Item No.

Veto _____

Override _____

ORDINANCE NO. _____

ORDINANCE AMENDING SECTIONS 2-98.4 THROUGH 2-98.11 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA CONCERNING NUISANCE ABATEMENT; REVISING PURPOSE, DEFINITIONS, OPERATING PROCEDURES, THE PUBLIC NUISANCE ABATEMENT BOARD, HEARING PROCESS AND FEES AND COSTS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-98.4 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:¹

Sec. 2-98.4. Legislative Findings and intent.

This article [Ordinance No. 92-42] is enacted pursuant to the provisions of the >>Miami<< Dade County Home Rule Charter and Florida Statute, Section 893.138, as it may be renumbered or amended from time to time, and shall be known and be cited as the [{"Metropolitan"}] >>"Miami-<< Dade County Public Nuisance Abatement Ordinance."

The Board of County Commissioners of >>Miami-<< Dade County, hereby finds and declares that any places or premises

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

which are used as the site of the unlawful sale, ~~[[or]]~~ delivery >>, or possession<< of controlled substances, prostitution, youth and street gang activity, gambling, illegal sale >>, possession, << or consumption of alcoholic beverages, ~~[[or]]~~ lewd or lascivious behavior, >>other criminal activity as defined in federal laws and/or Florida Statutes, or violations of the Code of Miami-Dade County<< may be a public nuisance that adversely affects the public health, safety, morals, and welfare. This Board also finds that abating the public nuisance which results from said ~~[[criminal]]~~ activity is necessary to improve the quality of life of the residents of >>Miami-<<Dade County and that said abatement will safeguard the public health, safety, and welfare.

This article is hereby declared to be remedial and essential to the public interest and it is intended that this article be liberally construed to effect the purposes as stated above. The provisions of this article and the standards set forth herein shall be applicable ~~[[only]]~~ to the unincorporated >>and incorporated<< areas of ~~[[Metropolitan]]~~ >>Miami-<<Dade County, Florida. >>It is not intended to replace, modify, supersede or diminish the standards established for the abatement of nuisances within any municipality within Miami-Dade County or any other County or municipal ordinance. It shall be the duty and responsibility of municipal departments, officials and employees to enforce the standards prescribed by the provisions of this chapter within the territorial limits of their respective municipalities. Notwithstanding this requirement, where investigations reveal evidence of a public nuisance within incorporated areas of Miami-Dade County where there exists no municipal ordinance and/or Nuisance Abatement Ordinance/Board, the Miami-Dade County Public Nuisance Abatement Board shall be vested with jurisdiction to proceed under this chapter.<<

The provisions of this article shall be cumulative and supplemental to and not in derogation of any provision of the Florida Statutes, the Code of ~~[[Metropolitan]]~~ >>Miami-<< Dade County, or any other applicable law.

Section 2. Section 2-98.5 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

Sec. 2-98[[;]]5. Definitions.

For the purpose of this article the following definitions shall apply:

>>A.<<Public nuisance: Any place or premise >>g<< which has been used

>>(1) by a youth and criminal street gang for the purpose of conducting a pattern of youth and criminal street gang activity, or

(2)<< on more than two (2) occasions within a twelve month period:

[[1]] >>(a)<< As the site of the unlawful sale >>,<< [[ø]] delivery >>, manufacture, cultivation, or possession<< of controlled substances >>(including, but not limited to substances and pharmaceuticals defined and regulated under Federal controlled substance laws, Florida Statutes, Chapters 893, and 499, any substance sold in lieu of a controlled substance in violation of Florida Statutes Section 817.563 or any imitation controlled substance defined in Section 817.564),<< or

[[2]] ~~By a youth a street gang for the purpose of conducting a pattern of youth and street gang activity, or~~

3]] >>(b) As the site of<< [[Fø]] prostitution, or solicitation of prostitution, >>or any violation of Florida Statutes Chapter 796, as it may be renumbered or amended from time to time, << or

[[4]] >>(c) As the site of<< [[Fø]] illegal gambling, or

[[5]] >>(d) As the site of<< [[Fø]] the illegal sale >>,<< [[ø]] consumption >>,<< or >>possession<< of alcoholic beverages >>, containers, or open containers,<< or

([[6]] >>e) As the site of<< [[Fø]] lewd or lascivious behavior, or >>(f) As the site of Violations of Florida Statute 812.019, Dealing in Stolen Property, as it may be renumbered or amended from time to time, or

(g) As the site of juveniles in violation of the Miami-Dade County Juvenile Curfew Ordinance, 95-208, as it may be renumbered or amended from time to time; or<<

([[7]] >>h<<) Any premise >>g<< or place declared to be a nuisance by Florida Statute, Section 823.05 or Section 823.10 as they may be renumbered or amended from time to time.

>>(i) As a site in which the Owner(s) and/or property is in violation of:

- (i) Sections 17-81 through 17-86, Public Nuisances on Leased Property, of the Miami-Dade County Code, as they may be renumbered or amended from time to time, or
- (ii) Chapter 17-17A, Minimum Vacant Housing Structures Standards, 17B, Demolition of Uninhabitable Structures Ordinances, 202, Unsafe Buildings, as they may be renumbered or amended from time to time,
- (iii) Unsanitary Health Nuisance Statutes including, but not limited to, those defined in Florida Statutes, Chapters 823 and 386 and Miami-Dade County Ordinance Chapter 26.
- (iv) Illegal Dumping or Illegal Use of Property Statutes and Codes, or other sections of Florida State Chapter 823.
- (v) The Miami-Dade County Environmental Protection Ordinance, Chapter 24, Sections 24-14 and 24-26 and Violations of State and Federal Environmental (Nuisance) Laws.
- (vi) Miami-Dade County's False Alarm Ordinance (Article XVI, Section 21-276), on a repeated basis in excess of six false alarm signals during two or more registration periods as defined in the ordinance as it may be renamed or renumbered from time to time.
- (vii) As the site (or place of habitation or feeding) of violations of the Miami-Dade County Pit Bull Ordinance, No. 89-22, or other violations of Florida

Statutes or Miami-Dade County Ordinances involving violent, dangerous, or potentially violent animal incidents, including but not limited to activities prohibited pursuant to Chapter 767 and Chapter 828 of the Florida Statutes.

(viii) As the site of the Illegal or Unlicensed Practice of Medicine, Dentistry, Funeral Services, or Health Care Services in Violation of Federal law and Florida Statutes, including but not limited to Chapters 381-408, 454-493, Environmental Regulations, Zoning Regulations, Code Enforcement Regulations, that may endanger the Public Health, Safety, and Welfare.

- B. Complaint: A complaint and/or incident documented on local, state, or federal law enforcement report, police report, incident report, arrest report, code enforcement citations, warning notices, 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 any of the above types of activities are occurring.
- C. Owner: Shall include the Property Owner/Property Manager and Business Owner/Manager as applicable.
- D. Places/Premises: Shall include, but not be limited to, any residential, business, farming, land, vacant lot, parking area, vessel, vehicle, area controlled by a homeowner or condominium or other similar association, or other property that comes within the control of a business, or business enterprise, or other activity associated with a business.
- E. Occasion: Shall be defined as any single instance and/or occurrence where there is evidence of ongoing nuisance activity or the receipt of a documented, substantiated complaint where the evidence shows that the activity was occurring on more than one day. Each instance and/or day of activity shall constitute a separate occasion/incident.<<

Section 3. Section 2-98.6 of the Code of Miami-Dade County, Florida is hereby

amended to read as follows:

Sec. 2-98.6. Operating procedure.

Any employee, officer >>~~1~~<< ~~[[e]]~~ resident >>, or visitor<< of ~~[[Metropolitan]]~~ >>Miami-<<Dade County may file a complaint and request for prosecution with the ~~[[Metropolitan]]~~ >>Miami-<<Dade County Public Nuisance Abatement Board regarding the existence of a public nuisance located within ~~[[Metropolitan]]~~ >>Miami-<<Dade County. Said complaint shall be filed with the Director of the ~~[[Metropolitan]]~~ >>Miami-<<Dade Police Department, or his designee. Upon the filing of more than two (2) complaints on any particular place or premises >>or enterprise controlling such places or premises, within a twelve-month period,<< the Director or his designee shall mail written notice of such complaints >>or a notice of complaints and a Nuisance Abatement Board hearing<< by certified mail with return receipt to the ~~[[owner]]~~ >>Owner<< of the place or premises complained of at the ~~[[owner's]]~~ >>Owner's<< address>>. Although any address reasonably likely to advise the Property/Business Owners may be used, using the address,<< as shown in the >>Miami-<<Dade County property tax collector's file >>, shall be deemed conclusively as proper. In lieu of the requirements of certified mail, the notice requirements may be fulfilled by Personal Service, hand delivery, posting in a conspicuous place on the premises, or by publishing in a newspaper or publication of general circulation in Miami-Dade County once a week for two (2) consecutive weeks.<< Said notice shall provide for the ~~[[owner]]~~ >>Owner(s)<< of the place or premises to contact, >>verbally and in writing,<< the Director or his designee within fourteen (14) days of receipt of the notice. This time period shall be allowed for the purpose of allowing the ~~[[owner]]~~ >>Owners<< to take such good faith measures as are appropriate to abate the nuisance. The Director or his designee may extend the fourteen (14) days to allow the ~~[[owner]]~~ >>Owners<< to institute or continue actions to abate the nuisance provided the actions are reasonable. In the event the ~~[[owner]]~~ >>Owners<< fails to respond to >>the<< Notice of Complaint or fails to take ~~[[reasonable]]~~ >>sufficient<< action to abate the nuisance, >>or there are further substantiated and/or documented complaints/incidents,<< the Director or his designee ~~[[shall schedule]]~~ >>may conduct<< a hearing on the ~~[[complaint]]~~ >>complaints<< before the ~~[[Metropolitan]]~~ >>Miami-<<Dade County Public Nuisance Abatement Board, and written notice of said hearing shall be ~~[[by certified mail with return receipt to the owner, of the premises and the complainant]]~~ >>sent by any of the methods for service of the initial

notice of complaints<< at least ten (10) days prior to the scheduled hearing. >>The notice of hearing may be in the same notification as the notice of complaint(s), provided that the 14-day period of time is allowed for the Owner to take action to abate the nuisance. Notification to the property Owner constitutes notice to the Business Owner or business or residential tenant. Notice to the Business Owner may constitute notice to the Property Owner if the Property Owner cannot be served on a timely basis. Any person or party who shall not appear and show cause as aforesaid shall be as fully bound by the proceedings taken as if he/she had appeared and shown cause. If notification requirements have been fulfilled, the hearings may be held upon the absence of the Owners.

Additionally, the Director of the Miami-Dade Police Department, or his designee, may eliminate the 14-day waiting period and 10-day Hearing Notification Period, and requirements of more than two (2) complaints (incidents) within a twelve (12) month period, and schedule a Nuisance Abatement Board Hearing, or Circuit Court Injunction hearing with a minimum of three (3) days notice to be provided to the Owner (s) as required by Florida Statute 893.13.

The Nuisance Abatement Board and/or the County Attorney shall have power of subpoena for any person or documents.

In the event the place or premises has already been declared a public nuisance by previous actions of the Board, the jurisdiction of the Board has ended, and there is new evidence of nuisance activity at, on, or in relation to the premises, the requirements for a new "notice of complaints" and for a 14-day period for the Owner(s) may be waived by the Director of the Miami-Dade Police Department or his designee and the case may be scheduled for a Board hearing and/or a Court Injunction Hearing under Florida State Statute 60.05 (with at least three (3) days notification prior to the scheduled hearing). All evidence previously presented to the Board may be considered in the new proceedings.<<

The aforesaid notice of hearing >>to the Owner(s)<< shall include:

- (a) A statement of the time, place and nature of the hearing;
- (b) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (c) A reference to the particular sections of the statutes and

ordinances involved;

- (d) A short and plain statement summarizing the incidents complained of.

Section 4. Section 2-98.7 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

Sec. 2-98.7. Public Nuisance Abatement Board.

The ~~[[Metropolitan]]~~ >>Miami<< Dade County Public Nuisance Abatement Board is hereby created and established. The Board shall consist of ~~[[nine (9)]]~~ >>thirteen (13)<< members with one member appointed by each County Commissioner.

- (a) Qualification of members. The composition and representative membership of the Board shall be as follows:
- (1) All members shall >>permanently<< reside in ~~[[the unincorporated areas of]]~~ >>and shall be a qualified elector of Miami-<<Dade County >>, unless the Board of County Commissioners, by a two-thirds vote of its membership, waives this requirement, and should have reputations for integrity and community service.<<
 - (2) One (1) member shall be a law enforcement officer ~~[[as defined in Florida Statutes, Section 943.10]]~~ who is retired or inactive ~~[[and]]~~ >>or<< who is not employed by Miami-Dade County >>, and who meets the definition of "law enforcement officer", as defined by Section 943.10 of the Florida Statutes, at the time he or she was in active status or who is currently in active status. <<
 - (3) One (1) members shall be an attorney practicing law in >>Miami-<<Dade County and a member[[s]] in good standing of the Florida Bar.

(4.) Eleven (11) members of the general public, who possess outstanding reputations for civic pride, integrity, responsibility, and business or professional ability, with interest or experience in abating public nuisances.

>>(5) Three (3) alternate members to be appointed by the Mayor, the County Manager, and the Director of the Miami-Dade Police Department or his designee, subject to ratification by the Board of Miami-Dade County Commissioners, who shall serve upon the absences of a Board Member(s).<<

(b) Terms of office. The initial appointments >>of members and alternates<< to the Board shall >>be in accordance with Sections 2-11.38 and 2-11.38.1 of the Code of Miami-Dade County and shall<< be as follows: Seven (7) members shall be appointed for the term of one year, six (6) members shall be appointed for the term of two (2) years. Thereafter all appointments shall be made for the term of >>office corresponding with the term of the appointing Commissioner<< [[two (2) years]]. >>Generally, no<< [[No]] members shall serve more than [[three (3) consecutive terms or seven (7) years]] >>eight (8) consecutive years, but may return to the Board after a 2 year hiatus and reappointment by the Board of County Commissioners as required by Section 2-11.38.2(b) of the Code of Miami-Dade County, Florida. Notwithstanding the term limit set forth herein, a Board member may apply for waiver from the Board of County Commissioners, who may approve such application upon a two-thirds (2/3) vote of its membership.<< Appointments to fill any vacancy on the Board shall be for the remainder of the unexpired term of office. >>Pursuant to Section 2-11.38.2 of the Code of Miami-Dade County, Florida, the term of every Board member nominated by a Commissioner shall automatically expire when the nominating Commissioner leaves office, or (2) the nominating Commissioner's term of office expires. A Board Member whose term has expired shall continue to serve until the responsible Commissioner reappoints or replaces him or her with a new appointee approved by the Board of County Commissioners.<< A member may be removed with or without cause by the affirmative vote of not less than a majority >>vote<< of the [[entire]] County Commission. [[-]] >>, and must comply with the attendance

requirements of § 2-11.39 as it may be renumbered and amended from time to time. Pursuant to § 2-11.39, acceptable excuses for non-attendance must be submitted verbally or in writing to the county official designated to receive such excuses, at least 24 hours prior to the start of the scheduled meeting. The provisions of this section may be waived by a two-thirds (2/3) vote of the members of the Board of County Commissioners. Should any member of the Board fail to comply with this section, the chairperson or the Board by a majority vote shall certify the same to the County Commission. Upon such certification, the member shall be deemed to have been removed and the County Commission shall fill the vacancy by appointment.~~<< [[Should any member of the Board fail to attend three (3) consecutive meetings without due cause, the chairperson shall certify the same to the County Commission. Upon such certification, the member shall be deemed to have been removed and the County Commission shall fill the vacancy by appointment.]]~~

(d) Meetings of the Board. Meetings of the Board shall be held monthly, or more frequently if necessary, to hear and dispose of the pending complaints. Notice of the time and place of meetings shall be given to ~~[[all]]~~ complainants and ~~[[owners]]~~ >>Owners<< of premises scheduled to be heard. Notice >>to the Owners<< shall be given in writing at least ~~[[ten (10) days]]~~ >>three (3) days<< prior to the hearing >>or as stipulated in § 2-97.<< Any aggrieved person may request a continuance of the hearing. The Board may grant a continuance of any hearing for good cause. The chairperson may call an emergency meeting of the Board, and meetings may also be called by written notice signed by three (3) members of the Board. The meetings of the Board shall be recorded and be transcribed >>(with a copy to the Clerk of the Board and the County Attorney)<< at the expense of the party requesting the transcript. All meetings shall be in compliance with Florida's "Government in Sunshine Law" and Chapter 286.011, Florida Statute. No less than >>a majority of the<< ~~[[seven (7)]]~~ >>members duly appointed to the board, provided that at least one-half (½) of the full board membership has been appointed,<< shall constitute a quorum. No less than >>a simple majority of the members present<< ~~[[six (6) members]]~~ voting affirmatively shall be required to declare any place or premises a public nuisance >>, or for any other motion or business of the Board,<< under this provision. The County Manager shall provide adequate and

competent clerical and administrative personnel, and such technical or scientific personnel as may be reasonably required by the Board for the proper performance of its duties. The County Manager shall provide a regular meeting place for the Board. All records shall be public records as defined by Chapter 119.011, Florida Statutes.

(e) Conduct of hearings.

- (1) The Director of the ~~[[Metro]]~~ >>Miami-<<Dade Police Department or his designee shall present cases before the Board. All parties shall have an opportunity to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the Board proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut it. The Board may consider any evidence, including evidence of the general reputation of the place or premises >>, the general reputation of the Owner(s) or their associates, employees, or tenants, and evidence concerning other properties that may be owned, managed, or controlled by the Owner(s). Any parties presenting any documentation to the Board without prior notification to the Director of the Miami-Dade Police Department, or his designee, shall ensure that adequate copies for the Board, the Clerk of the Board, and the Owner(s) be available for review at the Board meeting.<< All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Orders of the Board shall be based on competent and substantial evidence and must be based on a preponderance of the evidence. >>Evidence may include, but is not limited to, documents and reports of the Miami-Dade Police Department, county agencies, or other local, state, or Federal law enforcement agencies.<<

- (2) After considering all evidence, the Board may declare the place or premises to be a public nuisance as defined in this chapter and may enter an order >>requiring the Owner(s) to adopt such procedure(s) as may be appropriate under the circumstances to abate any such nuisance and/or it may enter an order immediately<< prohibiting >>, but not be limited to any of the following:<<
- (i) The maintaining of the nuisance;
 - (ii) The operating or maintaining of the place or premises ~~[[or]] >>~~, including the closure of the place or premises or any part thereof; << or
 - (iii) The conduct, operation, or maintenance of any business or activity on the premises which is conducive to such nuisance ~~[-]~~ >>; and/or
- (3) Notwithstanding the provisions set forth in subsection (2) of this Section, the Board shall prohibit or require actions by the Owner(s) as permitted or required by the Code of Miami-Dade County, Florida and/or applicable Florida Statutes, including the following:
- (a) Sections 17-81 through 17-86, Public Nuisances on Leased Property, of the Miami-Dade County Code, Chapters 17-17A, Minimum Vacant Housing Structures Standards, 17B, Demolition of Uninhabitable Structures Ordinances, 202, Unsafe Buildings,
 - (b) Ordinance Prohibiting Sexual Activity at Adult Bookstores and Adult Video Stores, Miami-Dade County Ordinance 96-13, and
 - (c) Ch. 386 Fla. Stat., Particular Conditions

Affecting Public Health, and/or

(d) Any other legal steps deemed necessary by the Nuisance Abatement Board, the County Attorney, inspectors of the County, State, or Federal Agencies, or the Director or designee, or police officers of the Miami-Dade Police Department, to abate the nuisance and/or to protect the public health, safety, and welfare.<<

(~~[[3]]~~>>4<<) An order entered under subsection (2) shall expire after one year or at such earlier time as stated in the order. The Board may retain Jurisdiction to modify its orders >>or to extend the time period of jurisdiction past the expiration date, upon the showing of cause that the Owners have not taken reasonable and/or sufficient action to abate the nuisance or there are additional nuisance activities, or the Owners have not adhered to the orders of the Board, << prior to the expiration of said orders.

(~~[[4]]~~ >>5<<) The Board may bring a complaint under section 60.05 of the Florida Statutes, seeking a >>temporary or<< permanent injunction against any public nuisance.

Section 5. Section 2-98.8 of the Code of Miami-Dade County, Florida is hereby amended to read as follows:

>>Sec. 2-98.8. Fines, Costs, and Recording.

(a) Prehearing Settlement. The Director of the Miami-Dade Police Department may enter into stipulations of settlement with the Property and Business Owners regarding their plans to abate any nuisance activities. Such negotiated stipulations may include but not be limited to any costs incurred by the Miami-Dade Police Department and the County for the investigation of the complaints, preparation of the notification to the Owners, and investigation of the Owners' plans to abate the nuisance activity. The

stipulation of settlement may be reviewed and approved by the Nuisance Abatement Board, prior to a Board Order declaring the Premises a Public Nuisance. In the event there is noncompliance by the Owner with any of the terms of the stipulation, the Director of Miami-Dade Police Department or his designee may either seek enforcement of the terms by the Board or present the case to the Board for purposes of declaring a property a public nuisance.

(b) The Board may order fines in increments of \$250 or another appropriate higher or lesser amount as it deems appropriate and necessary, per incident and/or day of non-compliance. Fines shall not exceed \$15,000 (or a total amount as allowed by Florida Statute 893.138, as amended) each time a premises is declared a public nuisance.

(c) <<Costs >>Levied by the Board<<. In the event [[that]] the Board declares a place or premises to be a nuisance and issues an order pursuant to Section 2-98.7(e)(2) >>or (3)<< above, the Board shall assess against the [[owner]] >>Property Owner and Business Owner (jointly and severally)<< of the place or premises the costs which the County has incurred in the preparation, investigation, and presentation of the case >>and monitoring of the premises and/or investigation of all incidents and/or conditions showing evidence of a public nuisance. In the event that the Owner(s) fail to comply with the orders of the Board, all costs associated with further investigation and enforcement of the order, shall be additionally assessed. Costs shall include, but not be limited to, any investigative, administrative, research, equipment, supplies, and attorney fees, incurred by the County Manager's Office, County Attorney's Office, the MDPD, and other Miami-Dade County Departments. Any other Municipal, State, or Federal Law Enforcement or Government Agency may request that the Board also order related costs to be paid to their agencies.

A summary of the actual costs to be requested by Miami-Dade County or other agencies shall be provided to the Owner(s) no less than 3 days prior to the cost hearing. The Owner(s), upon presentation of these costs, shall be

given an opportunity to provide a written proposal along with supporting documentary evidence of the costs they believe to be acceptable, that will be reviewed before the Board, if a finding of a public nuisance is returned by the Board. If the Owners and officials of Miami-Dade County cannot arrive at an acceptable determination of reasonable costs, then evidence of costs will be heard by the Board to determine the reasonableness of costs. The Board will order actual costs incurred by Miami-Dade County, unless the Owners dispute the costs in a hearing as asserted in a prior proposal provided to Miami-Dade County Officials. The Owners and County officials shall be afforded a cost hearing, if requested. The Owners shall be able to provide evidence of unreasonable costs or additional evidence of their efforts to abate the nuisance activity and the County shall provide evidence of the reasonableness of the costs. Each party may refute or cross examine the witnesses or evidence presented. The witnesses and evidence provided in the public nuisance hearing may be considered as evidence of the costs. Unless upon a majority vote of the Board, the Board specifically finds that the costs or any parts of the costs are unreasonable, or upon a specific finding of any of the following mitigating circumstances, the Board shall order the actual costs. Mitigating circumstances shall include, but not be limited to: substantial, competent evidence that (1) the Owners have instituted measures that will abate or have successfully abated the nuisance activity; (2) a finding that the costs are unreasonable; (3) evidence that neither the Owners, or their relations, or their employees, or their invited friends, or their tenants, or invited associates of the tenants, were involved in or did not have knowledge of or could not be presumed to know of the nuisance activity; (4) a consummated sale of the premises will provide undue hardship to the new Owners, who have not been associated with the nuisance activity, and who present evidence to the Board that they will take reasonable actions to abate the nuisance; (5) evidence that the goals of the Nuisance Abatement Ordinance and Board to abate the nuisance will severely restrict the ability of the Board and the Owner(s) to successfully abate the nuisance; (7) the inability of the Board to find that the property is a public nuisance; (8) or

there was insufficient probable cause to find that the nuisance existed. Upon a majority vote of the Board and a detailed opinion of the application of the above listed mitigating circumstances, the Board may order an amount less than the actual costs requested under the following guidelines: No Order of Costs may be less than the actual costs levied as a result of the pre-hearing settlement with the Owner(s) unless there is a finding of no nuisance because of a lack of evidence of probable cause that the nuisance exists or existed; the amount of costs may be levied in its entirety and later reduced to no less than 25% of the actual ordered costs or the levied fines if the nuisance is abated successfully during the entire jurisdiction of the Board and the Owners provide evidence of complete and responsible adherence to the Board Orders.<< These costs shall be due and payable ten (10) days after the written order of the Board has been filed >>or the date of the cost hearing whichever is earlier.<<

[[e]]>>d)

Recording of Orders, Fines and Costs.<< A certified copy of an order >>declaring a premises a public nuisance and other orders to abate the nuisance and<< imposing >>fines and/or<< costs >>or penalties assessed under Sec. 2-98.8 (a)<< may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or, ~~[[if the violator does not own the land,]]~~ upon any other real or personal property owned by the violator >>(Owner);<< and it may be enforced in the same manner as a court judgment by the sheriffs of this state including levy against ~~[[the]]~~ personal property, but shall not be deemed to be a court judgment except for enforcement purposes. >>Whenever a Notice of Complaint has resulted in a fine being levied or a Board Order, a copy of such final order shall be filed in the office of the Clerk of the Circuit Court of Miami-Dade County, Florida, who shall cause the same to be recorded among the public records of Miami-Dade County. The recordation of such final order shall constitute constructive notice to any subsequent purchasers, transferees, grantees, mortgagors, mortgages, lessees, lienors, and all persons having, claiming or acquiring any interest in the property described therein, or affected thereby. When the nuisance specified in

said final order has been abated and all fines and costs for enforcement have been paid, a certificate certifying the nuisance has been abated shall be filed and the order canceled. All such final orders shall include the proper legal description of the property involved. The costs of recording the original final order and the certificate of cancellation shall also be recoverable as costs from the Owner of record prior to recording the certificate of cancellation. The original final order may include an automatic date of cancellation/expiration, exclusive of the costs/fines liens, and shall be effective if the Board has not filed a notice of extension as allowed under Sec. 2-98.7 (4). Any person acquiring any interest in or to property described in a final order after recordation thereof, shall take the property subject to the requirements set forth in the final order, and all other provisions of this Article.<< After ~~[[one-year from]]~~ the filing of any such lien which remains unpaid, Miami-Dade County may foreclose or otherwise execute on the lien. Interest shall accrue on the unpaid cost >>and/or fines<< at the ~~[[legal rate of interest]]~~ >>annual interest rate of 18%<< ~~[[set forth in Section 55.03, Florida Statutes, as that may be amended from time to time.]]~~

(~~[[d]]~~)>>e) Fines and/or Cost Payments shall be made payable to the Miami-Dade Board of County Commissioners, excepting those orders requiring payment to other agencies, and sent to the Director of the Miami-Dade Police Department, or his designee. Fines and Costs receipts shall be used to offset costs of the enforcement of the Nuisance Abatement Ordinance and other associated criminal statutes and crime prevention programs.

Liens created pursuant to this Article may be discharged and satisfied by paying the Miami-Dade County Board of County Commissioners, excepting those orders requiring payment to other agencies, and sent to the Director of the Miami-Dade Police Department, or his designee the amount specified in the notice of lien, together with interest thereon from the date of filing of the lien computed at a rate of eighteen (18) percent per annum, together with administrative costs, filing and recording fees and fees paid to file a satisfaction of the lien in the public records. When

such lien has been discharged, the Board or other agency responsible for the lien shall promptly cause evidence of the satisfaction and discharge of such lien to be recorded in the public records. Any person, firm, or legal entity, other than the present Property and/or Business Owner(s) involved, who pays any such unsatisfied lien shall be entitled to receive an assignment of the lien held by the County and shall be subrogated to the rights of the County in respect to enforcement of such lien, as permitted by law.<<

Section 6. Section 2-98.9 of the Code of Miami-Dade County, Florida is hereby amended to read as follows

Sec. 2-98.9. Appeals.

An aggrieved party may appeal a final order of the ~~[[Metropolitan]]~~ >>Miami-<<Dade County Public Nuisance Abatement Board to the Circuit Court of the Eleventh Judicial Circuit, Appeals Division. 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 thirty (30) days of the date of the written order appealed from.

Section 7. Section 2-98.4 of the Code of Miami-Dade County, Florida is hereby amended to read as follows

>>Sec. 2-98.10, Enforcement.

If a property is declared a public nuisance and the Board Issues an Order for Abatement, a fine of \$250 shall be levied for each day the Owner does not comply with the Board's Order or the property continues to be a public nuisance as evidenced by further incidents on the premises and/or the filing of a Miami-Dade Police Department (or other law enforcement agency) Offense/Incident Report or an affidavit by an employee, officer, of resident of Miami-Dade County.

Any Owner, or person who hinders, or obstructs, any County or State Official, in the discharge of his duties under this chapter, or

in carrying out the Orders of the Board, or who fails to follow the orders of the Board, shall be cited by County Officials and/or Police, and upon conviction thereof in the County Court, shall be punished by a fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail for not more than sixty (60) days, or by both such fine and imprisonment.

In the event that the Board orders the Owner to close the property and secure it, and the Owner fails to do so, as determined by inspectors of the Miami-Dade County Departments of Team Metro, Building, Code Enforcement, Building and Zoning, and/or officers or officials of the Miami-Dade Police Department, or other County or State agencies (or as they may be named or renamed from time to time), the Board authorizes the County to secure the premises as necessary to safeguard the public health, safety, and welfare. The Owner will automatically be assessed the costs and be subject to lien and foreclosure action as in Section 2-98.1a-c.<<

Section 8. Section 2-98 of the Code of Miami-Dade County, Florida is hereby amended to add Section 2-98.11 and reads as follows:

Sec. 2-98.1[[0]]>>1<< Rights preserved.

This article does not restrict the right of any person to proceed under Section 60.05 of the Florida Statutes, against any Public Nuisance.

Section 9. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 10. It is the intention of the Board of County Commissioners, that the applicable provisions of this ordinance, including but not limited to jurisdictions, types of nuisance activity, Board membership requirements and term limits, types of nuisance activity, dates of nuisance activity, definitions, costs, and fines, hereby being amended, may be applied

retroactively, for enforcement purposes, to the original date of adoption of the ordinance, or to the dates of amendments to Florida Statutes, 893.138.

Section 11. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 12. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

RAE

Prepared by:

TAS

Terrence A. Smith

25