

**ORDINANCE NO. 2003-3405**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, REPEALING SECTIONS 2-190.56 THROUGH 2-190.59, OF DIVISION 22 ENTITLED "NUISANCE ABATEMENT BOARD", OF ARTICLE III ENTITLED "AGENCIES, BOARDS AND COMMITTEES", OF MIAMI BEACH CITY CODE CHAPTER 2 ENTITLED "ADMINISTRATION"; REPEALING SECTION 70-181 ENTITLED "DEFINITIONS", OF MIAMI BEACH CITY CODE CHAPTER 70 ENTITLED "MISCELLANEOUS OFFENSES"; AND, REPEALING SECTIONS 70-231 THROUGH 70-235 OF DIVISION 3 ENTITLED "ABATEMENT PROCEDURES", OF ARTICLE IV, ENTITLED "CRIMINAL NUISANCES", OF MIAMI BEACH CITY CODE CHAPTER 70 ENTITLED "MISCELLANEOUS OFFENSES"; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the Mayor and City Commission voted on February 26 , 2003 to disband the Nuisance Abatement Board and the abatement procedures set forth in Sections 70-231 through 70-235 of the City Code, and

**WHEREAS**, the abatement of criminal nuisances may be adequately addressed by the City through other means such as license suspension or revocation proceedings provided for in the City Code and via injunctive procedures set forth in Section 60.05 of the Florida Statutes.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA** as follows:

**SECTION 1.** That Sections 2-190.56 through 2-190.59 of Division 22, entitled "Nuisance A batement Board" of Chapter 2 of the Miami Beach City Code are hereby repealed in their entirety as follows:

~~DIVISION 22. NUISANCE ABATEMENT BOARD~~

~~Sec. 2-190.56. Organization.~~

~~There is created and established a nuisance abatement board to hear evidence relating to the existence of public nuisances as defined in section 70-181 on premises located in the city. The board shall consist of five members appointed by a majority vote of the city commission, for two-year terms, except as set forth in section 2-109.29. Members of the nuisance abatement board shall be persons who reside or maintain a business establishment in the city. Membership on the board shall include one representative from each of the following areas of the city:~~

- ~~(1) South of 22<sup>nd</sup> Street;~~
- ~~(2) 22<sup>nd</sup> Street to 55<sup>th</sup> Street; and~~
- ~~(3) 55<sup>th</sup> Street to 87<sup>th</sup> Terrace.~~

~~The chairperson of the board shall be an attorney duly licensed by the state with trial experience.~~

~~Sec. 2-190.57. Appointments.~~

~~Appointments to the board for two years shall be made. Any member may be reappointed by the city commission for not more than three consecutive terms. Appointments to fill a vacancy shall be for the remainder of the unexpired term. Any member who fails to attend two of three successive meetings without cause and without prior approval of the chairman shall automatically forfeit his appointment, and the city commission shall promptly fill such vacancy for the remainder of the term.~~

~~Sec. 2-190.58. Quorum; compensation.~~

~~The presence of three or more members of the board shall constitute a quorum.~~

~~Sec. 2-190.59. Purpose.~~

~~The nuisance abatement board shall hear evidence relating to the existence of public nuisances as defined in section 70-181 on premises located in the city.~~

**SECTION 2.** That Section 70-181 entitled "Definitions" of Article III entitled "Criminal Nuisances" of Miami Beach City Code Chapter 70, entitled "Miscellaneous Offenses" is hereby repealed in its entirety as follows:

**ARTICLE IV. CRIMINAL NUISANCES** Reserved.

**Division 1. Generally**

**Sec. 70-181. Definitions.**

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

~~*Board* means the nuisance abatement board.~~

~~*Clerk* means a person appointed by the city commission to perform the clerical duties necessary to carry out the activities of the nuisance abatement board.~~

~~*Operator* means a tenant, lessee or person having control or possession of a remises.~~

~~*Owner* means a person having title to a premises that is a public nuisance.~~

~~*Public nuisance* means any place or premises within the city that may be declared a nuisance according to F.S. s. 823.05 or 823.10, or that has been used on more than two occasions within a six month period:~~

- ~~(1) — As the site of the unlawful sale or delivery or storage of controlled substances as defined in F.S. ch. 893;~~
- ~~(2) — By a youth and criminal street gang for the purpose of conducting a pattern of youth and criminal street gang activity;~~
- ~~(3) — For prostitution or solicitation of prostitution;~~
- ~~(4) — For illegal gambling;~~
- ~~(5) — For illegal sale or consumption of alcoholic beverages;~~
- ~~(6) — For dealing in stolen property.~~

**SECTION 3.** That Sections 70-231 through 70-235 of Division 3, entitled “Abatement Procedures” of Article IV entitled “Criminal Nuisances” of Miami Beach City Code Chapter 70, entitled “Miscellaneous Offenses” are hereby repealed in their entirety as follows:

### **DIVISION 3. ABATEMENT PROCEDURES**

**Sec. 70-231. Generally.**

- ~~(a) — *Filing complaint.* Any employee, officer or resident of the county or of the city may file a complaint and request for prosecution with the city nuisance abatement board regarding the existence on premises located in the city of a public nuisance. This complaint shall be filed with the city police chief or his designee. The police chief or his designee shall mail written notice of such complaints by certified mail with return receipt to the owner and operator of the place or premises complained of at his last known addresses. The notice shall provide for the owner and operator of the place or premises to contact the police chief or his designee within 14 days of receipt of the notice. This time period shall be allowed for the purpose of allowing the owner and operator to take such good faith measures as are appropriate to abate the nuisance. The police chief or his designee may extend the 14 days to allow the owner and operator to institute or continue actions to abate the nuisance provided the actions are reasonable. If the owner and/or operator fails to respond to the~~

notice of complaint or fails to take reasonable action to abate the nuisance, the police chief or his designee shall submit the complaint to the city attorney for prosecution.

- (b) ~~Hearing.~~ The city attorney, when he has received the aforesaid complaint and request for prosecution and has reason to believe that a public nuisance exists on the premises complained of located in the city and that the required written notice has been duly mailed to the owner and operator of the premises as set forth in subsection (a) of this section, shall promptly request a hearing before the nuisance abatement board.
- (c) ~~Service.~~ The nuisance abatement board, through its clerk, shall schedule a hearing; and written notice of the hearing shall be sent by certified mail with return receipt or hand delivered to the owner and operator of the premises complained of at their last known addresses at least 14 days prior to the scheduled hearing. If an attempt to reach the owner and operator by hand delivery or certified mail is unsuccessful, notice of the hearing may be by publication as provided in F.S. ch. 49.
- (d) ~~Contents of notice of hearing.~~ The notice of hearing referred to in subsection (c) of this section shall include:
  - (1) ~~A statement of the time, place and nature of the hearing.~~
  - (2) ~~A statement of the legal authority and jurisdiction under which the hearing is to be held.~~
  - (3) ~~A reference to the particular sections of the statutes and ordinances involved.~~
  - (4) ~~A short and plain statement summarizing the incidents complained of.~~

Sec. 70-232. Conduct of hearings.

- (a) ~~The chairman of the board may call hearings of the board. Hearings may also be called by written notice signed by at least three members of the board. The board, at a hearing, may set a future hearing date. The board shall attempt to convene once every month but may meet more often as the demand necessitates. The board shall adopt rules for the conduct of its hearing. Minutes shall be kept of all hearings, and all hearings shall be open to the public. The city shall provide clerical and administrative personnel as may be reasonably required for the proper performance of the board's duties.~~
- (b) ~~The city attorney or any other legal counsel who is representing the city 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 agency proposes to consider such~~

~~material, 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. 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 upon a preponderance of the evidence.~~

~~(c) — After considering all evidence, the board may declare the place or premises to be a public nuisance and 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 conducive to such nuisance.~~

~~(d) — If the board issues an order declaring a place or premises to be a nuisance, the board shall assess against the owner of the place or premises the reasonable costs and attorney fees the city has incurred in the preparation, investigation and presentation of the case. These costs shall be due and payable ten days after the written order of the board has been filed. A certified copy of an order imposing costs and attorney fees 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, but shall not be deemed to be a court judgment except for enforcement purposes. After one year from the filing of any such lien that remains unpaid, the city may foreclose or otherwise execute on the lien. Interest shall accrue on the unpaid costs at the legal rate of interest set forth in F.S. s. 55.03.~~

~~(e) — If the board issues an order declaring a place or premises to be a public nuisance, the board may assess against the owner of the place or premises a fine not to exceed \$250.00 per day that the nuisance continues and up to \$500.00 per day for recurring public nuisances on the place or premises as defined in section 70-181. The total fines imposed shall be recorded in the public records and thereafter shall constitute a lien in the same manner as set forth in subsection (d), above.~~

~~(f) — All orders of the board shall be recorded among the public records of Miami-Dade County.~~

~~(g) — All orders of the board shall be by motion approved by a majority of those members present and voting.~~

~~(h) An order entered under subsections (c) (e), above, shall expire after one year or at such earlier time as stated in the order. The board may retain jurisdiction to modify its orders prior to the expiration of the orders.~~

~~(i) The board may bring a complaint under F.S. s. 60.05, seeking a permanent injunction against any public nuisance.~~

#### ~~Sec. 70-233. Appeals.~~

~~An aggrieved party, including the city administration, may appeal a final administrative order of the board to 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 appealed from.~~

#### ~~Sec. 70-234. Enjoining of nuisances.~~

~~When any nuisance as defined in F.S. s. 823.05 exists, the city attorney or any citizen of the county may sue in the name of the state on his relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.~~

#### ~~Sec. 70-235. Rights preserved.~~

~~This article does not restrict the right of any person to proceed under F.S. s. 60.05 against any public nuisance.~~

### **SECTION 4. REPEALER**

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

### **SECTION 5. SEVERABILITY**

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

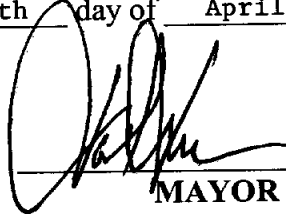
### **SECTION 6. CODIFICATION**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, 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 7. EFFECTIVE DATE**

This Ordinance shall take effect on the 19th day of April, 2003.

**PASSED AND ADOPTED** this 9th day of April, 2003.

  
MAYOR

**ATTEST:**

  
CITY CLERK

Ordinance No. 2003-3405

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

 3-6-03  
City Attorney Date

## CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARINGS

**NOTICE IS HEREBY** given that public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, April 9, 2003, at the times listed below** to consider the following on first reading:

**at 10:30 a.m.:**

AN ORDINANCE AMENDING CHAPTER 142 OF THE MIAMI BEACH CITY CODE ENTITLED "ZONING DISTRICTS AND REGULATIONS" ARTICLE IV THEREOF ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 1 ENTITLED "GENERALLY," SECTION 142-876, "KEEPING LIVESTOCK PROHIBITED," AND SECTION 142-877, "MAXIMUM NUMBER OF ANIMALS ON PREMISES," BY DELETING THESE SECTIONS AND TRANSFERRING THESE PROVISIONS TO CHAPTER 10; AND AMENDING CHAPTER 10 ENTITLED "ANIMALS," BY CREATING SECTION 10-15 "KEEPING LIVESTOCK PROHIBITED," INCLUDING A PROVISION THAT THE MAINTAINING OF LIVESTOCK FOR PUBLIC EVENTS FOR TEMPORARY PERIODS OF TIME MAY BE ALLOWED, AS APPROVED BY THE CITY MANAGER OR HIS/HER DESIGNEE; AND CREATING SECTION 10-16 "MAXIMUM NUMBER OF ANIMALS ON PREMISES"; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

Inquiries may be directed to the Planning Department at (305) 673-7550.

**at 10:35 a.m.:**

AN ORDINANCE REPEALING SECTIONS 2-190.56 THROUGH 2-190.59, OF DIVISION 22 ENTITLED "NUISANCE ABATEMENT BOARD," OF ARTICLE III ENTITLED "AGENCIES, BOARDS AND COMMITTEES," OF MIAMI BEACH CITY CODE CHAPTER 2 ENTITLED "ADMINISTRATION"; REPEALING SECTION 70-181 ENTITLED "DEFINITIONS," OF MIAMI BEACH CITY CODE CHAPTER 70 ENTITLED "MISCELLANEOUS OFFENSES"; AND REPEALING SECTIONS 70-231 THROUGH 70-235 OF DIVISION 3 ENTITLED "ABATEMENT PROCEDURES," OF ARTICLE IV, ENTITLED "CRIMINAL NUISANCES," OF MIAMI BEACH CITY CODE CHAPTER 70 ENTITLED "MISCELLANEOUS OFFENSES"; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Inquiries may be directed to the Legal Department at (305) 673-7470.

ALL INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk  
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding, or to request information on access for persons with disabilities, or to request this publication in accessible format, or to request sign language interpreters, should contact the City Clerk's office at (305) 673-7411, no later than four days prior to the proceeding. If hearing impaired, contact the City Clerk's office via the Florida Relay Service numbers, (800) 955-8771 (TTY) or (800) 955-8770 (VOICE).

(Ad #0164)



OFFICE OF THE CITY ATTORNEY

*City of Miami Beach*

F L O R I D A



MURRAY H. DUBBIN  
City Attorney

Telephone: (305) 673-7470  
Telecopy: (305) 673-7002

COMMISSION MEMORANDUM

TO: Mayor David Dermer and  
Members of the City Commission

DATE: April 9, 2003

FROM: Murray H. Dubbin  
City Attorney

**SECOND READING**  
**PUBLIC HEARING**

SUBJECT: **ORDINANCE: REPEALING NUISANCE ABATEMENT BOARD  
ORDINANCES**

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Pursuant to the report submitted by the Neighborhoods Committee to the Mayor and City Commission at the commission meeting held on February 26, 2003 (item No. C6A4), the attached ordinance is submitted for your consideration on the April 9, 2003 agenda.