

ORDINANCE NO. 2017 -__

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA, AMENDING THE CODE OF THE CITY OF CORAL GABLES, FLORIDA, BY CREATING ARTICLE IX “NUISANCE ABATEMENT” OF CHAPTER 34 “NUISANCES”, TO CREATE A PROCESS BY WHICH THE CITY CAN ADDRESS PUBLIC NUISANCES IN THE CITY OF CORAL GABLES; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission wishes to establish a board to address public nuisances within the City;

WHEREAS, § 893.138(4), Fla. Stat., authorizes the creation or administrative boards with authority to impose administrative fines and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing ordinances regarding public nuisances;

WHEREAS, § 893.138(11), Fla. Stat., provides that a municipal ordinance may supplement state law regarding public nuisances;

NOW THEREFORE BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:

SECTION 1. That the foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance upon adoption hereof.

SECTION 2. That Article IX, “Nuisance Abatement” of Chapter 34 “Nuisances” of the Code of the City of Coral Gables, Florida, is created as follows:

CHAPTER 34. NUISANCES

ARTICLE IX, NUISANCE ABATEMENT

Sec. 34-191 - Definitions.

For the purpose of this article a “public nuisance” is defined as any place or premises that has been used:

- (a) On more than two occasions within a six-month period, as the site of a violation of F.S. § 796.07 as amended, entitled “Prohibiting prostitution and related acts”;
- (b) On more than two occasions within a six-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;

- (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 street gang for the purpose of conducting a pattern of criminal street gang activity as defined by F.S. § 874.03 as amended;
- (e) On more than two occasions within a six-month period, as the site of a violation of F.S. § 812.019 as amended, relating to dealing in stolen property;
- (f) On more than two occasions within a six-month period, as the site of a violation of F.S. ch. 499, as amended, known as the Florida Drug and Cosmetic Act;
- (g) Any pain-management clinic, as described in F.S. §§ 458.3265, or 459.0137, as amended, which has been used on more than two occasions within a 6-month period as the site of a violation of:
 - (1) F.S. §§ 784.011, 784.021, 784.03, or 784.045, as amended, relating to assault and battery;
 - (2) F.S. § 810.02, as amended, relating to burglary;
 - (3) F.S. § 812.014, as amended, relating to theft;
 - (4) F.S. § 812.131, as amended, relating to robbery by sudden snatching; or
 - (5) F.S. § 893.13, as amended, relating to the unlawful distribution of controlled substances.
- (h) On more than one occasion or for more than 24 hours in a manner that is detrimental to health or which threatens danger to persons or property within the city, but that does not also constitute a violation of a provision of the city code;
- (i) On more than one occasion or for more than 24 hours in a manner which annoys or disturbs another in the free use, possession, or enjoyment of his property within the city or which renders its ordinary use or occupation physically uncomfortable, but that does not also constitute a violation of the city code; or
- (j) On more than one occasion or for more than 24 hours in a manner that is offensive or noxious by reason of the emission of odors, gases, dust, smoke, vibration, or noise or which constitutes an eyesore or nuisance to adjacent property owners, residents, or the community, but that does not also constitute a violation of the city code.

The board may declare such a property to be a public nuisance, and the city may abate the nuisance pursuant to the procedures provided in this article.

For the purposes of this article “operator” means an owner or person having, as an agent or otherwise, possession of, charge of, an interest in, or control of the place or premises.

For the purposes of this article, “complaint” shall mean the official process by which cases are initiated and brought before the nuisance abatement board.

Sec. 34-192 - Nuisance abatement board.

- (a) *Created; membership; terms; compensation.*
- (1) The code enforcement board is hereby designated and established as the nuisance abatement board (the “board”) to hear complaints regarding the public nuisances listed in section 34-191 above. The membership, terms, and compensation of the board shall be as set forth in article VI of chapter 105.
 - (2) The City Commission may, at its sole election, hear any complaints under this article, instead of the board and as if it were the board.
- (b) *Calling of hearings; clerical support for hearings; presentation of cases.*
- The calling of hearings, the taking of testimony, the provision of clerical support and legal counsel for hearings, and the presentation of cases shall be as provided in article VI of chapter 105.

Sec. 34-193 - Procedures.

- (a) *Written complaint; reports.*
- (1) Any employee, officer of the city, or any resident of the city, except for a member of the board, may file a written complaint under oath with the police department after giving not less than three days’ notice of the complaint of a public nuisance listed in section 34-191, to the owner and operator of the place or premises. The complainant shall send notice of the complaint to be filed, including a copy of the complaint, by certified mail, return receipt requested, to the owner and operator at their last known addresses. The owner or operator shall provide a copy of the notice to all tenants or subtenants of the owner or operator.
 - (2) The complaint shall state facts that reasonably tend to establish the existence of a public nuisance located within the city or having an effect on properties located within the city or on the residents of the city. The complaint shall only be for those public nuisances listed in section 34-191.
 - (3) Any police officer making an arrest for a violation of the statutes referred to in section 34-191 or any police officer or public service aide or code enforcement officer making a report of an incident or occurrence of a breach of any statutes or the occurrence of any of the public nuisances listed in section 34-191 shall submit a copy of the arrest or other report to the city attorney or designee.
- (b) *Processing; review of case.*
- (1) The city attorney or designee shall review all complaints and reports for compliance with the requirements of section 34-193(a) and determine whether they describe a public nuisance listed in 34-191 and determine whether the case is legally sufficient for presentation to the board for its consideration and disposition as provided in this article. If so, the city attorney or designee shall forward the case to the clerk of the board.

(c) *Hearings; hearing notices.*

- (1) The clerk of the board shall provide notice of the hearing to the owner and operator at their last known address as set forth in article VI of chapter 105. The owner or operator shall provide a copy of the notice of hearing to all tenants or subtenants of the owner or operator.
- (2) The notice of hearing shall include a:
 - (i) Statement of the time, place, and nature of the hearing;
 - (ii) Reference to the particular sections of the statutes and/or ordinances involved; and
 - (iii) A short and plain statement of facts summarizing the incidents complained of.

Sec. 34-194 - Conduct of hearings.

- (a) The city attorney or designee shall present evidence before the board on behalf of the city. The city attorney or designee may serve as counsel to the board or may represent the city by presenting cases before the board, but in no case shall the same individual attorney serve in both capacities at the same hearing. The city attorney or designee may, however, serve as counsel while the deputy city attorney or assistant city attorney(s) represent the city by presenting cases before the board. The city may also retain special counsel to serve in either capacity. If an appeal is taken from any decision of the board, the city attorney or designee shall represent the city at such proceedings.
- (b) All parties shall have an opportunity to present evidence and argument on all issues involved, to conduct cross examination, to submit rebuttal evidence, and to be represented by counsel.
- (c) 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.
- (d) The city shall have the burden of proving the existence of an unlawful public nuisance by a preponderance of evidence.
- (e) If the City properly served notice of the hearing before the board and the owner or operator 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).

Sec. 34-195 – Post-hearing.

- (a) At the conclusion of the hearing, the board may issue findings of fact and conclusions of law based upon the evidence presented at the hearing and declare the place or premises a public nuisance.

(b) If the board declares the place or premises to be a public nuisance, the board shall enter an order immediately requiring any combination of the following:

- (1) The discontinuance of the nuisance;
- (2) The closure of the place or premises or any part thereof;
- (3) The prohibition of the conduct, operation, or maintenance of any business or activity at the place or premises which is conducive to the maintenance of such public nuisance, which prohibition may include the suspension or revocation of any city local business tax receipt issued or renewed pursuant to the provisions of chapter 66; and
- (4) The payment to the city by the owner and operator(s) of a fine of \$500.00 per day. The fines will continue to accrue for each day of non-compliance with the board's order.

(c) For purposes of subsection (b) above, the board shall function as the city commission for consideration of revocation of any local business tax receipt for violation of a city ordinance and the board hearing shall be in lieu of hearing in chapter 66.

(d) The findings of fact, conclusions of law, and orders of the board shall be by motion approved by a majority of those present and voting.

(e) An order entered pursuant to this article shall expire after one year or at such earlier time as stated in the order. The board shall have continuing jurisdiction for a period of one year over any place or premises that has been or is declared to be a public nuisance and may modify the order prior to the expiration of the one year period.

Sec. 34-196 - Enforcement of orders.

(a) The board may bring a complaint under F.S. § 60.05 seeking a permanent injunction against any nuisance described herein.

(b) The city attorney is authorized to initiate contempt proceedings in the circuit court of the 11th judicial circuit for willful disobedience or failure to comply with any order of the board.

(c) Further, the city attorney is authorized to initiate proceedings in any county, state, or federal forum for the suspension or revocation of any permits, licenses, concessions, or contracts held by or awarded to the violator, including contracts awarded under F.S. s. 24.112, and including licenses for the sale of beverages issued under F.S. § 561.19, where the existence of such permits, licenses, concessions or contracts is conducive to the maintenance of such nuisance.

(d) The City shall post the orders of the board declaring a public nuisance pursuant to this article at the place or premises where the public nuisance exists, existed, or is occurring, in violation of the law, and shall sent the order by certified mail to the owner of record and operator of the place or premises within two business days of the posting.

(e) Five business days after the posting of an order issued by the board, city police officers shall be authorized to act upon and enforce such orders in accordance with section 34-195.

Sec. 34-197 - Appeals.

The order of the board or the City Commission acting as the board may be appealed pursuant to article VI of chapter 101.

Sec. 34-198 - Enjoining of nuisances; remedies cumulative.

When any business person, party or entity is found to be erecting, establishing, continuing, maintaining ownership of, or to be leasing the use of any place or premises located in the city and in which the health of the community is threatened or the morals and welfare of the people are injured and in which any nuisance exists, as defined in F.S. chs. 823, 893, 796, or 849 or any of the code sections as stated herein, such business persons, parties, or entities may be sued by the city attorney in the name of the State of Florida or by any citizen of the city for such relief and damages as may be recognized by law. All powers and rights conferred by this article shall be in addition to and supplemental to those conferred by any other general or special laws, including the City Attorney's authority to issue Cease and Desist letters pursuant to the City Code, and shall be liberally construed to effectuate the purpose of this article.

Sec. 34-199 - Costs; liens.

In the event that the board declares a place or premises to be a public nuisance and issues an order pursuant to subsection 34-195(b) above, the board shall assess against the owner of the place or premises the costs that the city has incurred in the preparation, investigation, and presentation of the case, including, but not limited to, attorneys' fees and costs. These costs shall be due and payable ten days after the written order of the board has been filed. Except as otherwise provided in § 893.138, Fla. Stat., a certified copy of an order imposing fines and costs may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists or existed and upon any other real or personal property owned by the violator; 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. After three months from the filing of any such lien that remains unpaid, the city commission may authorize the city attorney to foreclose on the lien. Interest shall accrue on the unpaid costs at the legal rate of interest set forth in F.S. § 55.03, as amended.

Sec. 34-200 - Prostitution, sexual activity, assignation, lewdness; soliciting or manifesting an intent to solicit prostitution, sexual activity, assignation, or lewdness.

(a) This section may be referred to as the "Prostitution Ordinance." Nothing herein shall be construed as prohibiting mere loitering in any public place.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

- (1) *Prostitution* shall have the meaning as set forth in F.S. § 796.07(1), as amended.
 - (2) *Within public view* means within areas generally accessible by or visible to the public, including streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, unenclosed automobiles (whether moving or not), doorways and entrances to buildings or dwellings and the grounds surrounding them and buildings open to the general public, including those which serve food or drink or provide entertainment. The interior enclosed portion of a structure not open to the general public shall not be considered “within public view.”
 - (3) *Sexual activity* shall have the meaning as set forth in F.S., § 796.07(1), as amended, and shall also include any act of lewdness or assignation as those terms are defined herein.
 - (4) *Assignation* means to make any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or obscene act.
 - (5) *Lewdness* means to give or receive the body for hire for an indecent or obscene act.
 - (6) *Solicit* means inducing, asking, enticing, requesting, or otherwise encouraging a person to commit a crime. The crime solicited need not be committed.
 - (7) *Previously verified pattern of solicitation activity* means the occurrence of a series of activities, in close temporal proximity to each other, three or more of which meet each of the following criteria:
 - (i) The activities are those activities described in subsection (d).
 - (ii) The activities are the same activities that precede, in close temporal proximity, a prior solicitation for prostitution, assignation, or lewdness, for which the person engaging in the activities was convicted.
 - (iii) The activities occur within one year of the date of conviction required in subsection (b).
- (c) It shall be unlawful for any person to exhibit, within public view, a previously verified pattern of solicitation activity.
- (d) Activities that are part of a previously verified pattern of solicitation activity:
- (1) The person repeatedly beckons to, stops, or attempts to stop passersby or engages them in conversation.
 - (2) The person repeatedly stops or attempts to stop motor vehicle operators by hailing, waving, or by any other bodily gesture.
 - (3) The person approaches a passerby or motorist, leaves with that person for a short period of time and, upon return to the same area, repeats this pattern with a different person.

- (4) The person takes flight or tries to conceal himself or herself upon the appearance of a law enforcement officer.
 - (5) The person gestures to, touches, or exposes his or her breast, groin, or buttocks.
 - (6) The person inquires whether a potential patron or procurer of a prostitute is a police officer or searches for articles that would identify a police officer.
 - (7) The person inquires of a potential patron or procurer of a prostitute about an act that would constitute sexual activity.
 - (8) The person requests the touching or exposure of his or her breast, groin, or buttocks.
- (e) No police officer shall arrest an individual for a violation of this section for the mere act of loitering, soliciting a ride from a vehicle for hire, entering a motor vehicle or waving at a passing motor vehicle.
- (f) A person who is convicted of a violation of this section may be required to pay a fine not to exceed \$500.00, and may be sentenced to a definite term of imprisonment not to exceed 60 days.

SECTION 3. Applicability. These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, including the City Attorney's authority to issue Cease and Desist letter pursuant to the City Code, but rather be an additional remedy available to the city above and beyond any other state, county or local provisions for same.

SECTION 4. Severability. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. Repealer. This ordinance is intended to provide authority to the City Attorney without limiting any other authority of the City Attorney or other City officers provided in other parts of the City Charter, City Code, and Zoning Code. Accordingly, any other ordinances or parts of ordinances that provide authority to the City Attorney or other City officers are not repealed by this ordinance.

SECTION 6. Codification. It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 7. Effective Date. This Ordinance shall become effective upon adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D., 2017.

APPROVED:

RAUL VALDES-FAULI
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY