

ORDINANCE NO. 22-303

AN ORDINANCE OF THE TOWN OF MIAMI LAKES, FLORIDA; AMENDING CHAPTER 17, OFFENSES AND MISCELLANEOUS PROVISIONS OF THE TOWN OF MIAMI LAKES CODE OF ORDINANCE AND CREATING SECTION 17-2 TITLED “MALICIOUS DEFACEMENT AND MARKING OF REAL PROPERTY”; PROVIDING FOR INCLUSION INTO THE CODE; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE. (Fernandez)

WHEREAS, during the June 8, 2021, Town of Miami Lakes (the “Town”) Council Meeting, the Town Council instructed the Town Attorney and Staff to develop an Ordinance that would provide the Town Manager with authority to seek law enforcement and legal relief defacement of Town Property; and

WHEREAS, during the October 21, 2022 Town Council meeting, the Town Council ordered the Town Manager and Town Attorney to prepare an Ordinance that would provide for prosecution of persons that through their own negligence have destroyed or defaced Town Property; and

WHEREAS, the proposed ordinance provides for local enforcement and provides the Town Manager and Town Attorney with express authority to prosecute persons who have defaced or destroyed Town Property; and

WHEREAS, on January 11, 2022 the Town Council met and passed the proposed Ordinance in first reading; and

WHEREAS, on July 25, 2022 the Town Council met and passed the proposed Ordinance in second reading.

THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES AS FOLLOWS:

Section 1. Recitals. Each of the above stated recitals is true and correct and is incorporated herein by this reference.

Section 2. Amending Chapter 17, Offenses and Miscellaneous Provisions of The Town of Miami Lakes Code of Ordinances and Creating Section 17-2 titled “Malicious Defacement and Marking of Real Property.” The Town Council hereby amends Chapter 13, Offenses and Miscellaneous Provisions of The Town of Miami Lakes Code of Ordinances and Creating Section 17-2 titled “Malicious Defacement and Marking of Real Property”, as fully described in this ordinance.

Section 3. Repeal of Conflicting Provisions. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

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

Section 5. Inclusion in the Town Code. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Town Code and that if necessary, the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Article”, “Division” or other appropriate word.

Additions to the Ordinance in First Reading shall be reflected by underlined, and deletions shall be reflected as ~~strike-throughs~~. Additions to the Ordinance between first reading and second reading shall be reflected by a double underline, and deletions between first reading and second reading shall be reflected by a ~~double-strike through~~.

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

FIRST READING

The foregoing ordinance was offered by Councilmember Fernandez who moved its adoption on first reading. The motion was seconded by Councilmember Alvarez and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	Absent
Vice Mayor Jeffrey Rodriguez	Yes
Councilmember Carlos O. Alvarez	Yes
Councilmember Luis E. Collazo	Yes
Councilmember Josh Dieguez	Yes
Councilmember Tony Fernandez	Yes
Councilmember Marilyn Ruano	Absent

Passed on first reading this 11th day of January 2022

[THIS SPACE INTENTIONALLY LEFT BLANK]

Additions to the Ordinance in First Reading shall be reflected by underlined, and deletions shall be reflected as ~~strike-throughs~~. Additions to the Ordinance between first reading and second reading shall be reflected by a double underline, and deletions between first reading and second reading shall be reflected by a ~~double strike through~~.

SECOND READING

The foregoing ordinance was offered by Councilmember Fernandez who moved its adoption on second reading. The motion was seconded by Vice Mayor Rodriguez and upon being put to a vote, the vote was as follows:

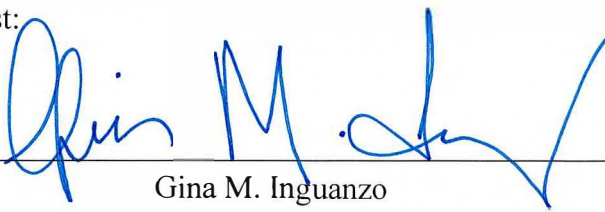
Mayor Manny Cid	Yes
Vice Mayor Jeffrey Rodriguez	Yes
Councilmember Carlos O. Alvarez	Yes
Councilmember Luis E. Collazo	Yes
Councilmember Josh Dieguez	Yes
Councilmember Tony Fernandez	Yes
Councilmember Marilyn Ruano	Yes

Passed and adopted on second reading this 25th of July 2022.



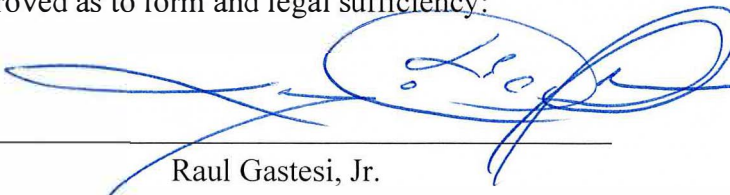
Manny Cid
MAYOR

Attest:



Gina M. Inguanzo
TOWN CLERK

Approved as to form and legal sufficiency:



Raul Gastesi, Jr.
Gastesi, Lopez and Mestre, PLLC
TOWN ATTORNEY

Additions to the Ordinance in First Reading shall be reflected by underlined, and deletions shall be reflected as ~~strike throughs~~. Additions to the Ordinance between first reading and second reading shall be reflected by a double underline, and deletions between first reading and second reading shall be reflected by a ~~double strike through~~.

Sec. 17-2. Malicious destruction, defacement, marking of real property.

- (a) Notwithstanding any Town Code provision to the contrary, it shall be unlawful for any person to willfully and maliciously, or without the knowledge and consent of the owner to mar, deface, damage or destroy intentionally by physical defacement of destruction, by writing, painting or drawing any inscription, figure or mark of any type on public or private property.
- (b) Notwithstanding any Town Code provision to the contrary, no person shall intentionally deface without authorization of the owner or tenant any private or public premises or property primarily used for religious, educational, residential, memorial, recreational, charitable, cemetery or utilitarian purposes, or for assembly by persons of a particular race, color, creed or religion, by placing material thereon, including symbols, objects, caricatures, an appellation, a burning cross or a Nazi swastika, or graffiti thereby exposing or tending to expose another to risk of violence, contempt or hatred on the basis of race, color, creed or religion.
- (c) A violation of subsection (a) or (b) of this section shall may be punishable as provided by F.S. § 806.43.
- (d) In addition to any punishment, the court shall may order the defendant to make restitution to the victim or the Town if the Town cures the damage pursuant to subsection (i) for damage or loss caused directly or indirectly by the defendant's offense in a reasonable amount or manner to be determined by the court. In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make such restitution.
- (e) In addition to any punishment, the court may, in its discretion, order the defendant to perform monitored community service.
- (f) Whenever the Town becomes aware of the existence of graffiti on any property, including structures or improvements within the Town, a code enforcement officer is authorized, upon such discovery, to give, or cause to be given, notice to remove or effectively obscure such graffiti within the time period enumerated in the notice, to the owner, agent or manager who shall cause the graffiti to be removed or effectively obscured by any means so long as it is completely obliterated, painted or touched up with the same or substantially similar color of existing paint or texture of the original wall, fence, siding or part of the structure afflicted.
- (g) It shall be unlawful for any person or firm owning property, acting as manager or agent for the owner of property, or in possession or control of property, to fail to remove or effectively obscure any graffiti from such property within the time period enumerated in the notice, as described in subsection (f). If the person or firm owning such property, acting as manager or agent for the owner of such property, or in possession or control of such property, fails to remove or effectively obscure the graffiti within the time period enumerated above, the Town shall present a case to the code enforcement board or special master and fines shall be assessed against the property until it comes into compliance.
- ~~(h) The property owner has five business days from receipt or posting of the notice to file for an appeal hearing before a special master.~~
- ~~(i) The appeal hearing referenced in subsection (h) shall be scheduled for the first available appeal hearing before a special master.~~

- ~~(h)~~ (h) Appeal requests and hearings shall be conducted by a special master in accordance with Chapter 8 of this Code.
- ~~(i)~~ (i) If the property owner is found guilty by the special master, the property owner or designee must remove or effectively obscure the graffiti within the time period ordered by the special master.
- ~~(j)~~ (j) If the property continues to be in violation after the time period referred to in subsection or the time period referred to in subsection ~~(k)~~, (i), whichever is later, the Town manager or designee shall cause corrective action to take place at the property owner's expense.
- ~~(k)~~ (k) The Town manager or designee shall have the right to enter upon private property to the extent necessary to take corrective action. No person shall obstruct, impede, or interfere with the Town manager or designee whenever the Town manager or designee is engaged in the work of corrective action pursuant to this section or in performing any necessary act preliminary to or incidental to such work pursuant to this section. Entry into any dwelling or structure is expressly prohibited.
- ~~(l)~~ (l) Public right-of-way. Whenever the Town becomes aware of the existence of graffiti on any property, including any structure or improvement, that abuts the public right-of-way within the city, the Town manager or designee is authorized to immediately remove or obscure such graffiti.
- ~~(m)~~ (m) After taking corrective action, including any corrective action taken on property abutting the public right-of-way pursuant to subsection (n), the Town manager or designee shall file a code enforcement lien in the amount of all expenses incurred in correcting the condition, including all fines, continuing penalties, and actual administrative costs.
- ~~(n)~~ (n) Such code enforcement liens pursuant to this section shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles, and claims in, to, or against the real property involved. The maximum rate of interest allowable by law shall accrue to such delinquent accounts. Notice of such lien shall be filed in the office of the clerk of the circuit court and recorded in the public records of Miami-Dade County, Florida. Once recorded, such lien shall constitute a lien against the property on which the graffiti existed and upon any other real or personal property owned by the property owner. Such liens shall be enforced by any of the methods provided by F.S. ch. 86, or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions applicable to practice, pleading, and procedure for the foreclosure of mortgages on real estate set forth in the Florida Statutes, or may be foreclosed pursuant to F.S. ch. 173, or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The property owner shall pay all costs of collection, including reasonable attorney fees, incurred in the collection of fees, service charges, penalties, and liens imposed by virtue of this section.
- ~~(o)~~ (o) Alternatively, code enforcement proceedings pursuant to Chapter 8 may be brought against the property upon which the graffiti exists.

(p) All persons who through their own negligence destroy or deface Town Property shall be held liable to the Town. The Town Manager and Town Attorney shall have specific authority to prosecute any and all claims against any individual who has, through their own negligence destroyed or defaced Town Property.

~~(#)~~ (p) If code enforcement proceedings are initiated, any person or firm owning property, acting as agent or manager for the owner of such property, or in possession or control of such property, who commits a violation of subsection (g), shall be punished by a fine as determined by the code enforcement board. When determining the amount of fine to impose, the code enforcement board shall consider the efforts taken by the violator, if any, to remove or effectively obscure the subject graffiti in a timely manner and how often the violator has been victimized by graffiti during the preceding calendar year. The provisions of this section shall not apply to a property owner, manager, agent, or possessor of property if, in the sole determination of the Town manager or designee, or the code enforcement board, such property owner, agent, manager, or possessor has been victimized two or more times by graffiti within any calendar year, and, during such time, has removed or effectively obscured such graffiti from the property in a timely manner.

~~(s)~~ (q) The Town may institute a civil action in a court of competent jurisdiction to recover compensatory and punitive damages, including reasonable costs and expenses, for any damage caused to city-owned property located within the Town limits as a result of violations of subsection (a) or (b).