

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 70 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING ARTICLE III, ENTITLED "GRAFFITI," BY AMENDING DIVISION I, ENTITLED "GENERALLY," BY AMENDING SECTION 70-125 THEREOF, ENTITLED "RESPONSIBILITY OF PROPERTY OWNER(S) TO ABATE GRAFFITI; GRAFFITI ABATEMENT AND NOTICE; ENFORCEMENT," BY AMENDING THE RESPONSIBILITIES OF PROPERTY OWNERS WITH REGARD TO THE ABATEMENT OF GRAFFITI, THE TIMEFRAME IN WHICH SUCH ABATEMENT MUST BE ACCOMPLISHED, AND THE NOTICE PROVISION THEREIN; BY AMENDING SECTION 70-126 THEREOF, ENTITLED "APPEAL," BY MODIFYING CERTAIN TERMS CONTAINED THEREIN; AND BY AMENDING SECTION 70-127 THEREOF, ENTITLED "COST OF GRAFFITI REMOVAL AS LIEN ON PROPERTY; COLLECTION, FORECLOSURE AND SALE," BY AMENDING THE CITY'S ABILITY TO REMEDY UNABATED GRAFFITI AND RECOVER THOSE COSTS INCURRED IN REMEDYING SUCH UNABATED GRAFFITI; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the immediate removal of graffiti is the most effective deterrent to its reoccurrence; and

WHEREAS, graffiti is a blight on the City, which depreciates the value of the defaced property as well as the surrounding neighborhood; and

WHEREAS, the presence of graffiti etching acid on surfaces which come into contact with the public pose a health and safety risk; and

WHEREAS, the Mayor and City Commission recognize the importance of preserving the City's aesthetic beauty, and protecting the City's image and quality of life for its residents and visitors; and

WHEREAS, graffiti has been previously declared a nuisance pursuant to section 70-121 of the City Code, which establishes that creating or maintaining the unauthorized application of paint, ink, chalk, dye, felt tip or indelible marker, or any non-water soluble substance, or the applying or affixing of other inscribed or engraved materials, including posters, placards, and flyers of any size and type, on public or private structures located on publicly or privately owned real property in the City, is hereby declared to be a nuisance; and

WHEREAS, in order to preserve the integrity of the commercial and residential neighborhoods in the City, including its historically designated districts, and to protect the health, safety and welfare of the general public, the Mayor and City Commission find that more stringent measures with regard to graffiti removal and abatement are needed to serve and protect the best interests of the citizens of Miami Beach and to promote and maintain the aesthetic appearance of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That those Sections of the City's Graffiti Ordinance, as such Ordinance is codified in Sections 70-125, 70-126, and 70-127 of the City Code, be amended as follows and as hereinafter set forth below:

CHAPTER 70

MISCELLANEOUS OFFENSES

* * *

ARTICLE III. GRAFFITI

* * *

DIVISION 1. GENERALLY

* * *

Sec. 70-125. Responsibility of property owner(s) to abate graffiti; graffiti abatement and notice; enforcement.

- (a) (1) Maintenance or allowance of graffiti to exist for more than ~~seven business days~~, 48 hours from the receipt or delivery of the notice to abate graffiti as referenced within this section, on either a commercial or noncommercial property, ~~or for more than ten business days, from the receipt or delivery of the notice to abate graffiti as referenced within this section on a noncommercial property~~, is prohibited.
- (2) Maintenance or allowance of etched graffiti to remain visible to public view for more than 48 hours, or to exist for more than 20 10 business days from the receipt or delivery of the notice to abate graffiti as referenced within this section, on either a commercial or noncommercial property, ~~or for more than 30 business days from the receipt or delivery of the notice to abate graffiti as referenced within this section on a noncommercial property~~ is prohibited.
- (b) Whenever the city becomes aware of the existence of graffiti on any property, a code compliance officer is authorized upon such discovery to give, or cause to be given, notice to conceal and abate the graffiti to the property owner or the property owner's agent or manager, as follows:
 - (1) *Commercial property.* For commercial property, the property owner or the property owner's agent or manager shall abate the graffiti within ~~seven business days~~ 48 hours from the receipt or delivery of the notice as referenced within this section, except that etched graffiti shall be completely concealed from public view with an opaque covering within 48 hours and shall be abated within 20 10 business days from the receipt or delivery of the notice as referenced within this section.
 - (2) *Noncommercial property.* For noncommercial property, the property owner, or property owner's agent shall abate the graffiti within ~~ten business days~~ 48 hours from the receipt or delivery of the notice as referenced within this section, except that etched graffiti shall be completely concealed from public view with an opaque covering within 48 hours and

~~shall be~~ abated within ~~30~~ 10 business days from the receipt or delivery of the notice as referenced within this section.

- (c) Such notice shall be given by:
- (1) a. Certified mail, return receipt requested to the property owner, or registered agent, of record (which mailed notice shall be deemed complete and sufficient notice when so deposited in the United States mail with proper postage prepaid); or
 - b. ~~or by~~ Hand delivery by code compliance officer to the owner of record of the property, any person residing at the property who is above 15 years of age, or the property owner's agent, manager or other person in charge of the premises, and informing such person of the contents of the notice described as recorded in the current county tax rolls; and
 - (2) Conspicuously posting such notice at the property. Mailed notice shall be deemed complete and sufficient notice when so deposited in the United States mail with proper postage prepaid.
- (d) The city shall waive painting permit requirements for abating graffiti, subject to the use of the same, or substantially same, colored exterior paint, provided that the existing paint complies with all city requirements.
- (e) Graffiti abatement shall consist of:
- (1) Painting of the entire area defaced by graffiti with paint matching, or substantially matching, the permitted paint color on the surface, regardless of whether the city has temporarily abated the graffiti with a different paint color;
 - (2) Pressure-cleaning or cleaning by any other method that will successfully remove graffiti from the area defaced by the graffiti without causing damage; or
 - (3) Professional glass restoration or replacement of glass for etched graffiti to completely remove the graffiti.
- (f) The property owner is responsible for ensuring compliance with sections 142-1191 through 142-1193 of the city Code and a violation of those sections shall be enforced pursuant to sections 114-7 through 114-8. In addition, the property owner is responsible for ensuring compliance with subsections 70-125(a), (b), and (e) and a violation of those subsections shall be enforced pursuant to chapter 30 of the city Code.

* * *

Sec. 70-126. Appeal.

- (a) A property owner who has been served with the notice set forth in section 70-125 shall elect either to:
- (1) Remove or cause to remove the graffiti within the time specified on the notice; or
 - (2) Request an administrative hearing before the special ~~master~~ magistrate to appeal the determination of the inspector which resulted in the issuance of the notice.
- (b) An appeal for an administrative hearing shall be held before the special ~~master~~ magistrate and shall be accomplished by filing a request in writing to set the hearing for review and

mailed to the code compliance officer or designee not later than two business days after the service of the notice. The remainder of the appeal procedures, and penalty and lien provisions, will be in accordance with sections 30-72 through 30-79 of the Code.

* * *

Sec. 70-127. Cost of graffiti removal as lien on property; collection foreclosure and sale.

- (a) Upon failure of the owner of the property to timely remedy the conditions existing in violation of section ~~70-123~~ 70-125, the code compliance officer shall proceed to have such condition remedied by the city and/or city agent in an effort to abate the nuisance.
- (b) City employees and/or the city's agents may enter upon private property to abate the nuisance pursuant to the provisions of this article. No person shall obstruct, impede, or interfere with any city employee and/or city's agent whenever said person is engaged in the work of graffiti abatement pursuant to this article, or in performing any necessary act preliminary to or incidental to such work as authorized or directed pursuant to this article.
- (c) Following corrective action taken by the city or city's agent, the code compliance officer shall proceed to have all cost(s) incurred, if such cost(s) remain unpaid, thereof to be and become a lien against such the property 30 days after notice of completion of work by the city if such costs remain unpaid or the date the city prevails in any appeal against the property owner, whichever is later. Said lien shall be of equal dignity with a lien for special assessments, and with the same penalties and with the same rights of collection, foreclosure, sale and forfeiture provided for special assessment liens.

* * *

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

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

SECTION 4. 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 Miami Beach City Code. 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 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2022.

PASSED AND ADOPTED this ____ day of _____, 2022.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Steven Meiner)

Underline denotes additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

7-12-22
Date