ORDINANCE NO. 2012-05-278

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING DIVISION 3 OF CHAPTER 28 OF THE CODE OF ORDINANCES ENTITLED "UNSAFE STRUCTURES" TO REPEAL ALL EXISTING SECTIONS, AS ADOPTED BY MIAMI-DADE COUNTY; AMENDING SECTIONS 28-68 THROUGH 28-123 TO CREATE A NEW UNSAFE STRUCTURES ORDINANCE; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 1965, Miami-Dade County adopted an Ordinance to establish an Unsafe Structures Board to ensure the safety of building structures, and

WHEREAS, municipalities were preempted from regulating unsafe structures, and

WHEREAS, on February 1, 2011, Miami-Dade County amended its Unsafe Structures Ordinance to allow municipalities to establish their own Unsafe Structures Board, and

WHEREAS, the City desires to establish an Unsafe Structures Board and procedures for declaring structures unsafe,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

Section 2. REPEAL: The existing provisions of Chapter 28, Division 3 of the Code of Ordinances entitled "Unsafe Structures", as adopted by Miami-Dade County are hereby repealed.

Section 3. AMENDMENT: Chapter 28, Division 3 is hereby amended as follows:

Sec. 28-68. - Unsafe structures board.

(a) General.

(1) The Unsafe structures board shall hear unsafe structures cases, and appeals of decisions, of the city building official declaring properties and their structures and accessory structures to be unsafe where there is a danger to the health, safety, and welfare of the citizens in the community, all in the manner prescribed in this article.

(2) Buildings or structures that are, or hereafter shall become, unsafe, unsanitary or deficient, and dilapidated facilities, with inadequate means of egress, or which constitute a fire or windstorm hazard, or are otherwise dangerous to human life or public welfare by reason of illegal or improper use, occupancy or maintenance, or which have been substantially damaged by the elements, acts of God, fire, explosion or otherwise, shall be deemed unsafe structures and a permit shall be obtained to demolish the structure, or where specifically allowed by this article, to bring the building into compliance with the applicable codes as provided herein.

(3) Incomplete buildings commenced without a permit or for which the permit has expired, or completed buildings commenced without a permit or for which the permit has expired, prior to completion and no certificate of occupancy has been issued, shall be presumed and deemed unsafe and a permit shall be obtained to demolish the structure or bring the building into compliance with the applicable codes as provided herein.

(4) Buildings which meet the physical criteria of unsafe structures, set forth in this section, and are ordered to be repaired by the building official or the unsafe structures board, in the manner more particularly set forth below, which are not completed or repaired and brought into full compliance with the building code within the reasonable time allowed by the building official or the unsafe structures board, will be demolished.

(5) Swimming pools that contain stagnant water are deemed unsanitary and dangerous to human life and the public welfare. If the stagnant water is not removed and all repairs made and brought into full compliance with the building code within a reasonable time, as allowed by the building official, then these swimming pools will be demolished and filled in.

(6) Buildings or structures subject to the recertification requirements in subsection 8-11(f) of the Miami-Dade County Code which the owner fails to timely respond to the notice of required inspection or fails to make all required repairs or modifications found to be necessary resulting from the recertification inspection by the deadline specified in the Code or any written extension granted by the building official will be demolished.

(b) Physical criteria.

(1) A building shall be deemed a fire hazard or unsafe when any of the following criteria are met:

a. It is vacant, unguarded and open at doors or windows.

b. There is an accumulation of debris or other material therein representing a hazard of combustion.

c. The building condition creates hazards with respect to means of egress and fire protection as provided herein for the particular occupancy.

d. It meets the criteria of a vacant and abandoned

property under Section 28-284 of this Code or under chapter 8 of the Miami-Dade County Code.

(2) A building, or part thereof, shall be presumed to be unsafe if:

a. There is a falling away, hanging loose or loosening of any siding, block, brick, or other building material.

b. There is a deterioration of the structure or structural parts.

c. The building is partially destroyed.

d. There is an unusual sagging or leaning out of plumb of the building or any parts of the building and such effect is caused by deterioration or over-stressing.

e. The electrical or mechanical installations or systems create a hazardous condition contrary to the standards of the building code.

f. An unsanitary condition exists by reason of inadequate or malfunctioning sanitary facilities or waste disposal systems.

g. By reasons of use or occupancy the area, height, type of construction, fire-resistivity, means of egress, electrical equipment, plumbing, air conditioning or other features regulated by this Code do not comply with this Code for the use and group or occupancy.

h. The construction, installation of electrical, plumbing or other equipment therein or thereon, or the partial construction or installation of electrical, plumbing or other equipment has been commenced or completed without a permit therefore having been obtained or where the permit has expired prior to completion and the issuance of a certificate of occupancy or certificate of completion.

i. The construction, installation of electrical, plumbing or other equipment therein or thereon, or the partial construction or installation of electrical, plumbing or other equipment has not been completed.

j. The building or structure is vacant and abandoned, and covered at doors or windows with materials not previously approved by the building official, or for a period exceeding the maximum limitations set forth in this article.

k. By reason of illegal or improper use, occupancy or maintenance does not comply with the building code, or the code in effect at the time of construction.

l. The building or part thereof meets the physical criteria of an unsafe structure set forth above and has not been repaired and brought into compliance with the building code following the expiration of the reasonable periods allowed by the building official, or an unsafe structures board for such repairs.

(3) Grow houses. A building or structure that has been identified by any law enforcement officer as being used to grow or manufacture controlled substances as defined by F.S. ch. 893 or any drugs, as defined in F.S. ch. 499 (a "grow house") shall be presumed to be unsafe if any one of the following criteria has been satisfied:

a. There is an open and obvious modification or addition to any of the structure's electrical wiring or electrical components, or there exists any exposed wires or exposed electrical components;

b. There is an open and obvious modification or addition to any of the structure's plumbing, and/or any discharge of water or other effluent that is not into an ordinarily available drain;

c. The structure's interior walls have been destroyed, moved, or modified in any way. This

may be evidenced by marks on the ceiling and/or floor that are indicative of a wall having been moved or removed, holes or passages in a wall that are not ordinary, and may be unfinished in appearance. This list shall not be considered exhaustive such that any other evidence of walls being destroyed, moved or modified shall be proper;

d. Any exterior window has been modified or covered in such a way, so as to inhibit or reduce egress or which inhibits or prevents normal use for ventilation purposes; this shall not include curtains and other ordinary window coverings; or

e. Any of the structure's exterior or interior doors have been modified or covered in such a way to prevent or inhibit ingress or egress.

(c) Upon observation of any one of the above criteria in subsection (b), any city enforcement personnel shall be authorized to post and shall post a notice in a conspicuous location on the building or structure that has been determined to be unsafe.

(1) The posted notice shall read substantially as follows:

UNSAFE BUILDING. This building or structure is, in the opinion of the City of Miami Gardens, unsafe. THIS BUILDING SHALL BE VACATED-SHALL NOT BE OCCUPIED. The owner should contact the City of Miami Gardens Building Department immediately. THIS NOTICE SHALL NOT BE REMOVED EXCEPT BY THE BUILDING OFFICIAL. DATE (insert date posted).

(2) Entry to any structure posted with such a notice shall be prohibited except by an order issued by a court of competent jurisdiction, until such time as all necessary inspections listed in subsection (4) have been completed.

(3) Within 24 hours of the notice being posted by the building official, the Miami Gardens Police Department shall notify the building department of any

trespass violations. Upon receiving such notification from the Miami Gardens Police Department, the building department shall immediately send a notice of violation in accordance with the provisions of this article. This notice shall also state that building official will conduct an inspection of the structure and issue a notice of violation within five business days.

(4) All structures that meet any of the criteria from subsection (c)(1) above and have been posted with the requisite notice, must be approved by the building department based upon all of the following inspections before the structure can be deemed safe for use:

a. An electrical inspection;

b. A plumbing inspection;

c. An inspection by a certified mold inspector; and

d. An inspection by a structural engineer.

Upon completion of the inspections described herein, an inspection report shall be filed with the building department for approval. The building director shall proscribe the forms to be used for the inspections described herein and shall be authorized to charge a fee for the review of the inspection reports. Each inspection report shall certify that there is currently no unsafe or hazardous conditions currently existing in the structure, all building code violations corrected and the structure is safe for occupancy. No building deemed unsafe pursuant to this section shall be occupied until the results from the required inspections have been reviewed, and all permits have been obtained to bring the structure back into compliance with the building code. Nothing herein shall relieve the owner from the requirement to obtain permits for any repairs required to meet the requirements of this section.

(d) Valuation criteria.

(1) If the cost of completion, alteration, repair and/or replacement of an unsafe building or structure or part

thereof exceeds 50 percent of its value, such building shall be demolished and removed from the premises. If the cost of completion, alteration, repair and/or replacement of an unsafe building or structure or part thereof does not exceed 50 percent of its value, such building or structure may be repaired and made safe, as provided herein.

(2) For purposes of application of this formula, value shall be the estimated cost to replace the building in kind, excluding depreciation. The estimate shall be derived from multiplying the value of the square footage of construction used by the building department to calculate the applicable permit fee. That estimate shall be broken down on a percentage basis into an estimate of the following critical elements of construction, as applicable: structural, roofing, electrical, plumbing and mechanical, and other building components ("valuation of construction components"). The cost of completion, alteration, repair or replacement shall be estimated by application of the percentage of deterioration found on site for each of the critical elements of construction to the valuation of construction components for the structure, to arrive at an overall estimated cost to repair the affected structure. The building official shall provide a form for the application of the formula set forth above for the various types of construction.

(3) If a building or structure may be repaired and made safe pursuant to the valuation criteria set forth above, and the building or structure is otherwise unsafe in accordance with the physical criteria set forth in this article, the building official may order such building or structure to be temporarily secured in the manner and subject to the limitations set forth in this article. Such building must be completed and brought into full compliance with the building code within such time as the building official or unsafe structures board may determine to be reasonable for such completion. If the building or structure is not temporarily secured, completed and brought into full compliance with the building code within the reasonable periods allowed, such building or structure shall be demolished and removed from the premises.

(e) Inspection of unsafe buildings and structures. The building official, on his or her own initiative or as a result of reports by others, shall examine or cause to be examined every building or structure appearing or reported to be unsafe, and if such is found to be an unsafe building or structure as defined in this article, the building official shall proceed in the manner set forth in this article.

(f) Emergency action. When in the opinion of the building official, there is actual or immediate danger of the failure or collapse of a building or structure, or there is a health, windstorm or fire hazard, he may order the occupants to demolish, vacate, temporarily close for use or occupancy the rights-of-way thereto, sidewalks, streets or adjacent buildings or nearby area and institute other such temporary safeguards, including securing the building or structure or any demolition or partial demolition, as he may deem necessary under the circumstances, and may employ the necessary labor and materials to perform the required work as expeditiously as possible. In such event, the operation of the notice and hearing requirements of this article shall be suspended as reasonably necessary in the opinion of the building official to redress the emergency situation. Costs incurred in the performance of such emergency work shall be paid by the appropriate owner of the property and upon the recording in the public records of this county a certificate executed by the building official, certifying the amount so expended, the same shall become a special assessment lien against the property involved.

(g) Unsafe structures meeting valuation criteria for immediate demolition.

(1) The provisions below shall apply to buildings or structures meeting the valuation criteria for demolition.

(2) The building official shall prepare a notice of violation. The notice shall state in summary form the nature of the defects which constitute a violation of this article and shall order the structure to be demolished within such time as is reasonable, subject to extension when requested in writing within the reasonable discretion of the building official. The notice shall state that the specific details concerning the violations can be obtained in writing from the building official upon

request. In addition, the notice will explain the right of appeal of the decision of the building official to the unsafe structures board, in its appellate capacity, and advise that unless the decision is appealed, the building or structure shall be demolished without further notice.

(3) The notice of violation shall be affixed to the structure concerned. The building official shall also affix to the structure notice of the hearing of the unsafe structures board scheduled to consider any appeal of the decision of the building official in connection with the structure. The notice of hearing shall be issued by the director of the building and code compliance department or his designee for appeals to an unsafe structures board advising persons to appear before the board to show cause why the decision of the building official should not be carried out. The hearing shall not be scheduled earlier than 30 days following the date of posting of the notice of hearing and notice of violation.

(4) The building official shall post a notice bearing his or her signature in a conspicuous location on the building or structure that has been determined to be unsafe. The posted notice shall read substantially as follows: "UNSAFE BUILDING". This building or structure is, in the opinion of the Building Official, unsafe. "THIS BUILDING SHALL BE VACATED-SHALL NOT BE OCCUPIED." Action shall be taken by the owner as prescribed by written notice. "THIS NOTICE SHALL NOT BE REMOVED EXCEPT BY THE BUILDING OFFICIAL. DATE (insert date posted)."

(5) Within ten working days of posting the notice of violation and notice of hearing, the building official shall send written notice of violation and notice of hearing to the owner and any interested party. For these purposes, the owner shall be the taxpayer as reflected in the most recently certified real property ad valorem tax roll of Miami-Dade County; provided however, where the records of the Dade County Property Appraiser indicate that ownership has changed, the owner shall be the taxpayer as reflected in those records. An interested party shall be the

owner and any other person or entity who has previously requested real property ad valorem tax notices with respect to the subject property in accordance with F.S. § 197.344, as the same may be renumbered or amended from time to time. The notice of violation and notice of hearing shall be sent by certified or first class mail to all such parties' last known addresses as reflected in the records of the Miami-Dade County Property Appraiser. Failure to receive such notice, or the lack of a signed return receipt shall not invalidate the notice.

(6) Upon expiration of the period of appeal provided in the notice of violation, the building official may file an appropriate instrument in the office of the clerk of the circuit court to be recorded in the public records of this county, indicating that the property is in violation of the building code. The recording of the notice shall constitute constructive notice of the violation to all concerned, subsequent purchasers, transferees, mortgagees, lessees, grantees and all persons claiming or acquiring interest in the property. In the event that the violation is corrected, the building official shall file proof of the same upon payment for fees incurred.

(7) The building official shall publish a notice in a newspaper of general circulation once a week for two consecutive weeks. The published notice shall contain the address of the subject property and the names of the owner and any interested party, and state that the subject property has been found to be in violation of the building code and subject to demolition. The published notice shall also state the time and place of the hearing scheduled before the unsafe structures board.

(8) The notices provided in this section are intended to serve as full and effective notice of the hearing and the violations related to the structure. Failure of one form of notice shall not invalidate or impair the full effectiveness of notice provided by other means pursuant to this section.

(h) Unsafe structures not meeting the valuation criteria for immediate demolition.

(1) If a building or structure may be repaired and made safe pursuant to the valuation criteria set forth above, and the building or structure is otherwise unsafe in accordance with the physical criteria set forth in this section, the building official may order such building or structure to be temporarily secured in the manner and subject to the limitations set forth in this section. Such building must be completed and brought into full compliance with the building code within such time as the building official or the unsafe structures board may determine to be reasonable for such completion. If the building or structure is not temporarily secured, or once served, not completed and brought into compliance with the building code within the reasonable periods allowed, such building or structure shall be demolished and removed from the premises.

(2) The building official shall prepare a notice of violation. This written notice shall state in summary form the nature of defects which constitute a violation of this section and shall prescribe the action to be taken to comply and the time within which compliance must be accomplished, in such time not to exceed ten days to secure an open structure to the reasonable satisfaction of the building official, 90 days to obtain permits to repair the structure, and 120 days to bring it into compliance with the building code. This notice shall also state that the specific details concerning the violations can be obtained in writing from the building official on request. In addition, this notice will explain the right of appeal of the decision of the building official to the unsafe structures board, in its appellate capacity and also advise that unless there is compliance with the directions of the building official, a case will be commenced before the unsafe structures after time for compliance has expired, or that the building official's order will be enforced.

(3) The notice of violation shall be affixed to the structure concerned.

(4) Within ten working days of posting the notice of violation, the building official shall send the written notice of violation to the owner and any interested party, in the same manner provided in above.

(5) In the event that the building or structure is not secured or brought into compliance with the requirements of the building code within the periods specified in the notice of violation, and no application for extension is made in the manner set forth in this section, the building official may schedule the case for hearing before the unsafe structures board to secure an order for demolition of the building or structure or to obtain any other appropriate remedy.

(6) In the event that the director of the building and code compliance department schedules a hearing, or in the event that the owner or interested party files a timely appeal of the decision of the building official, the secretary to the director of the building department or his or her designee shall issue a notice of hearing which shall be affixed to the property, mailed to the owner and interested party, in the same manner provided in subsection (g) above. Notice of the hearing shall be published in the same manner provided in subsection (g) above.

(7) Upon expiration of the period of appeal provided in the notice of violation, if the property has not been secured or permits for repair obtained in the manner stipulated in the notice, the building official may file an appropriate instrument in the public records in the manner provided in subsection (g) above.

(8) The periods set forth in the notice of violation for bringing the structure into compliance with the building code may be extended by the building official for one or more additional periods which in the aggregate do not exceed an additional 180 days, provided all of the conditions of this subsection are met. Application for the extension must be made in writing by the interested party to the building official prior to the expiration of the period allowed for compliance, and shall set forth to the reasonable satisfaction of the building official that the extension is warranted by one or more of the following circumstances:

a. The interested party has a demonstrated financial hardship that will prevent the

interested party from completing a building or structure;

b. The interested party has filed a completed zoning hearing application which affects the final completion of the building or structure and which zoning hearing request has not received final approval or rejection from the city or applicable governmental agency, including any or all appeals to court, for circumstances outside of the control for the interested party;

c. The building or structure is a multiple dwelling structure as defined in the building code and demolition of any unit comprising that structure compromises the structural integrity of the entire multi-unit structure, where the completion of the structure is outside of the control of the interested party;

d. The building or structure is the subject of pending litigation that renders it impossible for the building or structure to be completed;

e. The building or structure is the subject of a good faith insurance claim, the proceeds of which are intended to be utilized for repair and completion;

f. The building or structure is the subject of a pending sale to be closed within a reasonable time from the date the extension is requested, where the buyer has executed a written commitment to the building official to complete the structure within the applicable extension period.

The written application for extension shall further represent to the building official that the building or structure is and has at all times been in full compliance with all of the conditions set forth in this subsection.

(9) Upon receipt of the written application, the building official shall be authorized to extend the date of full completion and compliance with the building code

provided:

a. The completed written application demonstrates to the reasonable satisfaction of the building official that one or more of the conditions set forth above exist with respect to the building or structure;

b. The building or structure is not open, vacant or abandoned, having been secured at doors and windows in a manner acceptable to the building official; and

c. The interested party has paid all reasonable costs of enforcement.

(10) Any interested party may appeal to the unsafe structures board a decision to grant or deny the extension. Such appeal must be filed within 30 days of the date of mailing of the building official's written notice of his or her decision with respect to the application for extension.

(i) Public hearing.

(1) On the day established in the notice of public hearing the unsafe structures board shall review all pertinent evidence and hear all testimony from the building official, the owner and other parties in interest and their respective witnesses.

(2) The unsafe structures board may order repair, securing, and/or demolition of the structure upon application of the standards set forth in this article. The unsafe structures board may modify, rescind, or uphold the decision of the building official as recited in the notice of violation. The unsafe structures board shall modify or rescind a decision of the building official only upon a finding that the building official was in error in the interpretation or application of the building code. The unsafe structures board shall not exceed the time frames allowed for repair and completion of buildings and structures specifically set forth in this article, except where the work involved reasonably requires such additional time.

(3) A copy of the order shall be forwarded to the owner, and all interested parties by registered or certified mail, and a copy thereof posted on the property.

(4) If the owner or interested party fails to comply with the order of the unsafe structures board within the time stipulated therein and such order is to repair, complete or secure the building to make safe, then the building official shall cause such building to be vacated, if occupied; and shall through his employees or through a contractor enforce the order of the unsafe structures board or building official. Buildings shall be secured with concrete block or other materials of the same durability as determined by the building official. Swimming pools shall be secured by fencing or by using another approved method as determined by the building official.

(5) If the order of the unsafe structures board is to demolish the building or structure and to remove or salvage contents, debris and abandoned property from the premises, and the owner or those responsible shall have failed to comply with such order, then the building official may do so. Swimming pools shall be demolished by removal of any stagnant water and any above ground parts of the structure, breaking open the bottom and filling with sand or clean fill level to the existing grade.

(j) Multi-unit structures.

(1) This subsection shall be applicable to all multi-unit structures. As used in this subsection, the term multi-unit structures means all townhouses and other structures which contain units divided by one or more common walls, where the structural integrity of any component unit depends upon the structural integrity of one or more other units in the same structure. In the event that the owner or other interested party fails to comply with any order of the unsafe structures board in connection with any multi-unit structure, then in addition to any other right or remedy contained in this section, the city shall be authorized, but not required, to secure the structure in the manner set forth in this subsection. In addition, and not in derogation of the use of other methods contemplated

by this section for enforcing the building code with respect to any structure, multi-unit structures may be secured by performing whatever work the building official may determine is reasonably necessary to preserve the structural integrity, water-tightness, or safety of adjacent units or the surrounding community which work may include, but not be limited to roofing, windows, and electrical.

(2) The procedure for enforcement of this Code set forth above shall be in addition to, and not in derogation of, other procedures available to the building official pursuant to the building code. The provisions of this subsection are not intended to exonerate any owner or other interested party from compliance with the building code or any order of an unsafe structures board.

(k) Recovery of cost.

(1) All costs incurred pursuant to any of the provisions of this section shall be paid by the owner, interested party, or occupant of the premises on which the violation occurred.

(2) The building official shall file among his or her records an affidavit stating with fairness and accuracy the items of expense and the date of execution of actions authorized by this article.

(3) Any other employee, official or agency who incurs costs while executing any provision within this article shall create an affidavit stating with fairness and accuracy the items of expense and the date of execution of actions authorized by this section. That affidavit shall be given to the building official responsible for the unsafe structure at issue and filed among his or her records for that property.

(4) After three months from the date of filing any liens that remain unpaid, the city may institute a suit in accordance with Chapter 162, Florida Statutes, to recover such expenses against any liable person or may cause such expenses to be charged against the property on which the violation occurred as a lien or as a special assessment lien collectible according to

established procedures.

(5) Any lien imposed pursuant to this article shall be a lien greater in dignity to all liens, excepting IRS tax liens.

(6) Liens created pursuant to this section may be discharged and satisfied by paying to the city the amount specified in the notice of lien, together with interest thereon from the date of the filing of the lien computed at the rate of 12 percent per annum, together with the administrative costs, filing and recording fees and fees paid to file a satisfaction of the lien in the public records. When any such lien has been discharged, the city shall promptly cause evidence of the satisfaction and discharge of such lien to be recorded in the public records.

(7) The remedies and procedures for recovery of costs provided in this article shall be in addition to and not in derogation of other provided in the building code or otherwise provided by law.

(l) Unsafe structure boards. Unsafe structures boards are hereby created to conduct hearings as provided for under this section.

(1) *Composition.* The unsafe structures board shall consist of seven individuals who reside or have a principal business in Miami-Dade County. The mayor and each city council member shall appoint a member to the unsafe structures board, such members shall serve at the pleasure of the mayor or city council member making the appointment. The mayor and city council members serving in the at-large city council seats shall appoint members to serve for a two-year initial term. The city council members serving in Seats 1, 2, 3, and 4 shall appoint members to serve a three-year initial term. Thereafter, each member shall be appointed to serve a two-year term, or until his/her successor is appointed, whichever occurs later. Appointments to fill a vacancy shall be for the remainder of the unexpired term. Members of the unsafe structures board shall possess knowledge of the following disciplines:

a. A registered engineer;

b. A registered architect;

c. A general building contractor;

d. An electrical contractor;

e. A plumbing contractor; and

f. Two (2) residents of the City of Miami Gardens shall be appointed to the board.

(2) *Organization of the unsafe structures boards.*

a. All provisions of chapter 2, article III, division 1, not in conflict herewith shall apply to the unsafe structures board.

b. A majority vote of unsafe structures board members present and voting shall be sufficient to overrule, modify or affirm any action or decision of the building official or to take any action within the scope of the powers and duties of the board.

c. No member of a unsafe structures board shall sit as a voting member in any hearing on a matter in which he has a personal or financial interest.

d. The building and code compliance department, or his or her designee, shall assist the unsafe structures board, but shall have no vote.

e. The director of the building and code compliance department or his or her designee may call and schedule unsafe structures hearings.

f. Audio record shall be kept of all unsafe structures hearings and all hearings shall be public.

g. All hearings shall be open to the public, and any person whose interest may be affected by

the matter on appeal shall be given an opportunity to be heard in person, or through his or her attorney.

h. Witnesses may be sworn and subpoenaed by the unsafe structures board in a like manner as they are subpoenaed by the court or courts in Miami-Dade County.

i. The hearings shall be quasi-judicial and need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.

j. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

k. The rules of privilege shall be effective to the same extent that they are now, or hereafter may be, recognized in civil actions; and irrelevant and unduly repetitious evidence shall be excluded.

(3) *Duties, and powers of the unsafe structures boards.* The unsafe structures boards and shall have the following duties, functions, powers and responsibilities:

a. Hear and determine appeals from actions and decisions of the building official pursuant to the provisions of this section.

b. Hear and review the application of the building official for the review of his or her action where his or her decision as indicated in a notice of violations has not been complied with.

c. Affirm, modify or reverse the decision of the building official upon appeal or on application for review.

(5) *Duties of the city attorney.* The city attorney, or his or her designee, shall represent the city before the unsafe structures board, and shall not therefore act as counsel for the board. The unsafe structures board shall rely on advice from independent legal counsel who shall be recommended by the city attorney for appointment by the city council, for a term not to exceed two years. Said attorney can be removed by the city council upon the recommendation of the city attorney.

(6) Requests for extensions of time. Any owner or authorized representative may seek an extension of the timeframes set forth in an order of the unsafe structures board. Such request for a hearing to seek such extension must be in writing, directed to the unsafe structures board. The unsafe structures board shall not be authorized to extend any deadline for compliance, set forth in the order, unless the secretary of the unsafe structures board receives the written request for extension prior to the deadline specified in the initial order. For example, in the event the unsafe structures board order states that a permit must be obtained within a specified period, the request for extension of the deadline to obtain the permit must be received prior to the expiration of that specified period. If the same order provides a deadline for completion of the structure, the request for the extension for the deadline of completion must be received prior to the deadline for completion, provided that the applicant has complied with the permit deadline. In no event may the unsafe structures board grant more than one extension of time for each initial order.

To obtain an extension, the owner or applicant must demonstrate to the reasonable satisfaction of the unsafe structures board that the structure that is the subject of the order is secure at the time the extension is sought and that the owner or applicant has made a good faith attempt to comply with the order which has been impeded by changed

circumstances or other circumstances outside of the owner or applicant's control. As a further condition of the extension, the owner or applicant must submit in writing, together with the petition for an extension, a written timetable for compliance with the substantive provisions of the order and for completion of all necessary repairs. The unsafe structures board shall not reconsider the order, limiting its consideration of the petition to deciding whether the grounds for an extension have been satisfied in the manner set forth in this subsection.

(7) Judicial review. An aggrieved party, including the city, may appeal a final order of the unsafe structures board to the appellate division of the Circuit Court of the Eleventh Judicial Circuit. Such an appeal shall not be a hearing de novo but shall be limited to an appellate review of the record created before the board. An appeal shall be filed within thirty (30) days of the written order to which the appeal is directed.

(8) Definitions.

Building or *structures* shall be synonymous.

Building code shall be the Florida Building Code, as amended from time to time.

Interested parties shall be the taxpayer as reflected in the most recently certified real property and ad valorem tax roll of Miami-Dade County; provided, however, where the records of the county property appraiser indicate ownership has changed, the owner shall be the taxpayer as reflected in those records.

Sec. 28-69. - Maintenance of vacant lots after demolition of structures.

(a) *Intent.* It is the intent of this section to regulate an improved or unimproved lot that has become vacant or the ground has been left in disarray or excavated due to demolition of a structure(s) on the lot and to implement regulations to:

(1) Ensure the lot is rehabilitated in a park-like appearance;

(2) Reduce neighborhood blight and its negative effects by regulating the aesthetic character of vacant lots, formerly improved lots; or

(3) Ensure the lot does not have portions of land which have been excavated and not returned to a uniform and level grade after a demolition.

(b) *Definitions.* For the purpose of this section, the following words and phrases shall have the meaning respectively ascribed to them by this subsection:

(1) *Vacant lot:* shall mean a lot, tract, or other parcel of land in the city that does not have a structure or building on the land.

(2) *Structure:* shall mean a structure or building as defined by the Florida Building Code, as amended.

(3) *Tree:* shall mean any self-supporting woody plant or palm which usually has a single main axis or trunk, with a minimum trunk diameter at breast height of two inches and a minimum overall height of 12 feet. This definition excludes plants which are defined as shrubs, hedges, vines, or ground covers. Palms shall have a minimum height of 14 feet in order to be classified as a tree.

(4) *Lot:* A parcel of land; a portion of land; property.

(c) *Minimum requirements.* When a structure has been demolished and real property has become a vacant lot or a portion of a lot has been left in disarray or excavated because of a demolition, the owner of the lot shall, at a minimum:

(1) Remove all debris resulting from the demolition of the structure, along with any other garbage from the lot.

(2) Refill and grade the lot in accordance with subsection (d), and lay down sod or hydroseed on any exposed dirt on the lot. Nothing in this section shall be construed to require the removal of trees from the lot.

(3) If the owner, fails to comply with the provisions of this section, the city, may issue a notice of violation.

Moreover, after proper notice to the owner of record as listed in the Miami-Dade tax roll, certified mail return receipt requested, the city may refill, grade, and sod the lot and impose a lien on the property for the work done.

(d) *Fill requirements.* The re-filling, grading, and sodding of the lot shall comply with the Florida Building Code, as amended.

(e) *Enforcement provision.* This section may be enforced in accordance with Chapter 8, Code Enforcement. Nothing in this section precludes the city from enforcing this section by any and all means provided by law, including but not limited to, any actions in the circuit court.

(f) *Special assessment provision.*

(1) Under the lawful authority granted to municipalities pursuant to F.S. chs. 170 and 166, the city hereby authorizes the levy and collection of special assessments to the fund the costs of any work done by the city to enforce compliance with the requirements of this article.

(2) Any work undertaken by the city under this article 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. Interest at the rate of 12 percent per annum shall accrue to such delinquent accounts. Such liens shall be enforced by any of the methods provided in F.S. ch. 85, as amended, 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 state statutes, or may be foreclosed pursuant to F.S. ch. 173, as amended, 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. Additionally, the city may elect to utilize the uniform method for the levy, collection and enforcement of this non-ad valorem assessment pursuant to F.S. §197.3632. as may be amended from time to time.

(g) *Best efforts.* The city, when at all possible, will use best efforts to comply with the provisions of this section when demolishing property within the city, regardless of ownership.

Sec. 28-70-123. Reserved.

Section 4. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 5. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the section of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed.

Section 7. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 28th DAY OF MARCH, 2012.

PASSED ON SECOND READING ON THE 11TH DAY OF APRIL, 2012.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 11TH DAY OF APRIL, 2012.

SHIRLEY GIBSON, MAYOR

ATTEST:

RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY
SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: Councilwoman Robinson
Second by: Councilwoman Davis

VOTE: 5-0

Mayor Shirley Gibson	_____ (Yes)	_____ (No)(not present)
Vice Mayor Oliver Gilbert, III	__X__ (Yes)	_____ (No)
Councilman David Williams Jr	__X__ (Yes)	_____ (No)
Councilwoman Lisa Davis	__X__ (Yes)	_____ (No)
Councilman Aaron Campbell, Jr.	__X__ (Yes)	_____ (No)
Councilwoman Felicia Robinson	__X__ (Yes)	_____ (No)
Councilman Andre' Williams	_____ (Yes)	_____ (No)(not present)

1515 NW 167 Street, Building 5 Suite 200
Miami Gardens, Florida 33169

City of Miami Gardens
Agenda Cover Memo

Council Meeting Date:	April 11, 2012		**Item Type:** *(Enter X in box)*	**Resolution**	**Ordinance**	**Other**	
					X		
Fiscal Impact: *(Enter X in box)*	**Yes**	**No**	**Ordinance Reading:** *(Enter X in box)*		**1st Reading**	**2nd Reading**	
						x	
		X	**Public Hearing:** *(Enter X in box)*		**Yes** / **No**	**Yes**	**No**
						x	
Funding Source:	N/A		**Advertising Requirement:** *(Enter X in box)*		**Yes**	**No**	
					x		
Contract/P.O. Required: *(Enter X in box)*	**Yes**	**No**	**RFP/RFQ/Bid #:**		**N/A**		
		X					
Strategic Plan Related *(Enter X in box)*	**Yes**	**No**	**Strategic Plan Priority Area:**		**Strategic Plan Obj./Strategy:** *(list the specific objective/strategy this item will address)*		
	X		**Enhance Organizational** ☐ **Bus. & Economic Dev** ☐ **Public Safety** ☐ **Quality of Education** ☐ **Qual. of Life & City Image** ■ **Communcation** ☐				
Sponsor Name	Danny O Crew, City Manager		**Department:**		**Building and Code Compliance**		

Short Title:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING DIVISION 3 OF CHAPTER 28 OF THE CODE OF ORDINANCES ENTITLED "UNSAFE STRUCTURES" TO REPEAL ALL EXISTING SECTIONS, AS ADOPTED BY MIAMI-DADE COUNTY; AMENDING SECTIONS 28-68 THROUGH 28-123 TO CREATE A NEW UNSAFE STRUCTURES ORDINANCE; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

Staff Summary:

The Unsafe Structures Board was established in 1965 through Miami-Dade County Ordinance 65-28. The Board ensures the safety of building structures through review of the Building Official's decision regarding the safety of structures and hearing interested parties appeals on these matters. The Unsafe Structures Board functions to serve the community through conducting a fair and open public hearing process, where testimony is heard and evidence reviewed to make determinations that serve to

safeguard the community. Prior to 2011, Miami-Dade County preempted municipalites from hearing unsafe structure cases within their boundaries.

On February 1, 2011, Miami-Dade County amended the Ordinance permitting municipalites the option of creating an Unsafe Structures Board for the administration of cases within their jurisdiction to include processes for appeals of unsafe structure cases. In addition to the adoption of an administrative process, the City can publish its own standards for declaring unsafe structures within the City of Miami Gardens.

The cost of administration of the Unsafe Structures Board will be recovered through assessement to the property owner/property.

Proposed Action:

Staff recommends the Council approve the attached ordinance which establishes the creation and administration process of an Unsafe Structured Board.

Attachments:

None