

## RESOLUTION #094-2018

### RESOLUTION TO ADOPT AN ATHLETIC OR RECREATIONAL APPARATUS PUBLIC NUISANCE RESOLUTION AND RESCIND RESOLUTION #10-2006

**Whereas,** Miami Township adopted a limited home rule form of government under Resolution #13-2015; and

**Whereas,** Miami Township desires to exercise its home rule authority to establish standards to regulate an athletic or recreational apparatus placed in the public road right-of-way within the unincorporated area of the township; and

**Whereas,** Miami Township has an existing resolution to approve a notice of violation for permanent and portable basketball poles within the township right-of-way adopted under Resolution #10-2006; and

**Whereas,** it is desired to utilize the powers granted to limited home rule townships to incorporate and adopt the attached Athletic or Recreational Apparatus Public Nuisance Resolution of Miami Township replacing the rule adopted pursuant to Resolution #10-2006; and

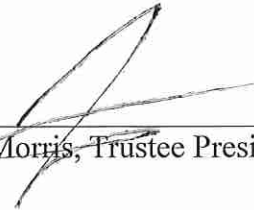
**Therefore, Be It Resolved,** the attached Athletic or Recreational Apparatus Public Nuisance Resolution is hereby incorporated, adopted and approved upon the first and second readings of this resolution and further finds:

Section 1. This resolution shall be effective thirty (30) days from the date of adoption upon both the First and Second readings of this legislation; and

Section 2. Resolution #10-2006 is rescinded and shall cease to be in effect upon the effective date of the Athletic or Recreational Apparatus Public Nuisance Resolution of Miami Township; and

Section 3. All formal actions of this Board concerning and relating to the passage of this Resolution, and that all deliberations of this Board that resulted in those formal actions, were in meetings open to the public in compliance with all legal requirements, including 121.22 of the Ohio Revised Code.

**SIGNATURE PAGE ONLY FOR RESOLUTION #094- 2018**

  
\_\_\_\_\_  
John Morris, Trustee President

absent  
\_\_\_\_\_  
Douglas J. Barry, Trustee Vice President

  
\_\_\_\_\_  
Donald R. Culp, Trustee

Attested:

  
\_\_\_\_\_

Aaron F. Newell, Fiscal Officer  
First Reading: September 25, 2018  
Second Reading: October 09, 2018  
Passed: October 09, 2018  
RLH:bfe

## **5571.14 Object bounding township road may be declared public nuisance.**

(A) A board of township trustees or township highway superintendent may determine that an object bounding any township road and located wholly or in part on the land belonging to the road interferes with snow or ice removal from, the maintenance of, or the proper grading, draining, or dragging of the road, causes the drifting of snow on the road, or in any other manner obstructs or endangers the public travel of the road. The board or superintendent then may declare the object to be a public nuisance and order the owner, agent, or occupant of the land on or bordering upon which the object is maintained to remove it within thirty days. If that person refuses or neglects to comply with the order, the board or superintendent shall have the object removed. The expense incurred in that removal shall be certified to the county auditor and entered on the tax duplicate against that land, to be collected in the same manner as other taxes.

(B)

(1) The authority granted in this section is in addition to the authority granted in section 5543.14 of the Revised Code to remove vegetation and the authority granted in section 5547.03 of the Revised Code to remove objects or structures constituting obstructions.

(2) The authority granted in this section applies to land belonging to a township road whether owned in fee simple or by easement.

(3) Objects that may be declared to be a public nuisance under this section include a fence, post, pole, athletic or recreational apparatus, rock, or berm, any vegetation, or any other object identified by the board or superintendent as interfering with or obstructing the township road under division (A) of this section.

(C) The authority granted in this section does not apply to an object that is lawfully entitled to be maintained on land belonging to a township road pursuant to a franchise or other grant of public authority.

Effective Date: 03-31-2003 .

# Athletic or Recreational Apparatus Public Nuisance Resolution of Miami Township

*ADOPTED – October 9, 2018*  
*RESOLUTION #094-2018*

**MIAMI TOWNSHIP**  
**MONTGOMERY COUNTY, OHIO**

2700 Lyons Road  
Miami Township, Ohio 45342  
(937) 433-3426  
[www.miamitownship.com](http://www.miamitownship.com)

# **ATHLETIC OR RECREATIONAL APPARATUS PUBLIC NUISANCE RESOLUTION**

## **Section 101: Administration**

It is the obligation of Miami Township to keep the Township road rights-of-way clear of obstructions that impede or pose a threat to the motoring or pedestrian public pursuant to Section 5571.14 **(B)(3)** of the Ohio Revised Code. This resolution sets forth a remedy for the improper placement of an Athletic or Recreational Apparatus within the Miami Township public road right-of-way. An Athletic or Recreational Apparatus shall not be placed in such a location in the township road right-of-way that could pose an obstruction or impede vehicles driving on the street. An Athletic or Recreational Apparatus shall not be placed in a manner that obstructs the safe movement of vehicles into and out of driveways or parking spaces along the road right-of-way. An Athletic or Recreational Apparatus shall not be placed in a manner that obstructs pedestrian movement on public sidewalks.

## **Section 102: Duties and Powers of Enforcement**

- 102.01 General.** The Public Works Department shall be responsible for the enforcement and application of this resolution. The Highway Superintendent shall be the official in charge.
- 102.02 Inspectors.** The Highway superintendent and the employees of the Public Works Department shall serve as inspectors to perform the duties required by this resolution. These inspectors shall report to the Highway Superintendent.
- 102.03 Interpretation Authority.** Highway Superintendent shall have authority to interpret and implement the provisions of this resolution.
- 102.04 Existing remedies.** The provisions in this resolution shall not be construed to abolish or impair existing remedies available to Miami Township or its officers or agents related to the abatement of a public nuisance.
- 102.05 Notices and orders.** The Public Works Department shall issue all necessary notices or orders to ensure compliance with this resolution.
- 102.06 Department Records.** The Public Works Department shall keep official records of all business and activities of Miami Township which relate to this resolution. Such records shall be retained in the official records in such manner and for so long as is required by Miami Township's retention policy.

## **Section 103: Notice of Violation**

- 103.01 Civil Offense.** It shall be a civil offense for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this resolution.
- 103.02 Notice of Violation.** The Public Works Department shall serve a Notice of Violation (hereinafter referred to as "Notice" or "Notice of Violation") on all persons, firms, or corporations found to be in conflict with or in violation of any of the provisions of this resolution.
- 103.03 Form of Notice of Violation.** Whenever the Public Works Department determines that there has been a violation of this resolution or has grounds to believe that a violation has occurred, notice shall be given in accordance with all the following:
- A. The Notice must be in writing; and
  - B. The Notice shall be sent to the person, firm, or corporation listed by the Montgomery County Auditor's Office as owner of the property at issue; and
  - C. The Notice must include a description of the property at issue which description is sufficient

for identification purposes; and

- D. The Notice must include a statement of the violation or violations determined to exist on the property with specific references to the section or sections of this resolution alleged to have been violated; and
- E. The Notice must include a description of the corrective action which must be taken to bring the property into compliance with the provisions of this resolution; and
- F. The Notice must include a deadline by which time the person receiving the Notice shall be required to take the necessary corrective action required to bring the property into compliance with the provisions of this resolution.
- G. The notice must include the amount of civil fine that will be assessed if the corrective action is not taken by the deadline (or any extension obtained as provided in **Section 103.05** of this resolution)

**103.04 Method of Service.** The Notice of Violation shall be deemed to be properly served if a copy thereof is:

- A. Delivered personally; or
- B. Sent by certified or first-class mail addressed to the owner of the property at issue at the address of the property; or
- C. Sent by certified or first-class mail addressed to the owner of the property at issue at the address listed as the owner's tax mailing address by the Montgomery County Auditor; or
- D. Sent by certified or first-class mail addressed to the owner of the property at issue at the owner's last known address; or
- E. Posted in a conspicuous place on or about the property at issue if another method of delivery of the Notice is returned showing that the Notice was not delivered.

**103.05 Extension of Compliance Deadline.** For good cause shown, the Highway Superintendent may, at his/her sole discretion, extend the deadline previously stated in the Notice of Violation for corrective action to bring a property into compliance. In the event such an extension is granted, Highway Superintendent shall notify the owner of the property at issue of the extension in the same form and pursuant to the same method of service required by **Sections 103.03 and 103.04** of this resolution. Any such notice of extension shall specifically state the revised deadline by which time the person receiving the extension shall be required to take the necessary corrective action required to bring the property into compliance with the provisions of this resolution.

#### **Section 104: Civil Citations**

**104.01 Civil Citation Issued.** If a person, firm, or corporation to whom a Notice of Violation has been served does not bring the property at issue into compliance with the provisions of this resolution by the deadline established in the Notice of Violation or by the granted deadline extension, if any, such person shall be issued a Civil Citation (hereinafter referred to as "Citation" or "Civil Citation").

**104.02 Form of Civil Citation.** Civil Citations issued for a failure to comply with the Notice of Violation by the deadline established therein, or by the granted deadline extension, if any, must be given in accordance with all of the following:

- A. The Citation must be in writing on a form specifically designated as a Civil Citation form;

- B. The Citation must include a statement advising the person charged that he/she must answer the citation within fourteen (14) days after the date on which the Citation is served upon him/her;
- C. The Citation must include a statement indicating the allowable answers that may be made and that the person will be afforded a court hearing if he/she denies committing the violation;
- D. The Citation must include a statement specifying that the answer must be made in person, or by mail, to the Miami Township Fiscal Officer;
- E. The Citation must include a statement indicating the amount of the fine arising from the violation;
- F. The Citation must include a statement advising the person of the violation charged, and the date, time and place of the violation charged; and
- G. The Citation must include the signature and affirmation of the Miami Township Police Officer if any, who issued the Citation.

**104.03 Method of Service.** The Civil Citation shall be deemed to be properly served if it is:

- A. Delivered personally by the bailiff for the Miamisburg Municipal Court or any other person not less than 18 years of age, who is not a party and has been designated by order of the municipal court to make personal service; or
- B. Sent by certified or express mail, return receipt requested with instructions to the delivering postal employee to show to whom it was delivered, the date of delivery, and the address where it was delivered, addressed to the owner of the property at issue at the address listed as the owner's tax mailing address maintained by the Montgomery County Auditor; or
- C. Sent by certified or express mail, return receipt requested with instructions to the delivering postal employee to show to whom it was delivered, the date of delivery, and the address where it was delivered, to the owner of the property at issue at the owner's last known address; or
- D. Delivered personally to the usual place of residence of the owner of the property at issue to the owner or some person of suitable age and discretion then residing at that residence by the bailiff of the Miamisburg Municipal Court or any other person not less than 18 years of age, who is not a party and has been designated by order of the municipal court to make residence service; or
- E. Any other method of service permitted by the Ohio Rules of Civil Procedure.

#### **Section 105: Permissible Answers to Civil Citations**

**105.01 Permissible Answers.** Any person, firm, or corporation to whom a Civil Citation has been served may answer said Citation in one of the following ways:

- A. Admission that the person, firm, or corporation committed the violation charged, filed in the manner and within the time permitted by **Section 106** of this resolution; or
- B. Express denial of the violations charged by the person, firm, or corporation charged, filed in the manner and within the time permitted by **Section 107** of this resolution; or
- C. Implicit denial of the violations charged by the failure of the person, firm, or corporation charged to file an answer or pay the fine set forth in the Civil Citation within the time permitted by **Sections 106 and 107** of this resolution.

#### **Section 106: Admissions of Violations Charged in Civil Citations**

**106.01 Admission of Guilt.** Persons, firm, or corporations served with Civil Citations may admit commission of the violations charged by paying the fine set forth in the Civil Citation as required by **Sections 106.02 and 106.03** of this resolution.

- 106.02 Admission of Guilt of Violations Charged in Civil Citations & Payment of Fine by Hand Delivery.** Persons, firms or corporations served with Civil Citations may admit the violations charged in the Civil Citation by paying the fine or fines set forth in the Civil Citation in person to the Township Fiscal Officer. Such payments must be hand-delivered within fourteen (14) days of the date that the Civil Citation was served upon such person, firm, or corporation.
- 106.03 Admission of Guilt of Violations Charged in Civil Citations & Payment of Fine by Mail.** Persons, firms or corporations served with Civil Citations may admit the violations charged in the Civil Citation by paying the fine or fines set forth in the Civil Citation by mailing the payment, postage prepaid, to the Miami Township Fiscal Officer, 2700 Lyons Road Miami Township, Ohio 45342. Such admissions/payments must be received by the Fiscal Officer no later than fourteen (14) days after the date that the Civil Citation was served upon such person, firm, or corporation.
- 106.04 Effect of Admission and Payment of Fine.** Persons, firms, or corporations who admit guilt as to the violation charged in a Civil Citation issued against them and who pay the fine set forth in the Citation are in no way absolved from resolving, removing, repairing, or otherwise abating the condition which resulted in the issuance of the Civil Citation. If such persons, firms, or corporations fail to resolve, remove, repair, or otherwise abate that condition, Miami Township may continue to issue Civil Citations each day it determines that the condition continues to violate the provisions of this resolution. Civil Citations issued for such continuing, unresolved violations of this resolution need not be preceded by additional Notices of Violation as the initial Notice of Violation shall suffice to notify the person, firm, or corporation involved as to the nature of the violation charged. Further, the admission of guilt and payment of the fines set forth in the Civil Citation shall in no way preclude the Miami Township Board of Township Trustees from instituting, by and through its Law Director or otherwise, appropriate action to enjoin, restrain, correct or abate a violation.

#### **Section 107: Express Denial of Violations Charged in Civil Citations**

- 107.01 Express Denial of Violation Charged in Civil Citations & Hand Delivery of Denial.** Persons, firms or corporations served with Civil Citations may deny the violation charged in the Civil Citation by expressly denying the violation in writing and presenting the denial in person to the Miami Township Fiscal Officer. Such denials must be hand-delivered within fourteen (14) days of the date that the Civil Citation was served upon such person, firm, or corporation.
- 107.02 Express Denial of Violation Charged in Civil Citations & Mailing of Denial.** Persons, firms or corporations served with Civil Citations may deny the violations charged in the Civil Citation by expressly denying the violations in writing and by delivering or mailing the denial, postage prepaid, to the Miami Township Fiscal Officer, 2700 Lyons Road Miami Township, Ohio 45342. Such denials must be received by the Fiscal Officer no later than fourteen (14) days after the date that the Civil Citation was served upon such person, firm, or corporation.

#### **Section 108: Implicit Denial of Violations Charged in Civil Citations**

- 108.01 Implicit Denial of Violations.** Persons, firms, or corporations who fail to either expressly deny the violation charged in the Civil Citation issued against them in the manner and within the time permitted by **Section 107** of this resolution or who fail to admit the violations charged in the Civil Citation issued against them by paying the fine or fines set forth in the Civil Citation in the manner and within the time permitted by **Section 106** of this resolution shall be deemed to have denied the violation charged.

#### **Section 109: Municipal Court Proceedings**

- 109.01 Referral to Municipal Court.** If the person, firm, or corporation issued a Civil Citation either expressly or implicitly denies the violation charged in the Citation within fourteen (14) days after service of the Civil Citation, the Miami Township Fiscal Officer or Police Department shall notify the Miamisburg Municipal Court of the denial so that a hearing can be set.



**109.02 Municipal Court Hearings.** Municipal Court hearings are conducted according to the Rules of Civil Procedure and the court determines whether the violation is proven by the Township by a preponderance of the evidence. If the court determines that the violation has been proven, it will order the violator to pay the fine.

**109.03 Payment of Fine After Determination of Guilt.** Persons, firms, or corporations found to have violated the provisions of this resolution charged in the Civil Citation must pay the fines assessed by the court within ten (10) days after the judgment. Failure to pay the fine within this time period will result in the placement of a lien on the property at issue and/or the collection of the amount due in any manner authorized by law.

#### **Section 110: Appeal Process**

**110.01 Appeal.** Persons, firms, or corporations wishing to appeal an adverse determination by the Miamisburg Municipal Court may file an appeal with the Second District Court of Appeals within thirty (30) days after the judgment.

#### **Section 111: Penalties and Fines**

**111.01 Violation Penalties.** The fee schedule for citations, as authorized under Section 504.05 of the Ohio Revised Code for violations of home rule township resolutions, shall be in accordance with Resolution #081-2018. Any person, firm, or corporation who violates a provision of this resolution shall be issued a Civil Citation in the following amounts:

- A. In the amount of one hundred dollars (\$100.00) for the first offense;
- B. In the amount of two hundred fifty dollars (\$250.00) for the second offense;
- C. In the amount of five hundred dollars (\$500.00) for the third offense;
- D. In the amount of one thousand dollars (\$1,000.00) for fourth and each subsequent offense.

**111.02 Continuing Violations.** Each day that a violation continues after due notice has been served shall be deemed a separate offense.