

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 70 OF THE CITY CODE, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING ARTICLE II, ENTITLED "PUBLIC PLACES," BY AMENDING SECTION 70-45, ENTITLED "CAMPING PROHIBITED," BY AMENDING THE CITY'S EXISTING PROHIBITION ON CAMPING TO ENSURE THAT THE PROHIBITION AND ENFORCEMENT MEASURES CONTAINED HEREIN COMPLY WITH CONSTITUTIONAL REQUIREMENTS FOR SUCH ORDINANCES AS SET FORTH BY THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT IN *JOEL V. CITY OF ORLANDO*, 232 F.3D 1353 (11TH CIR. 2000); PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, it is the policy of the City of Miami Beach that public property, including, but not limited to, public sidewalks, streets, alleyways, parks, beaches, beach access areas, walkways, pathways, garages, buildings, promenades, and pedestrian malls should be readily accessible and available for use by residents, visitors and the public at large for their safe enjoyment; and

WHEREAS, the use of public areas by individuals for camping interferes with the rights of residents, visitors and the public to freely use public spaces for the purpose for which they were intended; and

WHEREAS, the prohibition on camping in public places in the City furthers the legitimate governmental interest in protecting the public health and the safety of all persons within the City; and

WHEREAS, the prohibition on camping in public places in the City furthers the legitimate governmental interest in maintaining sanitation in these areas; and

WHEREAS, the prohibition on camping in public places in the City furthers the legitimate governmental interest in protecting the aesthetic nature of these areas; and

WHEREAS, the prohibition on camping in public places in the City furthers other legitimate governmental interests that have been recognized by the state and federal courts; and

WHEREAS, this amendment to the City's existing camping prohibition ensures that the prohibition and enforcement measures contained herein comply with constitutional requirements for such ordinances as set forth by the United States Court of Appeals for the Eleventh Circuit in *Joel v. City of Orlando*, 232 F.3d 1353 (11th Cir. 2000).

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

SECTION 1. That Section 70-45 of Article II of Chapter 70 of the Miami Beach City Code is hereby amended as follows:

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CHAPTER 70

MISCELLANEOUS OFFENSES

ARTICLE II. PUBLIC PLACES

* * *

Sec. 70-45. Camping prohibited; indicia of camping.

~~(a) Definitions.~~

~~(1) Camping means:~~

- ~~a. Sleeping in a temporary shelter out-of-doors or otherwise being in a temporary shelter out-of-doors; or~~
- ~~b. Cooking over an open flame or fire out-of-doors or utilizing non-city designated cooking facilities outdoor.~~

~~(2) Public place means any public street, sidewalk, alley, or other public right-of-way, pedestrian mall, park, playground, beach, beach access or government-owned areas within the city.~~

~~(b) Prohibited activities. It shall be unlawful for any person to engage in camping on any public place within the city unless specifically authorized for that purpose by the city manager or his designee.~~

~~(c) Evidence of camping. Prior to enforcing a violation of this section, an officer must consider the following:~~

- ~~(1) Simply being asleep in a public place is not sufficient to constitute a violation of this section; and~~
- ~~(2) Camping must be taking place in a public place;~~
- ~~(3) The person who is engaged in camping must be inside or covered with material which provides a temporary cover from the elements, including but not limited to, a tent, sleeping bag, hammock, or blankets, cots, beds, tarpaulins, newspapers, or cardboard; or, the person has built a campfire.~~

~~(d) Enforcement and penalties. Any person who is observed engaged in camping in an unauthorized area shall vacate the public place upon the request of an authorized official or law enforcement officer. The willful refusal to vacate the area shall be punished in accordance with section 1-14 of this Code.~~

~~If a law enforcement officer or other authorized official encounters a person engaged in camping who volunteers that he or she has no home or other permanent shelter, he or she must be given an opportunity to enter a homeless shelter or similar facility, if available. If no such facility is available, an arrest may not be made.~~

(1) For the purposes of this section, "camping" is defined as:

- (a) Sleeping or otherwise being in a temporary shelter out-of-doors;

(b) Sleeping out-of-doors; and/or

(c) Cooking over an open flame or fire out-of-doors.

(2) Camping is prohibited on all public property, except as may be specifically authorized by the appropriate governmental authority.

(3) Camping is prohibited on all private property in the City used for residential purposes; provided, however, that camping is permitted on such property with the permission and consent of the property owner.

(4) Indicia of camping. Local court rulings have held that in order to "camp", the suspect must do more than simply fall asleep on city property. There must be some indication of actual camping. One or more of the following should exist before an arrest under this section is appropriate:

(a) the property must be private or public property, including highway overpasses;

(b) the suspect is inside a tent or sleeping bag, or the suspect is asleep atop and/or covered by materials (i.e. bedroll, cardboard, newspapers), or inside some form of temporary shelter (except that an individual on a public beach during operational hours shall not be charged under this ordinance unless the officer identifies evidence that the beach is being used as a living space rather than for its intended purpose);

(c) the suspect has built a campfire; or

(d) the suspect is asleep and when awakened volunteers that he has no other place to live. If a law enforcement officer or other authorized official encounters a person engaged in camping who volunteers that he or she has no home or other permanent shelter, he or she must be given an opportunity to voluntarily enter a homeless shelter or similar facility within Miami-Dade County, if available to that person, or to accept other available government assistance for which the person is eligible that would result in housing, including, but not limited to, mutually consensual reunification with family or friends in any location, or consensual placement in any other appropriate facility that provides housing within Miami-Dade County. If no homeless shelter or other facility, or government assistance, that would result in immediate housing, is available for which the person is eligible, an arrest may not be made.

(e) Upon arrest, evidence of camping (sleeping bags, bedroll, cardboard, newspapers, etc.), should not be destroyed, but should be seized and placed in Property and Evidence. Other personal property of the Defendant, which is not evidence, should be taken to the appropriate Miami-Dade County jail with the Defendant.

(5) Violation of this section shall be punished in accordance with section 1-14 of this Code.

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SECTION 2. REPEALER.

