

R5 D 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 BASED UPON THE RECENT RULING OF THE SUPREME COURT OF THE UNITED STATES IN CITY OF GRANTS PASS, OREGON V. GLORIA JOHNSON ET AL., 144 S.CT. 2202 (2024), AND THE ENACTMENT OF FLORIDA STATUTE § 125.0231, ENTITLED "PUBLIC CAMPING AND PUBLIC SLEEPING," WHICH TAKES EFFECT ON OCTOBER 1, 2024; AND WITH PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Applicable Area:

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: City Attorney Ricardo J. Dopico

DATE: September 11, 2024 10:25 a.m. Second Reading Public Hearing

TITLE: 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 BASED UPON THE RECENT RULING OF THE SUPREME COURT OF THE UNITED STATES IN *CITY OF GRANTS PASS, OREGON V. GLORIA JOHNSON ET AL.*, 144 S.C.T. 2202 (2024), AND THE ENACTMENT OF FLORIDA STATUTE § 125.0231, ENTITLED "PUBLIC CAMPING AND PUBLIC SLEEPING," WHICH TAKES EFFECT ON OCTOBER 1, 2024; AND WITH PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

BACKGROUND/HISTORY

ANALYSIS

The proposed Ordinance, sponsored by Vice-Mayor Alex Fernandez and Mayor Steven Meiner, is submitted for consideration by the Mayor and City Commission.

The City's current camping ordinance, which is codified in section 70-45 of the City Code, sets forth the policy of the City of Miami Beach that public property (including, but not limited to, public sidewalks, streets, alleyways, buildings, parks, beaches, beach access areas, walkways, pathways, garages, promenades, and pedestrian malls) should be readily accessible and available for use by residents, visitors and the public at large for their safe enjoyment. However, 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 in which they were intended.

Moreover, courts have held that the prohibition on camping in public places furthers the legitimate governmental interests of protecting the public health and the safety of all persons, maintaining sanitation in public areas, and protecting the aesthetic nature of public areas, among other legitimate governmental interests.

To that end, on June 28, 2024, the Supreme Court of the United States in *City of Grants Pass, Oregon v. Gloria Johnson et al.*, 144 S. Ct. 2202 (2024) ruled that an Oregon city's anti-camping ordinance did not violate the "cruel and unusual punishment" clause of the U.S. Constitution's Eighth Amendment despite the fact that Grants Pass did not have adequate shelter beds for its homeless population. Furthermore, Florida Statute § 125.0231, which becomes effective Oct. 1, 2024, prohibits a county or municipality from authorizing or otherwise allowing any person to

regularly engage in public camping or sleeping on any public property including, but not limited to, any public building or its grounds and any public right-of-way.

The proposed Ordinance amends the City's existing camping prohibition by incorporating terms from Fla. Stat. § 125.0231, in a manner consistent with the *Grants Pass* decision, and effectively prohibits camping or sleeping out-of-doors on public property. However, the proposed Ordinance retains the requirement that if an individual without a permanent shelter is found to be in violation of the Ordinance, then such person must be given an opportunity to voluntarily enter a homeless shelter or similar facility within Miami-Dade County, or to accept other available government assistance that would result in housing. The proposed Ordinance provides that only if the offer of shelter is refused, or the person is ineligible for shelter placement due to his or her own past or present conduct, may an arrest be effectuated.

The proposed Ordinance, which has been slightly modified for second reading to expand the scope and timing of conduct that would constitute public camping (in a manner not inconsistent with the *Grants Pass* decision), still retains the requirement that only if a homeless person refuses an offer of shelter (or is ineligible for shelter placement) may such person be arrested for violating the Ordinance.

FISCAL IMPACT STATEMENT

N/A.

Does this Ordinance require a Business Impact Estimate? Yes
(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on 8/23/2024.
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

City Attorney

Sponsor(s)

Commissioner Alex Fernandez
Mayor Steven Meiner

Co-sponsor(s)

Commissioner Joseph Magazine
Commissioner David Suarez

Condensed Title

10:25 a.m. 2nd Rdg, Ch. 70, Camping Prohibited. (Fernandez/Meiner/Magazine/Suarez) CA

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 BASED UPON THE RECENT RULING OF THE SUPREME COURT OF THE UNITED STATES IN *CITY OF GRANTS PASS, OREGON V. GLORIA JOHNSON ET AL.*, 144 S.CT. 2202 (2024), AND THE ENACTMENT OF FLORIDA STATUTE §125.0231, ENTITLED "PUBLIC CAMPING AND PUBLIC SLEEPING," WHICH TAKES EFFECT ON OCTOBER 1, 2024; AND WITH 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, on June 28, 2024, the Supreme Court of the United States in *City of Grants Pass, Oregon v. Gloria Johnson et al.*, 144 S. Ct. 2202 (2024), ruled that the enforcement of generally applicable laws regulating camping on public property does not constitute cruel and unusual punishment under the Eighth Amendment to the United States Constitution; and

WHEREAS, Fla. Stat. §125.0231, which prohibits a county or municipality from authorizing or otherwise allowing any person to regularly engage in public camping or sleeping on any public property including, but not limited to, any public building or its grounds and any public right-of-way under the jurisdiction of such county or municipality, goes into effect on October 1, 2024; and

WHEREAS, Fla. Stat. §125.0231 also specifically authorizes a resident of the county, an owner of a business located in the county, or the Attorney General to bring a civil lawsuit against the county or applicable municipality authorizing or otherwise allowing a person to regularly engage in public camping or sleeping on its public property; and

WHEREAS, Fla. Stat. §125.0231 further provides that if a resident or business owner prevails in the civil lawsuit, the court may award reasonable expenses incurred in bringing the case, including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition costs.

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:

* * *

CHAPTER 70

MISCELLANEOUS OFFENSES

ARTICLE II. PUBLIC PLACES

* * *

Sec. 70-45. Public camping and public sleeping prohibited.; ~~indicia of camping.~~

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

- (a) Sleeping or other 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 been 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 section 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, of 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.~~

~~(1) *Definition.* For the purposes of this section, "public camping or sleeping" means:~~

- ~~(a) Lodging or residing overnight in a temporary outdoor habitation used as a dwelling or living space and in an outdoor space as evidenced by the erection of a tent or other temporary shelter, the presence of bedding or pillows, the storage of personal belongings, or lying, sitting, or resting upon or under any item or material; or~~
- ~~(b) Lodging or residing overnight in an outdoor space without a tent or other temporary shelter; Cooking over an open flame or fire out-of-doors; or~~
- ~~(c) Cooking over an open flame or fire out-of-doors; or Sleeping out-of-doors.~~
- ~~(d) Sleeping out-of-doors.~~

~~(2) *Prohibition.* Public camping or sleeping is prohibited on all public property including, but not limited to, any public building or its grounds and any public right of way in the city, except as may be specifically authorized by the appropriate governmental authority. However, an individual on a public beach during operational hours shall not be charged under this section unless a law enforcement officer identifies evidence that the beach is being used as a living space rather than for its intended purpose.~~

~~(3) *Shelter.* If a law enforcement officer or other authorized official encounters a person engaged in public camping or sleeping 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, or to accept other available government assistance that would result in housing, including, but not limited to, mutually consensual reunification with family or friends in any location, of 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, an arrest may not be made.~~

~~Notwithstanding the foregoing, nothing herein shall be construed to prevent or otherwise prohibit a law enforcement officer from arresting a person who is ineligible for shelter placement for any reason including, but not limited to: such person being under the influence of alcohol or drugs; such person having been previously banned from the available shelter; his or her status as a~~

sexual offender, sexual predator, or domestic violence offender; or his or her any other past or present conduct rendering such person ineligible for placement in a shelter.

(4) *Property.* 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) *Penalty.* Violation of this section shall be punished in accordance with section 1-14 of the City Code.

* * *

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, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

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 a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered 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 the _____ day of _____, 2024.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions.

~~Strikethrough~~ denotes deletions.

Double underline denotes additions after First Reading.

~~Double strikethrough~~ denotes deletions after First Reading.

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

9/3/2024

Date

(Sponsored by Vice-Mayor Alex J. Fernandez and Mayor Steven Meiner,
and co-sponsored by Commissioner Joseph Magazine and Commissioner David Suarez)