

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael A. Paz, City Attorney



FIRST READING

DATE: September 13, 2023

SUBJECT: 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.

The proposed Ordinance (the "Ordinance"), which is sponsored by Mayor Dan Gelber, Commissioners Alex J. Fernandez, Steven Meiner, and Kristen Rosen Gonzalez, is submitted to the City Commission for first reading on September 13, 2023.

BACKGROUND

City Code Sec. 70-45 sets forth 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. 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 for which they were intended.

This amendment to the City's existing camping prohibition is an update that incorporates the terms of the nearly identical City of Orlando camping ordinance, which was upheld by the United States Court of Appeals for the Eleventh Circuit in *Joel v. City of Orlando*, 232 F.3d 1353 (11th Cir. 2000).

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.

RFR/mmm