

1 **ORDINANCE NO. 2023-_____**

2 **AN ORDINANCE OF THE MAYOR AND CITY**
3 **COMMISSION OF THE CITY OF SOUTH MIAMI,**
4 **FLORIDA, AMENDING SECTION 15-65, "CAMPING**
5 **PROHIBITED; EXCEPTIONS," OF CHAPTER 15,**
6 **"OFFENSES AND MISCELLANEOUS PROVISIONS," OF**
7 **THE CITY CODE OF ORDINANCES TO PROHIBIT**
8 **OVERNIGHT CAMPING ON PUBLIC PROPERTY AND**
9 **PROVIDE FOR ENFORCEMENT PROCEDURES AND**
10 **PENALTIES; PROVIDING FOR CORRECTIONS;**
11 **SEVERABILITY; CONFLICTS; IMPLEMENTATION; AND**
12 **AN EFFECTIVE DATE.**

13 **WHEREAS,** Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida
14 Statutes, provides municipalities with the authority to exercise any power for municipal purposes,
15 except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

16 **WHEREAS,** the City Commission of the City of South Miami ("City") finds it
17 periodically necessary to amend its Code of Ordinances ("Code") to update regulations and
18 procedures to maintain consistency with state law, implement municipal goals and objectives,
19 clarify regulations, and address specific issues and needs that may arise; and

20 **WHEREAS,** Chapter 15 of the City's Code protects the health, safety, and welfare of City
21 residents, occupants and visitors by prohibiting certain offenses involving public health, safety,
22 welfare, peace and order; and

23 **WHEREAS,** the City has a legitimate and significant governmental interest in public
24 health, safety and welfare of all residents and visitors and occupants of the City, specifically, the
25 safe and sanitary condition of its public places; and

26 **WHEREAS,** public places, including rights-of-way and sidewalks, are provided and
27 maintained for the primary purpose of enabling the use and occupancy by the public for the
28 purposes intended in a safe and efficient manner, including open space, recreation, pedestrians and

29 vehicular access to safely and efficiently move about from place to place, facilitating the delivery
30 of goods and services and providing the public with convenient access to goods and services; and

31 **WHEREAS**, Section 15-65, “Camping prohibited; exceptions,” of the City Code prohibits
32 camping on all public property, except as may be specifically authorized by the appropriate
33 governmental authority; and

34 **WHEREAS**, the City finds that homelessness is a serious public issue negatively
35 impacting safety, commerce and tranquility, as well as the individuals experiencing homelessness
36 who require assistance; and

37 **WHEREAS**, homelessness can detrimentally impact on City services, particularly police,
38 public works and parks and recreation; and

39 **WHEREAS**, the blight of homelessness has a major economic impact on the City,
40 businesses and residents utilizing disproportionate amounts of city services, depreciating property
41 values, and potentially impeding business activity; and

42 **WHEREAS**, the City Commission desires to amend Section 15-65 of the City Code to
43 prohibit overnight camping and provide enforcement procedures and penalties, while
44 simultaneously providing individuals experiencing homelessness with assistance and information
45 in seeking shelter or social services with the goal of promoting the well-being of the individuals
46 experiencing homelessness; and

47 **WHEREAS**, this ordinance provides fair notice of the conduct that it prohibits because a
48 law enforcement or code enforcement officer is first required to provide notice and warning before
49 citing—arresting someone for a violation of the ordinance, provides for written information
50 regarding the availability of medical treatment (including mental health treatment) or social
51 services (including temporary shelter or drug or alcohol rehabilitation), and affords the person an

52 opportunity to ~~be transported to a public shelter~~ avoid enforcement through connecting with social
53 services ~~if the violator provides proof, within ten days of the Civil Citation arrest, that the individual~~
54 ~~is on a wait-list or has applied for housing, including shelter assistance through a government or~~
55 ~~charitable organization, and further provides that the warning may be accompanied by written~~
56 ~~information will be provided regarding the availability of medical treatment (including mental~~
57 ~~health treatment) or social services (including temporary shelter or drug or alcohol rehabilitation);~~
58 and

59 **WHEREAS,** to encourage persons to seek social services for temporary and permanent
60 shelter, the ordinance will not be enforced against those persons actively on a wait-list for housing
61 provided the violator has not refused assistance, voluntarily left such housing once it has been
62 obtained, or had their housing terminated for failure to follow the required policies for such
63 housing, as confirmed by the City's social services representative; and

64 ~~WHEREAS, the ordinance further allows for the City to waive not prosecute a Civil~~
65 ~~Citation issued to a violator if the violator provides proof, within ten days of the Civil Citation,~~
66 ~~that the individual is on a wait list or has applied for housing, including shelter assistance through~~
67 ~~a government or charitable organization; and~~

68 **WHEREAS,** the City Commission finds that this Ordinance is in the best interest and
69 welfare of the City and approved it on first reading on September 5, 2023; and

70 **WHEREAS,** on _____, 2023, the Mayor and City Commission conducted a duly
71 noticed public hearing as required by law and approved the ordinance.

72 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY**
73 **COMMISSION OF THE CITY OF SOUTH MIAMI, FLORIDA, AS FOLLOWS:¹**

74 **Section 1.** **Recitals.** The above-stated recitals are true and correct and are incorporated
75 herein by this reference.

76 **Section 1.** **Amending Chapter 15, Article I, Section 15-65 of the Code.** Chapter 15
77 – “Offense and Miscellaneous Provisions,” Article I. – “In General”, Section 15-65. “Camping
78 prohibited; exceptions” of the City Code of Ordinances, is hereby amended to read as follows:

79 **CHAPTER 15 – OFFENSES AND MISCELLANEOUS PROVISIONS**

80 **ARTICLE I. – IN GENERAL**

81 * * *

82 **Sec. 15-65. Overnight Camping prohibited; exceptions.**

83 **(a)** It shall be unlawful to engage in overnight camping on public property, including rights-
84 of-way, except as may be specifically authorized by the appropriate governmental
85 authority.

86 **~~(a)~~(b)** For the purpose of this section, "overnight camping" is defined as:

87 (1) Sleeping or otherwise being in a temporary shelter out-of-doors from the hours of
88 sunset to sunrise;

89 (2) Sleeping out-of-doors and/or on public property from the hours of sunset to
90 sunrise; or

91 (3) Cooking over an open flame or fire out-of-doors on public property from the
92 hours of sunset to sunrise; or

93 (4) Conducting activities of daily living such as sleeping or storage of personal
94 possessions in public places from the hours of sunset to sunrise.

95 **~~(b)~~** ~~Camping is prohibited on all public property, except as may be specifically authorized by~~
96 ~~the appropriate governmental authority.~~

¹ Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with ~~double-strikethrough~~ and double underline and shaded in light grey. Modifications made at second reading are shaded in **dark grey**.

97 (c) Enforcement and Penalties. The enforcement procedures and penalties set forth in this section
98 are specifically tailored to address and assist individuals in achieving compliance. Any person
99 who violates this section, shall first receive a written warning, which may be accompanied by
100 written information regarding the availability of medical treatment (including mental health
101 treatment) or social services (including temporary shelter or drug or alcohol rehabilitation), and if
102 found to thereafter be in violation of this section ~~three or less times shall be guilty of a civil~~
103 ~~violation punishable by a fine of \$100. Any person who violates this section a fourth second time~~
104 ~~or any subsequent time thereafter,~~ shall be guilty of a misdemeanor and, upon conviction, shall be
105 punished either by a fine up to \$500.00, imprisonment in the county jail up to 60 days, or both.

106 (1) ~~A law enforcement or Code Enforcement officer may issue a civil citation for a~~
107 ~~violation of this section if prior to issuing the civil citation, the law enforcement or~~
108 ~~Code Enforcement officer has issued a written warning or courtesy civil citation~~
109 ~~and affords the person an opportunity to be transported to a public shelter. The~~
110 ~~written warning may be accompanied by written information regarding the~~
111 ~~availability of medical treatment (including mental health treatment) or social~~
112 ~~services (including temporary shelter or drug or alcohol rehabilitation).~~

113 (2) ~~If the person has not picked up their belongings and complied with the prohibition~~
114 ~~within two hours after (i) the written warning or courtesy civil citation, or (ii) any~~
115 ~~subsequent violation after the first civil citation has been issued to the same person,~~
116 ~~the law enforcement or Code Enforcement officer may issue a civil citation.~~

117 (13) The City shall ~~not prosecute~~ ~~waive a civil~~ ~~a criminal violation following arrest~~
118 ~~citation issued to a violator~~ if the violator provides proof, within ten (10) days of
119 ~~the arrest~~ ~~civil citation~~, that the violator is documented in a Homeless Management
120 Information System accessible by the City, and:

121 a. ~~the violator is on a wait-list for housing, including shelter assistance through~~
122 ~~a government or charitable organization, as verified by a~~ ~~the City's social~~
123 ~~services representative~~ ~~certified social worker, caseworker or law~~
124 ~~enforcement officer;~~ or

125 b. ~~after arrest receiving the civil citation,~~ the violator applied for housing,
126 including shelter assistance through a government or charitable
127 organization, as verified by a ~~the City's social services representative~~
128 ~~certified social worker, caseworker or law enforcement officer.~~

129 (24) ~~Subsection (c) shall not be enforced for 90 days from its effective date so that~~
130 ~~known persons who engage in public camping can be contacted and be given a~~
131 ~~reasonable opportunity to meet with the City's social services representative~~
132 ~~regarding available social services, which may include the availability of medical~~
133 ~~treatment (including mental health treatment) or other social services (including~~
134 ~~temporary shelter or drug or alcohol rehabilitation).~~

135 (35) This ~~subsection (c)~~ shall not be enforced against a violator who is on a wait-list for
136 housing, including shelter assistance through a government or charitable

137 organization, provided the violator has not refused assistance, voluntarily left such
138 housing once it has been obtained, or had their housing terminated for failure to
139 follow the required policies for such housing.

140 **Section 2. Corrections.** Conforming language or technical scrivener-type corrections
141 may be made by the City Attorney for any conforming amendments to be incorporated into the
142 final Ordinance for signature.

143 **Section 3. Severability.** If any section, clause, sentence, or phrase of this Ordinance
144 is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding
145 shall not affect the validity of the remaining portions of this Ordinance.

146 **Section 4. Conflicts.** That all ordinances or parts of ordinances, resolutions or parts
147 of resolutions, in conflict herewith, are repealed to the extent of such conflict.

148 **Section 5. Implementation.** The City Manager is hereby authorized to take any and
149 all necessary action to implement the purposes of this Ordinance.

150 **Section 6. Effective Date.** This Ordinance shall become effective immediately upon
151 adoption.

152 **PASSED** on first reading on the ____ day of _____, 2023.

153 **PASSED AND ADOPTED** on second reading on the ____ day of _____, 2023.

154 ATTEST:

APPROVED:

155

156 _____
157 CITY CLERK

MAYOR

158

159 READ AND APPROVED AS TO FORM,
160 LANGUAGE, LEGALITY AND
161 EXECUTION THEREOF

COMMISSION VOTE:
Mayor Javier Fernández:
Vice Mayor Lisa Bonich:
Commissioner Steve Calle:
Commissioner Joshua Liebman:
Commissioner Brian Corey:

162

163

164 _____
165 WEISS SEROTA HELFMAN COLE

166 & BIERMAN, P.L.
167 CITY ATTORNEY