



City Attorney's Communication #2018-765

April 27, 2018

TO: Mayor and City Commission

FROM: James E. Saunders III, Assistant City Attorney

VIA: Mark E. Berman, City Attorney

RE: Text Amendment – Chapter 131
§ 131.24 Unlawful Lodging and Storage of Personal Property

Upon the request of City Management, the City Attorney's Office prepared text amendments to the Code of Ordinances, Chapter 131, principally, to permit the maintenance of a safe and orderly environment on public property and public right-of-way by deterring the placement of debris and unwanted personal property in such areas. The proposed Ordinance requires the City's law enforcement agency to store any items removed from public property or the public right-of-way for a period of thirty (30) days and authorizes the posting of temporary or permanent signage warning of the immediate removal of items from public property and the public right-of-way.

Specifically, the proposed Ordinance is outlined as follows:

§ 131.24 (A)

Definitions of terms are provided that are critical to understanding prohibited acts and items and the area where such acts or items are considered unlawful.

§ 131.24(B)

Prohibited items on public or private property are identified as a tent, hut, lean-to, shack or other type of temporary shelter. A person is prohibited, at any time, from placing, using or occupying a prohibited item on public or private property or sleeping atop or covering with a prohibited item, except with the permission of the City or property owner. If a person desires to lodge out-of-doors on or in public property, permission may be obtained by an affirmative vote of the City Commission or from its designee.

§ 131.24(C)

Enforcement action is prohibited against a person for singularly lodging in a public place or private place outdoors without permission from the City Manager or the property owner. A law enforcement officer, prior to taking any enforcement action, must also determine if the person

has numerous items of personal belongings, is engaged in cooking activities, has built or maintaining a fire, is engaged in digging or earth breaking activities, or is asleep and has no other place to live.

§ 131.24(D)

A law enforcement officer is prohibited from taking any enforcement action, unless there is an oral request or order to refrain from the alleged violation or the officer attempts to ascertain if the person is in need of medical or social services assistance. If the officer determines the person is in need of medical or social services, the officer affords the person an opportunity to be transported to either a hospital or public shelter. If the person has personal property, the officer must advise the person that his or her personal property will be inventoried and stored by the law enforcement agency, unless the property has no apparent utility or is in an unsanitary condition. If the person refuses to be transported or is not in need of medical or social services and fails to comply with the officer's request or order to refrain from the alleged violation, enforcement actions may be taken.

§ 131.24(E)

A person will not be charged with a violation of this Section if the person immediately leaves the prohibited area and, where applicable, removes or causes to be removed all prohibited items and does not return within thirty (30) days.

§ 131.24(F)

Immediate enforcement action is permissible, despite the lack of warning or inquiry as previously required, where the officer is unable to properly identify the person, or the person is intoxicated by alcohol or drugs, or the person was previously charged with a violation within the prior year, or the person elected to be transported to an available public shelter. Proper Identification includes, but is not limited to, a driver license, a government or employment identification card with photograph or other form of identification that would satisfy the officer as to the person's identity.

§ 131.24(G)

Prohibits storage of unattended items of personal property on public property or attended items of personal property on public property for over 24 continuous hours or store items of personal property on private property without private property owner's consent. Similar to lodging, the officer is prohibited from enforcement action until a verbal, written or posted notice to remove the prohibited items is given. If the personal property is immediately removed and not returned, the person is not charged with a violation. Moving unlawfully stored personal property from public property only to store such prohibited items at another public property is not considered removing items from public property. If the City removes unattended personal property, and the

person retrieves their personal property inventoried or store, no citation will be given if it is the first violation. If storage is requested by a person in violation of this Section, and in consideration of public health and safety, an officer may remove or cause to be removed all personal property to a secure indoor or outdoor, where the person has no permanent abode or other available storage location.

§ 131.24(H)

The City may remove attended property that is continuously stored on public property for over 24 hours, whether attended by the owner of such items or a custodian, where prior verbal or written notice has been given to remove the items and the owner fails to comply. Unattended personal property that is being stored on public property, and not determined lost or abandoned, may be removed by the City, following written notice affixed to the personal property giving the owner 48 hours to remove such items. If the owner fails to remove the items, the City may remove such items. If the City identifies personal property, whether attended or not, that is being stored on public property, that is a threat to the public's health, safety and welfare, the City may immediately remove such items. A written notice will be posted in the location where the items were placed, giving the owner notification of the location where the property is being stored. The written notice will, among other things, inventory the personal items removed, provide a date and time of removal, and the date and time by which the items must be claimed. The City may immediately remove unattended personal property stored on public property, where there is a posted sign giving notice of the City's actions.

§ 131.24(I)

The City may also immediately remove personal property unlawfully stored on private property, upon the property owner's request.

§ 131.24(J)

The City may dispose of personal property after it has been removed from public or private property after thirty (30) days from the date of removal. If the owner may claim the property within thirty (30) days, with adequate proof of ownership and payment of reasonable charges for storage and removal. The City may dispose of any personal property, after seven (7) days, deemed to be a threat to the public's health, safety and welfare, unless the owner make a claim within that time period and if release of such items is consistent with applicable governmental laws and regulations. Removal and disposal may be accomplished by the City or its contractor.

§ 131.24(K)

Provides for the posting of temporary or permanent signage warning of the removal of unlawfully stored personal property on public property.

§ 131.24(L)

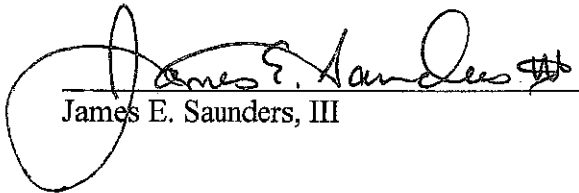
Provides for exemptions to the Code provisions, where items are stored due to a medical emergency, permitted event, or involving permitted or government property.

§ 131.24(M)

Violations are punishable by a fine not exceeding \$500, or imprisonment for a term not exceeding 60 days, or both.

Thank you for your consideration of this matter. Should you wish to discuss this matter further, please contact me at (954) 786-4616.

Respectfully submitted,



James E. Saunders, III

JEB:jmz
l:cor/atty/2018-765

Attachments

cc: Gregory P. Harrison, City Manager