

ORDINANCE NO. 2018-_____

**CITY OF POMPANO BEACH
Broward County, Florida**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 131, "OFFENSES AGAINST PERSONS AND PROPERTY," BY CREATING SECTION 131.24, "UNLAWFUL LODGING AND STORAGE OF PERSONAL PROPERTY," PROVIDING FOR DEFINITIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission has a significant governmental interest in promoting the health, safety and security of citizens and visitors by regulating potentially hazardous conditions on private and public property including public rights-of-way; and

WHEREAS, the City Commission seeks to maintain a safe, orderly and pleasant environment on public property and public rights-of-way; and

WHEREAS, the City Commission recognizes the need to restrict keeping, leaving unattended, discarding, storing or placing personal property upon public and private property, which can obstruct vehicular and pedestrian traffic, contribute to a disordered and unpleasant environment in the City, and/or present public health, safety and security hazards; and

WHEREAS, Chapter 705 of the Florida Statutes prescribes provisions for governmental entities to identify and dispose of only what is defined as lost and abandoned personal property and law enforcement officers shall continue to follow the procedures set forth in Chapter 705 for the removal of abandoned or lost property on Public Property; and

WHEREAS, the City Commission finds it necessary in the interests of public health, welfare, safety, security, tranquility and quality of life to adopt this ordinance regulating the

placement of personal property kept, left unattended or stored upon public property and private property and to establish a process for removing such property in a lawful manner; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 131.24, "Unlawful Lodging and Storage of Personal Property," of Chapter 131, "Offenses Against Persons and Property," is hereby created to read as follows:

§ 131.24 UNLAWFUL LODGING AND STORAGE OF PERSONAL PROPERTY.

(A) The following words and phrases, when used in this section, shall have the following meanings:

(1) ***CUSTODIAN.*** An owner of personal property or another person entrusted with the care and possession of the personal property by the owner.

(2) ***LODGE OR LODGING.*** To reside or dwell temporarily in a place, with shelter, and to engage in activities of daily living such as eating, sleeping or storage of personal possessions in such place.

(3) ***OFFICER.*** Any person authorized by law, ordinance, or the City Manager to enforce the provisions of this chapter, including , but not limited to a police officer, park ranger, public service aide, code enforcement officer or other person who is authorized by the city to issue citations or violation notices or both.

(4) ***PUBLIC PROPERTY.*** Any street, alley, sidewalk, pedestrian pathway, bicycle lane, or any other area encompassed within the public

right-of-way, any park or other recreation facility, or any other grounds, buildings, or other facilities owned or leased by the City or other public entity within the boundaries of the City.

(5) ***SHELTER.*** Includes, without limitation, any tent, hut, lean to, shack, tarpaulin, sleeping bag, blanket, bedroll, or any form of cover or protection from the elements other than clothing for purposes of sleeping.

(6) ***STORE OR STORED.*** When referring to an item on public or private property shall be broadly interpreted to include any action to place, store, park, display, keep, locate, or set an item upon the property.

(B) It shall be unlawful and a violation of the Code for any person, at any time, to place, use or occupy a tent, hut, lean-to, shack or other type of temporary shelter (hereinafter collectively referred to as “prohibited items”) on public or private property, or be asleep atop or covered by such prohibited items out-of-doors or otherwise lodging, except with the permission and consent of the City Manager or the property owner, where applicable. Permission and consent to lodge out-of-doors on property owned by the City may be given for a specified time period by the affirmative vote of the City Commission or its designee.

(C) Lodging in a public place or private place out-of-doors without the permission and consent of the City Manager or the property owner may be evidence of a violation but is not alone sufficient to issue a citation, make an arrest or otherwise enforce this section. One or more of the following must also exist before a law enforcement officer can find probable cause to issue a summons or to make an arrest:

- (1) Numerous items of personal belongings are present;
- (2) The person is engaged in cooking activities;
- (3) The person has built or is maintaining a fire;
- (4) The person has engaged in digging or earth breaking activities; or
- (5) The person is asleep and when awakened states that he or she has no other place to live.

(D) No officer shall issue a citation, make an arrest or otherwise enforce this section against any person:

- (1) Unless the officer orally requests or orders the person to refrain from the alleged violation of this section, and if the person fails to comply

after receiving the oral request or order, the person may be cited or arrested for a violation of this section; or

(2) If the officer attempts to ascertain whether the person is in need of medical or social services assistance, including but not limited to mental health treatment, drug or alcohol rehabilitation, or homeless assistance, and the officer determines that the person is in need of the assistance, the officer shall afford the person an opportunity to be transported to either a hospital or a public shelter. The officer shall advise the person that all of his or her personal property, which is not taken to the hospital or public shelter accompanying the person, except that which is of no apparent utility or which is in an unsanitary condition, shall be inventoried and stored by the City law enforcement agency for 30 days, until reclaimed; or

(3) Unless the person who needs medical or social services assistance refuses to be transported to a hospital or public shelter; or

(4) Unless the person is not in need of medical or social services assistance.

(E) A person shall not be charged with a violation of this Section if the person immediately leaves the ~~prohibited area~~ public property or right-of-way and, where applicable, removes or causes to be removed all prohibited items from any prohibited areas personal property and does not return, ~~within 30 days, to any prohibited area.~~ to the prohibited public area for the same activity for a period of 30 days. Leaving public property or right-of-way to lodge in another public property or right-of-way does not satisfy the requirement of this paragraph.

(F) Subsection (D) shall not apply to any person who cannot be properly identified, or is intoxicated by alcohol or drugs or who, within the past year, was previously charged with a violation of this section or elected to be transported to an available shelter. For purposes of this subsection, proper identification shall include, but not be limited to, a driver's license, a government or employment identity card with photograph or other form of identification, which would satisfy a reasonable officer as to the identity of the person.

(G) *Storage of personal property.* It shall be unlawful, subject to the provisions herein, for any person to store unattended items of personal property on Public Property, or store attended items of personal property on Public Property for over 24 continuous hours, or store items of personal property on private property without the permission of the private property owner.

(1) A person shall not be charged with a violation of this section unless and until they have been given verbal, written or posted notice, under the provisions herein, to remove the prohibited items, and then fail to do so. A person who retrieves their personal property inventoried or stored by the City

as described herein, which was unattended when removed by the City, shall not be cited for a violation of this section if it is that person's first violation of this section. A person shall not be charged with a violation of this section if the person removes or causes to be removed all prohibited items from any Public Property or private property immediately and does not return any personal property to any Public Property or to private property without the permission of the private property owner. Moving the unlawfully stored items to another location on Public Property shall not be considered to be removing the item from Public Property.

(2) The provisions of this section may be utilized as an alternative to the provisions of Chapter 37 of the City Code, when applicable, at the option of the City.

(3) If requested by a person in violation of this section, and in consideration of the public health and safety, an officer shall remove, or cause to be removed, all items of personal property to a secure indoor or outdoor location, as determined by the City, if the person in violation does not have a permanent abode or other available location to store the personal property. Whenever it is determined that personal property has been abandoned, the procedures set forth in Chapter 705 of the Florida Statutes shall apply and be followed.

(H) Removal of personal property unlawfully stored on public property.

(1) *Attended property.* If the City identifies items of personal property that are and have been stored continuously on Public Property for over 24 hours and such items are attended by the owner or other custodian, the City shall give the owner or custodian 24 hours to remove, or cause to be removed said items to another location that is not on Public Property. If the owner or custodian fails to remove any item of personal property, which is unlawfully stored on Public Property after having been given verbal or written notice by the City, the City may cause the removal of such unlawfully stored items.

(2) *Unattended property.* If the City identifies items of personal property that are being stored on Public Property and said items are unattended and are not determined to be lost or abandoned property under Chapter 705 of the Florida Statutes; then the City shall affix a written notice to the personal property giving the owner 48 hours to remove or cause to be removed said items to another location that is not on Public Property. If the property owner fails to remove any item of personal property, which is unlawfully stored on Public Property after having been given said written notice by the City, the City may cause the removal of such unlawfully stored items.

(3) *Property that is a threat to health, safety or welfare.* If the City identifies items of personal property, whether attended or left unattended,

that are being stored on Public Property and determines that the stored items are a threat to the health, safety, or welfare of the public, the City may immediately remove such stored items. A threat to the health, safety, or welfare of the public shall include, but not be limited to, a fire hazard, an explosive hazard, noxious odors, an infectious or pathogenic hazard, or an infestation of vermin, including rodents, lice, roaches and fleas, to which the public would be exposed due to the unlawful storage. If the items are removed without prior notice, a written notice shall be posted at the location where or nearby where the items were removed from and at the local law enforcement agency.

(4) The written notices required by subsections (H)(1)(2) and (3) above shall contain a complete description of the items to be removed (which may refer to an attached photograph); the unlawful location of the property; the location to which the items will be removed; the date and time which the items must be removed from the Public Property; the date by which the items must be claimed from the location where they are being stored, where applicable, and identification of the section of the City Code that is being violated.

(5) *Property within posted notice of no storage.* If the City identifies items of personal property, left unattended, that are being stored on Public Property which is posted with a sign conforming to the requirements of subsection (K) stating that unattended personal property may not be stored on Public Property and may be removed immediately; then no additional notice shall be required and the unattended item(s) may be removed immediately by the City or by someone under contract with the City to remove such items.

(I) *Removal of personal property unlawfully stored on private property.* If the City identifies items of personal property that are being stored on private real property without the permission of the private real property owner, the City may immediately remove such unlawfully stored items at the request of the private real property owner.

(J) *Disposal of personal property that has been removed by the city.* The City may dispose of personal property after it has been removed from Public Property or from private property upon the expiration of 30 days after its removal. However, the owner of the personal property may retrieve said property within the 30 day period, after presentation to the City of adequate proof of ownership thereof and payment to the City of reasonable charges for the storage and removal thereof, if applicable. The City may dispose of any personal property deemed to be a threat to the health, safety, or welfare of the public pursuant to this subsection after seven days, unless the owner of the personal property retrieves the items, within said time period, and if release of the items is consistent with all applicable governmental laws and regulations for the public health, safety and welfare, and after presentation to the City of adequate proof of ownership thereof and payment to the City of reasonable charges for the storage and removal thereof, if applicable. The City shall post notice at the Police Department with a

description of the items removed, the location the items were removed from, and the deadline for the recovery of the items by their owner. The removal and disposal of any items of personal property under this section may be accomplished either by the City or by someone under contract to the City to remove or dispose of such items.

(K) *Posted notice.* The City shall be authorized to post, or cause to be posted, notice of the prohibitions of unlawful storage on Public Property under the following circumstances:

(1) Temporary signs warning of immediate removal of unattended items from Public Property may be posted at least 36 hours in advance of preplanned events, including, but not limited to, parades and special events which are likely to draw large crowds to the City.

(2) Temporary signs may be posted in a particular area in the event the City determines there is a need for a clean-up or clearance of unattended items from that area. Signs shall be posted at least 36 hours in advance of the clean-up or clearance operation. Any items left when the clean-up commences may be immediately removed.

(3) Permanent signs warning of the immediate removal of unattended items from Public Property may be posted on Public Property frequently traveled by pedestrians in order to facilitate access to businesses, schools and government facilities in commercial areas of the City or when required to ensure access as required by the Americans With Disabilities Act.

(4) Permanent signs warning of the immediate removal of unattended items from Public Property may be posted in public parks and around schools and public buildings or facilities which are likely targets for the placement of explosive devices by terrorists or dissidents.

All signage authorized by this subsection shall be readable to pedestrians traveling in or upon the Public Property; shall be prominently displayed on the Public Property where the prohibitions apply; shall state "NO storage of unattended personal property on Public Property allowed;" shall state where a claim of recovery of personal property removed under this section may be made; and shall cite this Ordinance.

(L) *Exemptions.* The following items shall be exempt from the prohibitions of this Section, unless any such exemption creates and/or causes a hazardous condition or threatens public safety:

(1) *Medical emergency.* Items stored pursuant to a medical emergency are exempt from the prohibitions of this Section until the resolution of the medical emergency.

(2) *Permitted event.* Items stored pursuant to permitted events in the City, such as but not limited to, parades, festivals, assemblies or concerts are exempt from the prohibitions of this Section, for the duration of the of the event, at the discretion of the City.

(3) *Permitted property.* Items stored pursuant to a permit issued by, or other authority from, the City are exempt from the prohibitions of Section.

(4) *Government property.* Items stored by a government entity or pursuant to direction from a government entity are exempt from the prohibitions of this Section, at the discretion of the City.

(M) Penalties. Violations of this Section are punishable under Section 10.99 of this Code.

SECTION 2. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision of application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 3. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2018.

PASSED SECOND READING this _____ day of _____, 2018.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

JES:jrm
4/17/18
L:ord/ch131/2018-170