

ORDINANCE NO. 2019-\_\_\_\_\_

**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 PERSON AND PROPERTY," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 131.24, "UNLAWFUL LODGING AND STORAGE OF PERSONAL PROPERTY," TO MODIFY DEFINITIONS, PROHIBITED CONDUCT AND ENFORCEMENT PROVISIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, the City Commission enacted Ordinance No. 2018-59 to provide appropriate regulations to address the placement of personal property kept, left unattended or stored upon public property and to establish a process for removing such property in a lawful manner; and

**WHEREAS**, City staff believes Ordinance No. 2018-59 needs further clarification relating to unlawful lodging and storage of personal property and the City Commission concurs; 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 amended 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 and use such place as a home, by using, erecting or occupying temporary ~~with shelter, and to engage by engaging~~ in activities of daily living such as, but not limited to, cooking, bathing, 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, mat or pad of any type of material, sleeping bag, blanket, bedroll, or any form of cover or protection from the elements other than clothing for purposes of ~~sleeping~~ lodging.

(6) ***STORE OR STORED.*** ~~When referring to an item on public or private property shall be broadly interpreted to include~~ Includes any action to place, ~~store, park,~~ display, keep, locate, or set an item upon ~~the~~ public 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~~ lodge on public property, 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~~ City Manager to schools, Girl Scouts, Boy Scouts and similar nonprofit organizations for educational purposes and pursuant to the provisions of Chapter 98.

(C) ~~Lodging in a public place or private place out of doors on public property~~ 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 issue a civil citation or find probable cause to issue a summons or to make an arrest:

(1) ~~Numerous~~ The person is storing items of personal ~~belongings are present~~ property;

(2) The person is engaged in unauthorized cooking activities;

(3) The person has built or is maintaining a fire without a city permit or its consent;

(4) The person has engaged in unpermitted or unauthorized digging or earth breaking ~~activities~~ activity; or

(5) The person is ~~asleep and when awakened states that he or she has no other place to live~~ bathing or washing, or using public restrooms or other public facilities for the same activities, in a nude condition.

(D) No officer shall issue a citation, make an arrest or otherwise enforce this section against any person except and pursuant to the following procedures:

(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)(1)(a) ~~If~~ The officer first 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, once 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, social service agency or a public shelter without issuance of a civil citation or arrest.

(b) 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 must be gathered and taken with them to the hospital, social service agency or public shelter. Any personal property left on public property will be removed, inventoried and stored by the city or its law enforcement agency for 30 days unless reclaimed by its owners within that time period. Any personal property left on public property that 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 which poses a hazard, will be discarded.

~~(3)~~ (2) Unless the Any person in violation of subsection (B) above, and is involved in an activity described in subsection (C), who needs medical or social services assistance or shelter and refuses to be transported to a hospital, social service agency or public shelter; or is not in need of such assistance, and who refuses to comply with a request by an officer to refrain from violation of this section, shall be issued a civil citation for the violation by the officer.

(3) Any person who refuses to comply with an officer's order to vacate and to refrain from violation of this section shall be subject to physical arrest or issuance of a notice to appear.

~~(4) Unless the person who needs medical or social services assistance refuses to be transported to a hospital or public shelter; or~~

(E) A person shall not be charged with a violation of this Section (B) if the person immediately leaves the public property or right-of-way and, where applicable, removes or causes to be removed all ~~prohibited~~ personal property and does not return 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) above shall not apply to any person who ~~cannot be properly identified, or is intoxicated~~ is impaired by alcohol or drugs, who has outstanding warrants or other alerts through NCIC/FCIC, or who, within the past year, was previously charged with a violation of this section or elected to be transported to an available shelter. In such instances, an officer may take the person into physical custody or issue a notice to appear. 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 prohibited.* It shall be unlawful, subject to the provisions ~~herein~~ in this subsection, 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.~~ No public property may be used for storage of personal property at any time when such property is closed to the public. Violation of this provision shall be punishable as a civil infraction.

(1) A person shall not be charged with a violation of this subsection unless and until they have been given verbal, written or posted notice; ~~under the provisions herein;~~ to remove ~~the prohibited items~~ their personal property, and then fails to do so.

(2) A person who shall not be charged with a violation of this section if the person retrieves their personal property inventoried documented or stored by the city as described herein or its law enforcement agency, 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.

(3) A person shall not be charged with a violation of this section if the person immediately removes or causes to be removed all prohibited items personal property 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 constitute removal of such items 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 direct~~ the owner or custodian ~~24 hours~~ to remove, or cause to be removed ~~said~~

such items within 24 hours to another location that is not on public property. If the owner or custodian fails to remove ~~any item of~~ such 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~~ such 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 or to the area nearest to the unattended personal property giving the owner ~~48~~ 24 hours to remove or cause to be removed ~~said~~ such items to another location that is not on public property. If the ~~property~~ owner fails to remove ~~any item of~~ the 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 from which the items were removed ~~from~~ and at the city or offices of the local law enforcement agency.

(4) The written notices required by subsections (H)(1), (H)(2) and (H)(3) above shall contain a ~~complete~~ description or photograph of the items removed or to be removed (~~which may refer to an attached photograph~~); the unlawful location of the property; and, where applicable, the location to which the items will be removed; the date and time ~~which~~ when the items must be removed from the public property; and 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. The City shall also post these notices at City Hall and the offices of the local law enforcement agency.

(5) *~~Property within~~ pPosted notice of no storage on public property.* If the City identifies items of personal property, left unattended, that are being stored on Public Property ~~which is~~ that is posted with a sign conforming to the requirements of subsection (KJ) stating that unattended personal property may not be stored on public property and that such unattended personal property 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 I)~~ *Disposal of personal property that has been removed by the City.*

(1) 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, except where immediate disposal is warranted and such personal property is deemed to be a threat to the health, safety or welfare of the public, has no apparent utility or exists in an unsanitary condition.

(2) However In those instances where the personal property is being stored by the city, local law enforcement agency or someone engaged by the city, the owner of the personal property may retrieve said the personal property within the 30 day period, after presentation to presenting the city of with 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.

(3) While being stored, The city shall post notice at City Hall and the Police Department offices of the local law enforcement agency with a description or photograph of the items removed, the location from which 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 J)~~ *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 section.

~~(I)~~ K *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)~~ L *Penalties.* ~~Violations of this section are punishable under § 10.99 of this Code.~~



(1) Any person violating the provisions of § 131.24(B), subject to the additional requirements of subsection (D)(2) or (G) shall commit a civil infraction. During a one-year period, each violation of the above-referenced subsection shall constitute a separate offense. Violations of the above-referenced section shall be punished as follows:

(a) For the first violation, by a civil penalty of \$50.00.

(b) For a second violation, by a civil penalty of \$100.00.

(c) For each additional violation, by a civil penalty of \$150.00.

(2) Any person who fails to pay the appropriate civil penalty, fails to make a written request to contest the citation in County Court, or fails to appear in court to contest the citation shall be deemed to have waived their right to contest the citation, and judgment may be entered against the person for an amount not to exceed \$500.00 by a County Court judge.

(3) Any person found in violation of § 131.24(D)(3) shall be subject to arrest or the issuance of a notice to appear in lieu of custodial arrest; all in accordance with § 10.99.

(N) Enforcement.

(1) If an officer, as defined in § 131.24(A), finds a violation of this section, a civil citation may be issued. Only authorized law enforcement officers may issue a notice to appear or take a person into physical custody consistent with the provisions of this section.

(2) Notwithstanding the Penalties provision, any person, who is found in violation of any provision of this section or is issued a notice to appear or taken into physical custody, and who satisfies the eligibility requirements of the Community Court Program within the 17<sup>th</sup> Judicial Circuit of Florida, may elect to participate in the Community Court Program and be referred by the attendant officer.

**SECTION 2.** All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

**SECTION 3.** 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 4.** This Ordinance shall become effective upon passage.

**PASSED FIRST READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**PASSED SECOND READING** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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**REX HARDIN, MAYOR**

**ATTEST:**

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**ASCELETA HAMMOND, CITY CLERK**

JES:jrm  
1/31/2019  
L:ord/ch131/2019-39