

ORDINANCE NO. 2024 - 1765

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AMENDING THE TOWN OF SURFSIDE CODE OF ORDINANCES BY AMENDING CHAPTER 54, "OFFENSES AND MISCELLANEOUS PROVISIONS," ARTICLE III, "OFFENSES INVOLVING PUBLIC PEACE AND ORDER," BY ADDING SECTION 54-67 ENTITLED "CAMPING PROHIBITED"; MAKING FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the Town Commission of the Town of Surfside ("Town Commission") finds it periodically necessary to amend its Code of Ordinances ("Code") in order to update regulations and procedures to maintain consistency with state law and to implement municipal goals and objectives for the general health, safety and welfare of the Town residents, occupants, visitors and the general public; and

WHEREAS, the Town Commission finds that public property, including, but not limited to, public sidewalks, streets, alleyways, parks, beaches, beach access areas, walkways, pathways, garages, buildings, promenades, and pedestrian shopping areas should be readily accessible and available for use by residents, visitors and the public at large for their safe enjoyment; and

WHEREAS, 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 purposes for which they were intended; and

WHEREAS, the unauthorized use of private property by individuals for camping constitutes trespass and interferes with the rights of property owners; and

WHEREAS, on October 18, 2023, the City of Miami Beach adopted an ordinance (codified in Section 70-45 of the City's Code) amending its existing prohibition on camping to ensure that the prohibition and enforcement measures contained therein complied with the constitutional requirements for such ordinances as set forth in *Joel v. City of Orlando*, 232 F.3D 1353 (11th Cir. 2000); and

WHEREAS, at a regular meeting of the Town Commission held on November 14, 2023, the Town Commission directed the Town Attorney to present an ordinance

amending the Town Code to prohibit camping on public and private property, similar to the City of Miami Beach's ordinance; and

WHEREAS, Chapter 54, Article III, of the Code protects the health, safety, and welfare of Town residents, visitors, and the general public by prohibiting offenses involving public peace and order; and

WHEREAS, the Town Commission desires to protect and preserve the health, safety, and welfare of its residents, visitors, business/retail owners and patrons and the general public, by adding Section 54-67 to the Town Code prohibiting camping (which conduct is specifically identified and defined herein) in public places and private property; and

WHEREAS, the Town Commission finds that prohibiting camping in public places and private property in the Town furthers the legitimate governmental interest in protecting the public health, safety and welfare of all persons within the Town; and

WHEREAS, prohibiting camping in public places in the Town furthers the legitimate governmental interest in maintaining clean order and sanitation in public areas; and

WHEREAS, prohibiting camping in public places in the Town furthers the legitimate governmental interest in protecting the aesthetic nature of these areas, and preserves the character and value of these areas and surrounding properties; and

WHEREAS, the proposed ordinance would further the legitimate governmental interests identified above; and

WHEREAS, prohibiting camping in the Town furthers other legitimate governmental interests that have been recognized by the state and federal courts; and

WHEREAS, the proposed ordinance identifies and defines the prohibited conduct of "camping" so as to provide clear direction and avoid arbitrary enforcement by law and code enforcement personnel; and

WHEREAS, this amendment to the Town Code's existing offenses involving public peace and order prohibition ensures 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); and

WHEREAS, the Town Commission finds that amending Chapter 54 of the Town's Code in order to prohibit camping in public places and private property in the Town as set forth herein is a legitimate governmental purpose in the best interest of the public health, safety and welfare of the Town, its residents, visitors, business/retail owners and patrons and the general public.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA¹:

Section 1. Recitals Adopted. That the above-stated recitals are hereby adopted and confirmed.

Section 2. Town Code Amended. The Code of Ordinances of the Town of Surfside, Florida is hereby amended by adding Section 54-67, to Chapter 54, "Offenses and Miscellaneous Provisions", as follows:

Chapter 54 – Offenses and Miscellaneous Provisions

* * *

Article III. – Offenses Involving Public Peace and Order

* * *

Division 1. – Generally

* * *

Sec. 54-67. Camping prohibited; Indicia of Camping.

1. For the purposes of this section, "camping" is defined as:
 - a. Sleeping or otherwise being in a temporary shelter out-of-doors;
 - b. Sleeping out-of-doors; and/or
 - c. Cooking over an open flame or fire out-of-doors.
2. Camping is prohibited on all public property, including public rights-of way, pedestrian walkways, parks and public beaches, except as may be specifically authorized by the Town Manager or appropriate governmental authority.
3. Camping is prohibited on all private property in the Town used for residential purposes; provided, however, that camping is permitted on such property with the permission and consent of the property owner.

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 ~~highlighted double strikethrough~~ and double underline.

34. Indicia of camping. Local court rulings have held that in order to “camp”, the suspect must do more than simply fall asleep on public property. There must be some indication of actual camping. One or more of the following should exist before an arrest under this section is appropriate:

~~a. the property must be public property, including public rights of way, pedestrian walkways, parks and public beaches;~~

~~b. a. the suspect is inside a tent or sleeping bag, or the suspect is asleep atop and/or covered by materials (i.e. bedroll, cardboard, newspapers), or inside some form of temporary shelter (except that an individual on a public beach during operational hours shall not be charged under this ordinance unless the officer identifies evidence that the beach is being used as a living space rather than for its intended purpose);~~

~~b. b. the suspect has built a campfire; or~~

~~c. the suspect is asleep and ~~when awakened volunteers~~ after awakening represents that he has no other place to live.~~

5. If a law enforcement officer or other authorized official encounters a person engaged in camping who ~~volunteers~~ represents that he or she has no home or other permanent shelter, he or she must be given an opportunity to voluntarily enter a homeless shelter or similar facility within Miami-Dade County, if available to that person, or to accept other available government assistance for which the person is eligible that would result in housing, including, but not limited to, mutually consensual reunification with family or friends in any location, or consensual placement in any other appropriate facility that provides housing within Miami-Dade County. If no homeless shelter or other facility, or government assistance, that would result in immediate housing, is available for which the person is eligible, an arrest may not be made.

~~e. Upon arrest, evidence of camping (sleeping bags, bedroll, cardboard, newspapers, etc.), should not be destroyed, but should be seized and placed in Property and Evidence. Other personal property of the defendant, which is not evidence, should be taken to the appropriate Miami-Dade County jail with the defendant.~~

36. Enforcement:

a. Violations of this section may be enforced as provided in section 1-8 of this Code or as otherwise provided by law. Any law enforcement officer or other

authorized official of the Town is authorized to enforce this section. As provided in Section 162.22, Florida Statutes, a person violating the provisions of this municipal ordinance, upon conviction, may be sentenced to a pay a fine, not to exceed \$500, and may be sentenced to a term of imprisonment not to exceed 60 days.

b. Upon arrest, evidence of camping (sleeping bags, bedroll, cardboard, newspapers, etc.), should not be destroyed, but should be seized and placed in Property and Evidence. Other personal property of the defendant, which is not evidence, should be taken to the appropriate Miami-Dade County jail with the defendant!

* * *

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 4. Codification. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "Ordinance" may be changed to "Section" or other appropriate word.

Section 5. Conflicts. Any and all ordinances and resolutions or parts of ordinances or resolutions in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall become effective upon adoption on second reading.

PASSED on first reading this 12th day of December, 2023.

PASSED and **ADOPTED** on second reading this 9th day of January, 2024.

Motion by: Vice Mayor Rose
Second by: Commissioner Landsman

FINAL VOTE ON ADOPTION

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meischheid	<u>No</u>

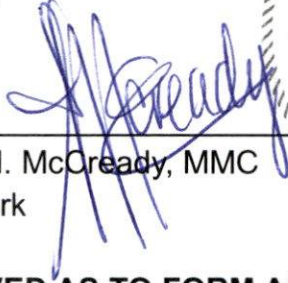
Commissioner Nelly Velasquez
Vice Mayor Jeff Rose
Mayor Shlomo Danzinger

No
Yes
Yes



Shlomo Danzinger, Mayor

ATTEST:



Sandra N. McCready, MMC
Town Clerk



**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Weiss Serota/Helfman Cole & Bierman, P.L.
Town Attorney