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MEMORANDUM

TO: Mayor Resch and Esteemed Commissioners

FROM: Office of the City Attorney

RE: **House Bill 1365 and Enforcement of No Camping Ordinances**

Date: May 10, 2024

House Bill 1365

On March 20, 2024, Governor DeSantis signed HB 1365. The bill, which will be codified at section 125.0231, Florida Statutes, takes effect October 1, 2024.

HB 1365 tasks local governments with preventing activities that may be associated with homelessness, such as utilizing a temporary outdoor habitation or sleeping overnight on public property. More specifically, HB 1365 prohibits local governments from authorizing or allowing persons to regularly engage in public camping or sleeping on public property. The phrase *public camping or sleeping* is defined as:

- a. Lodging or residing **overnight** in a temporary outdoor habitation used as a dwelling or living space and evidenced by the erection of a tent or other temporary shelter, the presence of bedding or pillows, or the storage of

personal belongings; or

b. Lodging or residing **overnight** in an outdoor space without a tent or other temporary shelter.

HB 1365 allows counties to establish and operate designated sleeping areas for persons experiencing homelessness. Such areas would have to meet basic health and safety requirements and would be overseen by the Department of Children and Families. If a county elects to designate such an area within the boundaries of a municipality, it can only do so with a majority vote of the municipality's governing body. HB 1365 does not require a municipality to establish or operate a designated sleeping area.

Beginning January 1, 2025, municipalities and counties can be sued by their residents, local business owners, or the Attorney General for authorizing or otherwise allowing public camping or sleeping as defined above. Before initiating a lawsuit, a plaintiff must give written notice of the alleged violation and five business days to cure it.

If the City receives such a notice, it can work with local law enforcement to reasonably address the matter and ideally prevent the lawsuit from moving forward. If a resident or business owner prevails in a civil action, the court may award them court costs, attorneys' fees, investigative costs, witness fees, and deposition costs.

HB 1365 does not explicitly make public camping or sleeping a violation of state law. Thus, in many cases, local governments may need to update their codes in order to fully implement the new legislation and address the defined conduct.

Section 7-9(i) of the Lake Worth Beach Code of Ordinances already prohibits anyone from camping within any park property or public property. Further, section 7-2(a) makes it unlawful for any person to enter and go upon any park or public property grounds in the city during times when said grounds are not opened for the public use.

Unless/until the courts weigh in on HB1365, these sections appear to be sufficient to enable the City to implement the new law. A cautious approach to enforcement is recommended while we await guidance from the courts.

We have searched for but have not found any legal challenges to HB 1365 at this time. We will continue to monitor the situation and provide updates if we become aware of any such challenge.

Constitutional Limitations on Enforcing No Camping Ordinances

In *Joel v. City of Orlando*, 232 F.3d 1353, 1362 (11th Cir. 2000), the Eleventh Circuit held a municipality's ordinance that prohibited camping/sleeping on public property did not violate the Eighth Amendment's prohibition on cruel and unusual punishment when the record undisputedly showed that when enforcing this ordinance, a large homeless shelter had "never reached its maximum capacity and that no individual has been turned away because there was no space available or for failure to pay the one dollar nightly fee." Thus, the court concluded "[t]he

ordinance in question here does not criminalize involuntary behavior. The City is constitutionally allowed to regulate where “camping” occurs, and the availability of shelter space means that Joel had an opportunity to comply with the ordinance.” *Id.*; see also *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) (concluding that, as long as there is a greater number of homeless individuals than the number of available beds in shelters, a municipality is prohibited from prosecuting homeless individuals from involuntarily sitting, lying, or sleeping in public). Notably, in *Joel*, the municipality had a handbook to assist law enforcement with enforcing the ordinance, which noted that homeless persons should be advised of alternative, available shelter space. *Joel*, 232 F.3d at 1356.

In contrast, in *McCardle v. City of Ocala, FL*, 519 F.Supp.3d 1045 (M.D. Fla. 2021), the court enjoined the municipality from enforcing its trespassing and lodging ordinance against homeless individuals because in that case, law enforcement failed to inquire about shelter availability before enforcing the ordinance. *Id.* at 1052 (“The Court notes that if the ordinance is only enforced after making an inquiry of the availability of shelter space, then it only punishes the individual's conduct for failing to comply with the ordinance. If no such inquiry is made and the individual is arrested for merely sleeping outside and identifying themselves as homeless, then the ordinance unlawfully punishes the individual based on their homeless status.”).

Pursuant to these cases, a law enforcement officer should inquire whether there are any beds available for homeless individuals at local shelters, and advise such individuals of the availability of beds, before they can issue a trespass warning or make an arrest for sleeping in public parks or public property.

The United States Supreme Court recently granted certiorari in a Ninth Circuit case dealing directly with this issue. See *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023). Based on the oral arguments in this case, which were held on April 22, 2024, the Supreme Court may provide municipalities with greater leeway to enforce their no camping ordinances. We are following this case and will provide an update once the Supreme Court issues its ruling.

Please let us know if you have any questions.