

Second Reading Ordinance
CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM

TO: Mayor and Members of the City Commission
FROM: Alejandro Vilarello, City Attorney
DATE: September 3, 2003
RE: Proposed Ordinance for September 11, 2003 City Commission Meeting
 Amend City Code sections related to prohibitions relating to parades and assemblies
 (J-03-772)

The attached proposed ordinance has been prepared at the request of the Chief of Police to authorize certain prohibitions relating to activity at parades and assemblies. The purpose and intent of this legislation is to establish reasonable time, place and manner restrictions for parades, demonstrations, rallies and assemblies to ensure the safety and well-being of individuals and property, while at the same time ensuring the First Amendment rights of those wishing to associate and to express their views, both individually and collectively.

The City's current parade regulations, which govern parades and assemblies, were enacted decades ago. Since that time, the statutory and judicial law governing parades, demonstrations, rallies and assemblies has developed and is significantly different than the law as it existed at the time of enactment. Further, the manner in which such events are undertaken, and the nature and level of the activity of those participating in such events, has changed significantly since the enactment of the current regulations. In recent years, civil unrest and disturbance has occurred at events held in a number of cities, such as Oakland, Seattle, San Diego, Los Angeles, San Francisco, Toronto and St. Louis, accompanied in some instances by significant personal injuries and property damage, including injuries and damage caused by the use of various weapons and projectiles, including some or all of those specified in this ordinance.

This Ordinance has been transmitted to the Agenda Coordinator for placement as a first reading ordinance on the September 11 2003 City Commission Agenda.

Attachment
 W930:BSS

c: Joe Arriola, City Manager
 Priscilla A. Thompson, City Clerk
 Elvi G. Alonso, Agenda Coordinator

J-03-772
9/11/03

ORDINANCE NO. _____

AN ORDINANCE OF THE MIAMI CITY COMMISSION, AMENDING CHAPTER 54 OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, ENTITLED "STREETS AND SIDEWALKS" TO ESTABLISH REASONABLE TIME, PLACE AND MANNER REGULATIONS CONCERNING MATERIALS AND OBJECTS THAT MAY BE POSSESSED, CARRIED OR USED BY THOSE PARTICIPATING IN PARADES AND DEMONSTRATIONS, AND PROVIDING FOR SUNSET OF SAID REGULATIONS AT MIDNIGHT ON THURSDAY, NOVEMBER 27, 2003; MORE PARTICULARLY BY ADDING NEW SECTION 54-6.1 TO SAID CODE; CONTAINING A REPEALER PROVISION, A SEVERABILITY CLAUSE, AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the City's current parade regulations, which govern parades, demonstrations, rallies and assemblies, were enacted more than twenty years ago; and

WHEREAS, the statutory and judicial laws governing parades, demonstrations, rallies and assemblies have developed and are significantly different than law as it existed at the time of enactment; and

WHEREAS, current technology, communication and materials available have altered the manner in which such events occur, and the nature and level of the activity of those participating in such events have changed significantly since the enactment of the

current regulations; and

WHEREAS, in recent years, civil unrest and disturbance have occurred at events in many cities, accompanied in some instances by significant personal injuries and property damage, including injuries and damage caused by the use of various weapons and projectiles including some or all of those items specified in Section 2 of this Ordinance; and

WHEREAS, courts have recognized the right of jurisdictions to enact reasonable time, place and manner restrictions related to parades, demonstrations, rallies and assemblies while not restricting the First Amendment rights of groups and individuals wishing to express their views by such demonstrations, rallies and assemblies; and

WHEREAS, the regulations of the City of Los Angeles restricting the size, nature and shape of sign handles were recently upheld by the Ninth Circuit Court of Appeal. See: *Vlasak v. Superior Court*, 2003 U.S. App. LEXIS 9230. See also: *Edwards v. City of Coeur D'Alene*, 262 F.3rd 856 (9th Cir. 2001); *Foti v. City of Menlo Park*, 146 F.3d 629 (9th Cir. 1998); and

WHEREAS, the City of Miami wishes to ensure the safety and security of those viewing, attending, or participating in parades and assemblies, the residents and businesses, and the public officials and employees responsible for handling or overseeing such events on public property in the City of Miami to reduce or avoid the possibility of personal injury and property damage; and

WHEREAS, the City of Miami recognizes the First Amendment rights of those wishing to express their views, both individually and collectively, on issues addressed at or in future parades, protests, demonstrations, rallies; and

WHEREAS, based on information obtained by the City of Miami, it appears that potential exists for civil disturbance and unrest during certain upcoming events and it is appropriate for the City Commission to timely enact regulations to be in effect relating to such events to ensure the safety and well-being of individuals and property, while ensuring the First Amendment rights of those wishing to associate and to express their views, both individually and collectively; and

WHEREAS, it is the purpose and intent of the City of Miami, in enacting the regulations set forth in Section 2 of this Ordinance, to establish reasonable time, place and manner restrictions for parades and assemblies to ensure the safety and well-being of individuals and property, while at the same time ensuring the First Amendment rights of those wishing to associate and to express their views, both individually and collectively; and

WHEREAS, in enacting these regulations, the City is cognizant of recent court decisions that authorize the enactment of reasonable time, place and manner restrictions, and the City is also cognizant of its obligation not to improperly restrict the First Amendment rights of individuals and groups wishing to

associate and to express their First Amendment views on any and all issues, and to do so in a robust, vigorous manner; and

WHEREAS, the regulations in Section 2 of this Ordinance restrict only the types of materials that those participating in parades, demonstrations, rallies and assemblies may have in their possession, and do not interfere with their rights of association and expression; and

WHEREAS, the materials restricted or prohibited by Section 2 of this Ordinance have the potential to be used as weapons and to inflict personal and property damage, or to provide protection by preventing permitted law enforcement controls related to those participating in the use of such weapons and the infliction of personal and property damage, and the materials have been used for this purpose in events in other jurisdictions; and

WHEREAS, no First Amendment right exists to permit personal and property damage through use of these materials, and it is therefore, reasonable and appropriate to restrict possession of such materials as a prophylactic, reasonable time, place and manner regulation; and

WHEREAS, the City Commission has determined, that in the best interests of the citizens of the City of Miami, such regulations should sunset at Midnight on Thursday, November 27,

2003;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. Chapter 54 of the Code of the City of Miami, Florida, as amended, entitled "Streets and Sidewalks" is amended in the following particulars:

"CHAPTER 54
STREETS AND SIDEWALKS

ARTICLE I. IN GENERAL

* * * * *

Sec. 54-6.1. Parade and Assembly Prohibitions.

(a) Definitions.

The term "parade" shall mean any march, demonstration, procession, motorcade, or promenade consisting of persons, animals, or vehicles, or a combination thereof, having a common purpose, design, destination, or goal; upon any public place, which parade, march, demonstration, procession, motorcade, or promenade does not comply with normal and usual traffic regulations or control.

The term "assembly" shall mean any meeting, demonstration, picket line, rally, gathering, or group of three (3) or more persons, animals, or vehicles, or a combination thereof, having a common purpose, design, or goal, upon any public street, sidewalk, alley, park, or other public place, which assembly substantially inhibits the usual flow of pedestrian or vehicular travel or which

Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

occupies any public area, other than a parade, as defined above.

(b) The following prohibitions shall apply to all parades and demonstrations:

- (1) It shall be unlawful for any person at any parade or demonstration to carry or possess any weapon, as defined below. For purposes of this chapter, and notwithstanding any other provision of this code, "weapon" means any pistol, rifle, shotgun or other firearm of any kind, whether loaded or unloaded, air rifle, air pistol, paintball gun, paintball rifle, explosive, blasting cap(s), knife, hatchet, ax, slingshot, slungshot, blackjack, metal knuckles, mace, iron buckle, baseball bat, ax handle, chains, crowbar, hammer, shovel, stick, pole or other club or bludgeon or any other instrumentality customarily used or intended for probable use as a dangerous weapon.
2. It shall be unlawful for any person to carry or possess any sign, poster, plaque or notice unless such sign poster plaque, or notice is constructed solely of a cloth, paper or cardboard material no greater than one-quarter inch in thickness.
3. It shall be unlawful for any person to carry or possess any length of lumber, wood or wood lath unless it is one-fourth inch or less in thickness and two inches or less in width or if not generally rectangular in shape, such object shall not exceed three-quarters inch in its thickest dimension. Both ends of the length of lumber, wood or wood lath shall be blunt and shall not be pointed.
4. It shall be unlawful for any person to carry or possess any length of metal, plastic or other similar hard or stiff material, whether hollow or solid; provided that hollow plastic does not exceed three-quarter (3/4") inch in its thickest dimension, does not exceed one-eighth inch (1/8") in wall thickness and is not filled with any material, liquid, gas or solid, may be used to support a sign, banner,

placard or other similar display; however, both ends of the length of plastic material shall be blunt, and not pointed.

5. It shall be unlawful for any person to carry or possess glass bottles, glass jars or glass containers of any kind.
6. It shall be unlawful for any person to carry or possess balloons filled with any material or substance other than air, oxygen or helium. Prohibited materials and substances include, but are not limited to, water, paint, or any other liquid, solid, or other gas.
7. It shall be unlawful for any person to carry or possess solid golf balls, ball bearings, marbles, paint balls or other solid shapes made of rubber, plastic, metal, wood or any other similar hard substance, including batteries; provided that nothing is intended to prohibit the possession of bicycles, wheelchairs and other similar devices that include ball bearings or other as part of their structure; and, provided further, that nothing is intended to prohibit the possession of electronic, electrical or other devices that are battery-operated. The purpose of this subsection is to prohibit the possession of materials or devices that can be thrown or projected and can or may cause, or have the potential for causing, significant personal or property damage.
8. It shall be unlawful for any person to carry or possess bricks, stones, rocks, pieces of asphalt or concrete or pieces of other similar hard materials or substances that are capable of being thrown or projected.
9. It shall be unlawful for any person to carry or possess spray paint cans.
10. It shall be unlawful for any person to carry or possess any projectile launcher or other device which is commonly used for the purpose of launching, hurling or throwing any object, liquid, material or other substance, including, but not limited to, supersoakers

and watercannons. Nothing in this subsection is intended to prohibit or restrict those participating in parades, demonstrations, rallies or assemblies from possessing sufficient amount of water or other liquids designed and intended for human consumption during such events.

11. It shall be unlawful for any person to carry, possess or wear any gas mask or similar device designed to filter all air breathed and that would protect the respiratory tract and face against irritating, noxious or poisonous gases.
12. It shall be unlawful for any person to carry, possess or wear a bulletproof vest as that term is defined in Sec. 775.0846 Fla. Stat. (2003), or other improvised body armor. Improvised body armor is gear or attire worn for the purpose of enabling the wearer to engage or attempt to engage in unlawful activity.
13. It shall be unlawful for any person to carry or possess any Sleeping Dragon Device, with the intent to use the device to deny or obstruct the public's ability to freely move about on roadways, sidewalks, or into or out of buildings. For purposes of this subsection, a Sleeping Dragon Device shall mean a section of pipe, or a container, filled with weighted material, handcuffs, chains, carabiners or other locking devices utilized for the purpose of locking a person or persons to another person or persons or other objects.

Nothing in this section shall prohibit a disabled person from carrying, possessing or using a wheelchair, cane, walker, or similar device necessary for providing mobility so that the person may participate in a parade.

Nothing in this section is intended to authorize the possession or use of materials, weapons or devices that are otherwise prohibited by any other local, state or federal ordinance, statute or regulation. The purpose of this section is to prohibit the carrying or possession of items and materials that have the

potential to be used as weapons to cause physical or personal damage, and whose possession might not otherwise be prohibited by local, state or federal law.

* * * * *

Section 3. All ordinances or parts of ordinances insofar as they are inconsistent or in conflict with the provisions of this Ordinance are repealed.

Section 4. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 5. The provisions of this Ordinance shall sunset at Midnight on Thursday, November 27, 2003.

Section 6. This Ordinance shall become effective IMMEDIATELY after final reading and adoption thereof.^{2/}

PASSED ON FIRST READING BY TITLE ONLY this _____ day of _____, 2003.

^{2/} This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission or upon the effective date stated herein, whichever is later.

PASSED AND ADOPTED ON SECOND AND FINAL READING BY TITLE ONLY

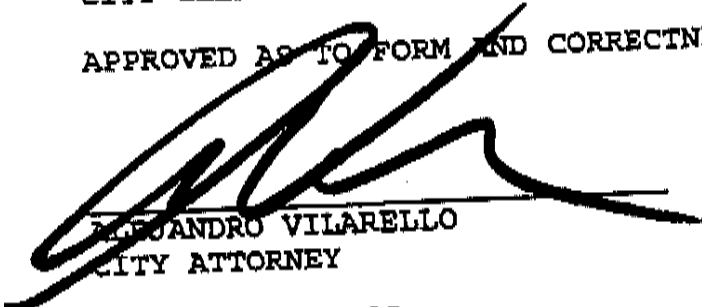
this _____ day of _____, 2003.

MANUEL A. DIAZ, MAYOR

ATTEST:

PRISCILLA A. THOMPSON
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS: 



ALEJANDRO VILARELLO
CITY ATTORNEY

W1524:GKW:et:BSS