

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-2406-CIV-ATKINS

MICHAEL POTTINGER, PETER  
CARTER AND BERRY YOUNG

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

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SETTLEMENT AGREEMENT

The Plaintiffs, MICHAEL POTTINGER, et al., and the class of Plaintiffs they represent (hereinafter collectively referred to as "Plaintiffs"), and the Defendant, THE CITY OF MIAMI (hereinafter "CITY"), by and through their respective undersigned counsel, agree to the complete settlement of this litigation, subject to the approval of this Court, on the following terms and conditions:

I. Introduction

1. This is a lawsuit by Plaintiffs against the CITY for violation of various civil liberties and constitutional rights pursuant to Title 42, U.S.C. section 1983 *et seq.* The lawsuit was filed in December, 1988. The district court certified this case as a class action lawsuit. *Pottinger v. City of Miami*, 720 F.Supp. 955 (S.D. Fla. 1989). On November 16, 1992, the district court entered its Findings of Fact and Conclusions and Order on Plaintiffs' Request for Declaratory and Injunctive Relief. *Pottinger v. City of Miami*, 810 F.Supp. 1551 (S.D. Fla. 1992). The district

court ruled that the CITY, through a municipal policy, violated various constitutional rights of the Plaintiffs, involuntarily homeless residents of Miami. Accordingly, this court enjoined the CITY from arresting Plaintiffs for the involuntary, harmless acts they were forced to perform in public and seizing and destroying the Plaintiffs' property without following its own procedures for handling found or seized property. *Id.* at 1584. The district court also directed the establishment of two or more arrest-free zones where the CITY would be enjoined from arresting homeless individuals for engaging in such harmless, involuntary conduct.

2. The City appealed the district court's judgment. Following briefing and oral argument, the Eleventh Circuit Court of Appeals remanded the case to the district court to make further findings of fact and to clarify its judgment. *Pottinger v. City of Miami*, 40 F.3d 1155 (11th Cir. 1994). On April 7, 1995, following an evidentiary hearing, the district court entered its Findings and Order on Limited Remand from the Eleventh Circuit Court of Appeals. The district court ultimately concluded that "[t]hough improvement in the overall situation is occurring via the [Dade County Homeless Assistance] Trust," "the salient facts of this case have not changed substantially . . . ." Thus, the district court determined that its original injunction should remain in effect with few modifications.

3. On February 7, 1996, following further briefing and oral argument, the Eleventh Circuit Court of Appeals entered its Interim Order referring this matter to its Chief Circuit Mediator for settlement discussions. *Pottinger v. City of Miami*, 76 F.3d 1154 (11th Cir. 1996). Accordingly, the parties have engaged in extensive settlement negotiations and have agreed to resolve each and every remaining issue in this case as set forth herein.

4. As a result of this lawsuit, the CITY has participated in a countywide effort to provide services and assistance to homeless people. In keeping with these past and ongoing efforts, the CITY is committed to ensuring that the legal and constitutional rights of all homeless persons be fully respected by all city policies, rules, regulations, practices, officials and personnel.

## II. Dismissal/Release

5. The parties agree that this lawsuit, including the three pending appeals, Case Nos. 91-5316, 92-5145, and 95-4555, will be dismissed with prejudice and without costs or attorneys fees (except such attorneys fees as are specifically provided for herein), subject to the terms of this Settlement Agreement and the District Court retaining jurisdiction to enforce this Settlement Agreement. Upon the District Court's approval of this Settlement Agreement, this Settlement Agreement shall operate as a general release of the CITY (including its agents, officers, and employees) for all claims of all class members between December 23, 1984, and the effective date of this Settlement Agreement for the types or kinds of injuries alleged in the Plaintiffs' Second Amended Complaint (docketed September 8, 1989) in this action. This release does not cover injuries suffered by class members which were outside the scope of the Plaintiffs' Second Amended Complaint (docketed September 8, 1989).

## III. No Admission of Liability

6. The CITY does not admit liability by virtue of entering into this Settlement Agreement.

## IV. Law Enforcement Training

7. The City agrees to implement, various forms of training (as specified herein) for its

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law enforcement officers for the purpose of sensitizing them to the unique struggle and circumstances of homeless persons and to ensure that their legal rights shall be fully respected. This training shall include, either (A & C) or (B & C) below, but not both A & B:

A. **Training and education provided at the School of Justice and Safety Administration at Miami Dade Community College - North Campus (hereinafter ACADEMY).** The CITY shall attempt to secure approval by the governing Board of the ACADEMY for training that includes instruction by academics, service providers, or homeless persons and shall focus on the causes of homelessness and the circumstances, needs, and rights of homeless persons.

B. **Post-Academy Training.** If the CITY is unsuccessful in securing approval by the governing Board of the ACADEMY for training that includes instruction by academics, service providers, or homeless persons focusing on the causes of homelessness, circumstances, needs, and rights of homeless persons, said training shall be taught in Post-Academy Training. This three week post-Academy course presently taught by the Miami Police Department, and any modification or change in the course to be incorporated in the future, shall include education and training similar to that specified above with an emphasis on local issues concerning homelessness in Miami and the City of Miami Police Department's law enforcement protocol (as set forth below).

C. **In-Service Training.** This training, including the Survival Training Course, roll calls, NOBLE training, and other formal/informal training, shall contain segments that focus on local homeless issues, the City of Miami Police Department's law enforcement protocol,

and current issues involving law enforcement, provision of services, and patterns of contact with homeless persons.

#### V. Adoption of Departmental Order

7. The City of Miami Police Department shall adopt a Departmental Order (D.O.) regarding the treatment of the homeless within the CITY which reflects the CITY's commitment to respect the rights of homeless people and implements the protocol which law enforcement officers must follow when they encounter homeless persons. This departmental order is attached as Exhibit A, and it may be revised from time to time to reflect future technical (non-substantive) changes in police procedures. This departmental order shall be circulated to, and read by, all City of Miami police officers within 30 days after this Settlement Agreement is approved by the district court. It shall also be read by all future City of Miami police officers in the course of their normal training.

#### VI. Compliance/Enforcement

9. The CITY hereby expressly adopts a policy as provided for herein to protect the constitutional rights of homeless persons, to prevent arrests and harassment of these persons, and the destruction of their property, inconsistent with the provisions of this Settlement Agreement. Any activities by a CITY police officer or other employee that are contrary to this policy shall cease immediately. Any CITY police officer or other employee of the CITY who is determined to be acting contrary to this policy or the protocol set forth in this Settlement Agreement shall be disciplined in accordance with CITY and/or CITY Police Department procedures. This policy statement and the law enforcement protocol set forth below shall be made a part of the

Departmental Order referenced above. Additionally, it shall be read by all other CITY employees with responsibilities regarding homeless people within 30 days of its issuance.

#### VII. Law Enforcement Protocol

10. Definition of "Homeless Person". An individual is considered a "homeless person" if he or she "lacks a fixed, regular, and adequate night-time residence and has a primary night-time residency that is: (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term 'homeless person' does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law." 42 U.S.C. §11301, et seq. (1994). An officer is allowed to make reasonable inquiry to make this determination.

11. Definition of "Available Shelter". An "available shelter" means a shelter, with a bed at no cost to the homeless person, within the territorial boundaries of the CITY or within one mile thereof, that treats homeless persons with dignity and respect, imposes no religious requirements, and does not impose involuntary substance abuse or mental health treatment.

12. Definition of "Public Property". "Public Property" includes all property owned by any governmental entity (federal, state or local). "Public Property" shall not include property which has become subject to a leasehold interest, management agreement or other possessory interest of a nongovernmental lessee, licensee or manager, which is operated as a private business. A public park shall always be considered public property within the meaning of

this Settlement Agreement.

12a. Definition of "Exempt Public Property. The following are "exempt public properties": (1) City of Miami, City Hall, 3200 Pan American Drive; (2) Miami Riverside Center, 444 S.W. 2<sup>nd</sup> Avenue; (3) City of Miami Fire Stations; (4) City of Miami Police Stations; and (5) City of Miami NET (Neighborhood Enhancement Team) Offices.

13. Purpose. It is agreed that a specified protocol is necessary to guide Miami police officers in their interactions and contacts with homeless persons. The protocol is a prescribed response when the police observe specified conduct or activity.

14. Law Enforcement Protocol: The City hereby adopts a protocol to further protect the rights of homeless persons, by limiting the circumstances under which arrests can be made, including the handling of their personal property:

**A. Homeless Person Observed Not Engaging in Any Criminal Conduct:**

There can be no arrest or detention. A law enforcement officer, social worker, or CITY outreach worker may approach the homeless person and advise him or her of shelter, services, or assistance which are then currently available. When the contact with the homeless person has been initiated by a "citizen's complaint," the law enforcement officer may, whenever appropriate, call for the assistance of an outreach worker, who, if available, may begin the process of engaging the homeless person in a dialogue which is intended to advise the homeless person of shelter, services or assistance that is/are available. **Required Records:** (1) If such an approach and advice concerning shelter, services, or assistance occurs by a law enforcement officer, the law enforcement officer shall complete a Field Information Card.

**Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

**B. Homeless Person Reasonably Believed to be Mentally Ill:**

Where a homeless person meets the criteria for involuntary examination under Florida Law (currently section 394.463, F.S.), "Baker Act," a law enforcement officer may, in his or her discretion, take the homeless person to a receiving facility for involuntary examination. **Required Records:** If the homeless person is taken to a receiving facility for involuntary examination, a copy of the forms required by section 394.463 (hereinafter "Baker Act Forms"), shall be filed with the Mental Health Crisis Center at Jackson Memorial Hospital and an Incident Report shall be completed. **Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

**C. Homeless Person Observed Violating a "Life Sustaining Conduct" Misdemeanor:**

1. "Life sustaining conduct" misdemeanors are those which a homeless individual commits by the mere fact that he or she is without shelter, and must conduct life sustaining activities, such as eating, sleeping, sitting, congregating, or walking in public.

2. If the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, the law enforcement officer may warn the homeless person to stop the unlawful conduct. If there is no "available shelter," no warning shall be given. If there is an "available shelter," the law enforcement officer may advise the homeless person of its availability. If there is an "available shelter," and the shelter has been



offered to the homeless person, and that person accepts this assistance, no arrest shall take place and arrangements shall be made to transport the homeless person to the shelter. Only if there is an "available shelter" and the homeless person refuses to accept the shelter, may the law enforcement officer arrest the homeless person for a "life sustaining conduct" misdemeanor.

**Required Records:** (1) If a homeless person is transported to an "available shelter," the law enforcement officer shall complete a Field Information Card; (2) If an arrest is made, an Arrest Affidavit shall be completed. **Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

3. The "life sustaining conduct" misdemeanors referenced above are as follows:

a. Being in park after hours. Current Provisions: §§38-3 & 1-13, City of Miami Code ("CMC"); §162.22, F.S. (1994);

b. Public nudity where necessary to carry on the daily necessities of life, such as bathing or responding to a call of nature. Current Provisions: §800.03, F.S. (1994), §37-1, 38-62, CMC.

c. Fires in parks. Current Provisions: §38-53 & 1-13, CMC; §162.22, F.S. (1994);

d. Obstructing passage on sidewalks. Obstructing a street, road, or highway shall not be construed to be a "life sustaining conduct" misdemeanor within the meaning of this protocol. Current Provisions: §§54-1 to 54-3, 37-3, CMC; §316.2045, F.S. (1994).

- e. Vehicles, living or sleeping in. Current Provision: §37-4, CMC;
- f. Loitering in Restrooms. Current Provision: §38-68, CMC;
- g. Littering. Current Provisions: §403.314, Fla. Stat.; §22-6, 38-17, 38-63 CMC; and
- h. Camping in parks. Current Provision: §38-71, CMC;
- i. Use of facilities for other than intended purpose (e.g., sleeping on park bench). Current Provisions: §38-54, CMC;
- j. Temporary structures in park. Current Provisions: §38-52, CMC;
- k. Trespass on "public property" other than structure or conveyance. Current Provision: §810.09(1), Fla. Stat. Trespass on private property or an "exempt public property" is not a "life sustaining conduct" misdemeanor within the meaning of this protocol, and such violation should always be treated either as specified under paragraph D or E below. A homeless persons' presence in the interior of an "exempt public property" is not a trespass within the meaning of this paragraph where the homeless person's activities are reasonably related to the governmental business activities normally performed within these physical structures.

4. Nothing in this paragraph discussing "life sustaining conduct" misdemeanors shall prevent an immediate arrest under §800.04, F.S., entitled, "Lewd, lascivious,

or indecent assault or act upon or in presence of child," if a law enforcement officer has probable cause to make such an arrest.

**D. Homeless Person Observed Violating a Misdemeanor (which is not classified above as "Life Sustaining Conduct"):**

1. The "non-life sustaining conduct" misdemeanors are those which a homeless individual commits, but are not associated with "life sustaining activities," such as eating, sleeping, sitting, congregating, or walking in public.

2. If the homeless person described above is observed violating a misdemeanor (which is not classified in this Protocol as "life sustaining conduct"), the law enforcement officer may warn the homeless person to stop the unlawful conduct, or, if the officer deems it appropriate, the officer may detain or arrest the homeless person. A law enforcement officer may, in his or her discretion, approach the homeless person and advise him or her of shelter, services or assistance which is then currently available. If the law enforcement officer deems it appropriate, he or she may also offer to call an outreach worker to the scene so that the homeless person can be transported to an "available shelter" that is appropriate for the homeless person's needs at that time. **Records required:** (1) If a homeless person is transported to an available shelter, the law enforcement officer shall complete a Field Information Card; (2) If an arrest is made, an Arrest Affidavit shall be completed; (3) If the law enforcement officer warns the homeless person to stop the unlawful conduct, but no arrest is made, then the law enforcement officer shall complete a Field Information Card; (4) If an approach and advice concerning shelter, services or assistance occurs by a law enforcement officer, or if an outreach worker is called, the

law enforcement officer shall complete a Field Information Card. **Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

**E. Homeless Person Committing Felony Offense:**

If a law enforcement officer has probable cause to believe that a homeless person is committing, or has committed, a felony, the law enforcement officer may detain or arrest the homeless person. **Required Records:** If an arrest is made, an Arrest Affidavit shall be completed. **Records Filing:** A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

**F. Disposition of Personal Property Belonging to a Homeless Person who is Arrested.**

1. The CITY shall respect the personal property of all homeless people. The Miami Police Department (and all other Departments including but not limited to Parks and Recreation and Solid Waste) shall follow their own internal procedures for taking custody of personal property. In no event shall any city official or worker destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e., bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned), except as permissible by law and in accordance with the department's operating procedure, or if the property is contaminated or otherwise poses a health hazard to CITY workers or to members of the public. Notwithstanding any language in this Settlement Agreement to the contrary, the CITY is not responsible for taking custody of mattresses.

2. The disposition of personal property shall never prevent a law enforcement officer from effectuating an arrest authorized under the previous sections of this protocol. However, the following safeguards shall be undertaken by the arresting officer or any other CITY agent or official to preserve the property of a homeless person, to the extent feasible:

a. The arresting officer shall always attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the arrestee, which are not large or bulky, in accordance with the police department's existing procedures;

b. The arresting officer shall ensure that large or bulky items (which are not contaminated or otherwise pose a health hazard to CITY officers or workers or to members of the public) are not abandoned at the point of arrest, but rather secured by an outreach worker and maintained in accordance with existing outreach procedures, or, if an outreach worker is unavailable, secured by the arresting officer until an outreach worker becomes available to assume its maintenance in accordance with existing outreach procedures.

#### **VIII. Record Generation/Maintenance/Access**

15. The CITY shall, within 30 days of the execution of this Settlement Agreement, adopt a procedure for monitoring and accounting for its police officers' encounters with the homeless persons. This procedure shall include the following:

(a). generating form records of all City of Miami police arrests and detentions

of homeless persons, and either entering them into a computer database or creating a paper data base;

(b). generating similar form records of all City of Miami police encounters with homeless persons as described in the above protocol and either entering them into a computer database or creating a paper data base. This Settlement Agreement shall not create any obligation on the part of a homeless person to produce any information to a law enforcement officer that would not otherwise be required of any other person.

(c). The records and statistics such as the number of arrests, detentions, and encounters which result in a warning or a referral; the nature of the underlying conduct; the ordinance or statute which formed the basis of the arrest, detention, or warning; and the number of actual referrals to homeless programs, if generated by the CITY, shall be provided to the members of the "Advisory Committee" (set forth below) as requested to monitor and ensure compliance with this Settlement Agreement."

(d). Within the limitations of the Florida Public Records Act, Chapter 119, Fla. Stat., access to other records, documents, and information relevant to this Settlement Agreement shall be readily available.

(e). The CITY shall preserve all existing arrest records relevant to class members making claims under the Compensatory Damages provisions of this Settlement Agreement for such period of time as is necessary to accomplish that goal.

#### **IX. Advisory Committee**

16. To ensure the CITY's compliance with this Settlement Agreement, there shall be

an Advisory Committee (hereinafter the "Committee"). The Committee shall consist of one person selected by the CITY, one person selected by the American Civil Liberties Union (hereinafter the "ACLU"), and a third person selected by the other two. The third person shall be someone with experience or expertise concerning homelessness in South Florida, but that individual shall not have been aligned with, or have testified on behalf of either party at any time during the pendency of this litigation. If any person selected refuses to serve, the selecting party or Advisory Committee members (whoever originally selected the member) shall have thirty (30) days to select another individual. If any member of the Committee resigns, the entity responsible for selecting the resigning member shall have ninety (90) days to select a replacement.

17. The members of the Committee shall serve as volunteers, without compensation, and strictly as a public service. They shall make every good faith effort to meet at the designated times and to carry out all responsibilities under this Settlement Agreement. The CITY shall provide reasonable copying and secretarial services (consistent with the functions of the advisory committee as set forth in this Settlement Agreement) and a meeting room.

18. The Committee shall remain in existence for a period of three (3) years following the date of the Court's approval of this Settlement Agreement, renewable for one three year period upon a majority vote of the Committee.

19. The responsibility of the Committee will be to monitor all police contacts with homeless persons, and other matters contemplated by this Settlement Agreement. These responsibilities shall be accomplished by interviewing homeless persons on the streets and in shelters, patrolling with police officers, accompanying CITY outreach workers in areas with high

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concentrations of homeless persons, observing the police training, reviewing the training curriculum, and reviewing information on file with the appropriate unit within the Miami Police Department, the City of Miami, regarding matters set forth in this Settlement Agreement.

20. The Advisory Committee shall also receive and investigate complaints by homeless persons who claim to have been aggrieved by the CITY's non-compliance with this Settlement Agreement and shall take appropriate responsive action, which may include, advising the aggrieved person and appropriate City officials of the validity of the claim, and making recommendations to the parties to prevent additional, similar grievances,

21. The Advisory Committee shall meet quarterly or more frequently as necessary to conduct its business, at a mutually acceptable date and time to the members. Three members of the Committee shall constitute a quorum. All decisions or other action of the Committee shall require a majority vote of the members. The meetings of the Committee shall be open only to the CITY and the ACLU. The Committee's business shall be kept confidential by the Committee members, who shall not discuss the Committee's business with anyone (including any members of the Press) but themselves or with the CITY and the ACLU, or other persons providing assistance to the Committee.

Additionally, the Committee shall issue a report every six months setting forth its activities for that reporting period. Every third year the Committee shall issue a summary report on its activities for that period and the CITY's compliance with this Settlement Agreement, and report to the parties on the need for its continuing existence.

22. If the Committee deems it appropriate, the Committee may advise the CITY Police



Department regarding the law enforcement protocol and police training set forth in this Settlement Agreement and may recommend to the parties any proposed changes.

22a. The Committee shall not have the authority to seek Court intervention into any matter concerned with this Settlement Agreement, and its recommendations shall not be binding upon the parties.

#### X. Compensatory Damages

23. As compensatory damages the CITY agrees to:

a. Create a Compensation Fund, which will be used to compensate members of the class (as amended, altered and modified in this Settlement Agreement) who between December 23, 1984, and the effective date of this Settlement Agreement, suffered the types or kinds of injuries alleged in the Plaintiffs' Complaint (as amended) in this action. Irrespective of the number of arrests or the number of times personal property may have been destroyed, a single individual member of the class may only participate in the compensation fund once, e.g., only one claim shall be allowed per person. The Compensation Fund shall be administered as follows:

(1). *Appointment of Magistrate.* A U.S. Magistrate shall be appointed by the Court to rule upon and determine objections to claims made pursuant to the procedure set forth herein.

(2). *Distribution of "Proof of Claim Forms."* Proof of Claim Forms may be obtained in person at the front reception desk of the CITY OF MIAMI Police Department, Central Station, 400 N.W. 2<sup>nd</sup> Avenue, Miami, Florida, and from all CITY NET (Neighborhood Enhancement Team) Offices, the City of Miami Office of Homeless Programs,

and the ACLU's Miami Office. Proof of Claim Forms shall be available by mail or telephone, or in person. They shall be made available in English, Spanish, and Creole. The Proof of Claim Forms shall be available as soon as practicable after the Settlement Agreement is approved, and shall be available during the entire 90 day period established by the Magistrate for the filing of claims.

(3). *Contents of Proof of Claim Form.* Class members who wish to file a claim ("claimants") shall be required to file Proof of Claim Forms (attached) providing details about their claim. The Proof of Claim Form (with Instructions) is attached as Exhibit "B" (English version). It may be revised if necessary to reflect the payment form and mechanism [See paragraphs 23(a)(4) and 23(a)(6)].

(4). *Filing of Proof of Claim Forms.*

(i). After selection of the Magistrate, the Magistrate will enter an order establishing the 90 day period during which claims may be filed with the Clerk of the Court for the Southern District of Florida, or in some other manner designated by the U.S. District Court. The 90 day period shall not be set to begin running until Proof of Claims Forms are available for distribution as specified in paragraph 23(a)(2) above. To be considered, all claims must be filed on a Proof of Claim Form. Both parties shall have access to the Proof of Claim Forms on file and shall have the right to make copies at their own expense. At the close of the 90 day period, the Magistrate shall notify the parties of the number of claims filed during the 90 day period and make them available for photocopying at their own expense. The Court or the Clerk shall release the claims forms (and all supporting documentation) to a third party

photocopying service, e.g., Black's Photocopy Service, for reproduction on behalf of either the ACLU or the CITY.

(ii). Prior to filing, upon presentation of a Proof of Claim Form to the public window of the Records Unit of the City of Miami Police Department, Central Station, including the name and date of birth of the claimant, the Records Unit shall provide certified copies of all arrests records (from December 23, 1984 through the effective date of this Settlement Agreement) on file with the City of Miami Police Department concerning the claimant to the claimant at no charge. These records shall also be made available at no charge through request by mail with an accompanying copy of the Proof of Claim Form. In addition, at the same time and place, and under the same conditions, the CITY shall make available to homeless persons for free the services of a notary public for the purpose of notarizing the signature of the claimant.

(iii). All claims against the Compensation Fund must be filed within the 90 day period established by the Magistrate, or be forever barred.

(iv). Each Proof of Claim Form filed shall be verified under penalty of perjury by the claimant (or, where applicable, the claimant's representative).

(5). *Determination of Claims*

(i). Objections:

(a) The CITY may file an objection to any claim only as follows:

[1]. The claimant or the injured person is not who he or she claims to be.

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- [2]. The claim was not timely filed;
- [3]. The claim was not signed, or verified;
- [4]. The claim was withdrawn by the claimant;
- [5]. The claimant has filed more than one (1)

claim [see paragraph 23(a)];

[6]. The claimant's proof of membership in the class is insufficient; and

[7]. The claimant's proof of injury at the hands of a CITY official or employee is insufficient; and

[8]. The claimant's proof that he suffered an injury of the type and kind alleged in Plaintiffs' Second Amended Complaint (docketed September 8, 1989) in this action is insufficient.

(ii). The CITY shall have 20 days (as computed by the Federal Rules of Civil Procedure) from the date the parties are notified by the Magistrate at the end of the 90 day period established for the filing of Proof of Claim Form, to present objections to any claim filed with the Magistrate. The CITY shall mail a copy of the objection to the ACLU and to the claimant at the mailing address given on the Proof of Claim Form. At the close of the 20 day period, the Magistrate shall make the objections available for inspection and/or photocopying at the ACLU's own expense. The Court or the Clerk shall release the objections (and all supporting documentation) to a third party photocopying service, e.g., Black's Photocopy Service, for reproduction on behalf of the ACLU.

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(iii). The Magistrate shall determine the validity of all claims upon the written record upon such terms and under such conditions as the Magistrate deems just.

(iv). The Magistrate shall accept the validity of any claim as to which no timely objection has been filed by the CITY. Upon the Magistrate's acceptance of a claim as to which no objection has been filed, the Magistrate shall so notify the parties and the claimant (or his representative, if any). The notice shall contain the following information:

(a). The Magistrate's acceptance of the claim because of a lack of objection;

(b). the entitlement of the claimant to an award (as set out below); and

(c). Where and how the award can be collected.

(v). In the case of a timely objection to a claim, the determination of the validity of the claim shall be made by the Magistrate.

(a). The Magistrate shall do so on the basis of the written record unless he or she determines that an interview or discussion with the claimant (and the claimant's representative, if any) is necessary. If the Magistrate determines that such an interview or discussion is necessary, the Magistrate shall set it at a time, date, and place that is feasible for the claimant, and, if at all possible, confirm its feasibility with the claimant. For claimants who reside outside Dade or who are otherwise unable to be personally present, the Magistrate shall have the discretion to conduct an interview by telephone. The Magistrate shall notify the parties to this Consent Decree of the date, time, and place of the meeting or interview,

and the parties shall have the right to be present and informally present arguments and evidence.

(b). In determining whether to accept a claim to which a timely objection has been filed, the Magistrate should seek to ensure that compensation is reserved for claimants rightfully entitled to receive it, taking into account that documentation of claims should be no more burdensome than necessary to implement the settlement and that the amount and specificity of evidence that might be needed to establish injury at trial is not required.

(vi). If the Magistrate accepts a claim as valid, notwithstanding the CITY's objection, then the Magistrate shall so notify the parties and the claimant (or his representative, if any). The CITY may move for reconsideration within 15 days. The notice shall contain the following information:

(a). The Magistrate's acceptance of the claim, and the reason for overruling the objection;

(b). the entitlement of the claimant to an award (as set out below); and

(c). Where and how the award can be collected.

(vii). If the Magistrate rejects a claim, then the Magistrate shall so notify the parties and the claimant (or his or her representative, if any). The claimant may move for reconsideration within 15 days. The notice shall contain the following information:

(a). The Magistrate's rejection of the claim and the reasons for rejecting it; and

(b). The right of the claimant to move for

reconsideration within 15 days. This notice shall be displayed prominently in bold typeface, and shall also include a notice that the claimant may contact the ACLU immediately for assistance. The notice shall have the telephone number for the ACLU.

(viii). The decisions of the Magistrate shall be final, with no right of appeal or reconsideration other than provided for hereinabove.

(6) *Awards:*

(i). If the CITY is able to devise and implement a "debit card" program by the date this Settlement Agreement is approved, then each successful claimant shall be awarded a debit card in the amount of \$1,500.00. Such debit cards shall be accessible by a nationally recognized card such as Visa or Mastercard, widely accepted by merchants, and will be set up to be used for purchases but not cash withdrawals or advances. Administrative costs of setting up and administering the accounts shall be born by the CITY.

(ii). If the CITY is not able to devise and implement a "debit card" program by the date of this Settlement Agreement is approved, then each successful claimant, shall be awarded damages in the form of \$1,250.00 in cash or \$1,500.00 in non-cash awards, as provided herein.

(iii). *Cash Payments.* Successful claimants who are no longer homeless shall qualify for a lump-sum cash payment of \$1,250.00. Whether a claimant is no longer homeless shall be determined by the Magistrate pursuant to the same procedures for the determination of claims. A successful claimant who was homeless at the time the Proof of Claim Form was filed, but is no longer homeless by the time awards are distributed, may execute a Form

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(Exhibit "C") so indicating. The CITY shall have 15 days to object to the truthfulness of the information in that Form, in which case the Magistrate shall make the final determination whether the successful claimant is no longer homeless. Cash payments shall be made by check payable to the claimant. Claimants who qualify for a lump-sum cash payment of \$1,250.00 may choose instead to participate in the non-cash program described below.

(iv). *Non-cash Program.* Successful claimants who do not qualify for cash payments (or who so qualify but choose instead to participate in the non-cash program) shall participate in a non-cash program as described herein. Such claimants shall be given vouchers for food, clothing, housing, or travel, or may have third party payments made on their behalf, in the amount of \$1,500.00 per participating claimant. Administrative costs of setting up and administering the voucher and third party payments shall be born by the CITY. However, if a non-cash program complying with all the requirements set out in paragraph 23(a)(6)(iv)(a-e) below cannot be devised by the date the Proof of Claims Forms are made available to claimants, then all successful claimants shall receive cash payments of \$1,500.00 each. If a non-cash program complying with all such requirements except for that set out in paragraph 23(a)(6)(iv)(d) below is devised by the date the Proof of Claims Forms are made available to claimants, then successful claimants who are homeless and reside outside Miami shall receive cash payments of \$1,500.00 each.

(a). In establishing the voucher program, the CITY shall provide vouchers or certificates for food or clothing at easily accessible stores such as but not limited to Publix, Winn-Dixie, K-Mart, Burdines, or similar establishments who agree to



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participate. The program shall also provide for vouchers or vendor payments for claimants to use at apartments, residential hotels, SRO dwellings, or similar establishments. The CITY shall make a good faith effort to persuade clothing, food, and department stores and housing providers to participate in the voucher program.

(b). The voucher program shall be designed so that the claimant is not narrowly limited by store or location. The vouchers shall be valid at stores, apartments, etc., within the territorial boundaries of the City of Miami, and at such additional locations in the Dade County Metropolitan Area as are appropriate.

(c). Claimants may take part of their voucher entitlement in the form of third party payments by the CITY on behalf of the claimant. Such payments shall be made only for a debt owed by the claimant himself or herself or for a transaction in which the claimant is the purchaser of goods or services. Third party payments shall only be made for legal debts and purchases, to establish merchants, financial institutions, and other established providers of goods and services (e.g., landlords).

(d). The voucher and third-party payment program shall be designed so that it satisfies the needs of successful claimants who do not qualify for cash and who live outside Miami, in a fashion comparable to those who live in Miami.

(e). Claimants shall be entitled to choose the mix of types of vouchers (food, clothing, housing travel) or third party payments they prefer.

(7). *Payment of Awards/Releases.* The CITY's Office of Homeless Programs (OHP) shall distribute the cash and non-cash awards. The vouchers shall be distributed

in such a manner as to discourage their being bartered, sold, or otherwise used by anyone but the claimant. The distribution of cash awards shall begin immediately after all claims have been so determined (including the expiration of the time for reconsideration). The non-cash program shall begin thirty days after all claims have been finally determined including the expiration of the time for reconsideration). In no event shall cash or non-cash awards be distributed earlier than January 5, 1998. Prior to distribution of any cash or non-cash award, the claimant shall execute a full release in the form attached as Exhibit "D" of the CITY, including all CITY agents, officials and employees, for all claims between December 23, 1984, and the effective date of this Settlement Agreement for the types and kinds of injuries alleged in Plaintiffs' Second Amended Complaint (docketed September 8, 1989) in this action. This release does not cover injuries suffered which were outside the scope of Plaintiffs' Second Amended Complaint (docketed September 8, 1989). The release may be revised if necessary to reflect the payment form and mechanism [See paragraphs 23(a)(4) and 23(a)(6)].

(8). *Amount of Fund.* In no event shall the City's aggregate responsibility under the Compensation Fund for all claims exceed \$600,000. If the cash and non-cash value of all valid claims exceeds \$600,000, claimants with valid claims shall be awarded a *pro rata* share of the \$600,000 compensation fund, notwithstanding the specific amounts specified above.

b. If the total value of all valid claims is less than \$600,000, the City will create a "Start Off Fund." The total amount of the Start Off Fund will be the difference between \$600,000 and the total value of all claims awarded from the Compensation Fund. Payments from

he Start Off Fund will be made in the form of vendor payments not to exceed \$1,000.00 per person. They will be available to any homeless person or homeless family in Miami to help achieve permanent housing (e.g., to pay for rent, security and utility deposits, clothing furniture, or other necessities of life). The Advisory Committee will determine the guidelines for payment from the Start Off Fund. The actual amount to be received by any given person or family group shall be determined by the City's Office of Homeless Persons, following such guidelines. Funding for the Start Off Fund shall be appropriated thirty days following the disposition of all claims by the Magistrate, including any requests for reconsideration, but not earlier than January 5, 1998. The funds from the Start-Off Fund shall be paid out within two years of the effective date of this Settlement Agreement. The CITY's Department of Internal Audits shall perform an audit of the Start-Off Fund program at its conclusion, and plaintiffs and their counsel shall be entitled to a copy of that audit. In addition, the books and records of the Start-Off Fund program will be available to plaintiffs and their counsel at any time during regular government business hours.

#### IX. Attorney Fees

25. The underlying litigation has spanned nearly ten years, during which there were two trials and numerous other hearings before the district court, two appeals including two oral arguments before the Court of Appeals for the Eleventh Circuit, as well as extensive court-ordered negotiations and mediation between the parties spanning eighteen months, all requiring substantial commitments of time and professional services on the part of more than ten attorneys for the plaintiffs over this period of time. In light of the foregoing, and considering similar payments of attorneys fees to plaintiffs' counsel in other civil rights cases, the City shall pay to the

Plaintiffs' attorneys the sum of \$900,000 (plus interest as provided for herein) as and for attorneys fees and costs, without any admission of liability to pay such fees, but rather, as a part of the comprehensive settlement to be adopted through the implementation of this Settlement Agreement. Additionally, said payment is made to conclude all claims for attorneys fees in the underlying litigation, including pending appeals, and in regard to all other matters connected with this Settlement Agreement, except enforcement proceedings, should such become necessary after non-binding mediation as provided for below.

The parties agree that the \$900,000.00 (together with interest at rate payable on federal judgments on the date this Consent Decree is approved by the Court) shall be paid within one year of the effective date of this Settlement Agreement. If this payment is not made on time in its entirety, the entire amount including interest, and any further attorneys fees necessary for collection, shall be awarded by the District Court.

#### **X. Enforcement/Mediation**

25a. Prior to any party seeking court enforcement against any other party to this Settlement Agreement, the parties shall attempt to informally mediate a dispute in a non-binding mediation. During the existence of the Advisory Committee, the Advisory Committee shall appoint one of its members to act as the mediator. After the expiration of the Advisory Committee, unless the parties can agree upon a mediator, the aggrieved party shall notify the Court for the need for the appointment of a mediator, and the Court shall appoint a mediator from its list of approved mediators, the cost of which shall be borne by the CITY. Mediation shall take place within ten (10) days of a request made by either party to the other party. This requirement

to mediate prior to seeking court enforcement shall not prevent a party from seeking immediate court enforcement if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss or damage will result to the aggrieved party before the aggrieved party and the other party can conduct mediation as contemplated in this paragraph.

## XII. Class Approval/Notice to Class Members

26. The class certified in *Pottinger v. City of Miami*, 720 F.Supp. 955, 960 (S.D. Fla. 1989), shall be amended, altered and modified under Rule 23(c)(1), Fed. R. Civ. Proc., to consist of all homeless persons who reside, have resided, or will reside on the streets, sidewalks, parks, and in other public places within the geographical boundaries of the City of Miami, who have been, expect to be, or will be in contact with members of the City of Miami Police Department.

27. Notice to the class of the amendment, alteration and modification of the class, and of this proposed Settlement Agreement, pursuant to Rule 23(e), Fed. R. Civ. Proc., shall be given simultaneously by publication in *The Miami Herald*, *El Nuevo Herald*, *Miami Times*, and *New Times*, on three different days, including one weekend day, of three consecutive weeks, which shall not be less than a 1/3 page in the Local (Locales) section of each paper, to maximize the chance of actual notice to the class members. The costs of such notices shall be borne by the CITY. The notice shall advise class members of the status of this case, and describe, generally, the proposed settlement and monetary relief available to class members, and how to obtain it, including where Proof of Claims Forms will be available after approval of the Settlement Agreement. The notice shall be subject to court approval. Class members shall have 30 days following the final notice within which to file any written objections to the Settlement Agreement.

The court shall convene a hearing at the convenience of its calendar, but at least 30 days thereafter to consider any such objections after which the court shall approve or disapprove the Settlement Agreement. The notice shall state the date, time, and location of this hearing. The Court shall set the date for the hearing to consider objections at the time it approves the content of the notice.

**XIII. Reserved**

28. [Reserved].

**XIV. Court Approval**

29. This Settlement Agreement shall not be effective until approved by the Court, after the hearing described in Section XII above, which, upon approval, shall become the Settlement Agreement between the parties. The Court shall retain jurisdiction to enforce the terms hereof.

**XV. Modification**

30. This Settlement Agreement may be modified by written agreement of the parties, or upon a showing of a significant change of circumstances warranting revision of the Agreement in a way suitably tailored to the change of circumstances, but in either event, only after approval by the Court.

**XVI. Integration Clause**

31. This Settlement Agreement, including the attached exhibits as listed below, contains the entire agreement of the parties, and supersedes all previous oral or written representations or agreements. This Settlement Agreement shall not be supplemented by parol evidence.

SETTLEMENT AGREEMENT  
CASE NO.: 88-2406-CIV-ATKINS

- Exhibit A: Departmental Order
- Exhibit B: Proof of Claim Form, with Instructions (English Version)
- Exhibit C: Verified Statement regarding Current Status
- Exhibit D: Release

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## HOMELESS

Section

- 9.1 Policy
- 9.2 Organization
- 9.3 Responsibility
- 9.4 Mission
- 9.5 Definitions
- 9.6 Procedures
- 9.7 Property

9.1 POLICY: It is the policy of the City of Miami Police Department to ensure that personnel are sensitive to the needs and rights of our Homeless population, as well as knowledgeable of the department's arrest policies concerning such persons.

9.2 ORGANIZATION: The City of Miami has a policy that we shall not arrest visibly homeless persons who live in public for performing acts, criminalized as misdemeanors, such as sleeping, eating, lying down, or sitting in public, when there is no available shelter. It is not a crime to be homeless. This policy should not be construed as protecting persons (whether homeless or not) from arrest for engaging in any other type of criminal activity.

9.3 RESPONSIBILITY: It is the responsibility of all City of Miami Officers whether working in an on-duty or off-duty capacity to abide by this Departmental Order.

9.4 MISSION STATEMENT: We must continue to vigorously do our job and enforce the laws which were enacted to ensure a safer community, while extending compassion for homeless persons.

9.5 DEFINITIONS:

9.5.1.1 A "homeless person" An individual is considered a "homeless person" if he or she "lacks a fixed, regular, and adequate night-time residence and has a primary night-time residency that is: (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for



human beings. The term 'homeless person' does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law." An officer is allowed to make reasonable inquiry to make this determination.

9.5.1.2 An "available shelter" means a shelter, with a bed at no cost to the homeless person, within the territorial boundaries of the CITY or within one mile thereof, that treats homeless persons with dignity and respect, imposes no religious requirements, and does not impose involuntary substance abuse or mental health treatment.

9.5.1.3 "Public Property": "Public Property" includes all property owned by any governmental entity (federal, state or local). "Public Property" shall not include property which has become subject to a leasehold interest, management agreement or other possessory interest of a nongovernmental lessee, licensee or manager, which is operated as a private business. A public park shall always be public property within the meaning of this definition.

9.5.1.3.1 "Exempt Public Property": The following are "exempt public properties": (1) City of Miami, City Hall, 3200 Pan American Drive; (2) Miami Riverside Center, 444 S.W. 2<sup>nd</sup> Avenue; (3) City of Miami Fire Stations; (4) City of Miami Police Stations; and (5) City of Miami NET (Neighborhood Enhancement Team) Offices. A homeless persons' presence in the interior of an "exempt public property" is not a trespass within the meaning of 9.6.2.3.3 (11) where the homeless person's activities are reasonably related to the governmental business activities normally performed within these physical structures.

## 9.6 PROCEDURES

9.6.1 An officer always has the right to approach any individual, including a homeless person, to allay any suspicions an officer may have about the individual, and ascertain that no criminal activity is occurring.

9.6.2 At any time, and for any reason, a law enforcement officer may approach a homeless person, who has not been observed engaging in any criminal conduct, to advise him or her of shelters, services, or assistance which are currently available. The officer may also call for the assistance of an outreach worker. The homeless person may or may not accept the advice or referral, or he/she may even walk away from the area prior to the outreach worker arriving. The rationale is to proactively have an outreach worker address the homeless person with referrals. If such an approach and advice occurs by a law enforcement officer, that officer shall complete a Field Information Card with the facts of the incident, the referral and indicate at the top of the card "Homeless". A copy of which shall be filed with the Records Unit within the Miami Police Department.

9.6.2.1 A law enforcement officer may, in his or her discretion, when coming into contact

with a homeless person which he or she reasonably believes to be mentally ill, take the homeless person to a receiving facility for involuntary examination where the criteria for involuntary examination under section 394.463 F.S. (Baker Act) have been satisfied. If the homeless person is taken to such a receiving facility for involuntary examination, a copy of the "Baker Act Forms shall be filed with the Mental Health Crisis Center at Jackson Memorial Hospital. In addition, the officer shall complete an Incident Report with the facts of the incident and indicate at the top of the report "Homeless". A copy of which shall be filed with the Records Unit within the Miami Police Department.

9.6.2.2 If a homeless person is observed violating a "Life Sustaining Conduct" misdemeanor (as listed under 9.6.2.2.4), the law enforcement officer may exercise the following courses of conduct.

9.6.2.3 If an officer determines that an individual is a homeless person, and through his observation determines that a "Life Sustaining Conduct Misdemeanor" (as they are listed under 9.6.2.2.4) is occurring in his presence, he must first check to see if there is an "available shelter." The officer will contact the communications unit, who in turn will contact the Homeless Outreach Program at (305) 579-6835, to ascertain if there is an "available shelter." If there is an "available shelter," the officer will offer the shelter to the homeless person in lieu of being arrested. If the homeless person chooses shelter rather than arrest, an Outreach Team (if available) will respond to transport the homeless person to the shelter. If the Outreach Team is not available, the officer shall transport the homeless person to the shelter. If the homeless person is transported to a shelter, the officer will complete a Field Information Card with the facts of the incident and indicate at the top of the card "Homeless". A copy of which shall be filed with the Records Unit within the Miami Police Department.

9.6.2.3.1 If the officer has probable cause to arrest the homeless person for a "Life Sustaining Conduct Misdemeanor" (as they are listed under 9.6.2.2.4), there is an "available shelter," and the homeless person refuses the shelter, the officer may arrest the homeless person. The officer must document on the A form, beyond the probable cause for the arrest, the offer of shelter, the refusal by the homeless person to accept the "available shelter," the name of the shelter, and the word "Homeless" should be written at the top of the Arrest Affidavit. A copy of the Arrest Affidavit will be forwarded to the Miami Police Records Unit.

9.6.2.3.2 If the officer has probable cause to arrest the homeless person for a "Life Sustaining Conduct Misdemeanor" (as they are listed under 9.6.2.2.4), and there is no "available shelter," the officer shall not make an arrest nor take any other police action (warnings, etc.) The officer will complete a Field Information Card explaining the circumstances of the initial contact with the homeless person, the fact that there was no "available shelter," the fact that no arrest was made and the word "Homeless" should be written at the top of the card. A copy of the Field Information Card will be forwarded to

the Miami Police Records Unit.

9.6.2.3.3 "Life Sustaining Conduct Misdemeanors" are the following:

1. Being in park after hours. Current Provisions (38-3 & 1-13, FS 162.22)
2. Public nudity where necessary to carry on the daily necessities of life, such as bathing or responding to a call of nature. Current Provisions (FS 800.03, 37-1, 38-62)
3. Fires in parks. Current Provisions (38-53, 1-13, FS 162.22)
4. Obstructing passage on sidewalks. Obstructing a street, road, or highway shall not be construed to be a "life sustaining conduct" misdemeanor within the meaning of this Departmental Order. Current Provisions (54-1 to 54-3, 37-3, FS 316.2045)
5. Vehicles, living or sleeping in. Current Provision (37-4)
6. Loitering in Restrooms. Current Provision (38-68)
7. Littering. Current Provisions (FSS 403.314, 22-6, 38-17, 38-63)
8. Camping in parks. Current Provision (38-71)
9. Use of facilities for other than intended purpose (e.g., sleeping on park bench). Current Provisions (38-54)
10. Temporary structures in park. Current Provision (38-52)
11. Trespass on "public property" other than structure or conveyance. Current Provision (FS 810.09(1)) Trespass on private property or in an "exempt public property" is not a "life sustaining conduct" misdemeanor within the meaning of this Departmental Order

9.6.2.3.4 Nothing in 9.6.2.3.3 listing the "Life Sustaining Conduct Misdemeanors" shall prevent an immediate arrest under 800.04 FS entitled "Lewd, lascivious, or indecent assault or act upon or in presence of a child," if the officer has probable cause to make such an arrest.

9.6.2.3.5 Homeless persons observed violating a misdemeanor, which is not classified above as a "Life Sustaining Conduct Misdemeanor." Under this category the existence of an "available shelter" would not dictate whether an arrest is effected. However, officers can still refer homeless persons to the Outreach Team. A referral to an appropriate shelter, rather than an arrest might be a better solution to minor misdemeanor arrests. The officer may warn the homeless person to stop the unlawful conduct, or, if the officer deems it appropriate, the officer may detain or arrest the homeless person. If the homeless person is arrested, the word "Homeless" should be printed on the top of the "A" form, a copy of which shall be filed with the Records Unit within the Miami Police Department. If the officer makes a decision not to make an arrest, and a referral is made, then the officer shall complete a Field Information Card with the facts of the incident, the referral, and indicate at the top "Homeless," a copy of which shall be filed with the Records Unit within the Miami Police Department.

9.6.2.3.6 If an officer has probable cause to believe that a homeless person is committing, or has committed, a felony, our current arrest procedure stay the same. The law enforcement officer may detain or arrest the homeless person. The officer shall make the notation of "Homeless" on the top of the Arrest Affidavit, a copy of which shall be filed with the Records Unit within the Miami Police Department.

## 9.7 PROPERTY

9.7.1 The City shall respect the personal property of all homeless persons. Officers shall follow existing policies for taking custody of personal property. In no event shall any officer destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person unless it is contaminated or otherwise poses a health hazard to an officer or to members of the public. Officer are not responsible for taking custody of mattresses.

9.7.2 The disposition of personal property shall never prevent an officer from effectuating an arrest. However, the following safeguards shall be undertaken by the arresting officer to preserve the property of the homeless person, to the extent feasible:

9.7.2.1 The arresting officer shall always attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the homeless person, which are not large or bulky, in accordance with the police department's existing procedures;

9.7.2.2 The arresting officer shall ensure that large or bulky items (which are not contaminated or otherwise pose a health hazard to the officer or to members of the public) are not abandoned at the point of arrest, but rather secured by an outreach worker and maintained in accordance with existing outreach procedures. If an outreach worker is unavailable, then it must be secured by the arresting officer until an outreach worker becomes available to assume its maintenance in accordance with existing outreach procedures.

9.7.3 In no event shall any officer destroy any personal property known to belong to a homeless person (i.e. clothing and other belongings organized or packaged together in a way indicating it has not been abandoned) except as permissible by law (in accordance with the department's operating procedures), or if the property is contaminated or otherwise poses a health hazard to officers or to members of the public.