

June 24, 2020

Honorable Mayor Francis Suarez
Honorable City of Miami Commission Chair Keon Hardemon
Honorable Miami City Attorney Victoria Méndez

RE: Proposed “Regulations for Street and Public Large Group Feedings”

Dear Mayor Suarez, Chair Hardemon, and City Attorney Méndez:

We, undersigned ACLU cooperating attorneys, Pottinger Class Representative, the Greater Miami Chapter of the ACLU of Florida, Southern Legal Counsel, the National Law Center on Homelessness and Poverty, and other stakeholders, express our strong opposition to the proposed municipal ordinance restricting the public service of food to persons experiencing homelessness in Miami. The proposed “Regulations for Street and Public Large Group Feedings” ordinance:

- would effectively serve as an unlawful ban on all public food service to the homeless throughout the City,
- has an impermissible disparate impact upon protected racial, disabled, and elderly groups of homeless individuals,
- unlawfully infringes upon federal and state constitutional and statutory rights of charitable groups that serve food to the homeless, and
- is simply cruel and inhumane, given its proposed implementation at the height of the COVID-19 pandemic and the extant economic crisis in the City of Miami.

The City of Miami should invest in constructive alternatives to end homelessness, instead of punishing unhoused persons and the charitable organizations that seek to feed the poor. We urge the Miami City Commission to reject consideration of this ill-conceived ordinance, and not waste limited public resources on unnecessary and unwanted litigation.

We first note that although the proposed ordinance purports to regulate organizations who are sharing food, it is evident that the real goal is to interfere with homeless people’s ability to access food and other necessities of life in the public places where they are forced to live. Thus, the proposed ordinance marks

a return to the same type of unconstitutional policies that Judge Atkins denounced in his 1992 *Pottinger* opinion:

Like the anti-sleeping ordinances, the City's enforcement of laws that prevent homeless individuals who have no place to go from sleeping, lying down, eating and performing other harmless life-sustaining activities burdens [fundamental rights].

Pottinger v. City of Miami, 810 F.Supp. 1551, 1580 (S.D. Fla. 1992).

During the current economic crisis and resultant reduction in food services to the poor, it is likely that *all* organizations that serve food to the homeless would attract at least 25 hungry persons, thus always triggering the operation of the proposed ordinance whenever anyone seeks to feed the poor. Given the proposed ordinance's severe restrictions on the sites, instances and times in which food can be served to the homeless, this ordinance would therefore effectively operate as an unlawful ban on serving food to the vast majority, if not all, of the homeless throughout the entire City.

Worse, the proposed ordinance would have an impermissible disparate impact on African-Americans who comprise nearly 60 percent of Miami-Dade County's homeless population, as well as a disparate impact on persons with disabilities. The description of the City's legislative intent reveals this discriminatory purpose, suggesting that homeless people gather, live and sleep in areas of the City where people share free food – but it's the other way around. People share food in places where people experiencing homelessness already live.

By cutting off food sources in those areas where the homeless live, the City would create a humanitarian crisis for Black and disabled individuals. Exhibit B to the proposed ordinance designates five “feeding locations” in downtown Miami far away from the majority Black homeless encampments located in the Overtown neighborhood at NW 10th and 11th Streets between NW 3rd and 5th Avenues (which was also the site of an unlawful May 13, 2020 encampment sweep) and NW 17th Street between NW 5th and 9th Avenues. The large number of Black, elderly and disabled individuals experiencing homelessness within these encampments cannot travel to these arbitrary “designated feeding locations” set by the City Manager.

It appears that it is no accident that this ordinance would impermissibly target the Black and disabled homeless populations, given a Miami City Commissioner's coded dog-whistle references to "those people" versus "regular people" at the April 30, 2020 Miami City Commission Special Meeting on homelessness policy, at which the City Attorney was then directed to draft the ordinance. That same Commissioner then "joked" about giving the homeless money and one-way bus tickets out of town.

Moreover, the proposed ordinance would violate charitable organizations' First Amendment Rights to free speech and free association. The targeting of charitable, political, and religious organizations who share food with homeless and hungry people in Miami violates constitutional rights, including freedom of expression, association, and religion. *See Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1243 (11th Cir. 2018) (political group's food sharing with homeless persons in city park is protected expressive conduct under the First Amendment, observing "the significance of sharing meals with others dates back millennia."); *Abbott v. City of Fort Lauderdale*, 783 So.2d 1213, 1214 (Fla. 4th DCA 2001) (City's park rule prohibiting food sharing violated religious organization's rights under the Florida Religious Freedom Restoration Act).

The proposed ordinance is not narrowly tailored to address a legitimate or compelling government interest in protecting public safety or health. Although the preamble to the ordinance cites a January 9, 2020, determination by the Florida Department of Health ("DOH") of a sanitary nuisance at 22 E. Flagler Street, *that complaint was actually initiated by the Director of the City's own Department of Human Services*. It is remarkable that instead of providing adequate sanitation and trash services to the 50-70 homeless individuals living near 22 West Flagler Street – as the CDC recommends for those residing within homeless encampments – the City simply initiated a DOH investigation into its own failure to provide for people in extreme need during this pandemic.

It is utterly disingenuous for the City to cite its own abdication of its duty to protect public health as a justification to ban food service to the homeless.

To protect public health without violating constitutional rights, the City could simply place handwashing stations and well-maintained trash receptacles in

the areas in which charitable organizations presently serve food to the homeless. Instead, by requiring that charitable groups obtain permits in advance, restricting the number of permits that an organization can obtain within a certain time period, and limiting when and where an organization can serve food in public spaces, the proposed ordinance would do nothing to advance the stated need to protect public safety or health. Its burdensome requirements and civil fines operate only as punitive measures to inhibit organizations' efforts to feed the poor.

More troubling, the proposed ordinance grants the Miami City Manager unbridled discretion to change the "designated feeding locations" at any time, without prior notice or consultation with the groups involved. Nothing in the ordinance requires the City Manager to consult even with the Department of Human Services before doing so, even though that Department has overall responsibility within the City for outreach and assistance to people experiencing homelessness.

The proposed ordinance is further flawed in that it is unconstitutionally vague in connection with, among other things, the 25-person threshold that triggers operation of the ordinance. It is problematic as to how an organization would ascertain when the 25-person threshold is reached – before or after the food service starts? When a volunteer who belongs to one organization with a previous permit shows up to assist another's food service operation? This 25-person figure appears to be an arbitrary number, pulled out of thin air, unworkable and bereft of any connection to a legitimate government interest.

Finally, it would be cruel and inhumane to implement this ordinance during the COVID-19 pandemic. We have already observed a reduction in the number of groups that travel to homeless encampments to feed the poor. It is simply unconscionable for Miami City Commission to further traumatize the homeless population by restricting the availability of food during this time of scarcity.

In short, this proposed ordinance serves only to punish individuals for their status of being involuntarily homeless, as well as punish the charitable organizations that seek to feed the poor. No legitimate public health or safety goal would be advanced by operation of this ordinance.

If you would like to discuss constructive alternatives to this ordinance, or more generally discuss alternatives to criminalization of homelessness, please

contact the Pottinger Class Representative David Peery at peerylaw@gmail.com
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Sincerely,

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cc:

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