

**UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

GILBERT JIMENEZ, DEBBIE  
JIMENEZ, and SPREADING THE  
WORD WITHOUT SAYING A WORD  
MINISTRY,

Plaintiffs,

Case No: 6:15-cv-1494-ORL-31KRS

v.

CITY OF DAYTONA BEACH,

Defendant.

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**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND DAMAGES**

**PRELIMINARY STATEMENT**

1. Plaintiffs Gilbert Jimenez and Debbie Jimenez are co-founders of the religious ministry Spreading The Word Without Saying A Word, which is inspired by the teachings of Jesus Christ. Their mission is to minister to people experiencing homelessness and hunger by providing aid, comfort and assistance. Their ministry is founded on the belief that actions speak louder than words and that by providing food and aid to hungry and homeless people they are "Spreading The Word Without Saying A Word."

2. Plaintiffs Gilbert Jimenez, Debbie Jimenez, and Spreading The Word Without Saying A Word Ministry bring this action for declaratory relief and injunctive relief and damages pursuant to 42 U.S.C. § 1983 for past and ongoing injury to their rights guaranteed by the First and Fourteenth Amendments of the U.S. Constitution because the

City of Daytona Beach (City) has unlawfully prohibited them from exercising their constitutional rights in city parks.

3. Beginning in May 2013, Plaintiffs started visiting Manatee Park, a City park, to minister to hungry and homeless people who gathered there. Plaintiffs began sharing food once a week in Manatee Park as part of their ministry to share the love of Jesus Christ by providing physical and spiritual nourishment in fellowship with all who wished to participate.

4. On May 7, 2014, during their ministry at Manatee Park, officers from the Daytona Beach Police Department arrested Gilbert and Debbie Jimenez for violation of Daytona Beach City Code (City Code) Ch. 82.101 (facility use without a permit) and for trespassing in violation of Sec. 810.09, Fla. Stat. (trespassing). Before this citation, Plaintiffs had never received any notice from, or been informed by, any City official or law enforcement agent that their activities were unlawful, or that they needed a permit. The officers also issued trespass warnings which banned Plaintiffs from Manatee Park in the future during times when the park is otherwise open to the public.

5. The City improperly arrested and issued trespass warnings to Plaintiffs for engaging in lawful protected expression and association in a traditional public forum.

6. The City's policies ban Plaintiffs from conducting their ministry at Manatee Park, or any other public park in the City, in violation of their rights guaranteed by the First and Fourteenth Amendment of the U.S. Constitution.

### **JURISDICTION**

7. This action arises under the First Amendment and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

8. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) & (4) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 & 2202.

**VENUE**

9. Venue lies in the Middle District of Florida pursuant to 28 U.S.C. §1391(b). The parties are located and all of the acts and omissions complained of herein occurred and will continue to occur in the Middle District of Florida.

**PLAINTIFFS**

10. Plaintiff GILBERT JIMENEZ is a resident of Volusia County and co-founder of Spreading The Word Without Saying A Word Ministry. He is a believer in the teachings of Jesus Christ and is serving his Lord and Savior who came into his heart and called him to put his faith in action by ministering to people experiencing homelessness through acts of service. He shares food with homeless and hungry people as an expression of his faith in Jesus Christ and belief that by serving those who are less fortunate, he is serving God and sharing God's love.

11. Plaintiff DEBBIE JIMENEZ is a resident of Volusia County and co-founder of Spreading The Word Without Saying A Word Ministry. She is a believer in the teachings of Jesus Christ and is serving her Lord and Savior who came into her heart and called her to put her faith in action by ministering to people experiencing homelessness through acts of service. She shares food with homeless and hungry people as an expression of her faith in Jesus Christ and belief that by serving those who are less fortunate, she is serving God and sharing God's love.

12. Plaintiff SPREADING THE WORD WITHOUT SAYING A WORD is an

unincorporated association and a nondenominational religious ministry grounded in the teachings of Jesus Christ that was founded in 2011 by Gilbert Jimenez and Debbie Jimenez. The religious ministry is guided by the principle that actions speak louder than words and shares the word of God through acts of service, including sharing food as an expression of God's love with people who are homeless and hungry.

### **DEFENDANT**

13. Defendant CITY OF DAYTONA BEACH is a municipal entity organized under the laws of the State of Florida, with the capacity to sue and be sued. See § 166.021, Fla. Stat. (2014).

14. The City Commission sets final policy on the creation and adoption of City ordinances.

15. The City is the legal entity responsible for the police department known as the City of Daytona Beach Police Department (DBPD), which is authorized to enforce Florida statutes and City ordinances.

16. The City is sued for injunctive and declaratory relief and compensatory damages on the basis of acts of officers, agents, and employees of DBPD and the City, which were taken pursuant to official policy practice and/or custom.

17. At all times relevant herein, the officers, agents, and employees of DBPD and the City were acting under color of state law.

### **FACTUAL ALLEGATIONS**

#### **Plaintiffs' Religious Ministry**

18. Plaintiffs began visiting Manatee Park (also known as Manatee Island Park)

in 2013 as part of Spreading The Word Without Saying A Word Ministry because it was a park frequented by people experiencing homelessness – the people Plaintiffs believe they had been called upon by God to serve.

19. For approximately one year (from 2013 until May 7, 2014), Plaintiffs shared food once a week on Wednesdays from 11:30 am-1:30 pm in Manatee with anyone who was homeless or hungry as part of their ministry.

20. Plaintiffs began sharing food in Manatee Park through their religious ministry because they believe that Jesus Christ came into their hearts and called them to share what they have with those who are less fortunate.

21. Prior to sharing food, Plaintiffs offered a blessing which generally involved the following prayer, “Heavenly father, thank you for the food we are about to receive for nourishment of our bodies and bless these people, In Jesus’ Name, Amen.”

22. During their weekly ministry at Manatee Park, Plaintiffs got to know the people who congregated together and learned about people’s lives and their need for comfort, aid, and assistance. Plaintiffs offered spiritual counsel to people if they were asked about the teachings of Jesus Christ. Plaintiffs also provided aid to individuals they met at the park to assist them with meeting basic necessities of life as part of their religious belief that God has called them to provide service to those who are less fortunate.

23. Over the course of the year, Plaintiffs developed close relationships with people who attended their weekly ministry. These weekly events provided time for Plaintiffs to gather in fellowship together with people that they came to consider friends and family. Plaintiffs started celebrating the birthdays of people who attended their ministry each week because homeless people do not usually have opportunity to celebrate their

birthdays and Plaintiffs believe that all human life is sacred in the eyes of God.

24. Plaintiffs are compelled by their religious beliefs to offer comfort, aid and assistance to homeless and hungry people by sharing food in a public place where they can demonstrate God's love and compassion not only to the people they serve but also to be a witness to other people who may observe their expression of God's love through their actions.

25. To Plaintiffs, and to the millions who share their faith, sharing food as a religious exercise is a sacred act and expression of their religious faith. This symbolism is found throughout the Christian Bible, such as in the account of the Last Supper, and after Jesus Christ was crucified disciples of Christ met together in fellowship assemblies and "broke bread" by sharing common meals together in remembrance and thanks of the meals they shared together with the Lord. Simultaneously sharing food and faith with homeless and hungry people is a nonnegotiable requirement of Plaintiffs' religious beliefs.

26. Spreading The Word Without Saying A Word does not have a traditional brick and mortar church building; rather, it shares religious messages with homeless individuals where it finds them in public spaces. Plaintiffs believe they do not have to preach the gospel; instead, they give living expression to the gospel through their acts of service.

27. Plaintiffs offer a blessing over the meals and food they share with others as a form of religious worship based on their belief that they are serving God by serving others in need.

28. Spending time with people and affirming social ties through the sharing of food has allowed Plaintiffs to develop close relationships with the individuals they have been called to serve. This time of fellowship is an essential part of their ministry because

it allows them to build trust to be able to serve these individuals by offering personal spiritual counseling, sharing the word of Jesus Christ, and to discover other needs for comfort, aid and assistance that they can provide to these individuals through their religious ministry.

### **Plaintiffs' Arrest and Trespass Warnings**

29. On May 7, 2014, Plaintiffs were sharing food at Manatee Park, as part of their religious ministry Spreading The Word Without Saying A Word, in fellowship with friends and other individuals experiencing homelessness or hunger.

30. DBPD officers arrived and asked Plaintiffs and other volunteers who were serving food to produce identification.

31. Plaintiffs were arrested for trespassing under Sec. 810.09, Fla. Stat., and for facility use without a permit under City Code Ch. 82.101.

32. At the time they were arrested on May 7, 2014, Plaintiffs were in Manatee Park during hours when the park is open to the public.

33. Plaintiffs never received any warning on or before May 7, 2014, from any employee or agent of the City that they were no longer invited, authorized or licensed to be in Manatee Park before the police arrested them for trespassing pursuant to Sec. 810.09, Fla. Stat.

34. The City also issued criminal citations and trespass warnings to four other individuals who were participating as volunteers for Plaintiffs' ministry by sharing food with hungry and homeless persons.

35. Plaintiffs also were issued trespass warnings which banned them permanently from returning to Manatee Park at any time in the future.

36. Plaintiffs were not provided with notice of the right to challenge the trespass warnings or provided a hearing process to challenge the trespass warnings issued to them for Manatee Park.

37. Two weeks after DBPD arrested Plaintiffs and issued the trespass warnings, Plaintiffs participated in a meeting with the DBPD Chief Chitwood, City attorneys and other City officials to discuss the charges and issues involved. Following this meeting, the City dropped the charges and rescinded the trespass warnings issued to Plaintiffs.

38. At the meeting that Plaintiffs attended with DBPD Chief Chitwood, the City instructed Plaintiffs that if they wished to continue to share food in Manatee Park, they would need to apply for a permit.

39. At the direction of the City, Plaintiffs filled out two permit applications for an “outdoor event” and a “facility use” permit which are referenced in City Code Chapter 82.

**The City’s Permit Requirement – City Code Ch. 82, Art. II, “Outdoor Events”**

40. Under City Code Section 82-1, an “outdoor event” is defined as: (a) a “parade” which is an “organized march, procession, or other moving group” on a public right-of-way that is likely to significantly interfere with or obstruct traffic; (b) a “block party”; (c) “filming activity”; or (d) an “organized outdoor activity involving 100 or more persons gathered on city property and conducted by a person for a common or collective use or benefit and which involves one or more of the following on such property: potentially dangerous activities such as daredevil acts; public sales and consumption of foods or services; use of amplified sound; temporary booths or tents larger than 120 square feet; or, paid admissions for the activity.”

41. City Code Chapter 82, Article II, concerning the use of public parks for

“outdoor events” does not require Plaintiffs to obtain a permit or City permission to engage in religious expression that involves the sharing of food at no cost with others in a City park without City permission regardless of how many people may be present at any time. City Code § 82-1, *et seq.* The only permit related to food in City Code Chapter 82, Article II, for “outdoor events” is required for a commercial activity that involves selling food when the outdoor activity involves 100 or more persons gathered on City property. *Id.*

**The City’s Permit Requirement – City Code Ch. 82, Art. III, “Facility Use”**

42. City Code Sections 82-100 through 82-112 set forth the City’s facility use permit requirements (hereinafter “facility use permit scheme”) for any person to “have the exclusive use” of any City park or “any portion thereof.” City Code § 82-101.

43. Section 82-101 of the City Code, which regulates use of “any portion” of a City park, is so overbroad that no person or group can conduct any First Amendment protected expressive activity in a City park, even activity that may attract a small group without being unlawfully subject to the requirement of a facility use permit. The City confirmed this when Plaintiffs were arrested on May 7, 2014, because they did not have a facility use permit while they were gathered sharing food at Manatee Park in fellowship with friends and other individuals experiencing homelessness or hunger as an expression of their religious ministry.

44. The City’s facility use permit scheme requires the following for any protected expressive activity in a City park:

- a. conditions a permit on approval of other permits by other City departments with no specified timeframes or stated guidelines or standards for those decisions (City Code § 82-104(a));

- b. requires the applicant to agree to indemnify and hold the City harmless from any actions “of any kind or nature whatsoever” in connection with permitted activity (City Code § 82-104(b));
- c. requires liability and property damage insurance naming the City as an insured through coverage “based on the city’s best interests” and the “degree of risk associated with the event” (City Code § 82-104(d)(1));
- d. mandates payment of departmental service charges for police, fire and other city services the City determines are necessary with no stated guidelines or standards to guide these decisions (City Code § 82-104(d)(3));
- e. subjects the permit to ultimate approval by the City Commission and conditions approval based on the “city’s best interests” with no standards to guide the decision-making and no time frame by which such decisions will occur (City Code § 82-105(a));
- f. imposes application fees, user fees, processing fees, parking fees, and other fees and charges as determined by the City Commission to be in the “city’s best interests” with a reservation of authority to charge fees in a fee schedule, or, require payment for park use based on a “negotiated basis without regard to the fee schedule” without any standards to guide such decisions (City Code § 82-105(b)); and
- g. provides no fee waiver or waiver of insurance requirements for indigency.

45. There is no stated exception to the City's facility use permit scheme in City Code §§ 82-100, *et seq.*, for First Amendment protected activity.

**Application of the City's Permit Requirement to Plaintiffs' Expressive and Associational Conduct**

46. The arrest citations for trespass which the DBPD issued to Plaintiffs on May 7, 2014, charged them with trespass and for not having a facility use permit under City Code Section 82-101.

47. On May 29, 2014, Plaintiffs' applications for an outdoor event or facility use permit were denied by the City, based on City Management Policy #71 (hereinafter "park rule"), which prohibits the "provision of food" "unless authorized pursuant to a written agreement with the city." In the denial letter, the City stated:

Based on the information contained in your application dated May 27, 2014 and consistent with your recent past use of Manatee Park, it appears that your request is to use Manatee Island North Pavilion for the purpose of providing the social service of distributing food to persons in need. As you are aware social services is not a permitted use of City parks (Management Policy #71 attached).

48. The City's park rule states, in relevant part:

Parks shall be used for recreation and relaxation, ornament, light and air for the general public. Parks shall not be used for business or social services purposes unless authorized pursuant to a written agreement with the city. As used herein, social services shall include, but not be limited to, the provision of food, clothing, shelter or medical care to persons in order to meet their physical needs.

49. The City's park rule prohibits the provision of such "social services" in all city parks, all public facilities, and in all re-development areas of the City.

50. The City's park rule prohibits the provision of food to meet a person's physical

needs without permission (i.e. “written agreement”) from the City, but lacks any process to obtain it or standards to guide decisions about whether to grant or deny permission and under what conditions. The rule also imposes the requirement to obtain permission prior to engaging in Plaintiffs’ protected speech for religious expression on City property, but fails to specify under what conditions the City may provide permission, or the procedure for obtaining permission. This is an unlawful prior restraint on protected expression.

51. After the City denied Plaintiffs’ application for an outdoor event or facility use permit based on the park rule that prohibits the provision of food to meet a person’s physical needs without permission (i.e., “written agreement”) from the City, Plaintiffs were verbally advised by a City official that they would never be granted permission to share food in Manatee Park.

52. Manatee Park is a public park located in the City of Daytona Beach. It is a quintessential public forum, a natural and proper place for the exercise of First Amendment rights.

53. The City’s park rules constitute an unlawful prior restraint on speech that prohibits Plaintiffs from engaging in their constitutionally protected religious expression through their ministry with homeless persons and those in need in any City park.

54. To avoid citation, arrest, and exclusion from public parks by the City through issuance of a trespass ban, Plaintiffs have been forced to cease sharing food with homeless and hungry people in Manatee Park as an expression of their religious faith and ministry to those in need.

55. Plaintiffs want to resume their weekly religious ministry in Manatee Park and would do so if not subject to citation and arrest because of Defendant’s unconstitutional

regulations which prohibit their activities and speech in all City parks.

56. The City has applied its park rules to prohibit Plaintiffs' protected expression and to infringe on their right to association for expressive purposes in public parks to communicate their religious message of love and acceptance of all of God's people, especially poor and homeless people.

57. Plaintiffs share food with hungry and homeless people as symbolic expression of their religious beliefs that God loves the least among us and by serving the poor and hungry they are serving God. Plaintiffs are engaged in expressive conduct protected by the First Amendment.

58. Sharing food with another person is inherently symbolic expression and conduct that communicates messages of intimacy, affirms social ties, and communicates group solidarity. Food is essential to maintain life and promote health and is a basic human need. Food is used by every human society on earth to communicate messages including the affirmation of social ties, the practice of religious beliefs, and the expression of national and ethnic identities. Food is used to reinforce messages of group solidarity and for a society to engage in ritual, ceremony and celebration. Food has symbolic meaning because it is literally taken into the body and has associations of life, love, home, family, and health.

59. Plaintiffs intend to convey a particularized message during their ministry to communicate God's love by sharing food with those in need. Their ministry through Spreading The Word Without Saying A Word reflects their religious belief that actions of faith speak louder than words and they are communicating God's love by sharing food with those in need.

60. The message conveyed by Plaintiffs is apparent to a reasonable observer as the message conveyed by providing the gift of food is universally recognized as a symbol of social solidarity and unity.

61. From 2013-2014, Plaintiffs engaged in constitutionally protected expression by sharing food every Wednesday to communicate their religious message of God's love for the least among us. Prior to the City's actions arresting Plaintiffs for failure to have a permit, they were not required to have any form of advance permission from the City to hold these weekly gatherings.

62. Plaintiffs associate with each other and with people who attend their weekly gatherings for purposes of developing close social ties, sharing the word of God, and giving living expression to Christ's message of the importance of serving the least among us.

63. The City's outdoor event permit requirement in City Code Chapter 82 does not apply to Plaintiffs' weekly gatherings for religious expression in Manatee Park. The City unlawfully applied this section to arrest Plaintiffs for holding an outdoor event without a permit, and to require Plaintiffs to file a permit application for an outdoor event and then denied Plaintiffs' application based the City's park rule under which Plaintiffs could never obtain a permit to engage in their constitutionally protected activities in a City park.

64. The City's park rule and permit requirements under Chapter 82 are being applied to prohibit Plaintiffs' constitutionally protected expression of their religious message through the symbolic expression of breaking bread together, while allowing others to congregate and engage in the similar conduct of eating a meal together in a City park.

65. The City is intentionally targeting Plaintiff's ministry because they are choosing to associate with homeless people. Plaintiffs are permitted to engage in the

exact same conduct of sharing food so long as they are not associating with persons experiencing homelessness.

66. Plaintiffs believe they have been called by God to be a witness for Jesus Christ through acts of service. Homeless people are traditionally excluded from public places in the City and looked down upon by other people. By sharing food in fellowship with homeless people, Plaintiffs are communicating to others their belief in the inherent worth and dignity of all human beings which is pivotal to the teachings of Jesus Christ.

67. Under the City's park rule and permit requirements in Chapter 82, the City has prohibited Plaintiffs from engaging in this expressive conduct and association in any City park. The exclusive and only alternative location provided by the City is a parking lot on private property. This private parking lot is not a location that can substitute for Plaintiffs' access to a traditional public forum to communicate their message where their intended audience and the general public will be reached.

68. Plaintiffs wish to continue their weekly ministry in Manatee Park but have refrained from engaging in constitutionally protected expression and association for fear of arrest under the City's policies.

69. The City's policies and actions have injured Plaintiffs including loss of constitutionally protected rights; loss of liberty due to arrest and issuance of trespass warnings to themselves and to volunteers associated with their ministry; harm to their ministry through loss of connections with people through their weekly ministry at Manatee Park; and damage to reputation of ministry and to themselves individually.

#### **Application of the City's Policies to Plaintiffs' Due Process Rights**

70. Plaintiffs' provision of food to those in need as a form of religious expression

does not meet the definition of an “outdoor event” in City Code Chapter 82, yet the City is applying this ordinance to prohibit Plaintiffs’ constitutionally protected conduct. The ordinance fails to provide adequate notice that their conduct is prohibited without a permit, subjecting Plaintiffs to arbitrary and discriminatory enforcement.

71. The City’s park rule (Management Policy #71) which bans providing food to any person to meet their “physical needs” is unconstitutionally vague as to the regulated conduct. It is unclear how the City determines whether food is being provided to meet a person’s “physical needs”; the rule fails to provide adequate notice of prohibited conduct, thereby authorizing and encouraging arbitrary and discriminatory enforcement.

72. Food is essential to sustain all human life and generally is consumed to satisfy simple nutritional and survival needs. Food is also consumed as part of religious ritual, to celebrate anniversaries and birthdays, and for pleasure. Many people share food in public parks for these reasons, at picnics or other informal gatherings. However, the City enforces the park rule against Plaintiffs and other individuals seeking to share food with homeless persons; the rule fails to provide adequate notice of prohibited conduct, thereby authorizing and encouraging arbitrary and discriminatory enforcement.

73. The City’s park rule is unconstitutionally vague on its face and as applied to Plaintiffs for failure to provide clear and definite standards to guide city officials in determining whether to provide “written agreement” for sharing food.

74. The City’s park rule which bans providing food to any person to meet their physical needs in any City park also violates due process by criminalizing otherwise innocent conduct without government permission, but providing no system by which government permission may be obtained.

75. Although all food is consumed to meet an individual's physical needs, the City's park rule is only being applied to prohibit providing food to homeless people as prohibited conduct while allowing picnics or outdoor events with the sale of food to less than 100 people without a permit, and outdoor events with the sale of food to more than 100 people with a permit under Section 82 of the City Code.

76. Plaintiffs were banned from a City park for more than two weeks without adequate notice or an opportunity to be heard at a meaningful time and a meaningful manner pursuant to an unlawful City policy of issuing trespass warnings for public parks without providing due process.

**FIRST CLAIM FOR RELIEF**  
**PROCEDURAL DUE PROCESS – FOURTEENTH AMENDMENT**

77. Plaintiffs incorporate and re-allege paragraphs 1 through 76, as if fully set forth here.

78. Plaintiffs have a constitutionally protected liberty interest to be in public places, including City parks.

79. The City's trespass policy authorizes City officials to issue trespass warnings for city parks and subject persons to future arrest for entering parks in violation of the trespass warnings without providing an opportunity for a hearing.

80. The trespass warnings issued to Plaintiffs by City police officers deprived them of their constitutionally protected liberty interest to be in Manatee Park when it is open to the public generally.

81. The trespass warnings issued to Plaintiffs violated their procedural due process rights because the City failed to provide Plaintiffs with notice of an opportunity to

be heard to challenge their trespass warnings.

82. Plaintiffs were excluded from a public park for more than two weeks by the City's actions taken in violation of the Due Process clause of the Fourteenth Amendment to the U.S. Constitution.

83. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and have been directly damaged as a result of the City's conduct.

**SECOND CLAIM FOR RELIEF**  
**VAGUENESS – FOURTEENTH AMENDMENT**

84. Plaintiffs incorporate and re-allege paragraphs 1 through 76, as if fully set forth here.

85. The City's park rule (Management Policy #71) which bans social services in City parks is unconstitutionally vague on its face and as applied to Plaintiffs' weekly ministry in Manatee Park as the rule fails to provide adequate notice of prohibited conduct and authorizes and encourages arbitrary and discriminatory enforcement.

86. The City's park rule fails to define key terms and phrases.

87. The City's park rule is unconstitutionally vague on its face and as applied to Plaintiffs' weekly ministry in Manatee Park in violation of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution for failure to provide clear and definite standards to guide City officials in determining whether to provide "written agreement" for sharing food as protected expressive activity in a public forum.

88. The City's outdoor events ordinance, Chapter 82 of the City Code, is unconstitutionally vague as applied to Plaintiffs' weekly ministry in Manatee Park in

violation of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

89. Plaintiffs' weekly ministry does not meet the definition of "outdoor event" in Chapter 82, yet the City is applying this ordinance to prohibit Plaintiffs' conduct. The ordinance fails to provide adequate notice that their conduct is prohibited without a permit, subjecting Plaintiffs to arbitrary and discriminatory enforcement.

90. The City's facility use permit scheme, Chapter 82 of the City Code, is unconstitutionally vague on its face and as applied to Plaintiffs' weekly ministry in Manatee Park in violation of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

91. The City's facility use permit scheme authorizes and encourages arbitrary and discriminatory enforcement by failing to provide objective standards for review of applications and granting unfettered discretion to grant or deny a request for a facility use permit in a traditional public forum for purposes of exercising First Amendment rights. City Code §§ 82-101, 82-104(a), and 82-105(a). The facility use permit scheme's lack of adequate standards also allows government officials to impose excessive and arbitrary fees and charges for a permit to engage in protected expressive activities in a public forum. City Code §§ 82-105(b), 82-104(d)(1), 82-104(d)(3) and 82-105(b).

92. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and have been directly damaged as a result of the City's conduct.

**THIRD CLAIM FOR RELIEF**  
**FREE SPEECH, ASSOCIATION AND EXPRESSIVE CONDUCT –**  
**FIRST AMENDMENT**

93. Plaintiffs incorporate and re-allege paragraphs 1 through 76, as if fully set

forth here.

94. Plaintiffs share food with people experiencing homelessness and hunger as an expression of their religious message of God's love for the least among us.

95. The City's park rule infringes on Plaintiffs' freedom of association with individuals that Plaintiffs have been called to serve and minister to by sharing food together and providing comfort, aid, and assistance. The City does not forbid picnics or having other types of events in public parks that involve the consumption of food, but is only applying this rule because Plaintiffs' ministry shares food with people experiencing homelessness.

96. Infringements on the right to expressive association must be justified by regulations adopted to serve compelling interests, unrelated to expression of ideas, that cannot be achieved through means significantly less restrictive on associational freedoms. The City's ordinance fails to meet this standard because the City prohibits and interferes with Plaintiffs' ability to associate with people experiencing homelessness and hunger for the purpose of sharing a meal together as an expression of Plaintiffs' religious beliefs. The City's interests for restricting this expressive association is not compelling and can be achieved through means significantly less restrictive on associational freedoms. The City's restrictions essentially make it unlawful for Plaintiffs to conduct their ministry by prohibiting them from associating with others in any City park for the expression of their religious beliefs.

97. The City's park rule acts as an unlawful prior restraint on Plaintiffs' protected expression of their religious beliefs because the City requires Plaintiffs to first obtain "written agreement," thereby banning them from engaging in lawful religious activity in a

public park without first applying for and receiving permission from City officials to use the public forum in advance. The City's park rule lacks any process to obtain this permission or any standards to guide decisions about whether the City will grant or deny permission and under what conditions.

98. The City's park rule fails to provide narrow, objective, and definite standards to guide City officials in determining whether to issue "written agreement" under the park rule. The park rule lacks procedural safeguards to ensure against unlawful infringement on protected First Amendment expression. Because the park rule fails to set forth definite standards of review, the ordinance grants unfettered discretion to a City official to arbitrarily grant or deny a request. The park rule also fails to provide for prompt judicial review, or to place time constraints on the issuance or denial of authorization. The absence of any standards means that the park rule vests public officials with unbridled discretion and invites content-based decisions. These are the hallmarks of an unlawful prior restraint on constitutionally protected expression.

99. The City is prohibiting Plaintiffs from engaging in protected activity that involves sharing food in furtherance of their religious expression and message without written permission from the City pursuant to an unlawful prior restraint that fails to meet constitutional requirements. The City acknowledged this prior restraint on Plaintiffs' rights by denying their application for an "outdoor event" permit pursuant to City Code Section 82-51 (after directing Plaintiffs to apply for one) based on the park rule (Management Policy #71) which prohibits the "provision of food" "unless authorized pursuant to a written agreement with the City."

100. The City's facility use permit scheme violates the First Amendment as an

impermissible prior restraint on expression in a quintessential public forum. Sections 82-101, 82-104(a), and 82-105(a) impose an advance filing requirement for a permit from the government to engage in protected expression without providing adequate standards to guide the exercise of discretion by public officials and without the necessary procedural safeguards to protect against content-based decisions. The facility use permit scheme's lack of adequate standards also allows government officials to impose excessive fees and charges for a permit to engage in protected expressive activities in a public forum. City Code §§ 82-105(b), 82-104(d)(3) and 82-105(b).

101. The City's facility use permit scheme also violates the First Amendment because it does not constitute a content-neutral reasonable time, place or manner restriction because of the lack of standards for deciding whether to grant or deny permits. The facility use permit scheme provides no procedural safeguards to ensure that City officials are not making decisions to delay or deny permits based on the content of speech or imposing onerous conditions for disfavored speakers. City Code §§ 82-104(a), 82-104(d)(1), 82-104(d)(3) and 82-105(a) & (b).

102. The City's facility use permit scheme is not narrowly tailored and does not allow for ample alternatives for communication because under City Code Section 82-101 no person or group, of any size, can conduct any protected expressive activity in "any portion" of any City park without being granted a permit.

103. The City's facility use permit scheme violates the First Amendment as City Code Section 82-104(b) imposes an unconstitutional condition on the issuance of a permit to engage in protected expression in traditional public fora in the City by requiring permittees to assume, in advance of their occurrence, all liability not only for their own acts

and omissions, but for the potentially unauthorized acts and omissions of third parties the permittee does not control, and from actions "of any kind or nature whatsoever" in connection with the expressive activity.

104. The City is applying the park rule and permitting requirements in Chapter 82 to prohibit Plaintiffs from engaging in expressive conduct in a quintessential public forum in violation of Plaintiffs' constitutionally protected First Amendment rights. Plaintiffs are engaged in expressive conduct protected by the First Amendment by sharing food in fellowship with homeless people and others in need. Plaintiffs intend to communicate to others their belief in the inherent worth and dignity of all human beings which is pivotal to the teachings of Jesus Christ and their religious belief that God has called them to provide comfort, aid, and assistance to those who are in need. Sharing food with others as a symbol and expression of their religious beliefs is inherently expressive conduct. The message conveyed by Plaintiffs is apparent to a reasonable observer as the message conveyed by providing the gift of food is universally recognized as a symbol of social solidarity and unity and as an expression of love.

105. The City's park rule and the permit requirements in Chapter 82 are being applied to prohibit Plaintiffs from expressing their religious beliefs through the sharing of food with people who are hungry, but allows picnics and events where food is sold. The City's park rule impermissibly empowers its officials to examine the content of the message that is conveyed by food sharing to determine whether it applies. If food is being shared as a "social service" defined by the City to "include, but not be limited to, the provision of food, clothing, shelter or medical care to persons in order to meet their physical needs," then the park rule applies to prohibit the conduct. This empowers City officials to pick and

choose between food sharing that is authorized and food sharing that is prohibited based on the content of the message conveyed – distinctions prohibited by the First Amendment.

106. When the government opens up a public forum, it may not discriminate among users of that forum based on what they intend to say. Plaintiffs are banned from expressing God's love for all human beings through the sharing of food with homeless and hungry people, but would be allowed to hold a church picnic with persons who are not poor and hungry.

107. The City's park rule fails constitutional scrutiny as an unlawful and unreasonable time, place or manner restriction on expressive activity and conduct in a traditional public forum. There is no legitimate interest for the regulation and the rule is not narrowly tailored. There is no size threshold to invoke the rule requirements. The rule also fails to provide ample alternatives for Plaintiffs to express their message because they are prohibited from sharing food as symbolic expression of their religious beliefs in any public park throughout the City.

108. As a direct and proximate result of the City's policies, Plaintiffs are deprived of their right to freely express their religious beliefs and to associate for expressive purposes.

109. Plaintiffs have suffered and continue to suffer irreparable harm for which there is no adequate remedy at law and they have been directly damaged as a result of the City's conduct.

#### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Court:

A. Issue a declaration that the City's park rule, permit requirements in Chapter 82,

trespass policy and Defendant's actions violate Plaintiff's rights under the U.S. Constitution in the manner described above.

- B. Issue a permanent injunction enjoining Defendant from enforcing the City's park rule, permit requirements in Chapter 82, and trespass policy in a manner that violates Plaintiffs' rights under the U.S. Constitution as described above.
- C. Award compensatory damages to Plaintiffs.
- D. Award Plaintiffs attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- E. Order any other relief that is just and proper.

Dated: September 9, 2015

Respectfully submitted,



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