

**UNITED STATES DISTRICT COURT  
Northern District of Texas  
Dallas Division**

**Big Hart Ministries Association Inc. a/k/a Big Heart Ministries** in its capacity as a 501(c)(3) organization and on behalf of the homeless population of the City of Dallas, **Rip Parker Memorial Homeless Ministry** in its capacity as an Association and on behalf of the homeless population of the City of Dallas, and **William Edwards**, in his individual capacity and on behalf of the homeless population of the City of Dallas,

**Plaintiffs,**

vs.

**City of Dallas, Mayor Laura Miller** in her official capacity as Mayor of the **City of Dallas, Mary K. Suhm**, in her official capacity as City Manager and Chief Executive Officer of the **City of Dallas, Karen D. Rayzer** in her official capacity as Department Director of Environmental Health Services for the **City of Dallas**, and **Anthony McGee** in his official capacity with the Department of Environmental Health Services for the **City of Dallas**.

**Defendants.**

**Civil Action No. 3:07-cv-00216**

**PLAINTIFFS' FIRST AMENDED  
COMPLAINT FOR  
INJUNCTION AND  
DECLARATORY RELIEF**

**(42 U.S.C. § 1983)**

**TO THE HONORABLE UNITED STATES DISTRICT COURT:**

Comes now Plaintiffs, by and through the undersigned attorneys, and file this First Amended Complaint for injunctive and declaratory relief stating that Dallas City Ordinance 26023 (the “Ordinance”), on its face and as applied, burdens the fundamental rights to life, free exercise of religion, free expression, free association, travel, due process of law, and equal treatment under the law as guaranteed by the United States Constitution, Article Eleven, Section Five of the Texas Constitution, and the Texas Religious Freedom Restoration Act.

**NATURE OF THE CASE**

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 to redress violations of Plaintiffs Big Hart Ministries Association Inc., Rip Parker Homeless Ministry, and William Edwards (collectively “Plaintiffs”) rights and the rights of the homeless population of the City of Dallas under the First and Fourteenth Amendments to the United States Constitution and the Texas Religious Freedom Restoration Act (Tex. Civ. Prac. & Rem. Code §§ 110.001, *et seq.*).

**JURISDICTION AND VENUE**

2. This is a civil action seeking a declaratory judgment and injunctive relief to vindicate and safeguard Plaintiffs’ and the Dallas-area homeless population’s rights guaranteed by the Constitution and laws of the United States and the State of Texas. Accordingly, this Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331, 1343(a)(3), (4).

3. Venue is proper in the United States District Court for the Northern District of Texas—Dallas Division, pursuant to 28 U.S.C. § 1391(b), because the events and occurrences giving rise to these claims arose in this district.

### **PARTIES**

4. Plaintiff, Big Heart Ministries Association Inc. a/k/a Big Heart Ministries (“Big Heart”) is a 501(c)(3) non-profit organization made up of citizens of the United States and residents of the City of Dallas and neighboring communities.

5. Plaintiff, Rip Parker Memorial Homeless Ministry (“Rip Parker”), is an association of Christians made up of citizens of the United States and residents of the City of Dallas and neighboring communities.

6. Plaintiff William Edwards (“Edwards”) is an individual who resides in the City of Dallas.

7. Plaintiffs have third party standing to defend the constitutional rights of the homeless individuals who reside within the City of Dallas, depend on Plaintiffs and others to provide life-sustaining necessities, and are unable to defend the rights asserted herein on their own.

8. Defendant, the City of Dallas (the “City”), is an incorporated city in Dallas County, Texas. Pursuant to Rule 4(j) of the Federal Rules of Civil Procedure, the City of Dallas may be served by delivering a copy of the summons and of this complaint to the City Manager and chief executive officer of the City

of Dallas, Mary K. Suhm, Dallas City Hall, 1500 Marilla Street, Room 4EN, Dallas, Texas 75201-6390.

9. Defendant, Mayor Laura Miller (“Miller”), is an individual and the Mayor of the City of Dallas, an incorporated City in Dallas County, Texas. Pursuant to Rule 4(e) of the Federal Rules of Civil Procedure, Mayor Laura Miller may be served by delivering a copy of the summons and of this complaint to Mayor Laura Miller at Dallas City Hall, 1500 Marilla Street, Room 5EN, Dallas, Texas 75201-6390.

10. Defendant, Mary K. Suhm (“Manager Suhm”), is an individual and the City Manager of the City of Dallas. Pursuant to Rule 4(e) of the Federal Rules of Civil Procedure, Mary K. Suhm, City Manager may be served by delivering a copy of the summons and this complaint to Mary K. Suhm, City Manager at Dallas City Hall, 1500 Marilla Street, Room 4EN, Dallas, Texas 75201-6390.

11. Defendant, Karen D. Rayzer (“Director Rayzer” or “Director”), is an individual and the Director of the Department of Environmental Health Services for the City of Dallas. Pursuant to Rule 4(e) of the Federal Rules of Civil Procedure, Karen D. Rayzer may be served by delivering a copy of the summons and this complaint to Karen D. Rayzer, Department Director, Department of Environmental Health Services, at Dallas City Hall, 1500 Marilla Street, Room 7A North, Dallas, Texas 75201-6390.

12. Defendant, Anthony McGee (“McGee”) is an individual and employed by the Department of Environmental Health Services for the City of

Dallas. Pursuant to Rule 4(e) of the Federal Rules of Civil Procedure, Anthony McGee may be served by delivering a copy of the summons and this complaint to Anthony McGee, Department of Environmental Health Services at Dallas City Hall, 1500 Marilla Street, Room 7A North, Dallas, Texas 75201-6390.

### **FACTUAL BACKGROUND**

13. Big Heart is non-profit organization of Christians who believe that their Christian faith requires them (i) to share hot meals with homeless people, and (ii) to do so while simultaneously sharing religious teachings. For over twenty years, Big Heart has been sharing food and faith with Dallas-area homeless people at various locations. Don Hart, Big Heart's founder, has been sharing food and faith with Dallas-area homeless people for almost three decades.

14. At every meal served, Big Heart volunteers and the homeless people they serve pray together and share religious messages through individual exchanges and collectively through sermons. Big Heart is a church; the homeless people it ministers to are its congregation; and its food-sharing events are church services. In fact, Big Heart formally enrolls those who attend its services as church members. Through their efforts, Big Heart volunteers develop personal relationships with many of the homeless people they serve, and, at each church service, minister to and share food with many homeless people with whom they have such relationships.

15. For several months, Big Heart modified its homeless food-sharing and ministry-related activities to comply with the Ordinance. Doing so, however,

did not allow Big Heart and its volunteers to conduct those activities as required by their faith. Big Heart therefore resumed sharing food and ministering to homeless people in a manner prohibited by the Ordinance and, as a result, has received both written and verbal warnings from city officials and the police that it and its volunteers risk being fined and/or arrested if it continues to do so. Since receiving those warnings, Big Heart has lost volunteers who fear being fined and arrested.

16. Rip Parker is an organization of Christians from multiple Dallas-area churches (including Park Cities Baptist, Prestonwood Baptist, Flower Mound United Methodist, First Baptist Church of Irving, Northwest Bible Church, The Covenant Church, The Believer's Chapel, and others) who believe that their Christian faith requires them (i) to share food with homeless people, and (ii) to do so while simultaneously sharing religious teachings. For over fifteen years, Rip Parker has been sharing food with Dallas-area homeless people at various locations throughout Dallas, usually on a daily basis. Through their efforts, Rip Parker volunteers develop personal relationships with many of the homeless people they serve, and frequently minister to and share food with many homeless people with whom they have such relationships.

17. Like Big Heart, Rip Parker has received both written and verbal warnings that its food-sharing activities with homeless people violate the Ordinance and that each volunteer who participates in those activities risks being

fined and/or arrested. Rip Parker has also lost volunteers who fear being fined and arrested.

18. Plaintiff Edwards, in addition to being a Rip Parker volunteer, shares food and religious teachings with homeless people in his individual capacity. In these efforts, Edwards often purchases food to share with homeless people using his own funds. Edwards, a formerly homeless person, credits both his material and spiritual salvation to the efforts of the late Rip Parker, whose ministry and memory Edwards and others honor and carry on as Rip Parker volunteers.

19. Edwards' religious beliefs compel him not only to secure food specifically to share with homeless individuals, but also to share his own food if that is the only food available. Through these efforts, Edwards develops personal relationships with many homeless people, and frequently ministers to and shares food with homeless people with whom he has such relationships. City officials have threatened Edwards with fines and/or arrest if he continues to share food with homeless people in violation of the Ordinance.

20. The Dallas homeless population -- estimated to be between 7,000 and 10,000 men, women, and children -- desperately needs support and assistance. As documented in numerous governmental and private reports, the homeless population includes many individuals with psychiatric disabilities or other challenges that make securing even life's most basic necessities difficult. For example, in a recent analysis of thirty-nine homeless encampments scattered across Dallas, the City estimated that 80% of the homeless people who live in

those encampments have “diagnosable mental illnesses” or suffer from other acute, co-occurring disorders and that the majority had been exposed to contagious/infectious diseases.

21. These and other challenges often make it extremely difficult for homeless people to seek out and access homeless-assistance programs, including programs that serve meals from fixed locations. Without food-sharing efforts targeting homeless people where they live, many would be forced to secure food from highly unsanitary sources (*e.g.*, trash cans, dumpsters, and street litter), go hungry, or flee the city.

22. In the past couple of years, the City has taken actions to drive homeless people out of public areas. Among other things, the City began bulldozing the make-shift camps under freeways and elsewhere where homeless people live. The City also enhanced police enforcement of city ordinances against homeless people, including those which prohibit sleeping in public, panhandling, and crossing streets away from crosswalks. Mike Rawlings, who serves as the City’s “homeless czar,” specifically instructed the police to target areas where homeless people are known to assemble and to “arrest in lieu of citations.”

23. The police’s efforts have particularly focused on the central-Dallas area surrounding the Day Resource Center (the “DRC”), which is the City’s primary homeless-assistance facility. Between February and September of 2005 alone, the police arrested 659 homeless people in that area, with sixty arrests occurring inside the DRC itself, and issued 372 ordinance-related citations. To put

these numbers into perspective: the City estimates that approximately 500 homeless people reside in and around downtown Dallas; thus, in eight months, the ratio of arrests per homeless person in that area exceeded one to one, and the ratio of arrests/citations to homeless person was two to one.

24. Even if these arrests/citations were all legitimate exercises of police power (Plaintiffs take no position in this regard), they nevertheless have created the perception among homeless people that traveling to the DRC involves police-related risks, even for those who seek to obey the law. As a result, many law-abiding homeless people otherwise willing to travel to the DRC do not.

25. The City has also targeted homeless people by adopting the Ordinance to amend Dallas City Code Chapter 17, which regulates “food establishments,” to severely restrict charitable food-sharing activities involving homeless people. Although Chapter 17’s stated purpose is “to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented,” the unstated purpose of the Ordinance amending Chapter 17 was to invidiously discriminate against homeless people by eliminating or severely restricting their access to food.

26. The Ordinance inhibits charitable food sharing with homeless people by restricting those activities through the City’s commercial food-service permitting scheme. In this scheme, all persons who operate a “food establishment” inside the city must have a food-service permit to serve food. Dallas City Code § 17-10.2(c)(1)(A). The Ordinance defines “food establishment”

to include every “operation” that provides food directly to one who eats it, even if there is no charge for the food:

**FOOD ESTABLISHMENT:**

- a. The term means an operation that:
  - i. Sells, stores, prepares, packages, serves, or otherwise provides food for human consumption ... and
  - ii. Relinquishes possession of food to a consumer directly.
  
- b. The term includes an element of the operation such as a transportation vehicle ... [and] an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off premises; and regardless of whether there is a charge for food.

Dallas City Code § 17-1.5(b)(6) (attached as Exhibit “A”).

27. Although “operation” is not defined, as administered by the City, the term includes singular, non-commercial acts of food sharing between two or more individuals. In other words, any entity or individual who provides food to a person for that person to eat is a “food establishment” subject to the Ordinance’s food-service permit requirement. Nothing in the Ordinance, however, provides reasonable notice that it should be construed in this way.

28. To create the illusion that the Ordinance provides special accommodation to food sharing with homeless people, the City included an “affirmative defense” against prosecution to those who share food with homeless people under certain conditions (the “homeless-feeder defense”). Dallas City

Code § 17-1.6(a)(5). If these conditions are not met, however, anyone caught sharing food with a homeless person without a permit may be fined of up to \$2,000.00 and/or jailed for up to six months. Dallas City Code § 17-10.2. Given the significant fees and requirements associated with securing and maintaining a commercial food-service permit, the Ordinance constructively bans homeless food-sharing activities that do not meet the conditions specified in the homeless-feeder defense.

29. As written and as administered by the City, the homeless-feeder defense operates to restrict homeless food-sharing activities in several ways. First and foremost, it confines those activities to a small number of pre-designated locations. Presently, there are ostensibly nine pre-designated food-sharing locations to serve Dallas's 6,000 to 10,000 homeless men, women, and children. While even this number of sites could not possibly serve that many people, the situation is actually worse: only two of the nine pre-designated sites allow Plaintiffs and others to share food with homeless people. Of these two, one only allows food sharing on Saturday evenings and only with the homeless people sheltered there. The other site, which is the only pre-designated site that allows Plaintiffs and others to share food on a daily basis, is the DRC.

30. The Ordinance also provides that the Director Rayzer may, at her discretion, approve additional food-sharing locations. However, as the City has indicated both verbally to Plaintiffs and in published materials, the Director will

not approve additional locations unless Plaintiffs meet certain, unduly burdensome criteria.

31. For example, the Director will not approve a food-sharing site away from the pre-designated sites unless it provides hand-washing facilities for food servers and restroom facilities for both food servers and the homeless people they serve. Thus, those seeking to share food away from the pre-designated sites (even if only a sandwich) must either provide portable hand-washing and restroom facilities (at their own expense) or must find a private property owner who agrees not only to allow homeless food-sharing activities on his property, but also to allow the homeless people served by those activities to use his on-site restroom facilities. Consequently, securing an approval to share food with homeless people away from the pre-designated sites is an extremely difficult thing to do. Even if the known approval criteria were met, however, the Ordinance still bestows complete and unfettered discretion to the Director to withhold her approval nevertheless.

32. The second way that the Ordinance inhibits food sharing with homeless people is that it constructively bans food sharing by individuals who share food in their individual capacity. On its face, the homeless-feeder defense applies only to those who share food with homeless people through “civic, religious, or other charitable organizations.” Individuals who share food without formally associating with such an organization are therefore subject to prosecution

for sharing food without a commercial food-service permit even if they otherwise meet the homeless-feeder defense's requirements.

33. The third way that the Ordinance inhibits food sharing with homeless people is that it constructively bans all food sharing that cannot be planned, organized, and disclosed to the Director days, weeks, or even months in advance. Specifically, the Ordinance requires food-sharing organizations to file a registration form with the Director before they engage in any food-sharing activities. This form is a mandatory precondition to food sharing and must be re-filed annually. Among other things, the registration form requires the organization to provide the exact dates, times of day, and locations where it intends to share food, and an organization may not share food other than in the manner disclosed without amending the form.

34. The form may also include any additional requirements and conditions that the Director, at her complete and unfettered discretion, unilaterally decides to impose. One such condition, which is mandatory under the Ordinance, requires every organization sharing food to have at least one member present at food-sharing events who has taken a city-sponsored food-preparation class. This class is presently offered no more than once every month.

35. Thus, any Dallas resident who encounters a homeless person in his neighborhood and spontaneously decides to help that person (with even only a sandwich), cannot do so until, *inter alia*, (i) he forms or associates with a charitable organization; (ii) that organization files a registration form disclosing

specific details of its food-sharing intentions; (iii) the organization rendezvous with the homeless person to be fed at the time and place identified in the registration form; (iv) at least one member of the organization who has taken the city-sponsored food-preparation class attends the food-sharing event; and (v) the organization meets all additional requirements included in its registration form. In other words, any Dallas resident who encounters a homeless person in his neighborhood and spontaneously decides to help that person (even with only a sandwich) cannot do so.

36. The Ordinance's effect on the Dallas homeless population cannot be overstated. On information and belief, the vast majority of unsheltered homeless people substantially rely on charitable food sharing to survive. By limiting Plaintiffs' and others' food-sharing efforts to so few locations, the Ordinance (if universally complied with) effectively deprives the homeless people who rely on those and similar efforts of their primary food source.

37. Indeed, the fact that there are only nine pre-designated sites to serve up to 10,000 homeless people demonstrates that the Ordinance is not rationally related to helping homeless people in any legitimate way. These nine sites could not serve 3,000 homeless people on a daily basis, let alone two to three times that number. The only pre-designated site that accommodates daily food sharing with unsheltered homeless people is the DRC, which can reasonably accommodate food sharing with no more than 300. The other pre-designated sites either do not

allow food sharing at all or, if they do, only allow food sharing with the homeless people sheltered at those sites and, even then, only under certain conditions.<sup>1</sup>

38. Thus, if everyone who shares food with homeless people strictly complied with the Ordinance and every homeless person who needed that food traveled to the a pre-designated site every day to receive it,<sup>2</sup> the Ordinance's nine-site scheme could not begin to achieve its stated purpose of ensuring that homeless people *receive* safe food: by any analysis, daily meal service for 6,000 to 10,000 homeless men, women, and children requires substantially more resources than those provided by the nine pre-designated facilities.

39. Not every homeless person who needs food, however, can travel to the pre-designated food-sharing sites. Homeless people whose mental or physical conditions (or other circumstances) prevent them from traveling to those sites will be forced to look for food elsewhere. More than anyone else's, the Ordinance substantially burdens these people's ability to associate with those who are ready, willing, and able to help them. Such intimate associations often present the best

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<sup>1</sup> In addition to the DRC, the only other location that actually allows outside groups to share food with homeless people is the Family Gateway, which houses 24 families (approximately 98 people) wherein Plaintiffs and others can ostensibly share food with those sheltered families on Saturday evenings only. As for the other pre-designated locations: ABC Behavioral Health is a mental health hospital that provides food for its homeless patients; Concord Church does not serve meals at all and is only a dry food pantry; the Dallas Life Foundation (maximum capacity: 500) feeds the homeless people sheltered there; Turtle Creek Manor is also a mental-health facility that feeds its residents; Vogel Alcove is a child-care facility and only permits volunteers to come in and play with the children; We Live Again, Inc. is a private facility that cares for the critically wounded and has never participated in any food-sharing program; Dallas Metro Care is actually a psychiatric clinic located **within** the DRC and does not allow any food sharing with homeless persons independently of that already occurring at the DRC.

<sup>2</sup> On information and belief, like Plaintiffs, many organizations and individuals who share food with homeless people away from the city's pre-designated sites continue to do so in violation of the Ordinance.

opportunity to move such homeless people into homeless-assistance programs that can address their long-term needs beyond daily nutrition.

40. The Ordinance also burdens unsheltered homeless people who are willing and able to travel to pre-designated food-sharing sites. Although these people may be able to avoid eating from trashcans and dumpsters, to do so, they must continually hover near the DRC to access the food served there as it becomes available.<sup>3</sup> The DRC keeps no schedule or set routine for food service, and food availability can vary from week to week, day to day, and even hour to hour. Food quantities also vary, which requires homeless people to stay close enough to the DRC to secure an early place in line so as to be served before the food runs out. Under these conditions, homeless people's ability to live and travel away from the DRC (*e.g.*, to work or seek employment, housing, or other beneficial services) is severely limited. Thus, homeless people who rely primarily on food sharing conducted at the DRC are constructively tethered to the DRC during food-sharing hours and are thereby inhibited from freely traveling throughout the city.

41. As these facts show, the Ordinance impermissibly burdens homeless people's fundamental right to secure the food they need to survive and their right to freely travel. The Ordinance also burdens both Plaintiffs' and homeless people's right to freely exercise their religion, engage in expressive conduct, and associate together for those purposes.

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<sup>3</sup> Plaintiffs are unaware of any City program whereby the City directly provides food to homeless people. Thus, all food provided to homeless people comes from charitable organizations or institutions which provide that food according to their own schedules.

42. For example, Plaintiffs and their members believe that their Christian faith requires them to seek out the neediest in their community and share much-needed food:

For I was hungered, and ye gave me meat; I was thirsty, and ye gave me drink; I was a stranger, and ye took me in ... Verily I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me. Then shall he say also unto it on the left hand, Depart from me, ye cursed, into everlasting fire, prepared for the devil and his angels: For I was hungered, and ye gave me no meat; I was thirsty and ye gave me no drink; I was a stranger, and ye took me not in ... And these shall go away into everlasting punishment; but the righteous into life eternal.

Matthew 25:35, 40-43, 46.

If a person is righteous and does what is lawful and right ... and gives his bread to the hungry and covers that naked with a garment ... he is righteous, he shall surely live, says the Lord God.

Ezekiel 18:5-9.

What does it profit, my brethren, if a man says he has faith, but has not works? Can his faith save him? If a brother or sister is ill-clad and in lack of daily food, and one of you says to it, "Go in peace, be warmed and filled," without giving it the things they needed for the body, what does it profit? So faith by itself, if it has no works, is dead.

James 2:14-17. Plaintiffs moreover believe that their faith requires them to simultaneously share religious teachings with the food they share:

When Jesus landed and saw a large crowd, he had compassion on them, because they were like sheep without a shepherd. So he began teaching them many things. By this time it was late in the day, so his disciples came to him. "This is a remote place," they said, "and it's already very late. Send the people away so they can go to the surrounding countryside and villages and buy themselves something to eat." But he answered, "You give them something to eat."....Then Jesus directed them to have all the people sit down in

groups on the green grass...Taking the five loaves and the two fish and looking up to heaven, he gave thanks and broke the loaves....They all ate and were satisfied.

Mark 6:34-42.

43. To Plaintiffs and the millions who share their faith, simultaneously sharing food with religious teachings is sacred expressive conduct: just as food provides bodily nourishment, so too, they believe, do their religious teachings provide spiritual nourishment. This age-old symbolism permeates the Christian Bible, such as in the account of the Last Supper, and is confirmed by millions of Christians every day through the taking of Communion and pre-meal prayer. Simultaneously sharing food and faith with homeless people is therefore a nonnegotiable requirement of Plaintiffs' religion, and the symbolism underlying this activity is readily understood and accepted as important expressive conduct by both Plaintiffs and the homeless people they serve.

44. As applied, the Ordinance burdens Plaintiffs' (and homeless people's) right to associate in the manner required by their faith. Most importantly, the Ordinance prevents Plaintiffs and similarly-minded persons from seeking out and sharing food with the neediest in their community whose mental or physical conditions (or other circumstances) prevent them from traveling to an approved food-sharing site. Plaintiffs believe they are charged by their faith to take food to such people, not simply to make food theoretically available for them somewhere in the city.

45. As administered by the City, the Ordinance also prohibits Plaintiffs from freely exercising their faith even with the homeless people who travel to the pre-designated food-sharing sites. As noted, the one pre-designated site that allows Plaintiffs and others to share food with unsheltered homeless people is the DRC. To share food at the DRC, however, Plaintiffs and others must follow the DRC's food-sharing rules, which are so restrictive as to constructively preclude Plaintiffs from simultaneously sharing their faith with the food they serve.

46. First and foremost, as explained to Plaintiffs by DRC employees, the DRC rules prohibit overtly religious activities, such as preaching and ministering, on the DRC premises. Thus, simultaneously sharing faith and food with homeless people at the DRC is practically impossible.

47. This rule is also selectively enforced. Some groups are (apparently) allowed to conduct religious activities while others are not. Moreover, certain religious groups, whose members include certain DRC employees, receive favorable treatment. Not only are these groups permitted to conduct religious activities at the DRC, when they do, they receive exclusive control over the DRC food-sharing area and over which homeless people may participate in those activities.

48. Second, even if the DRC's rules allowed Plaintiffs and others to simultaneously share food and faith with homeless people, those rules still limit such activities to the DRC's inadequately-sized parking lot, which, by anyone's standards, is a highly unsanitary place. The parking lot contains the DRC's trash

dumpsters and other waste receptacles, which are constantly overflowing with rotting garbage. The lot is also infested with hundreds of pigeons which continually pull the garbage across the lot and aggressively scavenge food as it is being prepared for and served to homeless people. Worst of all, however, due in part to the fact that homeless people must often stand in line for well over thirty minutes to use the DRC's restrooms, the lot is continually contaminated with human waste and smells accordingly.

49. Indeed, as one City employee from the Health and Environmental Services Department observed to Big Heart: requiring *any* human being to eat in the DRC parking lot is “criminal” and would never be tolerated but for the fact that these particular human beings are “only” homeless people. Such treatment not only endangers homeless people’s health, it denies their basic human dignity. It similarly endangers and demeans Plaintiffs, other food-sharers, and the city employees charged with enforcing this policy. As such, sharing food in the DRC parking lot conflicts with Plaintiffs’ belief that they are charged by their faith to uplift homeless people, not to debase them or treat them in an undignified manner.

50. The DRC parking lot, which is enclosed by a high brick wall, is also too congested to accommodate food-sharing activities. During food-sharing hours, the lot is continually occupied by cars and pedestrian traffic unrelated to food-sharing activities. There is also no requirement that individuals park their cars in an organized manner. Parking is a free-for-all; there are no marked parking spaces, and, on multiple occasions, Big Heart in particular could not get car

owners to move cars inhibiting its operation. Cars moving in and out of the lot (usually with horns blaring) also require the lines of homeless people waiting to receive food to haphazardly disperse, causing confusion and disruption when they attempted to reform afterwards.

51. As these examples show, the Ordinance's burden on homeless people and those who share food with them is inexcusable. Equally inexcusable, however, is the fact that the Ordinance singles out this group -- and only this group -- for such treatment. Specifically, to temper its sweeping requirement that anyone who shares food with anyone else must first secure a food-service permit, the Ordinance provides an "affirmative defense" to those whose food-sharing activities do not involve public advertising, public fundraising, or participation by the general public:

It is a defense to prosecution under this chapter . . . that, at the time of the offense, the person charged was selling, distributing, or serving food at an event, party, or other special gathering that is not open to persons other than the members or invited guests of the sponsor, provided that there is no public advertisement of the event, public solicitation of funds at or for the event, or participation by the general public in the event[.]

Dallas City Code § 17-1.6(a)(3) (the "private-event defense").

52. Presumably, this defense is what allows families, friends, church groups, and others to share food without first securing a food-service permit. If administered as written, this defense would protect most, if not all, food sharing with homeless people at public locations just as it protects food sharing with non-homeless people at public locations (e.g., family or church picnics at public parks).

As interpreted and administered by the City, however, the defense provides no such protection, presumably because the City considers food sharing with homeless people to involve “participation by the general public.”<sup>4</sup>

53. Accordingly, as administered by the City and as clearly stated to Plaintiffs by those enforcing the Ordinance, whether a charitably-minded individual may provide a meal to a homeless person at a public location turns entirely on whether the homeless-feeder defense applies. In contrast, whether that same individual may provide that same meal to a non-homeless person at that same public location turns entirely on whether the broader, less-restrictive private-event defense applies. Such disparate treatment of both homeless people and those who share food with them is not rationally related to any governmental interest.

54. Moreover, nothing in the Ordinance provides reasonable notice that the private-event defense should be construed as it is administered by the City, *i.e.*, as only protecting food sharing with non-homeless people. Further, even if the City administered the defense as it is written, *i.e.*, as protecting most, if not all, food sharing with homeless people, nothing in the Ordinance provides clear guidance to Plaintiffs, other food sharers, or enforcement officials regarding when and whether the defense applies. Additionally, nothing in the Ordinance requires

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<sup>4</sup> City officials enforcing the Ordinance have clearly stated that anyone desiring to share food with homeless individuals may only do so at City-approved locations at designated times.

enforcement officials to investigate whether the defense applies before issuing citation or making arrest.

### **FIRST CLAIM FOR RELIEF**

VIOLATION OF THE RIGHT TO LIFE GUARANTEED BY THE  
FOURTEENTH AMENDMENT TO THE UNITED STATES  
CONSTITUTION

Defendants' actions and the Ordinance, both on its face and as applied, violate homeless persons' right to secure life-sustaining necessities, as guaranteed by the Fourteenth Amendment of the United States Constitution.

### **SECOND CLAIM FOR RELIEF**

VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION  
GUARANTEED BY THE FIRST AND FOURTEENTH  
AMENDMENTS TO THE UNITED STATES CONSTITUTION

Defendants' actions and the Ordinance, both on its face and as applied, violate Plaintiffs' and homeless persons' right to freely exercise their religious beliefs, as guaranteed by the First and Fourteenth Amendments of the United States Constitution.

### **THIRD CLAIM FOR RELIEF**

VIOLATION OF THE RIGHT TO FREE SPEECH GUARANTEED  
BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE  
UNITED STATES CONSTITUTION

Defendants' actions and the Ordinance violate Plaintiffs' right to free expression, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

#### **FOURTH CLAIM FOR RELIEF**

VIOLETION OF THE RIGHT TO FREE ASSOCIATION  
GUARANTEED BY THE FIRST AND FOURTEENTH  
AMENDMENTS TO THE UNITED STATES CONSTITUTION

Defendants' actions and the Ordinance violate Plaintiffs' and homeless persons' right to freely associate with persons of their own choosing, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

#### **FIFTH CLAIM FOR RELIEF**

VIOLETION OF THE RIGHT TO TRAVEL GUARANTEED BY  
THE FOURTEENTH AMENDMENT TO THE UNITED STATES  
CONSTITUTION

Defendants' actions and the Ordinance violate homeless persons' right to freely travel, as guaranteed by the Fourteenth Amendment to the United States Constitution.

#### **SIXTH CLAIM FOR RELIEF**

VIOLETION OF THE RIGHT TO DUE PROCESS GUARANTEED  
BY THE FOURTEENTH AMENDMENT TO THE UNITED  
STATES CONSTITUTION

The Ordinance violates the Plaintiffs' right to due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution. On its face and/or applied by the City:

1. The Ordinance is overbroad in that it prohibits every singular act of food sharing between a private individual and a homeless person that does not occur according to the conditions described in the homeless-feeder defense.

2. The Ordinance is vague in that it does not put individuals on notice as to when an act of food sharing constitutes an “operation” such that an individual would know that he or she constitutes a “food establishment” subject to the Ordinance’s food-service permit requirement.

3. The Ordinance is vague in that it does not put individuals on notice as to whether or when an act of food sharing with a homeless person falls under the private-event defense. The City moreover enforces the Ordinance in a manner that, contrary to that private-event defense’s plain language, denies those who otherwise meet the defense’s criteria the benefit of this defense for the simple reason that they share food with homeless people.

4. To the extent that the private-event defense applies to any act of food sharing with homeless people, the Ordinance fails to instruct officials enforcing the Ordinance to investigate whether such defense applies before issuing citation or making arrest.

## **SEVENTH CLAIM FOR RELIEF**

### **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**

Defendants' actions and the Ordinance, both on its face and as applied, violate Plaintiffs' and homeless persons' right to equal protection under the law, as guaranteed by the Fourteenth Amendment to the United States Constitution. On its face and as applied:

1. The Ordinance unlawfully favors the acts of food sharing with homeless people by individuals who do so while associating with a "civic, religious, or other charitable organization" over the acts of individuals who do not associate with such an organization.

2. The Ordinance unlawfully favors the acts of food sharing by individuals who share food without (i) public advertising, (ii) public fundraising, and (iii) participation by the general public over the acts of individuals whose food sharing meets these criteria but involves sharing food with homeless people.

3. The Ordinance unlawfully favors non-homeless people in that they may receive food from others at virtually any location in the city whereas homeless people are required to receive food from others at one, highly-unsanitary location which is unfit for that purpose.

On information and belief, the City does not enforce and does not intend to enforce the Ordinance against individuals engaging in prohibited conduct, such as

church or charity “bake sales” and other food-sharing activities not related to sharing food with homeless people.

The City also administers the Ordinance so as to favor certain groups’ food-sharing and religious activities with homeless people over others’ food-sharing and religious activities with homeless people.

### **EIGHTH CLAIM FOR RELIEF**

#### VIOLATION OF ARTICLE 11, SECTION 5 OF THE TEXAS CONSTITUTION

The Ordinance violates Article 11, Section 5 of the Texas Constitution, which prohibits any ordinance from containing any provision inconsistent with the general laws enacted by the legislature. By requiring Plaintiffs to obtain permits to share food with homeless individuals, the Ordinance conflicts with Section 437.007 of the Texas Health & Safety Code, which prohibits requiring non-profit organizations to obtain permits under food service regulations.

### **NINETH CLAIM FOR RELIEF**

#### VIOLATION OF THE TEXAS RELIGIOUS FREEDOM RESTORATION ACT

Defendants’ actions and the Ordinance violate the Texas Religious Freedom Restoration Act (Tex. Civ. Prac. & Rem. Code §§ 110.001, *et seq.*, (2004)), by substantially burdening Plaintiffs’ and homeless people’s free exercise of religion, not in furtherance of a compelling governmental interest and not by the least restrictive means.

## PRAYER

Plaintiffs request that this Court:

1. Enter declaratory judgment declaring that the Ordinance and Defendants' actions violate Plaintiffs' and the homeless people's rights under the U.S. Constitution and the Texas Religious Freedom Restoration Act in manner described above.
2. Enter a permanent injunction enjoining Defendants from enforcing the Ordinance or Dallas City Code Chapter 17 in a manner that violates Plaintiffs' and homeless people's rights under the U.S. Constitution and the Texas Religious Freedom Restoration Act in manner described above.
3. Award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and/or Tex. Civ. Prac. & Rem. Code § 110.005.
4. Grant all other relief that is necessary and proper.

Dated: \_\_\_\_\_

**HOWREY, L.L.P.**

By: \_\_\_\_\_

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