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PROVIDENT LAW

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION**

ST. HERMAN’S TABLE, an Arizona
nonprofit corporation; and LANCE BRACE,

Case No. _____

Plaintiffs,

COMPLAINT

vs.

CITY OF PHOENIX,

Defendant.

Comes now the Plaintiffs, St. Herman’s Table and Lance Brace, by counsel and for
their Complaint against the Defendant, plead as follows:



PROVIDENT LAW

INTRODUCTION

1
2 Christian Orthodoxy requires almsgiving. Almsgiving is the “third pillar” of virtue
3 alongside prayer and fasting. It involves voluntary, sacrificial giving—money, time, or
4 goods—to the needy in Christ’s name. The purpose of almsgiving is to assist one’s neighbor,
5 to demonstrate Christ-like love, and to combat one’s own greed. Similarly, the Orthodox
6 Church teaches that its followers are called to preach the Gospel and proclaim the Good News
7 of Jesus Christ.

9 To fulfill his obligation of almsgiving and evangelism, Lance Brace (“Mr. Brace”)
10 founded St. Herman’s Table (“St. Herman’s”), a ministry of Exaltation of the Holy Cross
11 Orthodox Church. Every Thursday, St. Herman’s ministers to the homeless at Cave Creek
12 Park at Cactus (“Cave Creek Park”) in the City of Phoenix (“the City”). St. Herman’s provides
13 a meal, water, Bibles, and small hygiene products to the homeless at no cost to them.
14 Ultimately, St. Herman’s goal is to introduce Jesus Christ to the people it serves.

17 But now, Mr. Brace and St. Herman’s face criminalization for their evangelism. On
18 May 6, 2026, the City Council passed the *Medical Treatment and Food Distribution in Parks*
19 *Ordinance* (“the Ordinance”). The Ordinance makes it a Class 1 Misdemeanor for any
20 individual or organization with a “charitable or similar humanitarian purpose[]” to distribute
21 food without a permit. And the Ordinance prohibits the issuance of more than two permits
22 per month per eligible park. Similarly, the Ordinance’s implementing rules make it impossible
23 for St. Herman’s to continue its ministry as is. The Ordinance and its regulations force Mr.
24
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1 Brace and St. Herman’s to cease its ministry at Cave Creek Park or face criminal prosecution.

2 Strikingly, however, the Ordinance exempts “family events such as celebrations,
3 weddings, meals, or reunions or informal gatherings of family or family friends” from its
4 permit requirements and criminalization altogether. But as the U.S. Supreme Court has
5 declared, under the Free Exercise Clause, *governments cannot treat secular activity more*
6 *favorably than religious exercise*. As such, the City has violated the First Amendment and the
7 Arizona Free Exercise of Religion Act (“FERA”) in this case.
8

9 Moreover, a permitting requirement in a public forum is a presumptively
10 unconstitutional prior restraint. And, although St. Herman’s currently operates under the
11 assumption that it must seek a permit for its ministry under the Ordinance because it is likely
12 qualifies as having a “charitable or similar humanitarian purpose[.]”—these terms, and others,
13 are not defined in the Ordinance. The Ordinance does not define what organizations and
14 activities are included or exempt from it and provides no standards by which law enforcement
15 may enforce it in a non-discriminatory manner, rendering it unconstitutionally vague.
16
17

18 For any or all of these reasons, the Plaintiffs respectfully seek declaratory and
19 injunctive relief from this Court allowing them to continue their ministry at Cave Creek Park
20 without the threat of criminal prosecution.
21

22 **JURISDICTION AND VENUE**

23 1. This Court has subject matter jurisdiction over the Plaintiff’s constitutional
24 claims pursuant to 28 U.S.C. §§ 1331 and 1343, as this action arises under 42 U.S.C.
25



1 § 1983 and other federal laws to redress the deprivation of rights guaranteed by the First
2 Amendment to the United States Constitution under color of State law, custom or usage.

3 2. This Court has supplemental jurisdiction over the Plaintiffs' state law claims
4 under 28 U.S. Code § 1367.

5 3. This Court has personal jurisdiction over the Defendant because it resides and
6 transacts business in the State of Arizona and in the City of Phoenix.

7 4. The declaratory and injunctive relief sought is authorized by 28 U.S.C.
8 § 2201 and Rule 57 of the Federal Rules of Civil Procedure.

9 5. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because
10 events giving rise to Plaintiff's claims occurred in this judicial district.

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13 **PARTIES**

14 6. Plaintiff, St. Herman's Table (hereinafter, "St. Herman's"), is an Arizona
15 nonprofit corporation with its principal place of business located at 12020 N. 35th Ave., Suite
16 107, Phoenix, AZ 85029.

17 7. Plaintiff, Lance Brace (hereinafter, "Mr. Brace"), is a private citizen and a
18 resident of Arizona.

19 8. Defendant, City of Phoenix is a municipal corporation in Arizona. Its principal
20 place of business is 200 W. Washington St., Phoenix, AZ 85003. The City is sued in its official
21 capacity.
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ALLEGATIONS

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2 9. Mr. Brace founded St. Herman’s, a ministry of Exaltation of the Holy Cross
3 Orthodox Church. It has no paid employees and acts solely through volunteers.

4 10. St. Herman’s is a registered domestic nonprofit corporation with the State of
5 Arizona. Mr. Brace currently serves as its President and a member of its Board of Directors.
6

7 11. Mr. Brace chose to name St. Herman’s after St. Herman of Alaska, a Russian
8 Orthodox monk of the 18th Century who ministered to people in the Kodiak region of Alaska,
9 so that the ministry would be aided by the saint’s intercession as they share the love of Christ
10 by feeding the needy.
11

12 12. The Orthodox Church and Mr. Brace sincerely believe that almsgiving is a
13 mandatory act of love. Almsgiving is considered the “third pillar” of virtue alongside prayer
14 and fasting.
15

16 13. Almsgiving involves voluntary, sacrificial giving—of money, time, or goods—
17 to the needy in Christ’s name, aiming to demonstrate Christ-like love, to assist one’s neighbor,
18 and to combat one’s own greed.

19 14. St. Herman’s purpose is to do almsgiving. It provides food, water, Bibles, and
20 small hygiene products—shampoos, soaps, toothpaste, and the like—to the less fortunate,
21 including the homeless, and seeks their conversion to the Gospel of Christ.
22

23 15. St. Herman’s does not provide medical supplies or medications. St. Herman’s
24 does not provide any type of needles to those it serves.
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1 16. St. Herman’s mission statement is: “We serve the hungry in the name of Jesus
2 Christ, offering food, prayer, and kindness, trusting God to supply what we lack.”

3 17. To fulfill their obligation of almsgiving and evangelization, St. Herman’s and
4 Mr. Brace go to Cave Creek Park, a City-owned and maintained park open to the public, to
5 feed and minister to the homeless every Thursday evening.
6

7 18. St. Herman’s typically spends about an hour-and-a-half to two-hours every
8 Thursday in the park.

9 19. Before St. Herman’s serves its meal to the homeless, every Thursday, St.
10 Herman’s offers a prayer in which its volunteers invite anyone who wishes to participate to
11 be a part of. Several of the homeless individuals at Cave Creek Park join in this prayer. During
12 St. Herman’s time in the park, Mr. Brace and its volunteers offer to pray with anyone who
13 engages with them.
14

15 20. Mr. Brace personally brings an icon of an Orthodox saint from his personal
16 collection to Cave Creek Park every Thursday. For example, on May 14, 2026, Mr. Bace
17 brought an icon of St. Porphyrios of Kafsokalyvia. On May 7, 2026, Mr. Brace brought an
18 icon of St. Moses the Black. St. Herman’s also gives out 4x6 inch prints of an icon of St.
19 Herman that has their Church information on the back.
20

21 21. St. Herman’s volunteers all wear crosses, most of them being the Russian
22 Orthodox Cross. The Russian three bar cross is different enough that Mr. Brace often gets
23 questions about it and it leads to a conversation about Christ. Mr. Brace personally wears his
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1 Orthodox Cross outside of my shirt and wears black shirts with the cross imprinted on his
2 shirt to encourage conversation about the cross.

3 22. St. Herman's typically serves between 12 to 25 people during their time at Cave
4 Creek Park. It rarely, if ever, serves more than 25 people. From the best of Mr. Brace's
5 recollection, St. Herman's has never served more than 30.
6

7 23. The number of St. Herman's volunteers who attend each Thursday to serve the
8 homeless varies by week. The five Board members are St. Herman's primary volunteers, but
9 not all are able to attend every week. Sometimes St. Herman's also has other Parishioners
10 volunteer.
11

12 24. All of St. Herman's current volunteers are either baptized members of the
13 Orthodox Church or Catechumens (someone who is preparing to enter the Church).
14

15 25. Mr. Brace and the other St. Herman's volunteers clean up before and after St.
16 Herman's feeds the homeless in the park every week.
17

18 26. St. Herman's does not leave trash or litter behind.

19 27. Mr. Brace has never encountered a needle during his time at Cave Creek Park.
20 If he saw any needle, he would immediately alert those around him to avoid the area until he
21 could carefully dispose of it while wearing gloves, or he would alert someone who could
22 safely dispose of the needle, such as a city employee.

23 28. St. Herman's has never had a large crowd congregate by its table at Cave Creek
24 Park when they are serving their Thursday meal. St. Herman's table operates as "buffet-
25



1 style.” That is, someone takes a plate and walks down the table collecting the food and small
2 hygiene items that he or she needs. That individual then finds a spot nearby to eat. There is
3 never a long line or crowd of people at St. Herman’s table, and the sidewalk is always
4 passable.

5
6 29. To its knowledge, St. Herman’s has never been the subject of a complaint to the
7 City.

8 30. Neither Mr. Brace nor St. Herman’s have ever been cited under any littering,
9 trash, noise, or crowd ordinance by the City.

10 31. Through consistent contact each week, Mr. Brace and St. Herman’s volunteers
11 have formed relationships and friendships with many of the homeless individuals that they
12 first met at Cave Creek Park.

13
14 32. For example, there is a disabled individual who routinely meets St. Herman’s
15 at Cave Creek Park on Thursday. He has informed Mr. Brace that sometimes the meal that St.
16 Herman’s provides is the only complete meal he has received that week.

17
18 33. There is another individual who regularly meets Mr. Brace and St. Herman’s at
19 Cave Creek Park on Thursday. This individual did not easily warm up to St. Herman’s
20 volunteers. It took considerable time for this person to trust that St. Herman’s is there to assist
21 him without judgment.

22
23 34. It is clear that these two individuals reside somewhere close to Cave Creek Park
24 and do not have reliable transportation to travel to other parks.



1 35. Ultimately, St. Herman’s goal is to be used by God to bring His love to these
2 individuals and the others whom St. Herman’s serves, and to see them embrace the Gospel as
3 taught by the Orthodox Church.

4 36. Prior to the passage of the City’s Ordinance, Mr. Brace attended the April 8,
5 2026 Community Meeting about the Ordinance at the Sunnyslope Community Center. This
6 meeting was held before Deputy City Manager Cynthia Aguilar. Mr. Brace testified at the
7 meeting.
8

9 37. Specifically, Mr. Brace testified that the Ordinance would prohibit him and St.
10 Herman’s from fulfilling their religious obligation and mission. His statement is attached as
11 Exhibit 1 and is incorporated herein.
12

13 38. Deputy City Manager Cynthia Aguilar asked Mr. Brace to e-mail his comments
14 to her after the meeting. Mr. Brace did so, but he did not receive any reply by email or
15 otherwise.
16

17 39. Mr. Brace also attended the City Council meeting on May 6, 2026.

18 40. Mr. Brace again testified at the May 6th meeting a second time that the
19 Ordinance would prohibit him and St. Herman’s from being able to fulfill its almsgiving and
20 evangelization. His statement is attached as Exhibit 2 and is incorporated herein.
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22 41. Mayor Kate Gallego, Councilwoman Betty Guardado, Councilwoman Ann
23 O’Brien, Councilwoman Debra Stark, Councilman Kevin Robinson, and Councilwoman
24 Kesha Hodge-Washington were all present at the May 6th meeting.
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1 42. At the May 6, 2026 City Council Meeting, Mayor Kate Gallego, Councilwoman
2 Betty Guardado, Councilwoman Ann O’Brien, Councilwoman Debra Stark, Councilman
3 Kevin Robinson, and Councilwoman Kesha Hodge-Washington all voted in favor of the
4 Ordinance. The Ordinance passed at that meeting.

5 43. The Ordinance is set to take effect on June 5, 2026. Attached as Exhibit 3 is the
6 Ordinance and it is incorporated herein.

7 44. In subsection B.6. of the Ordinance, “Food Distribution Event” is
8 defined as:
9

10 “a gathering conducted by a private individual or organization, for charitable
11 or similar humanitarian purposes, at a park, that is planned, organized, or
12 conducted to distribute food to any member of the general public at no cost or
13 for a nominal charge.
14

15 i. Private events, not open to the general public, where food is served
16 such as family gatherings, picnics, social organization events, or sporting
17 events where food is served only for participants of those events are not food
18 distribution events.”
19

20 Ex. 3.

21 45. Subsection D of the Ordinance, titled “Food Distribution in Parks” prohibits
22 “any person, group, or organization to conduct a food distribution event at a park without
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1 obtaining a permit from the Director [of the City of Phoenix Parks and Recreation
2 Department] prior to the event.” Ex. 3.

3 46. In Subsection G of the Ordinance, titled “Exceptions”, Section 4 states:

4 “For avoidance of doubt, subsection D of this section does not apply to any
5 event that was not planned or intended to serve or distribute food to the
6 general public. This includes *but is not limited to*:

7
8 “i. Family events such as celebrations, weddings, *meals*, or reunions or
9 informal gatherings of family *or* family friends; and

10
11 “ii. Events that are not open to the general public or events to which
12 the general public is not invited.”

13 Ex. 3 (emphasis supplied).

14 47. Subsection H of the Ordinance thus makes it a Class 1 Misdemeanor for any
15 individual or organization to provide food for “charitable or similar humanitarian purposes”
16 to any member of the general public without a permit. Ex. 3.

17
18 48. Subsection E of the Ordinance details in full the discretion of the Director of
19 the Phoenix Parks and Recreation Department (“the Director”). It states that the Director: “[i]s
20 authorized to adopt rules and procedures for the issuance of permits for such services,
21 *including, but not limited to*, rules and procedures to minimize disruption to other park uses,
22 ensure the safety of park guests, and maintain parks in a clean and sanitary condition.” Ex. 1
23 (emphasis added). The entirety of Subsection E is incorporated into this paragraph.
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1 3. The Ordinance’s implementing rules and permit application require that a that
2 an individual or organization distributing food for “charitable or similar humanitarian
3 purposes” must apply for the two available permits per month per park on a tri-annual basis.
4 For example, the Fall 2026 applications open June 1-June 19, 2026 for permits in September-
5 December 2026. The permit application requires that at the time of application, the
6 organization seeking the permit must identify who will attend and provide Food Handler
7 Certificates for each of those individuals. St. Herman’s does not know months in advance
8 which of its volunteers will be available.
9

10 4. Exempted individuals and organizations are not subject to any such advance
11 scheduling or notification.
12

13 5. The Ordinance’s implementing rules and permit application require that an
14 individual or organization distributing food for “charitable or similar humanitarian purposes”
15 must submit proof of a \$2 million liability insurance policy at the time of application.¹
16

17 6. Exempted individuals and organizations are not subject to any insurance policy
18 requirement.
19

20 7. The Ordinance’s implementing rules and permit application require that any
21 individual or organization seeking to distribute food for “charitable or similar humanitarian
22

23 ¹ Plaintiffs respectfully request that the Court take judicial notice of the City’s rules
24 for the issuance of a summer permit and the permitting application. *See CITY OF PHOENIX,*
25 *Medical Treatment/Food Distribution Services Permit Application, available at*
[https://www.phoenix.gov/content/dam/phoenix/parkssite/documents/safemedicaltreatment/S](https://www.phoenix.gov/content/dam/phoenix/parkssite/documents/safemedicaltreatment/Summer%20Open%20Application..pdf)
26 [ummer%20Open%20Application..pdf](https://www.phoenix.gov/content/dam/phoenix/parkssite/documents/safemedicaltreatment/Summer%20Open%20Application..pdf) (last visited May 20, 2026).



1 purposes” must submit proof that every person handling food has a Food Handlers Certificate
2 at the time of application.

3 8. Exempted individuals and organizations are not subject to any Food Handlers
4 Certificate requirement.

5 9. The Ordinance’s implementing rules make clear that only permits for use in the
6 eligible parks’ parking lots will be issued.

7 10. Exempted individuals and organizations are not subject to any limitations on
8 where they can host their event.

9 11. The Ordinance declares that these requirements are necessary because
10 “providing services needed to vulnerable populations . . . can [] strain the parks and city
11 resources, frequently creating large crowds, increased noise, obstruction of public spaces,
12 litter, and the accumulation of trash, debris, and food waste.”

13 12. But when asked at the May 6th City Council meeting for data to support the
14 Ordinance’s interest, Deputy City Manager Cynthia Aguilar responded that the City does not
15 have any such data.

16 13. Specifically, Deputy City Manager Aguilar was asked, “what empirical
17 evidence do[es the City] have that restricting care distribution will result in measurable
18 cleaner parks?”

19 14. Deputy City Manager Aguilar responded that the City “do[es] not have data that
20 is specific to that on park property.”
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15. The Ordinance will prevent St. Herman’s from continuing to feed, befriend, and evangelize at Cave Creek Park each week.

16. The Ordinance and its implementing rules impacts the number of beneficiaries and volunteers, and St. Herman’s mission, by its requirement that they be confined to an asphalted parking lot.

17. The Ordinance and its implementing rules prevent St. Herman’s from applying for permits because it cannot schedule and identify volunteers for a particular day months in advance.

18. The Ordinance damages the essential trust and friendships between St. Herman’s and those they serve because the ordinance will prevent regular, reliable and weekly meals and ministry.

19. The purpose and effect of the Ordinance is to substantially burden St. Herman’s exercise of its legal rights.

20. Both Mr. Brace and St. Herman’s intend to peaceably continue their weekly ministry at Cave Creek Park despite the threat of prosecution by the City under the Ordinance. St. Herman’s intends to continue to feed and minister to the homeless at Cave Creek Park once the Ordinance goes into effect on June 5, 2026.

21. Mr. Brace has a wife and three children who often volunteer at St. Herman’s Thursday ministry at Cave Creek Park with him. As an Orthodox Christian, he believes that he must set a Godly example for his children. Mr. Brace and his wife therefore take their



1 children to the park when they are volunteering with St. Herman's so that they may witness
2 feeding and ministering to those in need and seeking their spiritual renewal.

3 22. However, due to the Ordinance, Mr. Brace and his wife have decided that once
4 the Ordinance goes into effect, she and their children will no longer attend
5 St. Herman's weekly ministry at Cave Creek Park.
6

7 23. They have made this decision in case Mr. Brace is cited or arrested while
8 fulfilling his almsgiving, so that their children will not be a witness to that, and so that his
9 wife will be able to care for their children in case he is unable to immediately return home.
10

11 24. Prior to filing this lawsuit and before the City Council adopted the Ordinance,
12 St. Herman's sent the Phoenix City Attorney a letter detailing in-depth Mr. Brace's and St.
13 Herman's' objections to the Ordinance and explaining why it violates the First Amendment.
14 The letter is attached hereto at Exhibit 4 and is incorporated herein.

15 25. Neither the City Attorney nor the City Council responded to the letter. Instead,
16 the Ordinance was passed on May 6, 2026. It is Mr. Brace's and St. Herman's understanding
17 that the City intends to fully enforce the Ordinance beginning on its effective date of June 5,
18 2026.
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21 **CLAIMS**

22 **Count I (42 U.S.C. § 1983)**
23 **First Amendment**
24 **Free Exercise of Religion Clause**
25 **Not Neutral or Generally Applicable**
26 **Facially and As Applied to St. Herman's and Mr. Brace**



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26. Plaintiffs incorporate by reference all the preceding factual paragraphs.

27. The Free Exercise Clause of the First Amendment protects against “indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.” *Carson v. Makin*, 596 U.S. 767, 778 (2022) (internal citations omitted).

28. Government practices that burden religious exercise are subject to strict scrutiny if they are not neutral and generally applicable. *Fulton v. City of Philadelphia*, 593 U.S. 522, 542 (2021).

29. “[T]he minimum requirement of neutrality is that a law not discriminate on its face.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993).

30. Government policies are not neutral and generally applicable “whenever they treat *any* comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (emphasis in original).

31. The Ordinance criminalizes religious persons and organizations practicing ministerial service if performed more than once or twice a month.

32. The Ordinance on its face prevents any religious organization from freely exercising its religious acts of service at Cave Creek Park on a weekly basis.

33. By adopting the Ordinance, the City has criminalized St. Herman’s and Mr. Brace’s weekly almsgiving and evangelism at Cave Creek Park because only two permits may be issued for the park in a month.



1 34. By criminalizing St. Herman’s and Mr. Brace’s almsgiving and evangelism, the
2 Ordinance burdens their free exercise of religion.

3 35. Moreover, the Ordinance’s implementing rules subject religious organizations,
4 St. Herman’s, and Mr. Brace to additional regulations—such as insurance, scheduling,
5 notification, and food safety training requirements—that secular individuals and
6 organizations are not required to adhere to.
7

8 36. The Ordinance is not neutral or generally applicable because on its face it
9 penalizes food distribution “conducted by a private individual or organization, for charitable
10 or similar humanitarian purposes,” which necessarily includes religious purposes, but does
11 not penalize food distribution conducted for other purposes.
12

13 37. The Ordinance is not facially neutral or generally applicable because it
14 penalizes St. Herman’s and Mr. Brace as they are a “private individual or organization, for
15 charitable or similar humanitarian purposes.”
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17 38. The Ordinance is not facially neutral or generally applicable because on its face
18 the Ordinance treats secular conduct more favorably than religious conduct. It exempts the
19 same food distribution conduct when performed for a secular reason but not when performed
20 for a religious reason by exempting the following events that serve food: (1) picnics
21 (subsection 6.i); (2) social organization events (subsection 6.i); (3) sporting events (subsection
22 6.i); (4) family gatherings (subsection 6.i); (5) family celebrations (subsection I.4.i.); (6)
23 family weddings (subsection I.4.i.); (7) family meals (subsection I.4.i.); (8) family reunions
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1 (subsection I.4.i.); (9) informal gatherings of family (subsection I.4.i.); (10) informal
2 gatherings of family friends (subsection I.4.i.); (11) events that are not open to the general
3 public (subsection I.4.ii); (12) events to which the general public is not invited (subsection
4 I.4.ii); (13) gatherings that are conducted by *public* individual or organizations (subsection
5 B.6.); (14) gatherings that are not conducted for charitable or similar humanitarian purposes
6 (subsection B.6.); (15) gatherings that make food available for more than free or a nominal
7 charge (subsection B.6.). The Ordinance’s text makes clear that other unenumerated
8 gatherings are also included through its use of “such as” in subsection B.6. and “includes but
9 is not limited to” in subsection I.4. The 15 enumerated categories are therefore merely
10 examples of exemptions and not a finite list of exemptions.
11

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13 39. The Ordinance is not neutral and generally applicable because it creates on its
14 face a system of exemptions from enforcement. *Tandon*, 593 U.S. at 63.

15
16 40. The Ordinance is not neutral or generally applicable because the Ordinance’s
17 text (“such as” in subsection B.6. and “includes but is not limited to” in subsection I.4) allows
18 the Director of the Phoenix Parks and Recreation Department to exercise discretion to grant
19 additional individualized exemptions beyond the 15 examples enumerated in the Ordinance,
20 as described in the above paragraph above. *Fulton*, 593 U.S. at 535.

21
22 41. Because the Ordinance is not neutral and generally applicable, it is subject to
23 strict scrutiny.
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1 54. Unbridled discretion is found if an ordinance does not provide any requirement
2 that a government official explain his or her reasons for denying or qualifying a permit and
3 fails to provide a forum for appealing the official’s decision. *See Seattle Affiliate of the Oct.*
4 *22nd Coalition to Stop Police Brutality v. City of Seattle*, 550 F.3d 788, 791 (9th Cir. 2008).

5
6 55. “Content-based laws—those that target speech based on its communicative
7 content—are presumptively unconstitutional and may be justified only if the government
8 proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of*
9 *Gilbert*, 576 U.S. 155, 163 (2015).

10 56. The Ordinance grants unbridled discretion to the Director on three counts.

11
12 57. First, the Ordinance provides no basis by which the Director is to determine
13 which individual(s) or organization(s) are to receive the two permits per park per month.

14 58. Second, the Ordinance requires no explanation from the Director for his
15 decision to favor one individual or organization over another.

16
17 59. Third, the Ordinance provides no mechanism by which to appeal the Director’s
18 decision.

19 60. Further still, the Ordinance is content-based as its permitting and
20 criminalization provisions only apply to individual speakers and small groups who wish to
21 express religious, charitable, and/or humanitarian purposes in a public forum.

22
23 61. The Ordinance allows some groups that serve food to have access on an
24 unlimited basis to a public park (family groups, social organizations, sports groups), while
25



1 prohibiting the same activity by groups who have a charitable or similar humanitarian
2 purpose. Therefore, the Ordinance is not content-neutral and is unconstitutional viewpoint
3 discrimination.

4 62. The Ordinance does not serve a compelling government interest.

5 63. The Ordinance is not narrowly tailored because it exempts social and secular
6 conduct from its permitting and criminalization provisions.
7

8 64. The Ordinance is not narrowly tailored because the City has admitted that it
9 does not have evidence to support the Ordinance’s alleged interest.

10 65. The Ordinance is not narrowly tailored because less restrictive means are
11 available to address the City’s trash, litter, crowding, noise, and safety concerns. *Tandon*, 593
12 U.S. at 62.

13 66. As such, the Ordinance is a facial prior restraint and unconstitutional as applied
14 to St. Herman’s and Mr. Brace.
15

16
17 **Count III (42 U.S.C. § 1983)**
18 **Violation of the First Amendment**
19 **Free Speech and Exercise Clauses**
20 **Equal Access**
21 **Facially and As Applied to St. Herman’s and Mr. Brace**

22 67. The Plaintiffs incorporate by reference all the preceding factual paragraphs.

23 68. The Free Speech Clause protects “expressive religious activities.” *Kennedy v.*
24 *Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022).
25



1 69. The First Amendment protects equal access for religious speakers and religious
2 speech, including religious expressive activities, to public fora, including traditional, limited,
3 and nonpublic fora. *See, e.g., Widmar v. Vincent*, 454 U.S. 263 (1981); *Rosenberger v. Rector*
4 *& Visitors of University of Virginia*, 515 U.S. 819 (1995); *Good News Club v. Milford Sch.*
5 *Dist.*, 533 U.S. 98 (2001); *Shurtleff v. Boston*, 596 U.S. 767 (2022).

7 70. Public parks are a traditional public forum in which religious speakers and
8 religious speech are protected. *See, e.g., Pleasant Grove City v. Summum*, 555 U.S. 460, 469
9 (2009) (citations omitted); *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (street public
10 forum); *Niemotko v. Maryland*, 340 U.S. 268 (1951); *Fowler v. Rhode Island*. 345 U.S. 67
11 (1953).

13 71. The Ordinance on its face and as applied denies equal access to a public park
14 for religious speakers and religious speech.

16 72. The Ordinance is not a time, place, or manner restriction because it is not
17 content-neutral. *Ward. v. Rock Against Racism*, 491 U.S. 781 (1989). It excludes food
18 distribution only for groups doing it for charitable or similar humanitarian purposes. That
19 means its terms require the government to consider the motivation for a group’s speech,
20 associational and expressive activity.

22 73. The Ordinance is not a reasonable time, place, or manner restriction because it
23 does not restrict all gatherings in the park based on the time of the activity (allowing some
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1 types of food distribution to occur at any time the park is open), or the place of the activity
2 (allowing some food distribution to take place all over the park).

3 74. The Ordinance is not a reasonable time, place, or manner restriction because it
4 is not adequately narrow. It does not leave open ample, alternative ways for groups to
5 communicate through their expressive acts of service. *Ward*, 491 U.S. 781.
6

7 75. The Ordinance allows some groups that serve food to have access on an
8 unlimited basis to a public park (family groups, social organizations, sports groups), while
9 prohibiting the same activity by groups who have a charitable or similar humanitarian
10 purpose. Therefore, the Ordinance is not content-neutral and is unconstitutional viewpoint
11 discrimination.
12

13 76. The Ordinance on its face and as applied denies religious organizations, Mr.
14 Brace, and St. Herman's equal access for their expressive religious activities of almsgiving
15 and evangelism through feeding persons in need, while allowing nonreligious expressive and
16 associational activities that involve food distribution to take place in public parks, which
17 violates the Free Speech Clause.
18

19 77. The Ordinance discriminates against Mr. Brace's and St. Herman's based on
20 the content and viewpoint of their expressive religious activities and religious speech.
21

22 78. As enacted, the Ordinance leaves unimpeded social conversation but impedes
23 religious conversation, encouragement and counsel.
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1 79. As enacted, the Ordinance exempts from criminalization secular social
2 gatherings but bans gatherings rooted in religious expression.

3 80. Therefore, the Ordinance on its face and as applied is subject to strict scrutiny
4 under the Free Speech Clause.

5 81. The Ordinance does not survive strict scrutiny because it does not serve a
6 compelling government interest.

7 82. The Ordinance also fails strict scrutiny because it creates exemptions on its face
8 that undermine any alleged interest of the City.

9 83. The Ordinance also fails strict scrutiny because the City has admitted that it
10 does not have evidence to support the Ordinance's alleged interest and "speculation is
11 insufficient to satisfy strict scrutiny." *Fulton*, 593 U.S. at 542.

12 84. The Ordinance also fails strict scrutiny because less restrictive means are
13 available to address the City's trash, litter, crowding, noise, and safety concerns. *Tandon*, 593
14 U.S. at 62.

15 85. Therefore, the Ordinance denies equal access to religious organizations, St.
16 Herman's, and Mr. Brace and is unconstitutional under the Free Speech and Exercise Clauses.

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21 **Count IV (42 U.S.C. § 1983)**
22 **First Amendment**
23 **Expressive Association**
24 **Violation of the First Amendment Free Speech and Assembly Clauses**
25 **Facially and As Applied to St. Herman's and Lance Brace**

26 86. The Plaintiffs incorporate by reference all the preceding factual paragraphs.



1 87. “Implicit in the right to engage in activities protected by the First Amendment
2 is a corresponding right to associate with others in pursuit of a wide variety of political, social,
3 economic, educational, religious, and cultural ends.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640,
4 647 (2000) (cleaned up).

5 88. By enacting the Ordinance, the City has denied the Plaintiffs their ability to
6 engage in gathering and associating with others at Cave Creek Park.

7 89. St. Herman’s was formed so that an association of religiously motivated people
8 could come together and have a bigger impact in living out their faith in word and deed by
9 working together. This is evident from St. Herman’s purpose, method of gathering volunteers,
10 and its plan of outreach through food service.

11 90. The Plaintiffs’ association has a communicative purpose—to convey by deed
12 and word the love and Gospel of Jesus Christ. St. Herman’s and Mr. Brace communicate this
13 purpose by praying with the homeless, speaking with them about the Gospel, providing Bibles
14 and small cards of St. Herman to the homeless, and displaying crosses and icons of saints.

15 91. The City’s Ordinance unconstitutionally prohibits St. Herman’s and Mr. Brace
16 from expressively associating with those they seek to meet with and minister to once a week
17 at Cave Creek Park.

18 92. Therefore, the Ordinance substantially burdens the Plaintiffs’ freedom of
19 expressive association, subjecting both to strict scrutiny.
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1 99. In a facial vagueness challenge, the ordinance need not be vague in all
2 applications if it reaches a “substantial amount of constitutionally protected conduct.” *Id.* at
3 359 n.8 (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489,
4 494 (1982)).

5 100. A statute is unconstitutionally vague if it “specifie[s]” . . . “no standard of
6 conduct at all.” *United States v. Lucero*, 989 F.3d 1088, 1101 (9th Cir. 2021)

7 101. The need for definiteness is greater when the ordinance imposes criminal
8 penalties on individual behavior or implicates constitutionally protected rights than when it
9 regulates the economic behavior of businesses. *Hoffman Estates*, 455 U.S. at 498–99.
10

11 102. Here, the Ordinance’s language as to what activities are exempted from
12 criminalization is unconstitutionally vague. The Ordinance does not define “private events”,
13 “general public”, “family gatherings”, “picnics”, “social organization events”, “sporting
14 events”, “celebrations”, “meals”, or “informal gathering of family or friends.”
15

16 103. As detailed herein, St. Herman’s has formed relationships and friendships with
17 many of the homeless individuals at Cave Creek Park. Under the plain language of the
18 ordinance, it is unclear whether a gathering between St. Herman’s volunteers, Mr. Brace, and
19 these individuals on a Thursday night would qualify as a “picnic”, “meal”, “private “informal
20 gathering of . . . friends”, or “social organization events.”
21

22 104. The Ordinance on its face does not define any of the terms in the above
23 paragraphs.
24

1 105. The Ordinance does not define or explain how or how not St. Herman's
2 Thursday meals qualify as any of the terms in the above paragraph.

3 106. The Ordinance does not provide any standards by which law enforcement may
4 determine in a non-discriminatory way if a religious organization or St. Herman's is engaged
5 in any of the terms in the above paragraphs.
6

7 107. As such, the Ordinance is unconstitutionally vague on its face and as applied to
8 St. Herman's and Mr. Brace.

9
10 **Count VI**
11 **(42 U.S.C. § 1983, under this Court's Supplemental Jurisdiction)**
12 **Violation of the Arizona Free Exercise of Religion Act ("FERA")**
13 **As applied to St. Herman's and Lance Brace**

14 108. The Plaintiffs incorporate by reference all the preceding factual paragraphs.

15 109. The Arizona Legislature passed FERA "to protect Arizona citizens' right to
16 exercise their religious beliefs free from undue governmental interference." *State v. Hardesty*,
17 222 Ariz. 363, 365 (2009) (*en banc*).

18 110. FERA prohibits the City from substantially burdening an exercise of religion
19 unless the burden is "[i]n furtherance of a compelling governmental interest [and] [t]he least
20 restrictive means of furthering that compelling governmental interest." A.R.S. §41-
21 1493.01(C).

22 111. A substantial burden is found when a government "forces individuals to choose
23 between following the precepts of [their] religion and receiving a government benefit" or
24 "compels them, under threat of criminal sanction, to perform acts undeniably at odds with
25



1 fundamental tenets of their religious beliefs.” *Brush & Nib Studio, LC v. City of Phoenix*, 247
2 Ariz. 269, 298, 448 P.3d 890, 919 (2019) (internal quotations omitted) (citations omitted).

3 112. The Ordinance substantially burdens Mr. Brace and St. Herman’s to either
4 follow the precepts of their religion—engage in consistent almsgiving and evangelization—
5 or forgo that obligation and receive, perhaps once a month, a permit for such activities to
6 avoid prosecution.
7

8 113. The Ordinance substantially burdens St. Herman’s and Mr. Brace’s religious
9 exercise because it criminalizes their weekly free exercise of almsgiving and evangelism.
10

11 114. The City does not have a compelling interest in prohibiting Mr. Brace and St.
12 Herman’s from engaging in their religious exercise. If the City were truly committed to
13 addressing park orderliness and cleanliness, it would not exempt birthday parties, weddings,
14 and social gatherings from the Ordinance.
15

16 115. Likewise, the City has less restrictive means by which to further any interest
17 related to keeping the City’s parks clean and orderly.

18 116. As such, the Ordinance violates St. Herman’s and Mr. Brace’s rights under
19 FERA.
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21 **PRAYER FOR RELIEF**

22 117. Plaintiffs ask this Honorable Court to:

- 23 a. Declare that the Ordinance facially violates the First Amendment.
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- b. Declare that the Ordinance violates the First Amendment as applied to Mr. Brace and St. Herman’s.
- c. Declare that the City’s Ordinance caused the City of Phoenix to violate the First Amendment.
- d. Declare that the City may not penalize protected First Amendment activity—in any way—including by enforcement of the Ordinance against Mr. Brace, St. Herman’s, or any volunteer or associate of St. Herman’s.
- e. Declare that the City may not cite, arrest, charge, or prosecute Mr. Brace, St. Herman’s, or any volunteer or associate of St. Herman’s under the Ordinance.
- f. Declare that the application or enforcement of the Ordinance, its implementing rules, and the permit process to Mr. Brace, St. Herman’s, and any volunteer or associate of St. Herman’s is an unconstitutional violation of the First Amendment’s Free Exercise Clause;
- g. Declare that the application or enforcement of the Ordinance, its implementing rules, and the permit process to Mr. Brace, St. Herman’s, and any volunteer or associate of St. Herman’s is an unconstitutional violation of the First Amendment’s Free Speech Clause;
- h. Declare that the application or enforcement of the ordinance, its implementing rules, and the permit process to Mr. Brace, St. Herman’s, and any volunteer or



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associate of St. Herman's is a violation of the Arizona Free Exercise of Religion Act;

118. Enter a temporary restraining order, preliminary injunctive relief, and permanent injunctive relief enforcing the above declaratory relief;

119. Enter injunctive relief:

- a. Prohibiting the City from enforcing the Ordinance, its implementing rules, and/or the permitting process against Mr. Brace, St. Herman's, and all of its volunteers and associates when they are almsgiving and evangelizing by serving food to persons in need on a weekly basis in City parks;
- b. Ordering the City to preserve the status quo regarding Mr. Brace's and St. Herman's religious exercise by allowing Mr. Brace, St. Herman's, and all of its volunteers and associates to continue to almsgiving and evangelize through serving food to persons in need on a weekly basis at Cave Creek Park every Thursday without any permit; and,
- c. Prohibiting the City from applying or enforcing the Ordinance, its implementing rules, and/or the permitting process against Mr. Brace, St. Herman's, and any volunteer or associate of St. Herman's.

120. Award the Plaintiffs their reasonable attorneys' fees, costs, and any equitable or other relief that is just and proper, including under 42 U.S.C. § 1988.



PROVIDENT LAW

Exhibit 1

Hello. My name is Lance Brace. I am an Orthodox Christian, and I run an organization called St. Herman's Table.

In Orthodox Christianity, we have three primary spiritual disciplines: prayer, fasting, and almsgiving. Almsgiving is not optional. It is a required and essential practice of the Christian life, most often expressed by feeding the hungry.

As I read this proposal, I asked a simple question: what exactly does this ordinance prohibit St. Herman's Table from doing?

It does not prohibit being in the park.

It does not prohibit the homeless being in the park.

It does not prohibit speaking with the homeless.

It does not prohibit gathering.

It prohibits one thing: the act of handing a hungry person something to eat.

That act is called almsgiving. It is a religious practice.

This ordinance therefore imposes a direct burden on the free exercise of religion. It conditions the ability to practice that religion on obtaining government permission, subject to limited permits, discretionary approval, and requirements (such as insurance) that many small, volunteer ministries cannot meet.

I want to be clear: I am not here to argue against order, safety, or cleanliness in our parks. Those are legitimate concerns. But those concerns can be addressed without prohibiting or effectively prohibiting acts of charity. For example, the city can enforce existing littering laws, require groups to clean up all trash after distributing food, and ensure walkways and park access remain unobstructed, without limiting service to two permits per month or imposing requirements that make participation realistically impossible for small, volunteer groups.

For two thousand years, the Church has fed the hungry as a core part of its life and witness. That practice will continue.

No Christian can be required to seek Caesar's permission to fulfill a religious obligation such as feeding the hungry. The role of government is not to stand between a person and their duty to love their neighbor.

As a matter of conscience and faith, I cannot/will not refrain from almsgiving, and I cannot accept a system in which that obligation requires prior permission from the government.

If this ordinance passes, it will not end acts of charity. It will only place those acts in conflict with the law.

I urge you to reconsider this proposal.

Thank you.



PROVIDENT LAW

Exhibit 2

EXHIBIT 2

Hello. My name is Lance Brace. I lead an outreach ministry called St. Herman's Table.

Every Thursday evening, we go to Cave Creek Park at Cactus to feed people who are hungry.

This is not just volunteer work. This is a Christian ministry.

In the Orthodox Christian faith, feeding the hungry is called almsgiving. It is not optional. It is a core religious practice that has been carried out *in public spaces* for millennia. [half pause]

When we do this, we are not just handing out food. We are bringing the Love of God to our homeless neighbors. [slowly] We are bringing the Light of Christ into their lives. We bring them to Church. We pass out Bibles and Icons. We pray for and with them.

This ordinance places an undue burden on our ministry, and would make it impossible to continue.

It requires permission. It limits when it can happen. And it creates a system where small, volunteer-led ministries like ours may not be able to continue at all.

And I want to be very clear about something.

No person of faith should need permission from the government to practice our religion in this peaceful, helping way, like the Church has been doing for 2,000 years.

[pause]

At the same time, this ordinance does not burden secular activities in the same way. It creates a distinction where feeding the hungry—because of what it is and who it serves—is treated differently.

And ultimately, this ordinance will not stop almsgiving.

It will not stop the Church from feeding the hungry where they are.

It will only force people of conscience to choose between engaging with our faith and submitting to the law.

That is not a position the City should be putting its people in.

We all want our parks to be clean and safe. That is important. But those concerns can be addressed without placing barriers in front of people trying to help.

I ask you to reconsider this ordinance.

Thank you.



PROVIDENT LAW

Exhibit 3

ORDINANCE G-7514

AN ORDINANCE AMENDING PHOENIX CITY CODE
CHAPTER 24 PARKS AND RECREATION TO ADD NEW
SECTION RELATING TO CERTAIN SERVICES IN PARKS

WHEREAS, individuals and organizations have historically provided services, including the distribution of food and medical care, at no cost or low cost to individuals in need. Such activities align with the city's overall aspiration to provide supportive care to vulnerable populations that frequently take place in parks.

WHEREAS, in addition to providing services needed to vulnerable populations, these activities can also strain the parks and city resources, frequently creating large crowds, increased noise, obstruction of public spaces, litter, and the accumulation of trash, debris, and food waste. These activities can damage public property and limit others' ability to access, share, and enjoy the parks.

WHEREAS, the intent of this Ordinance is to establish a framework for safer, orderly, and fair use and management of the parks, making every effort to ensure welcoming and positive access to them.

WHEREAS, the purpose of this Ordinance is to establish reasonable time, place, and manner restrictions on certain service events occurring at parks and thereby protect public health, safety, and welfare by requiring individuals and organizations that conduct certain service events at parks to first obtain permits and comply with applicable regulations.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. Phoenix City Code, Chapter 24, is amended as follows:

SEC. 24-45 CERTAIN SERVICES IN PARKS

- A. THIS SECTION APPLIES TO PARKS AS DEFINED IN PHOENIX CITY CODE CHAPTER 24.

B. DEFINITIONS. THE FOLLOWING WORDS, TERMS, AND PHRASES HAVE THE MEANING ASCRIBED TO THEM IN THIS SECTION, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES A DIFFERENT MEANING:

1. "CAREGIVER" MEANS A PERSON WHO ACCOMPANIES TO AND FROM THE PARK AND CARES FOR SOMEONE WHO IS SICK OR DISABLED OR AN ADULT WHO ACCOMPANIES TO AND FROM THE PARK AND CARES FOR AN INFANT OR CHILD AND INCLUDES A FAMILY MEMBER, LEGAL GUARDIAN, BABYSITTER, NANNY, FRIEND, TEACHER, NURSE, OR MEDICAL PRACTITIONER OF THE PERSON BEING CARED FOR.
2. "DEPARTMENT" MEANS THE CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT.
3. "DIRECTOR" MEANS THE DIRECTOR OF THE CITY OF PHOENIX PARKS AND RECREATION DEPARTMENT.
4. "FAMILY MEMBER" MEANS A PERSON WHO IS BY BLOOD, ADOPTION, OR MARRIAGE A PARENT, GRANDPARENT, GREAT-GRANDPARENT, SIBLING OF THE WHOLE OR HALF BLOOD, STEPBROTHER, STEPSISTER, AUNT, UNCLE, GREAT-AUNT, GREAT-UNCLE, OR FIRST COUSIN.
5. "FOOD" MEANS ANY PRODUCT, OTHER THAN WATER OR ELECTROLYTE BEVERAGES, DISTRIBUTED OR SOLD FOR HUMAN CONSUMPTION, THE SALE OR DISTRIBUTION OF WHICH IS NOT PROHIBITED BY LAW.
6. "FOOD DISTRIBUTION EVENT" MEANS A GATHERING CONDUCTED BY A PRIVATE INDIVIDUAL OR ORGANIZATION, FOR CHARITABLE OR SIMILAR HUMANITARIAN PURPOSES, AT A PARK, THAT IS PLANNED, ORGANIZED, OR CONDUCTED TO DISTRIBUTE FOOD TO ANY MEMBER OF THE GENERAL PUBLIC AT NO COST OR FOR A NOMINAL CHARGE.
 - i. PRIVATE EVENTS, NOT OPEN TO THE GENERAL PUBLIC, WHERE FOOD IS SERVED SUCH AS FAMILY GATHERINGS, PICNICS, SOCIAL ORGANIZATION EVENTS, OR SPORTING EVENTS WHERE FOOD IS SERVED ONLY FOR PARTICIPANTS OF THOSE EVENTS ARE NOT FOOD DISTRIBUTION EVENTS.

7. "MEDICAL TREATMENT" MEANS ANY ACT THAT INVOLVES THE USE OF NEEDLES, SYRINGES, OTHER MEDICAL SHARPS, OR PRODUCES MEDICAL WASTE AS DEFINED BY A.R.S. § 49-701(32), INCLUDING BUT NOT LIMITED TO BANDAGES AND DRESSINGS.

C. MEDICAL TREATMENT IN PARKS. IT IS PROHIBITED:

1. FOR ANY PERSON, GROUP, OR ORGANIZATION TO POSSESS A NEEDLE, SYRINGE, OR OTHER MEDICAL SHARP CAPABLE OF POSING A STICK OR PUNCTURE HAZARD, UNLESS: (A) SUCH PERSON ALSO POSSESSES THE MEDICATION TO BE ADMINISTERED BY SUCH NEEDLE, SYRINGE, OR OTHER MEDICAL SHARP AND (B) SUCH MEDICATION IS CURRENTLY AND VALIDLY PRESCRIBED TO THAT PERSON OR TO A PERSON ACCOMPANYING THEM AND FOR WHOM THEY ARE A PARENT OR OTHER CAREGIVER.
2. FOR ANY PERSON, GROUP, OR ORGANIZATION TO CONDUCT THE SALE, DISTRIBUTION, OR EXCHANGE OF SYRINGES OR NEEDLES OR CONDUCT A NEEDLE EXCHANGE OR A NEEDLE EXCHANGE PROGRAM.
3. FOR ANY PERSON, GROUP, OR ORGANIZATION TO PROVIDE MEDICAL TREATMENT TO ANY PERSON OTHER THAN (A) A FAMILY MEMBER OR (B) A PERSON TO WHOM THEY ARE A CAREGIVER WITHOUT OBTAINING A PERMIT FROM THE DIRECTOR AUTHORIZING THE PROVISION OF SUCH MEDICAL TREATMENT.
4. FOR ANY PERSON, GROUP, OR ORGANIZATION TO PROVIDE PERMITTED OR OTHERWISE AUTHORIZED MEDICAL TREATMENT IN A PARK WITHOUT REMOVING FROM THE PARK, AFTER SAID TREATMENT IS COMPLETED, ALL NEEDLES, SYRINGES, OTHER MEDICAL SHARPS, OR MEDICAL WASTE AS DEFINED BY A.R.S. § 49-701(32), INCLUDING BUT NOT LIMITED TO BANDAGES AND DRESSINGS, THAT WERE USED IN SUCH TREATMENT.

D. FOOD DISTRIBUTION IN PARKS. IT IS PROHIBITED:

FOR ANY PERSON, GROUP, OR ORGANIZATION TO CONDUCT A FOOD DISTRIBUTION EVENT AT A PARK WITHOUT OBTAINING A PERMIT FROM THE DIRECTOR PRIOR TO THE EVENT.

E. SERVICES PERMITS. THE DIRECTOR:

1. IS AUTHORIZED TO ISSUE PERMITS AUTHORIZING THE FOLLOWING SERVICES:
 - i. MEDICAL TREATMENT IN A PARK; AND/OR
 - ii. A FOOD DISTRIBUTION EVENT IN A PARK.
2. IS AUTHORIZED TO ADOPT RULES AND PROCEDURES FOR THE ISSUANCE OF PERMITS FOR SUCH SERVICES, INCLUDING, BUT NOT LIMITED TO, RULES AND PROCEDURES TO MINIMIZE DISRUPTION TO OTHER PARK USES, ENSURE THE SAFETY OF PARK GUESTS, AND MAINTAIN PARKS IN A CLEAN AND SANITARY CONDITION.
3. SHALL ENSURE THAT THE RULES AND PROCEDURES FOR ISSUING PERMITS FOR SUCH SERVICES:
 - i. REQUIRE THAT THE DIRECTOR NOT ISSUE MORE THAN TWO (2) PERMITS FOR SUCH SERVICES FOR THE SAME PARK IN ANY CALENDAR MONTH;
 - ii. REQUIRE THAT MEDICAL TREATMENT ACTIVITIES BE CONDUCTED ONLY:
 1. ON A PARK'S PARKING LOTS OR OTHER HARDSCAPE AREAS, BUT NOT INCLUDING SPORTS COURTS, DESIGNATED PICNIC AREAS, OR SIMILAR DEDICATED PARK AMENITY SPACES AND
 2. IN AN ENCLOSURE SUFFICIENT TO ENSURE PATIENT PRIVACY AND THE CONTAINMENT OF ANY WASTE. SUCH ENCLOSURES MIGHT INCLUDE, BUT ARE NOT LIMITED TO:
 - a. MEDICAL TENTS OR OTHER SIMILAR TENTS WITH A ROOF, ALL OPAQUE SIDES AND A TARP OR OTHER IMPERMEABLE FLOOR, AND
 - b. VEHICLES, SUCH AS AMBULANCES OR RVs, THAT ARE EQUIPPED AND INTENDED FOR MOBILE MEDICAL TREATMENT WITHIN THE ENCLOSED SPACE OF THE VEHICLE;
 - iii. REQUIRE THAT PERMITTEES AGREE TO PROVIDE ADEQUATE INDEMNIFICATION AND INSURANCE;

- iv. REQUIRE THAT PERMITTEES AFFIRM THAT MEDICAL CARE AT MEDICAL TREATMENT EVENTS WILL BE PROVIDED ONLY BY PROPERLY LICENSED PROFESSIONALS ACTING WITHIN THE SCOPE OF THEIR LICENSURE; AND
- v. REQUIRE THAT PERMITS ARE ISSUED ONLY FOR NEIGHBORHOOD PARKS WITH PARKING LOTS, COMMUNITY PARKS, OR REGIONAL PARKS (EXCLUDING SPORTS COMPLEXES).

F. A PERSON, GROUP, OR ORGANIZATION THAT HAS OBTAINED A PERMIT PURSUANT TO SUBSECTION E OF THIS SECTION SHALL DISPLAY THE PERMIT UPON REQUEST. THE PERMIT HOLDER AND ALL PERSONS COVERED BY THE PERMIT SHALL ABIDE BY ANY STIPULATIONS OF USE SET FORTH IN THE PERMIT. THE PERMIT MAY BE REVOKED FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

G. EXCEPTIONS.

1. SUBSECTION C OF THIS SECTION DOES NOT APPLY TO:

- i. FIRST RESPONDERS, INCLUDING FIREFIGHTERS, LAW ENFORCEMENT OFFICERS, PARAMEDICS, EMERGENCY MEDICAL TECHNICIANS, OR OTHER INDIVIDUALS (INCLUDING AN EMPLOYEE OF A LEGALLY ORGANIZED AND RECOGNIZED VOLUNTEER ORGANIZATION, WHETHER COMPENSATED OR NOT), WHO, IN THE COURSE OF THEIR PROFESSIONAL DUTIES, RESPOND TO LAW ENFORCEMENT, FIRE, MEDICAL, HAZARDOUS MATERIAL, OR OTHER SIMILAR EMERGENCIES.
- ii. ANY PERSON RENDERING AID TO ANOTHER PERSON EXPERIENCING A SUDDEN INJURY OR EMERGENCY.
- iii. LICENSED PROFESSIONALS ACTING WITHIN THE SCOPE OF THEIR LICENSES AND AT AN OTHERWISE CITY-PERMITTED EVENT (FOR EXAMPLE, A SPORTING COMPETITION, TOURNAMENT, FUN RUN, OR SPECIAL ACTIVITY).
- iv. THE DISTRIBUTION OF INTRA-NASAL NALOXONE IN NON-EMERGENCY OR EMERGENCY SITUATIONS.

2. SUBSECTION C(1) OF THIS SECTION DOES NOT APPLY TO AN EMPLOYEE, VOLUNTEER, OR PARTICIPANT OF A PROGRAM ESTABLISHED PURSUANT TO A.R.S. § 36-798.51 WHO POSSESSES A NEEDLE OR SYRINGE AND WHO PROVIDES VERIFICATION THAT THE NEEDLE OR SYRINGE WAS OBTAINED FROM AN OVERDOSE AND DISEASE PREVENTION PROGRAM ESTABLISHED PURSUANT TO A.R.S. § 36-798.51.
3. FOR AVOIDANCE OF DOUBT, SUBSECTION D OF THIS SECTION DOES NOT APPLY TO ANY EVENT THAT WAS NOT PLANNED OR INTENDED TO SERVE OR DISTRIBUTE FOOD TO THE GENERAL PUBLIC. THIS INCLUDES BUT IS NOT LIMITED TO:
 - i. FAMILY EVENTS SUCH AS CELEBRATIONS, WEDDINGS, MEALS, OR REUNIONS OR INFORMAL GATHERINGS OF FAMILY OR FAMILY FRIENDS; AND
 - ii. EVENTS THAT ARE NOT OPEN TO THE GENERAL PUBLIC OR EVENTS TO WHICH THE GENERAL PUBLIC IS NOT INVITED.

H. VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

PASSED by the City Council of the City of Phoenix this 6th day of May

2026.

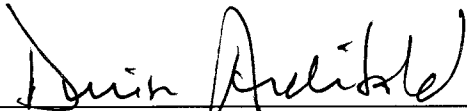


MAYOR

05/07/2026

Date

ATTEST:



Denise Archibald, City Clerk

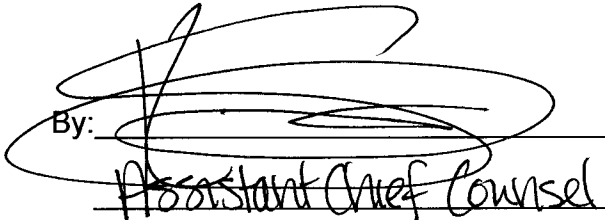


APPROVED AS TO FORM:

Julie M. Kriegh, City Attorney



By:



Assistant Chief Counsel

REVIEWED BY:



Ed Zuercher, City Manager

DSC:phs:(LF26-0926);05/06/26:4935-3168-2982



PROVIDENT LAW

Exhibit 4



PROVIDENT LAW

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Managing Partner

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May 1, 2026

Via Fax and First-Class Mail:

Mr. Deryck R. Lavelle
City Attorney's Office
Phoenix City Hall
200 W. Washington St., 13th Floor
Phoenix, AZ 85003
602-732-2768

Dear Mr. Lavelle:

Please be advised that St. Herman's Table ("St. Herman's"), a religious ministry of Exaltation of the Holy Cross Orthodox Church, has retained Provident Law[®] and the Christian Legal Society's Center for Law & Religious Freedom ("the Center") to represent it in relation to the City of Phoenix's Medical Treatment and Food Distribution in Parks Ordinance (the "proposed ordinance"). It is our understanding that this proposed ordinance is to be voted upon by the Phoenix City Council on May 6, 2026. We are writing to raise our concerns with the constitutionality of the proposed ordinance and any application of it to St. Herman's and its volunteers. We hope that the ordinance can be brought into alignment with the First Amendment and Arizona's Free Exercise of Religion Act ("FERA") before adoption, so that a federal judge need not do so.

As the City of Phoenix ("the City") is aware, St. Herman's is a Christian religious ministry whose services include providing food, Bibles, and small hygiene products to unhoused residents at Cave Creek Park at Cactus in Phoenix.¹ St. Herman's ministers to the homeless every Thursday of the week, serving between 12 and 25 persons per visit.

¹ St. Herman's President, Lance Brace, spoke at the Sunnyslope Community Meeting on April 8, 2026, informing the City of St. Herman's ministry and outlining the substantial burden that the proposed ordinance places upon it and his ability to carry out his religious calling of

Under the City's proposed ordinance, it will become illegal for St. Herman's to distribute food to the homeless without a permit. Further, the proposed ordinance limits the City to issuing only two permits per month per eligible park. From our understanding, the permits are to be limited to a single day. Therefore, even in the unlikely scenario that St. Herman's would be granted the two monthly permits allowed under the ordinance for Cave Creek Park, it still would be prohibited from fulfilling its once-a-week ministry. Moreover, because St. Herman's will undoubtedly not be the only permit applicant per month, St. Herman's will be unable to even plan for its regular religious activity, which includes the coordination of volunteers and food that is part of its ministry. Prohibiting St. Herman's from engaging in its weekly ministry substantially burdens St. Herman's free exercise of religion, as it would impede St. Herman's ability to partake in its required almsgiving and to share the love of God with the homeless individuals with whom St. Herman's has formed relationships. In short, the proposed ordinance will make St. Herman's ministry impossible.

But St. Herman's is not without sound legal recourse. As explained herein, St. Herman's is shielded by Arizona's FERA² and the Free Exercise and Free Speech Clauses of the First Amendment.

I. Application of the proposed ordinance to St. Herman's would violate FERA

Arizona law directly protects the ministry of St. Herman's and its volunteers in their religious exercise of feeding and serving the homeless in the City's parks. This basis alone is sufficient to fully shield St. Herman's from enforcement of the proposed ordinance.

As the City is undoubtedly aware, the Arizona legislature passed FERA "to protect Arizona citizens' right to exercise their religious beliefs free from undue governmental interference." *State v. Hardesty*, 222 Ariz. 363, 365 (2009) (*en banc*). FERA prohibits the City from substantially burdening an exercise of religion unless the burden is "[i]n furtherance of a compelling governmental interest [and] [t]he least restrictive means of furthering that compelling governmental interest." A.R.S. § 41-1493.01(C). A substantial burden on religion exists when a government's action threatens to penalize or punish an individual's or institution's exercise of its religious beliefs. *See Holt v. Hobbs*, 574 U.S. 352, 362 (2015).

almsgiving. Thereafter, Mr. Brace electronically mailed a copy of his comments to Deputy City Manager Cythnia Aguilar at her request. A copy of his comments is included with this letter as Exhibit 1.

² A.R.S. §§ 41-1493 *et seq.*

Here, the City would substantially burden our client if the City passes the proposed ordinance as is and applies it to prevent St. Herman's from engaging in its ministry each week. Similarly, a substantial burden would exist if those ministering to the homeless through St. Herman's were criminally charged and/or prosecuted under the ordinance for engaging in religious exercise without a permit. To justify these substantial burdens, the City would have to demonstrate that denying St. Herman's the ability to serve the homeless is the least restrictive means of furthering a *compelling* government interest. A.R.S. § 41-1493.01(C) (emphasis added.).

According to the proposed ordinance, the City asserts that the ordinance is necessary so as not to "strain the parks and city resources" because meal and medical supply distribution "frequently create[es] large crowds, increased noise, obstruction of public spaces, litter, and the accumulation of trash, debris, and food waste." Reducing litter in parks is hardly a compelling interest in the context of religious exercise. *See e.g., Wisconsin v Yoder*, 406 U.S. 205 (1972) (state interest in compulsory education for teenagers is not sufficiently compelling as it is not "an interest of the highest order."). And even the City's asserted interest is undercut by the City's exemptions in the proposed ordinance for secular activity that create the same issues of crowds, noise, litter, and trash. That is, the proposed ordinance would exempt from criminalization private weddings, birthday parties, and other social gatherings that also result in noise and litter. The City cannot meet the compelling interest or least restrictive means test under FERA when it exempts secular activity but not religious exercise from the proposed ordinance's enforcement. *See, e.g., Fulton v. City of Philadelphia*, 593 U.S. 522, 542 (2021) (explaining "[t]he creation of a system of exceptions" to a government interest alone fails to meet strict scrutiny); *see also Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

Further still, FERA specifically requires equal treatment for religious organizations in the land use context. Specifically, FERA provides that "[g]overnment shall not impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution, regardless of a compelling governmental interest." A.R.S. § 41-1493.03(B).

The City's proposed ordinance glaringly violates FERA under the statute's equal terms provision for the same reasons that it fails to meet the compelling interest/least restrictive means test. The City cannot treat secular activity—weddings, parties, and social gatherings—more favorably than St. Herman's religious exercise of ministering to the homeless, regardless of any compelling City interest. Pursuant to FERA, St. Herman's must be treated on equal terms as private entities and individuals under the proposed ordinance. Accordingly, St. Herman's is fully protected under Arizona law from enforcement of the proposed ordinance against it.

II. The proposed ordinance would unconstitutionally infringe upon the free exercise of religion both on its face and as applied to St. Herman's

Not only would St. Herman's rights under Arizona's FERA be violated by the proposed ordinance, but the proposed ordinance, if enacted, would also violate the U.S. Supreme Court's free exercise jurisprudence both on its face and if it were applied against St. Herman's.

The Free Exercise Clause of the First Amendment, applicable to the States under the Fourteenth Amendment, provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. In *Fulton v. City of Philadelphia*, the Supreme Court explained that "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." 593 U.S. at 533 (citation omitted). The Court further explained that a law is *not* generally applicable—and thus strict scrutiny applies—if the government has "in place a system of individual exemptions." In such a situation, it may not refuse to extend that system to cases of 'religious hardship[.]'" *Id.* at 534 (citations omitted). Since *Fulton*, the Supreme Court has further clarified when a law is not generally applicable or religiously neutral.

In *Tandon v. Newsom*, the Court rejected California's COVID-19 regulations that allowed for secular activities to bring together three or more households but prohibited religious in-home services of the same number. 593 U.S. 61, 63. The Court outlined two specific principles for determining when such a law is not neutral and generally applicable for purposes of determining a free exercise claim and thus when strict scrutiny applies. *Id.* at 62. First, "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* (emphasis in original). Second, "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.*

Fulton and *Tandon* make clear that the City's ordinance as currently proposed would violate the Free Exercise Clause. It would allow for private entities and persons (potentially scores of littering party-goers) to gather for food and drink without a permit but would prohibit religious organizations from feeding 12 to 25 desperate human beings once a week. In fact, the proposed ordinance is strikingly similar to *Tandon's* fact-pattern. Here, the City is allowing secular gatherings but prohibiting St. Herman's from gathering in free exercise of its religion. As the Court in *Tandon* made clear, where a regulatory scheme allows favorable treatment of secular activity, the scheme is subject to strict scrutiny. *Tandon*, 593 U.S. at 62. See *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993). And here, like in *Fulton*, the City's proposed ordinance fails such scrutiny. See, e.g., *Fulton*, 593 U.S. at 542.

III. The Free Speech Clause of the First Amendment likewise shields St. Herman's

Aside from the Free Exercise Clause, the proposed ordinance also violates St. Herman's right to free speech under the First Amendment. As explained herein, St. Herman's volunteers distribute Bibles to the homeless at Cave Creek Park in addition to food. These volunteers spread

the Gospel of Christ throughout their time in the park by speaking with the individuals they serve about Jesus and exemplifying Christ-like love by providing food and small hygiene products to the homeless. These expressive activities have a long history of constitutional protection in our country.

The Free Speech Clause's protection of "expressive religious activities," *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022), extends to various modes of communication: "leafletting, sign displays, and oral communications are protected by the First Amendment." *Hill v. Colorado*, 530 U.S. 703, 715 (2000). Public parks are a traditional public forum. *Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009) (citations omitted). And as such, the government may impose reasonable restrictions on the time, place, or manner of protected speech. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984) (citations omitted). But, to determine the level of scrutiny that applies to the constitutionality of an ordinance, a court must assess whether the restriction is content-based. "A regulation of speech is facially content based under the First Amendment if it 'target[s] speech based on its communicative content'—that is, if it 'applies to particular speech because of the topic discussed or the idea or message expressed.'" *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (citation omitted). Some laws clearly regulate speech "by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both . . . are subject to strict scrutiny." *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015).

The proposed ordinance is the "subtle" type of law that would regulate speech by its function or purpose. *Id.* It would require no permit nor limit the number of events in which food, birthday cake and bags of party favors are handed out to a dozen children, but it would require a permit and ban weekly distribution of food, toiletries, and Bibles. It would leave unimpeded social conversation but impede religious encouragement and counsel. It would exempt from criminalization secular social gatherings but outlaw gatherings rooted in religious expression. Therefore, the proposed ordinance is subject to strict scrutiny under the Free Speech Clause. For all of the same reasons detailed above, the City's proposed ordinance does not survive such scrutiny. Prohibiting the religious expression of St. Herman's is a constitutionally impermissible restriction.

Further still, even if the proposed ordinance were subject to a lower level of scrutiny, it would still fail that inquiry. In *Santa Monica Food Not Bombs v. City of Santa Monica*, the Ninth Circuit considered a number of different ordinances enacted by the City of Santa Monica, including an events ordinance not unlike the one being proposed by the City of Phoenix. 450 F.3d 1022, 1037 (9th Cir. 2006). The Court ultimately concluded that the City of Santa Monica's ordinance, which required a permit for group activity that "may impede, obstruct, impair or interfere" with the free flow of traffic, was subject to intermediate scrutiny.³ Nonetheless, the Court still found

³ In making the determination that the City of Santa Monica's events ordinance is subject to intermediate scrutiny, the Court relied upon the standard outlined in *Thomas v. Chicago Park District*, 534 U.S. 316 (2002) that: (1) "[n]one of the grounds for denying a permit has anything to

that the ordinance violated that scrutiny because it was not narrowly tailored. *Id.* at 1038-40. The Court explained that:

Without a provision limiting the permitting requirements to larger groups, or some other provision tailoring the regulation to events that realistically present *serious* traffic, safety, and competing use concerns, significantly beyond those presented on a daily basis by ordinary use of the streets and sidewalks, a permitting ordinance is insufficiently narrowly tailored to withstand time, place, and manner scrutiny.

Id. at 1039. The Court declared: “a narrowly tailored permit requirement must maintain a close relationship between the size of the event and its likelihood of implicating government interests.” *Id.* at 1040.

The Ninth Circuit has clearly identified that for a permitting ordinance to pass intermediate scrutiny, it must demonstrate a “close” relationship between the regulated conduct and the asserted government interest. *Id.* Here, it is difficult to imagine how the proposed ordinance meets the Ninth Circuit’s rule because it excludes from enforcement secular social conduct. Rather, the proposed ordinance allows social groups to meet, eat, and drink together impeding the City’s interests of park orderliness, but prohibits St. Herman’s from engaging in its religious expression. The proposed ordinance is not narrowly tailored, even under an intermediate level of scrutiny.

IV. Less restrictive means are available

Underlying all of the legal infirmities detailed herein is the fact that the City has less restrictive means of achieving its goals. The City can cite park users for littering and can enforce any noise ordinance, but it cannot burden religious exercise or restrict content or viewpoint of speech. The proposed ordinance would serve relatively minor government interests by taking a sledgehammer to the First Amendment rights of residents whose religion requires them to demonstrate Christ’s kindness. The City should consider lauding St. Herman’s rather than shutting them down.

do with what a speaker might say”; (2) “the ordinance (unlike the classic censorship scheme) is not even directed to communicative activity as such, but rather to *all* activity conducted in a public park”; and (3) the object of the permitting scheme was “to coordinate multiple uses of limited space, to assure preservation of the park facilities, to prevent uses that are dangerous, unlawful, or impermissible under the Park District’s rules, and to assure financial accountability for damage caused by the event” rather than to exclude expression based on any particular content. *Santa Monica Food Not Bombs*, 450 F.3d at 1036 (citations omitted). Significantly, here, the City’s proposed ordinance does *not* treat all activity the same—as outlined herein—because it treats secular social gatherings more favorably.

V. Conclusion

For the reasons detailed herein, St. Herman's ministry is legally entitled to engage in its religious exercise and expression of serving the homeless in Phoenix's city parks under FERA and the First Amendment despite the proposed ordinance's threats of criminalization. Accordingly, St. Herman's respectfully requests a substantive response to this letter, confirming that the City of Phoenix will: (1) decline to adopt the proposed ordinance; (2) amend the ordinance to publicly exempt from enforcement of the ordinance all religious organizations;⁴ or (3) agree to exempt from enforcement of the proposed ordinance St. Herman's via a consent decree or permanent injunction.

Due to the impending vote upon the legally-flawed proposed ordinance, St. Herman's respectfully requests that the vote by the City Council be delayed to give the City Attorney time to reply to the undersigned by **May 15, 2026**. Otherwise, should the City decline to respond to this letter before the ordinance as currently worded is adopted, St. Herman's intends to file a lawsuit raising its FERA and First Amendment rights under 42 U.S.C. § 1983 seeking declaratory and injunctive relief and requesting reimbursement of attorneys' fees under 42 U.S.C. § 1988.

Should you have any questions or concerns, please don't hesitate to contact undersigned counsel. Thank you for your time and attention to this matter.

Sincerely,
PROVIDENT LAW



Christopher J. Charles
Managing Partner

⁴ We respectfully suggest that the City avoid violation of the Establishment Clause as well as the Free Exercise and Free Speech Clauses by exempting all religious organizations from the proposed ordinance. *See, e.g., Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238, 249 (2025) (holding that a regulatory scheme violates the Establishment Clause when it imposes a "denominational preference" by differentiating between religious organizations based on their theological practices).



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EXHIBIT 1

Hello. My name is Lance Brace. I am an Orthodox Christian, and I run an organization called St. Herman's Table.

In Orthodox Christianity, we have three primary spiritual disciplines: prayer, fasting, and almsgiving. Almsgiving is not optional. It is a required and essential practice of the Christian life, most often expressed by feeding the hungry.

As I read this proposal, I asked a simple question: what exactly does this ordinance prohibit St. Herman's Table from doing?

It does not prohibit being in the park.

It does not prohibit the homeless being in the park.

It does not prohibit speaking with the homeless.

It does not prohibit gathering.

It prohibits one thing: the act of handing a hungry person something to eat.

That act is called almsgiving. It is a religious practice.

This ordinance therefore imposes a direct burden on the free exercise of religion. It conditions the ability to practice that religion on obtaining government permission, subject to limited permits, discretionary approval, and requirements (such as insurance) that many small, volunteer ministries cannot meet.

I want to be clear: I am not here to argue against order, safety, or cleanliness in our parks. Those are legitimate concerns. But those concerns can be addressed without prohibiting or effectively prohibiting acts of charity. For example, the city can enforce existing littering laws, require groups to clean up all trash after distributing food, and ensure walkways and park access remain unobstructed, without limiting service to two permits per month or imposing requirements that make participation realistically impossible for small, volunteer groups.

For two thousand years, the Church has fed the hungry as a core part of its life and witness. That practice will continue.

No Christian can be required to seek Caesar's permission to fulfill a religious obligation such as feeding the hungry. The role of government is not to stand between a person and their duty to love their neighbor.

As a matter of conscience and faith, I cannot/will not refrain from almsgiving, and I cannot accept a system in which that obligation requires prior permission from the government.

If this ordinance passes, it will not end acts of charity. It will only place those acts in conflict with the law.

I urge you to reconsider this proposal.

Thank you.
