

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE, COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

RUSSEL HARVEY,

CASE NO.

Plaintiff,

v.

CITY OF MIAMI BEACH,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

The Plaintiff, Russel Harvey, by and through his undersigned counsel, sues the Defendant, the City of Miami Beach, and states.

Introduction

The City of Miami Beach (“City”) has created an impermissible regulatory scheme that violates Article I of the Florida Constitution. As part of this scheme, the City instituted a Panhandling Ordinance, which makes it illegal to ask for money in most areas of the City. This ordinance is facially unconstitutional, being overbroad and in no way narrowly tailored to serve any compelling governmental interest.

The City also instituted a Street Performers and Artist Vendors Ordinance. This ordinance purports to limit street performers and art vendors only on Lincoln Road, requiring that they apply for a permit under a lottery system that is empowered to judge their art. However, because the Panhandling Ordinance makes it illegal to ask for money in many areas of the City, the Street Performers and Artist Ordinance actually succeeds in making street performing and art

vending legal **only** on Lincoln Road, provided a permit is granted. This is in direct violation of a prior opinion of the Third District Court of Appeal, which struck down an earlier ordinance regulating street performers for failing to provide alternative outlets for a constitutionally protected form of expression.

In conjunction with these ordinances, the City is also using two other ordinances – an ordinance requiring a business license and an ordinance prohibiting the solicitation of business without a license – to deter and punish free speech activities on Miami Beach. There has been no business license available to anyone, including street performers, art vendors, and panhandlers, in the City, and enforcing these ordinances against them is also impermissible.

It is well-established in our jurisprudence that speech is the most protected of activities. Visual art and performance are protected forms of speech and may not be regulated unless the regulation is narrowly tailored, provides alternative channels of communication, and serves a compelling government interest. The City's stated interest in regulating panhandling, street performance, and art vending, is to reduce traffic congestion on public walkways. However, the traffic congestion on the public walkways is due primarily to the fact that the City of Miami Beach has licensed out most of the available public space to private cafés and restaurants. Thus, the City's interest exists only to solve a problem that the City itself created. This is not a compelling interest and there are other ways to further the City's interest in preventing sidewalk congestion than a limitation on individuals' free speech rights. In addition, the City failed to narrowly tailor these restrictions on speech and has not provided alternative channels of communication for the restricted speech. As such, these ordinances and the regulatory scheme they comprise cannot stand.

Jurisdiction

1. This is an action for declaratory judgment and injunctive relief based on the unconstitutionality of the following sections of the Code of the City of Miami Beach: a) section 18-901 through 18-910, Street Performers and Artist Vendors; b) sections 74-76 through 74-79, Panhandling on Public Property; c) section 74-1, Soliciting Business in Public from Pedestrians; d) section 18-1, Business License Required.

2. This action arises under Article 1, sections 2 and 4, of the Florida Constitution's Declaration of Rights.

3. Jurisdiction is conferred on this Court by Article V, section 5(b), of the Florida Constitution, and Chapter 86, Florida Statutes.

Parties

4. Plaintiff, **Russel Harvey ("Harvey")**, a Miami Beach resident, is a street artist and caricaturist who talks politics with, does stand up comedy for, and draws caricatures of tourists, visitors, residents and other people in the City of Miami Beach on the public streets, sidewalks and pedestrian malls, and sometimes asks for and/or accepts contributions of money in connection with these activities.

5. Defendant, **City of Miami Beach ("City")**, is a municipality duly incorporated under the laws of the State of Florida.

FACTUAL ALLEGATIONS

Panhandling On Public Property Sections 74-76 through 74-79

6. On March 16, 2005, the City revised Article III of the City Code, Panhandling on Public Property ("Panhandling Ordinance").

7. The City's rationale for the Panhandling Ordinance is: (1) to protect the safety, and prevent the harassment and intimidation of residents, visitors, and tourists; and (2) to provide a pleasant, enjoyable environment, free of nuisance activity, as well as to eradicate annoying, distasteful, or unpleasant speech and/or conduct.

8. The Panhandling Ordinance makes it unlawful for any "person" to "panhandle" or "solicit" on public property (1) within twenty feet in any direction from the outside perimeter... of any outdoor café, outdoor restaurant, sidewalk café, or other establishment serving food or beverages for immediate consumption; (2) within twenty feet in any direction from any entranceway into or exit from any food store selling alcoholic beverages or package store." Section 74-78. The Panhandling Ordinance does not define "outside perimeter."

9. Panhandling is defined as "begging, asking or soliciting in person for an immediate donation of money or other thing of value for charity or personal gain, either by words, bodily gestures, signs or other means indicating one is seeking an immediate donation or other thing of value." Section 74-76.

10. Solicitations are defined as "all direct person-to-person requests for immediate contributions in the form of money or other thing of value, for any religious, political, associational, educational, benevolent, health-related, humane, philanthropic, patriotic, or eleemosynary function, event, organization or purpose, or for any charitable cause..." Section 74-76.

11. Sidewalk café is defined as "a use located on a public sidewalk which is associated with a full service restaurant where food and beverages are prepared, served and sold

and are delivered for consumption on the sidewalk” including “the public right-of-way connecting the main restaurant to the sidewalk café.” Section 74-76.

12. Violations of the Panhandling Ordinance are punishable by up to 60 days of incarceration and/or up to a \$500 fine. Section 74-79.

13. The Panhandling Ordinance applies to the **entire** City, covering **all** public spaces, streets, and sidewalks. It operates as a ban on Harvey’s right to exercise his freedom to speak and to express himself as an artist.

14. The breadth of the Panhandling Ordinance outlaws even traditional forms of “panhandling” and “solicitation.” For example, a friend asking another friend for money as they walk down a street in the City; Girl Scouts selling cookies on a sidewalk; students raising money for team uniforms or attendance at competitions; religious and charitable solicitations; waiters accepting tips; and the Salvation Army box at Christmas, could all be illegal activities under the Panhandling Ordinance.

15. And the Panhandling Ordinance fails to distinguish between aggressive panhandling and passive panhandling. Miami-Dade County already has an aggressive panhandling ordinance in place, prohibiting begging with the intent to intimidate and/or engaging in conduct that would make a person fearful, or feel compelled to give money. Section 21-31.4, Code of Miami-Dade County. The City currently arrests aggressive panhandlers under this ordinance.

16. The City enforces violations of the Panhandling Ordinance through city officials, including the Miami Beach Police Department (“MBPD”).

Soliciting Business in Public from Pedestrians, Section 74-1

17. In addition to the Panhandling Ordinance, the City enacted an ordinance entitled, "Soliciting Business in Public from Pedestrians" ("Soliciting Business Ordinance").
Section 74-1.

18. The Soliciting Business Ordinance makes it illegal "for any person, while upon any public street or sidewalk or while in any building, doorway, stairway, window or other opening abutting or adjacent to such street or sidewalk, to accost or attempt to accost any pedestrian on such street or sidewalk for the purpose of soliciting him to purchase any property, real or personal, or to solicit him to enter any place of business for the purpose of selling to or inducing or attempting to induce such pedestrian to purchase any property, real or personal."

19. The City, through the MBPD, reports violations of the Soliciting Business Ordinance to the CCO. The CCO then enforces violations of the Soliciting Business Ordinance.

Business License Required, Section 18-1

20. The ordinance entitled, "Business Licenses Required" ("Business License Ordinance") was enacted by the City and states that "[n]o person shall engage in any business within the city for which a license is required by this Code unless a city license has been procured from the city manager or his designee as provided in this chapter."

21. The Code does not currently require a license for street performers or art vendors in the City.¹

22. And no license or permit exists for street performers or art vendors in the City who are not performing or vending on Lincoln Road. But even though it is impossible for

¹ Beginning in June 2007, the Code requires a permit for street performers and artist vendors on Lincoln Road. See "Street Performers and Artist Vendors," *infra*.

street performers or art vendors to obtain a license -- as none exists -- street performers and art vendors are cited for violating the Business License Ordinance.

23. The City, through the CCO, enforces the Business License Ordinance to intimidate, harass, and deter protected activities such as political and artistic speech.

Street Performers and Art Vendors, Sections 18-901 through 18-910

24. On September 28, 2005, the Third District Court of Appeal, declared that Miami Beach Ordinance No. 2001-3313 entitled "Street Performers and Art Vendors" ("Street Performer Ordinance") was unconstitutional because it violated the free speech provisions of, *inter alia*, the Florida Constitution since it did not allow street performers and art vendors to freely perform and sell merchandise.

25. On April 11, 2007, the City introduced a new ordinance to replace the one struck down by the 3d DCA. That ordinance, entitled "Street Performers and Artist Vendors" ("Performer and Artist Ordinance") falls under Chapter 18 of the Miami Beach City Code. Sections 18-901 through 18-910. One of the stated purposes of the Performer and Artist Ordinance is to stop interference with the flow of pedestrian traffic and to improve access to the sidewalk.

26. The Performer and Artist Ordinance requires that art vendors and street performers on Lincoln Road obtain a permit through a lottery system for one of twelve designated locations on Lincoln Road. Street performers and art vendors are not permitted to work anywhere outside of those locations, and even then, only if they receive a permit. The Performer and Artist Ordinance will go into effect in June 2007.

27. Requiring a permit for the free speech activities discussed above is an unconstitutional prior restraint on speech in violation of the Florida Constitution.

Russel Harvey's Activities

28. Russel Harvey ("Mr. Harvey") is a street/sidewalk artist, caricaturist, and performer who regularly talks to, draws caricatures for, and performs stand up comedy for tourists, visitors, residents, and other people throughout the City, including Lincoln Road.

29. Mr. Harvey does not have a business license, nor is he required to have one.

30. As part of his creation of artwork, caricatures, and comedy routines, Mr. Harvey, in a non-aggressive manner, asks for and solicits donations of money and otherwise, and accepts such donations from tourists, visitors, residents, and other people.

31. The City, through the MBPD and the CCO, has threatened and harassed Mr. Harvey while he talks to or draws people. The City has informed Mr. Harvey that he is violating the law and will be cited and/or arrested. These threats create a chilling effect on Mr. Harvey's ability to exercise his right to freedom of speech in the City. Mr. Harvey has been harmed, physically injured, humiliated, and offended by the City while exercising his right to freedom of speech.

32. The City, through the MBPD, harassed Mr. Harvey and threatened to cite him for violating the Panhandling Ordinance. These threats and harassment by the City, through the MBPD, have chilled Mr. Harvey's exercise of his right to freedom of speech.

33. The City, through the CCO, issued Mr. Harvey several warnings for violating the Soliciting Business Ordinance. These citations impinge upon Mr. Harvey's right to freedom of speech, specifically, his right to draw and to approach people, regardless of whether Mr. Harvey sells, gives away, or solicits contributions – immediate or otherwise.

34. The City, through the CCO, is using the Soliciting Business Ordinance to intimidate, harass, and deter Mr. Harvey's activities, including his political and artistic speech.

35. The City, through the CCO, cited Mr. Harvey for several violations of the Business License Ordinance. These citations impinge upon Mr. Harvey's right to freedom of speech.

36. The City, through the CCO, and with full knowledge that there is no license or permit available for street performers or art vendors (with the exception of those who will be performing on Lincoln Road after June 2007), is using the Business License Ordinance to intimidate, harass, and deter Mr. Harvey's activities, including his political and artistic speech.

37. On February 4, 2006, Mr. Harvey was on the public walkway near Balans Restaurant at 1022 Lincoln Road. He drew a caricature of a young girl eating penne pasta. He signed the drawing and gave it to the girl's mother, receiving nothing but a thank you. An MBPD officer approached Mr. Harvey and told him that he was breaking the law. The MBPD officer followed, harassed, assaulted, searched, and threatened Mr. Harvey with arrest. Then, the MBPD officer called a CCO who cited Mr. Harvey for violations of the Soliciting Business Ordinance and the Business License Ordinance.

38. Threats of arrest and prosecution for violations of the Panhandling Ordinance, as well as continuing verbal and physical threats and harassment by the MBPD and the CCO chilled Mr. Harvey's ability to exercise his right to freedom of speech. Mr. Harvey is presently fearful of performing his work, and of obtaining donations because of the existence of the Panhandling Ordinance, as well as the fear of arrest for violating it. Mr. Harvey is intimidated and has censored and curbed his own speech due to these ordinances. He takes

different routes, avoids certain locations, and looks over his shoulder before performing protected activities, like drawing or talking to people, or peacefully asking for money.

Congestion of Public Streets and Sidewalks in the City

39. All streets and sidewalks in the City, including but not limited to Ocean Drive, Lincoln Road, and Washington Avenue, are public property.

40. The city issues sidewalk café permits to private businesses under the Sidewalk Café Ordinance. Sections 82-366 through 82-388. These permits license specified public spaces to sidewalk cafés to use for tables and chairs. The issuance of a license grants the holder the right to use the space in a designated manner. It does not, however, grant the holder of the license a property interest in the space, which remains public property.

41. As of 2006, the City had issued sidewalk café permits to 49 businesses on Lincoln Road for a total of 42,368.87 square feet, and to 28 businesses on Ocean Drive for a total of 15,857.11 square feet.

42. Sidewalk cafés, by taking up the public right-of-way, necessarily restrict the available public space, creating traffic flow problems, and pedestrian traffic congestion.

43. Many of the sidewalk cafés violate the conditions and restrictions of their permits, placing additional structures on non-licensed areas of public property, including but not limited to tables, chairs, umbrellas, heat lamps, bus stops, food storage trays, preparation hutches, and bread and water stations. Such violations block art work and architecture in the City, and further exacerbate pedestrian traffic congestion. These violations are ignored by the City.

44. The City's stated goal of reducing congestion in public walkways by prohibiting protected activities by street performers, art vendors, and panhandlers is an impermissible attempt by the City to solve a problem that the City created.

The City's Impermissible Regulatory Scheme

45. Together the Panhandling Ordinance, the Performer and Artist Ordinance, the Soliciting Business Ordinance, and the Business License Ordinance have created an impermissible regulatory scheme prohibiting the exercise of free speech.

46. The Panhandling Ordinance on its face prohibits any and all speech asking for money in public, be it between two friends; a political or charitable contribution; a hostess outside a restaurant asking someone to come inside; a homeless person asking for money in order to survive; or a street performer.

47. While the Performer and Artist Ordinance may appear to be a narrowly tailored ordinance when considered in isolation, regulating street performance and art vending only on Lincoln Road, when taken in conjunction with the Panhandling Ordinance, the Soliciting Business Ordinance, and the Business License Ordinance, the Performer and Artist Ordinance actually makes street performance or art vending in the City legal **only** in the twelve designated areas on Lincoln Road. In fact, due to the Panhandling Ordinance, the Soliciting Business Ordinance, and the Business License Ordinance, street performers and art vendors are not permitted to operate in the City, unless they apply for and receive a permit in the lottery for Lincoln Road.

48. And by requiring a license for artistic speech, the Performer and Artist Ordinance creates an impermissible prior restraint that quells artistic speech.

49. The Soliciting Business Ordinance and the Business License Ordinance together create another impossible hurdle for street performers and art vendors, creating the threat of citation and arrest for performing without a license, even while no license exists for them to obtain.

Count I
Panhandling On Public property, Sections 74-78 through 74-79
Violates The Florida Constitution Article I, Section 2 & 4
Both On Its Face And As Applied

50. Plaintiff re-alleges and incorporates all preceding paragraphs.

51. The Panhandling Ordinance, on its face, violates Plaintiff's Florida constitutional basic and free speech rights guaranteed by Article I, sections 2 and 4, of the Florida Constitution.

52. The prohibition operates in a quintessential public forum, *i.e.*, on sidewalks, public streets, and other open, public areas where people tend to congregate or retreat.

53. The Panhandling Ordinance's prohibition of speech is based on the content of the prohibited speech, *i.e.*, any kind of request for an immediate donation. Thus, the Panhandling Ordinance is a content-based regulation.

54. Creating a pleasant, enjoyable environment free of nuisance activity and/or eradicating annoying, distasteful, or unpleasant speech or conduct does not constitute a compelling governmental interest to justify the Panhandling Ordinance's content-based ban on speech.

55. The Panhandling Ordinance's broad ban is not narrowly tailored because it is over broad in that it fails to distinguish between "aggressive" panhandling, which may pose a

legitimate threat to the safety and security of Miami Beach residents and visitors, and “passive” begging which does not.

56. Even if the Panhandling Ordinance is content-neutral, it is not a reasonable time, place or manner restriction.

57. The Panhandling Ordinance is not narrowly tailored and its broad geographical and situational ban fails to leave open sufficiently ample alternative channels of communication.

58. The City could more narrowly address its interest in protecting the safety and security of its resident and visitors by enforcing Miami-Dade County’s aggressive panhandling ordinance, section 21:31.4, Code of Miami-Dade County, or other Florida Statutes, including those prohibiting loitering and prowling, section 856.021, or breach of the peace and disorderly conduct, section 877.03.

59. The Panhandling Ordinance prohibits Plaintiff from engaging in completely passive and harmless panhandling and soliciting, protected political speech that presents no legitimate threat to the safety or security of the City’s residents or visitors.

60. Section 74-78 is vague based on the language: “20 feet **in any direction** from the outside **perimeter**” (emphasis added) in that one who wishes to conduct free speech activities has no idea where they can do so without being in violation. There is no definition of perimeter given except to look at the site plan attached to the city issued permit.

61. The Panhandling Ordinance is part and parcel of a regulatory scheme that unconstitutionally burdens speech because it is not narrowly tailored to serve a significant government interest, and it fails to leave open sufficiently ample alternative channels of

communication of information for individuals who wish to engage in street performance and/or art vending within Miami Beach.

62. The Panhandling Ordinance is also unconstitutional as applied to Plaintiff.

Count II
Street Performers and Artist Vendors, Sections 18-901 through 18-910
Violates the Florida Constitution Article I, Sections 2 & 4
Both On Its Face And As Applied

63. Plaintiff re-alleges and incorporates all preceding paragraphs.

64. The Performer and Artist Ordinance, on its face, violates Plaintiff's Florida constitutional basic and free speech rights guaranteed by Article I, sections 2 and 4, of the Florida Constitution.

65. The Performer and Artist Ordinance restricts street performance and art vending in an eight-block area of Miami Beach (the "Lincoln Road Area") to those individuals who hold permits, and makes it unlawful for any person to engage in any street performance or art vending in the Lincoln Road Area without a permit.

66. Individuals wishing to engage in street performance or art vending are already prohibited from doing so in any area of Miami Beach outside of the Lincoln Road Area, owing to enforcement of Section 74-78 (Panhandling on Public Property), Section 74-1 (Soliciting Business in Public from Pedestrians), and Section 18-1 (Business License Required) against street performers and art vendors throughout Miami Beach. Accordingly, the Performer and Artist Ordinance is part and parcel of a regulatory scheme that unconstitutionally burdens speech because it is not narrowly tailored to serve a significant government interest, and it fails to

leave open sufficiently ample alternative channels of for communication of information for individuals who wish to engage in street performance and/or art vending within Miami Beach.

67. Moreover, the permitting process provided for in the Performer and Artist Ordinance is unconstitutionally overbroad and vague on its face.

68. Because the permitting process is vague, the Performer and Artist Ordinance vests impermissibly broad discretion in the occupational license office or other committee charged with reviewing and approving applications for permits, thus comprising a facial violation of Plaintiff's right to free speech. Such a licensing requirement constitutes a prior restraint and may result in censorship. The prior restraint of the licensing provision coupled with the impermissibly broad discretion created by the vague language in the Ordinance itself amounts to an actual injury to Plaintiff.

69. The Performer and Artist Ordinance prohibition of speech is based on the content of the prohibited speech, *i.e.*, any of the following activities: "singing, playing musical instruments, pantomime, juggling magic dancing, and puppetry on public property," and "display, creation and/or sale on public property of art." Thus, the Performer and Artist Ordinance is a content-based regulation.

70. Freeing up space in front of businesses on Lincoln Road does not constitute a compelling governmental interest to justify the Performer and Artist Ordinance's content-based ban on speech.

71. The Performer and Artist Ordinance is part and parcel of a regulatory scheme that unconstitutionally burdens speech because it is not narrowly tailored to serve a significant government interest, and it fails to leave open sufficiently ample alternative channels

of communication of information for individuals who wish to engage in street performance and/or art vending within Miami Beach.

Count III
Section 74-1 Soliciting Business In Public From Pedestrians
Violates The Florida Constitution Article 1, Section 2 & 4, Basic And Free Speech Rights
Both On Its Face And As Applied.

72. Plaintiff re-alleges and incorporates all preceding paragraphs.

73. Section 74-1, on its face and as applied, violates Plaintiff's Florida constitutional free speech rights, guaranteed by Article I, sections 2 and 4, of the Florida Constitution.

74. Section 74-1's prohibition of speech is based on the content of the prohibited speech, *i.e.*, "soliciting him to purchase property, real or personal, or to solicit him to enter any place of business for the purpose of selling to or inducing or attempting to induce such pedestrian to purchase any property, real or personal."

75. Section 74-1 is not a reasonable time, place or manner restriction.

76. Section 74-1's prohibition operates in a quintessential public forum, *i.e.*, "while upon any public street or sidewalk or while in any building, doorway, stairway, window or other opening abutting on or adjacent to such street or sidewalk . . . any pedestrian on such street or sidewalk."

77. Section 74-1's broad ban is over broad in that it is not narrowly tailored because it in that it prohibits commercial speech by "**any** person" (emphasis added) in public from all pedestrians *i.e.*, while upon **any** public street or sidewalk and applies to **any** pedestrian on such street or sidewalk and prohibits selling "**any** property, real or personal." (emphasis added).

78. Section 74-1 is not the least restrictive means of protecting the City's compelling interest.

79. Even if section 74-1 is content-neutral, it is not narrowly tailored and its broad geographical and situational ban fails to leave open sufficiently ample alternative channels of communication.

80. Section 74-1 is vague because it is not clear who it applies to, *i.e.*, "it shall be unlawful for **any person**" (emphasis added) and it is not clear what one is prohibited from selling "**any property, real or personal.**" (emphasis added).

81. Section 74-1 is part and parcel of a regulatory scheme that unconstitutionally burdens speech because it is not narrowly tailored to serve a significant government interest, and it fails to leave open sufficiently ample alternative channels of communication of information for individuals who wish to engage in street performance and/or art vending within Miami Beach.

Count IV
Section 18-1 Business License Required
Violates The Florida Constitution Article 1, Section 2 & 4, Basic And Free Speech Rights
On Its Face And As Applied To Plaintiff

82. Plaintiff re-alleges and incorporates all preceding paragraphs.

83. Section 18-1 is part and parcel of a regulatory scheme that unconstitutionally burdens speech because it is not narrowly tailored to serve a significant government interest, and it fails to leave open sufficiently ample alternative channels of communication of information for individuals who wish to engage in street performance and/or art vending within Miami Beach.

84. Section 18-1 is unconstitutional as applied to Plaintiff because it is being used to proscribe Plaintiff's free speech activities.

**Count V: Violation Of Florida Constitution Article 1,
Section 2, Arbitrary Enforcement**

85. Plaintiff re-alleges and incorporates all preceding paragraphs.

86. The Performer and Artist Ordinance lends itself to biased or arbitrary enforcement in that it allows the owners, managers, or supervisors of any outdoor café, outdoor restaurant, or sidewalk café unbridled discretion to exempt particular panhandlers or solicitors from the prohibition's strictness at and around their establishments.

87. Section 74-78 lends itself to biased or arbitrary enforcement in that it allows the owners, managers, or supervisors of any outdoor café, outdoor restaurant, or sidewalk café unbridled discretion to exempt particular panhandlers or solicitors from the prohibition's strictness at and around their establishments.

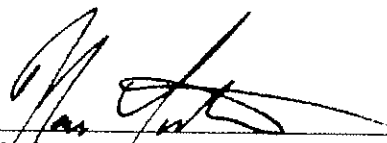
88. Section 74-1 lends itself to biased or arbitrary enforcement in that it allows the owners, managers, or supervisors of any outdoor café, outdoor restaurant, or sidewalk café unbridled discretion to exempt particular panhandlers or solicitors from the prohibition's strictness at and around their establishments.

89. Section 18-1 lends itself to biased or arbitrary enforcement in that it allows the owners, managers, or supervisors of any outdoor café, outdoor restaurant, or sidewalk café unbridled discretion to exempt particular panhandlers or solicitors from the prohibition's strictness at and around their establishments.

WHEREFORE, the Plaintiff prays that this court: declare sections 18-901 through 18-910 of the Code of the City of Miami Beach unconstitutional on its face and as applied to

private individuals; declare section 74-76 through 74-79 of the Code of the City of Miami Beach unconstitutional on its face and as applied to private individuals; declare section 74-1 of the Code of the City of Miami Beach unconstitutional on its face and as applied to private individuals; declare section 18-1 of the Code of the City of Miami Beach unconstitutional on its face and as applied to private individuals; enjoin the enforcement of sections 18-901 through 18-910, sections 74-76 through 74-79, 74-1, and 18-1 of the Code of the City of Miami Beach; and provide such other and further relief as this court deems fair and just.

Dated: June 21, 2007



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