

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

**THE SEVENTH-DAY BAPTIST  
CHURCH OF DAYTONA BEACH,  
FLORIDA**

*Plaintiff,*

v.

**CITY OF DAYTONA BEACH,  
FLORIDA.**

*Defendant.*

**Case No. 6:24-cv-858-JSS-DCI**

**PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff, The Seventh-Day Baptist Church of Daytona Beach, Florida (the “Church”), respectfully requests a preliminary injunction enjoining Defendant City of Daytona Beach, Florida (the “City”), from enforcing Daytona Beach, Fla., Land Dev. Code § 5.2.B.13.e.i.(c), which prohibits places of worship—and only places of worship—from operating a food pantry in a redevelopment area. This blatantly discriminatory ordinance violates the Free Exercise Clause, the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), and the Florida Religious Freedom Restoration Act (“FRFRA”). A preliminary injunction is warranted because the Church is likely to prevail on the merits of its claims, enforcement of the ordinance causes the Church

irreparable harm, and both the balance of the equities and the public interest weigh in favor of granting injunctive relief to the Church.

### MEMORANDUM

For 16 years, the Church operated a food pantry in the Downtown redevelopment area of the City with the full knowledge and support of City officials. In October 2023, however, the City abruptly changed course and ordered the Church to shut down the food pantry. The City alleged that hosting a food pantry at the Church violated Section 5.2.B.13.e.i.(c) of the City's Land Development Code, which provides that "food pantries . . . shall be prohibited as an accessory or principal use to a place of worship in any Redevelopment Area." Daytona Beach, Fla., Land Dev. Code § 5.2.B.13.e.i.(c) (hereinafter, the "Religious Food Pantry Ordinance" or the "Ordinance"). That restriction applies only to places of worship; it does not affect buildings used for secular purposes. So while the Church is prohibited from operating a food pantry, secular institutions like Bethune-Cookman University or Casa San Pablo and even religiously-affiliated organizations, like the Salvation Army or Halifax Urban Ministries, are permitted to do so, so long as they do not also operate as a place of worship.

An ordinance that imposes a restriction solely on places of worship while leaving secular properties unaffected is a blatant violation of the Free Exercise Clause of the First Amendment. Under the Free Exercise Clause, the

government may not “single out houses of worship for especially harsh treatment.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17 (2020). Nor may the government “treat *any* comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (emphasis in original). Because the Religious Food Pantry Ordinance facially discriminates against houses of worship, the Ordinance and the City’s actions thereunder cannot stand.

The Church seeks a preliminary injunction enjoining the City from enforcing the Religious Food Pantry Ordinance while the Church’s constitutional and statutory claims are resolved. An injunction is clearly warranted in this case. The Church is likely to prevail not only on its claim under the Free Exercise Clause, but also on its claims under the RLUIPA and the FRFRA. The ongoing violation of the Church’s First Amendment freedoms “unquestionably constitutes irreparable injury.” *Roman Cath. Diocese*, 592 U.S. at 19 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). Finally, the balance of the equities and the public interest weigh in favor of granting a preliminary injunction because the public has a strong interest in vindicating the Church’s First Amendment rights, whereas there is no public interest in “enforcing an unconstitutional ordinance.” *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006).

## BACKGROUND

In 2007, the Church established a food pantry to serve the hungry members of the community of Daytona Beach, Florida. *See* Declaration of Pastor Ben Figueroa attached as Exhibit A (“Figueroa Decl.”) ¶ 16. For 16 years, the Church accepted donations of canned goods and other nonperishables from individuals, food banks, and grocery stores. *Id.* ¶ 17. It then redistributed these donations to the most needy members of the community every Wednesday between 9:00 AM and 11:00 AM. *Id.* ¶ 19. The Church facilitated thousands of meals, including to at least 80 families who relied consistently on the food pantry to meet their basic needs. *Id.* ¶¶ 22–23.

The Church considers its food pantry to be a vital part of its mission “to honor Christ and care for His people.” *Id.* ¶ 11 (quoting the Seventh-Day Baptist Church of Daytona Beach Mission Statement, <https://sdbdaytona.org/about-us> (last visited Aug. 18, 2024)). In the Church’s view, ministering to the hungry is a commandment from God made clear in Scripture. *See id.* ¶¶ 12–15; *see also Matthew* 25:35–40 (English Standard Version, “ESV”) (“For I was hungry and you gave me food, I was thirsty and you gave me drink . . . . ‘Truly, I say to you, as you did it to one of the least of these my brothers, you did it to me.’”); *James* 2:15–16 (ESV) (“If a brother or sister is poorly clothed and lacking in daily food, and one of you says to them, ‘Go in peace, be warmed and filled,’ without giving them the things needed for

the body, what good is that?"); *Isaiah* 58:10 (ESV) (“[I]f you pour yourself out for the hungry and satisfy the desire of the afflicted, then shall your light rise in the darkness and your gloom be as the noonday.”); *Psalms* 146:5–7 (ESV) (“Blessed is he . . . who gives food to the hungry.”); *Proverbs* 14:21 (ESV) (“Whoever despises his neighbor is a sinner, but blessed is he who is generous to the poor.”).

For many years, the City not only permitted but openly supported the Church’s food ministry. *See id.* ¶ 24. When Pastor Ben Figueroa joined the Church in 2020, he visited City Hall to make sure that the food pantry was in full compliance with all City ordinances. *Id.* ¶ 25. A City employee told him that the Church was doing a great service for the community and reassured him that nothing more was required for the Church to continue operating the food pantry. *Id.* ¶¶ 27–28. A year later, in September 2021, City Commissioner Quanita May visited the Church while the food pantry was in operation, told Pastor Figueroa that she appreciated the work the Church was doing, and offered to supply goods to the Church. *Id.* ¶ 29.

All this good will abruptly ended on October 13, 2023. *Id.* ¶ 33. Following repeated political pressure from a former City Commissioner and her spouse, including vehement complaints that, among other things, food pantries were “plagues to the efforts to redevelop a neighborhood” and that “crowds of people [are] sleeping on church steps and in alleys beside homes,”

the City caved to the pressure. City’s September 2022 Email Thread Acknowledging the Whites’ Concern attached as Exhibit B at 2. Without any prior warning or discussion, the City notified the Church that it was in violation of the Ordinance, which prohibits places of worship—and only places of worship—from operating a food pantry in a redevelopment area.<sup>1</sup> Figueroa Decl. ¶ 33; *see also* City’s Response to Jack White’s Final October 2023 Complaints attached as Exhibit C at 1 (“Code has cited the property and provided a copy of the codes. They believe we are violating separation of church and state.”). Over the next month, the Church kept the food pantry open while seeking an explanation from the City as to the sudden enforcement. Figueroa Decl. ¶¶ 34–35. But the City provided no answers. *Id.* ¶ 34. Instead, it regularly sent employees to photograph the Church to verify whether the food pantry was still in operation. *Id.* ¶¶ 35–36.

Eventually, the City informed the Church that it must appear before a magistrate judge and set a penalty for failing to close the food pantry at \$5,000 per day. *Id.* ¶ 38. Seeing no alternative, the Church closed the food pantry in

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<sup>1</sup> The full text of the Religious Food Pantry Ordinance provides: “Irrespective of the districts in which food pantries are shown as allowed by the use tables in Section 5.2.A Principal Use Tables, they shall be prohibited as an accessory or principal use to a place of worship in any Redevelopment Area.” Daytona Beach, Fla., Land Dev. Code § 5.2.B.13.e.i.(c). A “Place of Worship” is defined as “[a] building or structure, together with its accessory buildings and uses, where people regularly assemble to conduct religious worship, ceremonies, rituals, and education.” *Id.* § 11.5. Examples include “chapels, churches, mosques, shrines, synagogues, tabernacles, temples, and other similar religious places of assembly.” *Id.* A “Food Pantry” is defined as “[a]ny program that acquires food products through donations, canned food drives, food bank programs or purchases and distributes the food to individuals, and does not provide prepared food to clients for consumption on or off site.” *Id.*

November 2023. *Id.* ¶ 39. At a hearing in May 2024, a magistrate judge concluded that the Church had violated the Religious Food Pantry Ordinance but was now in compliance. *Id.* ¶ 40; *see generally* Order of Non-Compliance and Finding of Compliance attached as Exhibit D. As a result of the magistrate judge’s decision, the Church’s food pantry remains closed to this day. *Id.* ¶ 41.

Although the Church was required to close its food pantry, other food pantries within redevelopment areas—including the same Downtown redevelopment area where the Church is located—remain open. *Id.* ¶¶ 42–46. These include food pantries operated by secular organizations, such as the Casa San Pablo in the Downtown redevelopment area and Bethune-Cookman University in the Midtown redevelopment area. *Id.* ¶¶ 42, 44. Halifax Urban Ministries and the Salvation Army, which are not places of worship but are religiously affiliated, operate food ministries in the Main Street and Ballough Road redevelopment areas, respectively. *Id.* ¶ 45. In addition, other places of worship located within redevelopment areas inexplicably continue to operate food pantries despite the Ordinance, including the First Christian Church in the Downtown redevelopment area and Powerhouse Ministries, Daytona Deliverance, and Greater New Zion Primitive Baptist Church in the Midtown redevelopment area. *Id.* ¶¶ 43, 46.

## LEGAL STANDARD

A preliminary injunction should issue when a plaintiff shows that (1) it is likely to succeed on the merits, (2) it likely will suffer irreparable harm in the absence of injunctive relief, (3) the balance of equities weighs in its favor, and (4) injunctive relief is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

## ARGUMENT

### I. **The Church Is Likely to Prevail on the Merits of Its Claims.**

The Amended Complaint, *see* ECF No. 27, asserts four claims against the City: (1) violation of the Free Exercise Clause, *see* U.S. Const. amend. I; (2) violation of the substantial burden provision of RLUIPA, *see* 42 U.S.C. § 2000cc(a); (3) violation of the equal terms provision of RLUIPA, *see id.* § 2000cc(b); and (4) violation of FRFRA, *see* FLA. STAT. § 761.03. The Church is likely to prevail on each claim.

#### A. **The Religious Food Pantry Ordinance Violates the Free Exercise Clause.**

The Free Exercise Clause of the First Amendment, which applies to the States through the Fourteenth Amendment, provides that “Congress shall make no law . . . prohibiting the free exercise” of religion. U.S. Const. amend. I; *see also Fulton v. City of Phila.*, 593 U.S. 522, 532 (2021). Additionally, the Free Exercise Clause “protects religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special



disabilities based on their religious status.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017) (cleaned up).

A plaintiff states a Free Exercise claim “by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not ‘neutral’ or ‘generally applicable.’” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). A law burdens a religious practice when it places “substantial pressure” on a church to “modify [its] behavior and to violate [its] beliefs.” *See Thomas v. Rev. Bd. Of Ind. Emp. Sec. Div.*, 450 U.S. 707, 718 (1981). Here, the burden on the Church’s religious exercise is self-evident: the Religious Food Pantry Ordinance threatens the Church with substantial fines if it operates its food pantry. Indeed, the Church has temporarily halted its religious exercise because of this substantial pressure.

If a law only incidentally burdens religious exercise, it normally will not be subject to strict scrutiny so long as it is *both* neutral *and* generally applicable. *See Fulton*, 593 U.S. at 533. But if a law fails *either* the test for neutrality *or* the test for general applicability, then the law is subject to strict scrutiny and will pass constitutional muster “only if it advances interests of the highest order and is narrowly tailored to achieve those interests.” *Id.* at 541 (cleaned up).

**1. The Religious Food Pantry Ordinance Is Neither Neutral Nor Generally Applicable.**

For several reasons, the Religious Food Pantry Ordinance fails the tests for both neutrality and general applicability. Each of these reasons independently triggers strict scrutiny.

*First*, the Religious Food Pantry Ordinance is not neutral because it targets places of worship for special disfavor. Neutrality requires that a law must not “discriminate[] against some or all religious beliefs or regulate[] or prohibit[] conduct because it is undertaken for religious reasons.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). The government fails to act neutrally when it “single[s] out houses of worship for especially harsh treatment.” *Roman Cath. Diocese*, 592 U.S. at 17; *see also Tandon*, 593 U.S. at 62 (government regulations trigger strict scrutiny “whenever they treat *any* comparable secular activity more favorably than religious exercise” (emphasis in original)). Here, the Religious Food Pantry Ordinance restricts only places of worship from operating a food pantry in a redevelopment area. That restriction is facially not neutral toward religion.

*Second*, the Religious Food Pantry Ordinance is not generally applicable because it permits secular institutions to operate food pantries within a redevelopment area while prohibiting places of worship from engaging in the exact same conduct. A law is not generally applicable when “it prohibits

religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. Here, secular entities such as Casa San Pablo and Bethune-Cookman University are permitted to operate food pantries in redevelopment areas. *See* Figueroa Decl. ¶¶ 42, 44. Whatever interest the City may have in preventing the Church from operating its food pantry, that interest is clearly undermined by the fact that secular food pantries are permitted to remain open.

*Third*, the Religious Food Pantry Ordinance is not generally applicable for the additional reason that it permits some places of worship located in redevelopment areas to keep their food pantries open. "A law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533 (cleaned up). Here, the City has exempted some places of worship located in redevelopment areas—including First Christian Church, Powerhouse Ministries, Daytona Deliverance, and Greater New Zion Primitive Baptist Church—from the ban on operating food pantries. *See* Figueroa Decl. ¶¶ 43, 46. The fact that the City exempts certain places of worship but not others invites strict scrutiny. *See Fulton*, 593 U.S. at 533.

## 2. The Religious Food Pantry Ordinance Fails Strict Scrutiny.

Because it is not a neutral law of general applicability, the Religious Food Pantry Ordinance “must advance interests of the highest order and must be narrowly tailored in pursuit of those interests.” *Lukumi*, 508 U.S. at 546 (cleaned up). Strict scrutiny is “the most demanding test known to constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). The test is “not watered down but really means what it says.” *Lukumi*, 508 U.S. at 546 (cleaned up). As a result, a “law that targets religious conduct for distinctive treatment . . . will survive strict scrutiny only in rare cases.” *Id.*; see also *Trinity Lutheran*, 582 U.S. at 466 (holding that the government failed to satisfy strict scrutiny); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 484–86 (2020) (same); *Fulton*, 593 U.S. at 541–43 (same); *Carson ex rel. O.C. v. Makin*, 596 U.S. 767, 780–81 (2022) (same).

Here, any compelling interest that the City may offer for the Religious Food Pantry Ordinance must explain why the City has an interest in denying places of worship the ability to host food pantries but not buildings used for secular purposes. Strict scrutiny demands a “precise analysis” and does not permit the government to justify itself through “broadly formulated interests.” *Fulton*, 593 U.S. at 541. Accordingly, asserting broad interests such as public welfare or the prevention of crime will not suffice; the City must explain why

these interests require closing the food pantry at the Church but not the food pantries at Bethune-Cookman University, Casa San Pablo, the Salvation Army, or Halifax Urban Ministries.

Second, regardless of whatever interests the City may offer for prohibiting the Church from operating its food pantry, those interests are undermined by the fact that other institutions—both secular organizations and other places of worship—are permitted to operate their food pantries in redevelopment areas. “A law does not advance an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Espinoza*, 591 U.S. at 486 (cleaned up). The City cannot offer a compelling reason for why it must prohibit the Church from operating its food pantry in a redevelopment area but exempt both secular institutions and other places of worship from that same restriction. *See Fulton*, 593 U.S. at 542. The Religious Food Pantry Ordinance is therefore “fatally underinclusive” and cannot survive strict scrutiny. *Espinoza*, 591 U.S. at 486; *see also Lukumi*, 508 U.S. at 546 (ordinances that were “underinclusive in substantial respects” were not narrowly tailored).

**B. The Religious Food Pantry Ordinance Violates the Substantial Burden Provision of RLUIPA.**

Section (a)(1) of RLUIPA, also known as the substantial burden provision, provides that “[n]o government shall impose or implement a land

use regulation in a manner that imposes a substantial burden on the religious exercise of . . . a religious assembly or institution, unless the government demonstrates that imposition of the burden” is “in furtherance of a compelling governmental interest” and is “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1). This provision applies if the “substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.” *Id.* § 2000cc(a)(2)(C). A “land use regulation” is defined as “a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land (including a structure affixed to land), if the claimant has an ownership . . . or other property interest in the regulated land.” *Id.* § 2000cc-5(5).

The substantial burden provision of RLUIPA applies here because the City’s Land Development Code—and, in particular, the Religious Food Pantry Ordinance—is a “land use regulation,” and the City is making individualized assessments of the properties within redevelopment areas. *See Thai Meditation Ass’n of Ala., Inc. v. City of Mobile*, 980 F.3d 821, 828 n.4 (11th Cir. 2020) (town zoning ordinance was a “land use regulation” under RLUIPA). The Religious Food Pantry Ordinance restricts property owners within a

redevelopment area from using their property to operate a food pantry, but only if the property is used as a place of worship. Properties that are not used as a place of worship, by contrast, are permitted to operate food pantries within redevelopment areas. *See* Figueroa Decl. ¶¶ 42, 44–45. Moreover, the City exempts certain places of worship within redevelopment areas from the general prohibition. *See id.* ¶¶ 43, 46. Because these exemptions are not based on any written criteria in the Land Development Code, the City is clearly basing its enforcement decisions on individualized assessments.

Because the substantial burden provision of RLUIPA applies, the Church will succeed in its claim if it shows: (1) that the use of its property to host a food pantry is “religious exercise” under RLUIPA; (2) that the Religious Food Pantry Ordinance imposes a “substantial burden” on this religious exercise; and (3) that the Ordinance does not survive strict scrutiny. *See* 42 U.S.C. § 2000cc(a)(1); *see also Thai Meditation*, 980 F.3d at 829, 833. The Church easily satisfies each of these elements.

*First*, the Church’s use of its property to operate a food pantry constitutes “religious exercise.” Under RLUIPA, “religious exercise” is defined broadly to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A). Courts have repeatedly held that ministering to the poor, including through food pantries, is “religious exercise” under RLUIPA. *See Harbor Missionary Church Corp. v. City of San*

*Buenaventura*, 642 F. App'x 726, 729 (9th Cir. 2016) (church was likely to succeed on its claim that prohibition of its “homeless ministry” violated RLUIPA); *Micahs Way v. City of Santa Ana*, No. 8:23-cv-00183, 2023 WL 4680804, at \*4 (C.D. Cal. June 8, 2023) (faith-based organization plausibly alleged “that its food distribution activities are part of its religious exercise” under RLUIPA); *St. Timothy’s Episcopal Church by & through Diocese of Or. v. City of Brookings*, No. 1:22-cv-00156, 2024 WL 1303123, at \*7 (D. Or. Mar. 27, 2024) (“There is no genuine dispute that [the church’s] feeding ministry is a ‘religious exercise’ under RLUIPA.”); *see also W. Presbyterian Church v. Bd. of Zoning Adjustment of D.C.*, 862 F. Supp. 538, 544 (D.D.C. 1994) (finding that “the Church’s feeding program” is “religious conduct falling within the protections of the First Amendment and the RFRA”); *Chosen 300 Ministries, Inc. v. City of Phila.*, 2012 WL 3235317, at \*17 (E.D. Pa. Aug. 9, 2012) (“Acts of charity are central to Christian worship.”). Here, the Church similarly believes that ministering to the hungry is commanded by God. *See* Figueroa Decl. ¶¶ 8–15.

*Second*, the Religious Food Pantry Ordinance undoubtedly imposes a “substantial burden” on the Church’s religious exercise because the Ordinance outright prohibits the Church from operating its food pantry. A “substantial burden” under RLUIPA “is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior.” *Thai Meditation*, 980



F.3d at 831 (quoting *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1227 (11th Cir. 2004)). An ordinance that “completely prevents” a church from engaging in religious exercise “suffice[s] to demonstrate a substantial burden.” *Id.*; see also *Davis v. Wigen*, 82 F.4th 204, 212 (3d Cir. 2023) (“There can hardly be a more substantial burden on a religious practice or exercise than its outright prohibition.”). As discussed above, that is exactly what is happening here.

Finally, the Religious Food Pantry Ordinance is not the “least restrictive means of furthering” a “compelling governmental interest” under RLUIPA for the same reason that the Ordinance fails strict scrutiny under the Free Exercise Clause. 42 U.S.C. § 2000cc(a)(1); see *supra* § I.A.2. The City can have no compelling interest in prohibiting places of worship in redevelopment areas from operating food pantries while allowing secular properties in redevelopment areas to do so. *Cf. Lukumi*, 508 U.S. at 546–47 (“Where government restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling.”). Moreover, by permitting both secular organizations and other, exempted places of worship from operating food pantries in redevelopment areas, the Ordinance “leaves appreciable damage” to whatever interest the government has in restricting food pantries.

*Espinoza*, 591 U.S. at 486 (cleaned up). An ordinance that is “underinclusive in substantial respects” does not survive strict scrutiny. *Lukumi*, 508 U.S. at 546.

**C. The Religious Food Pantry Ordinance Violates the Equal Terms Provision of RLUIPA.**

Section (b)(1) of RLUIPA, also known as the equal terms provision, provides that “[n]o government shall 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.” 42 U.S.C. § 2000cc(b)(1). The equal terms provision “requir[es] equal treatment of secular and religious assemblies.” *Midrash*, 366 F.3d at 1232. An ordinance “that facially differentiates between religious and nonreligious assemblies or institutions” violates the equal terms provision. *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1308 (11th Cir. 2006). When an ordinance violates the equal terms provision, the Eleventh Circuit has held it “must undergo strict scrutiny.” *Midrash*, 366 F.3d at 1232. While the Church disputes that applying strict scrutiny is consistent with the statutory text of RLUIPA,<sup>2</sup> it recognizes this Court is bound by precedent and reserves the right to raise this issue in the appropriate venue.

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<sup>2</sup> See 42 U.S.C. § 2000cc(b)(1); see also *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 293 n.12 (5th Cir. 2012) (declining to adopt the Eleventh Circuit’s strict scrutiny approach).

The Religious Food Pantry Ordinance violates the equal terms provision of RLUIPA for the same reasons that it violates the Free Exercise Clause and the substantial burden provision of RLUIPA. *See supra* §§ I.A–B. The Ordinance is a “land use regulation” within the meaning of RLUIPA because it “restricts” certain properties located in redevelopment areas from operating food pantries. 42 U.S.C. § 2000cc-5(5). And the Ordinance treats religious assemblies or institutions “on less than equal terms” with nonreligious assemblies or institutions because the restriction on operating a food pantry does not apply to secular properties in a redevelopment area. *Id.* § 2000cc(b)(1). Finally, the Ordinance does not survive strict scrutiny because the City can have no compelling interest in restricting only places of worship, and also because the Ordinance is “fatally underinclusive”—*i.e.*, it permits the same conduct by secular institutions that it prohibits from places of worship. *Espinoza*, 591 U.S. at 486.

**D. The Religious Food Pantry Ordinance Violates FRFRA.**

FRFRA provides that “[t]he government shall not substantially burden a person’s exercise of religion, even if the burden results from a rule of general applicability,” unless it can demonstrate that the burden is “in furtherance of a compelling governmental interest” and is “the least restrictive means of furthering that compelling governmental interest.” FLA. STAT. § 761.03(1). The “[e]xercise of religion” is defined as “an act or refusal to act that is

substantially motivated by a religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief.” *Id.* § 761.02(3). The language of FRFRA is practically identical to the substantial burden provision of RLUIPA. *Compare id.* § 761.03(1), *and id.* § 761.02(3), *with* 42 U.S.C. § 2000cc(a)(1), *and id.* § 2000cc-5(7)(A). Accordingly, “federal and state courts have applied the same analysis under FRFRA and RLUIPA.” *Powers v. Jones*, No. 3:16-cv-635, 2018 WL 1496918, at \*4 (M.D. Fla. Mar. 27, 2018) (quoting *Westgate Tabernacle, Inc. v. Palm Beach County*, 14 So. 3d 1027, 1031 (Fla. Dist. Ct. App. 2009)).

Because the Religious Food Pantry Ordinance violates the substantial burden provision of RLUIPA, *see supra* § I.B., it also clearly violates FRFRA. The Church’s operation of a food pantry constitutes the “exercise of religion” because the Church considers ministering to the hungry to be a commandment from God. *See* Figueroa Decl. ¶¶ 8–15; *Harbor Missionary Church*, 642 F. App’x at 729; *Micahs Way*, 2023 WL 4680804 at \*4; *St Timothy’s Episcopal Church*, 2024 WL 1303123 at \*7. The Religious Food Pantry Ordinance substantially burdens that religious exercise because it prohibits the Church from operating the food pantry. *See Thai Meditation*, 980 F.3d at 831 (ordinance that “completely prevents” a church from engaging in religious exercise “suffice[s] to demonstrate a substantial burden”). And the Ordinance does not survive strict scrutiny because the Government has no compelling

interest in restricting only places of worship, and also because the Ordinance is “underinclusive in substantial respects.” *Lukumi*, 508 U.S. at 546.

## **II. The Church Has Suffered and Continues to Suffer Irreparable Harm.**

There can be no doubt that the Church has suffered irreparable harm because the injury involves a violation of the First Amendment right to the free exercise of religion. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Catholic Diocese*, 592 U.S. at 67 (quoting *Elrod*, 427 U.S. at 373 (plurality opinion)); *see also Opulent Life Church*, 697 F.3d at 295 (“This principle applies with equal force to the violation of RLUIPA rights because RLUIPA enforces First Amendment freedoms[.]”). Since it was forced to close its food pantry in November 2023, the Church has been prohibited from carrying out its religious obligation of ministering to the hungry. *See* Figueroa Decl. ¶¶ 39, 47–48. The Church has already suffered 10 months of a deprivation of its constitutional rights, and it will continue to do so unless a preliminary injunction is issued to prevent the City from enforcing the Religious Food Pantry Ordinance.

The irreparable harm caused by the First Amendment violation is worsened by the fact that the prohibited conduct involves ministering to the hungry. Prior to shutting down, the Church served at least 80 families who consistently relied on the food pantry to meet their basic needs. *See id.* ¶ 23.

Because of the Religious Food Pantry Ordinance, the Church has been—and continues to be—unable to support these dozens of families living on the edge of hunger.

**III. The Balance of Equities and the Public Interest Favor Granting a Preliminary Injunction.**

The remaining factors—which merge when the preliminary relief is against the government—also weigh in favor of granting preliminary injunctive relief. *See Navy Seal 1 v. Austin*, 586 F. Supp. 3d 1180, 1204 (M.D. Fla. 2022) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). It is well settled that “the public has no interest in tolerating even a minimal infringement on Free Exercise.” *Id.* Nor does the public have an “interest in enforcing an unconstitutional ordinance.” *KH Outdoor*, 458 F.3d at 1272; *see also Beckwith Elec. Co., Inc. v. Sebelius*, 960 F. Supp. 2d 1328, 1350 (M.D. Fla. 2013) (“[I]t is never in the public interest to enforce unconstitutional laws.”). By contrast, there is a strong public interest in ensuring that the Church’s First Amendment and RLUIPA rights are vindicated. *See City Walk - Urb. Mission Inc. v. Wakulla Cnty. Fla.*, 471 F. Supp. 3d 1268, 1288 (N.D. Fla. 2020); *see also League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) (“The vindication of constitutional rights and the enforcement of a federal statute serve the public interest almost by definition.”).

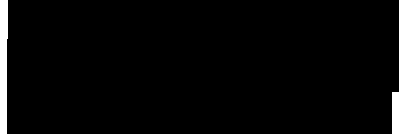
The balance of harms also favors a preliminary injunction for a more practical reason: enjoining the enforcement of the Religious Food Pantry Ordinance will allow the Church to reopen its food pantry and to resume services to the community. During the 16 years that it was open, the Church's food pantry facilitated the preparation of thousands of meals to numerous families, including at least 80 families who regularly depended upon the food pantry to meet their basic needs. *See* Figueroa Decl. ¶¶ 21–23. The food pantry was so successful that, up until October 2023, the City was supportive of the Church's food ministry. *See id.* ¶¶ 24–32. Although the City has now changed its position on the food pantry, it cannot credibly argue that it will suffer any harm as a result of the Church reopening the food pantry. Numerous secular institutions and other places of worship continue to operate food pantries within redevelopment areas, including the same Downtown redevelopment area where the Church is located. *See id.* ¶¶ 42–46. Permitting one additional place of worship to resume serving hungry families will cause no harm to the community.

### CONCLUSION

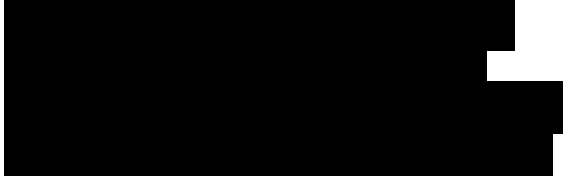
For the foregoing reasons, the Church requests that the Court issue a preliminary injunction prohibiting the enforcement of the Religious Food Pantry Ordinance and providing any other relief that the Court deems appropriate.

Dated: August 28, 2024

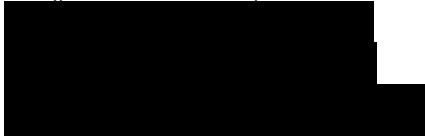
Nathan W. Kellum, Sr.  
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2001 W. Plano Pkwy., Suite 1600  
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Charles Chobee Ebbets  
Florida Bar No. 218294  
Chobee Ebbets, P.A.  
138 Live Oak Avenue  
Daytona Beach, Florida 32114



Fax: (386) 257-1253

*Attorney to be noticed as lead counsel*

Respectfully Submitted,

By: /s/ Brian M. Trujillo  
Gordon D. Todd  
Dino L. LaVerghetta  
Aaron P. Haviland  
Jenny Q. Becker\*  
SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
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*\* Pro Hac Vice Application Pending*

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Secondary email: pboylan@sidley.com  
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Suite 900  
Miami, FL 33131  
Telephone: (305) 391-5100  
Facsimile: (305) 391-5101

*Counsel for Plaintiff*



**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2024, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of filing to all ECF users.

By:  /s/ Brian M. Trujillo  
Brian M. Trujillo

# **EXHIBIT A**

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

**THE SEVENTH-DAY BAPTIST  
CHURCH OF DAYTONA BEACH,  
FLORIDA**

*Plaintiff,*

v.

**CITY OF DAYTONA BEACH,  
FLORIDA.**

*Defendant.*

**Case No. 6:24-cv-858-JSS-DCI**

**DECLARATION OF PASTOR BEN FIGUEROA**

I, Ben Figueroa, declare the following under penalties of perjury:

**A. Introduction to the Church.**

1. My name is Ben Figueroa. I am over eighteen years of age. I am of sound mind, and I am legally competent to make this declaration in connection with the above-captioned action. I have personal knowledge of the facts stated herein, and, if called to testify thereto, I could and would competently do so. The facts stated within this declaration are true and correct to the best of my knowledge.

2. I am the lead pastor of The Seventh-Day Baptist Church of Daytona Beach, Florida (the "Church") and have been for four years.

3. I am intimately familiar with the history, operation, and maintenance of the Church.

4. The Church has been located at 128 Live Oak Ave., Daytona Beach, Florida 32114, United States, since 2019.

5. The Church currently sits in the City of Daytona Beach, Florida (the “City”)’s Downtown redevelopment area.

6. Before relocating to 128 Live Oak Ave., the Church was located at 145 First Ave., Daytona Beach, Florida 32114, United States—also in the Downtown redevelopment area—for over ninety years.

7. As the pastor for the Church, I am also intimately familiar with the values, mission, and beliefs of the Church.

**B. What the Church Believes.**

8. The Church is a Christian church.

9. More specifically, the Church is formally part of the Seventh Day Baptist General Conference, which is an evangelical, Baptist denomination.

10. The Church’s vision statement is: “To help people from all walks of life to come together to worship God, study His word and encourage each other as we grow in our faith and knowledge of Him.”

11. The Church’s mission statement is that: “We exist to honor Christ and care for His people.”

12. The Church is motivated to care for all of God’s people because God—through His word, the scriptures—teaches and commands us to do so.

13. Among some of the scriptures that the Church believes, and is motivated by, are:

- a. Isaiah 58:10 (English Standard Version, “ESV”): “[I]f you pour yourself out for the hungry and satisfy the desire of the afflicted, then shall your light rise in the darkness and your gloom be as the noonday.”
- b. Psalm 146:5–7 (ESV): “Blessed is he whose help is the God of Jacob, whose hope is in the Lord his God, who made heaven and earth, . . . who executes justice for the oppressed, who gives food to the hungry.”
- c. Matthew 25:35–40 (ESV): “For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me. . . . Truly, I say to you, as you did it to one of the least of these my brothers, you did it to me.”
- d. Proverbs 14:21, 31 (ESV): “Whoever despises his neighbor is a sinner, but blessed is he who is generous to the poor. . . . Whoever

oppresses a poor man insults his Maker, but he who is generous to the needy honors him.”

- e. James 2:14–16 (ESV): “What good is it, my brothers, if someone says he has faith but does not have works? Can that faith save him? If a brother or sister is poorly clothed and lacking in daily food, and one of you says to them, ‘Go in peace, be warmed and filled,’ without giving them the things needed for the body, what good is that?”

14. As a result, one of the Church’s core religious beliefs is to love and care for the weak, hungry, and poor.

15. The Church believes that this is a good and important commandment from God.

**C. The Church’s Food Pantry.**

16. In furtherance of these Christian beliefs, the Church decided to start a formal food ministry approximately sixteen years ago.

17. At its core, the food ministry works by accepting food donations—*e.g.*, canned goods and various kinds of nonperishables—from either individuals in our community, food banks, or grocery stores.

18. One such food bank the Church partners with is called “Second Harvest.”

19. The Church, after checking that donated canned goods and nonperishables are safe to share, redistributes those donations every Wednesday from 9:00 a.m. to 11:00 a.m.

20. Both the City and the Church refer to this as the Church's "Food Pantry."

21. The Church has operated its Food Pantry in the Downtown redevelopment area of the City for sixteen consecutive years.

22. The Food Pantry does not serve meals or prepared foods, but, still, every week, the Church has served many families with free canned goods and nonperishables, leading to thousands of meals being served over the course of the sixteen-year period.

23. At least eighty families consistently rely on the food ministry each week to have their needs met.

**D. The City Supports the Church's Food Pantry.**

24. Before October 2023, the Church understood the City to not only be welcoming of the Church's Food Pantry, but also *supportive* of it.

25. After I became the pastor of the Church in 2020, Ewald Fick, the Church's president, and I went to City Hall to make sure that the Church was operating its Food Pantry in full compliance with the City's laws.

26. When we arrived at City Hall, we asked to speak to someone in either zoning or planning.

27. We met a City employee who informed us that they were aware of our Food Pantry and that the Church was doing a great service for the community.

28. That employee also said that there was nothing to do with respect to continuing the Church's food ministry through its Food Pantry. The employee also expressed enthusiasm and encouragement for the Food Pantry.

29. One year later, on September 11, 2021, City Commissioner Quanita May—who represents Zone 3, the Zone the Church is and has always been in—came to the Church on a day when we were operating the Food Pantry and stated that the City appreciated the work the Church was doing and wanted to partner with the Church.

30. City Commissioner May also represented that the City would provide resources to support the Church's ministries, including by providing quilts and food.

31. Based on City Commissioner May's representations, I emailed her on October 21, 2021, informing her of the items our community was "in dire need [of]," including: "Backpacks, Blankets, Sleeping bags, Sanitary Wipes, Baby wipes, Baby diapers, [and] Can[ned] goods (with easy open pull lids)[.]"

32. Prior to October 2023, the City neither expressed any concern nor raised any issues related to the Church's operation of the Food Pantry.



**E. The City Changes Its Position on the Church's Pantry.**

33. Without warning, the City suddenly changed its position regarding our Food Pantry. On October 13, 2023, the City came to the Church and delivered us a Violation Notice, which cited the Church with violating Land Development Code § 5.2.B.13.e.i.(c)'s prohibition on a Place of Worship operating a Food Pantry in a redevelopment area.

34. We reached out to the City for clarification but the City could not provide a clear response.

35. We tried to find a solution for about a month and continued operating the Food Pantry during that time.

36. During this time, the City would come nearly every week to see if we were still operating our Food Pantry.

37. They would take photos of our Church and the vulnerable beneficiaries we were serving.

38. Eventually, we were told that we had to appear before a Magistrate Judge and that the consequence of noncompliance with the City's ordinance would result in a \$5,000 fine per violation.

39. Faced with that devastating fine, we decided to close our Food Pantry on November 2023 and have kept it closed.

40. On May 16, 2024, Special Magistrate Judge David A. Vukelja held a hearing where he found that the Church had violated the ordinance but had

subsequently resumed compliance. The Church was not represented at the hearing.

41. As a result, our Food Pantry remains closed.

42. But despite our prohibition on operating a Food Pantry, I have seen some secular organizations, like Casa San Pablo Apartments, a senior apartment community, 401 North Ridgewood Ave., Daytona Beach, Florida 32114, continue to operate a Food Pantry in the same redevelopment area the Church is in, the Downtown redevelopment area.

43. I have also seen that the First Christian Church, 326 S. Palmetto Ave., Daytona Beach, Florida 32114, a Place of Worship also in the Downtown redevelopment area, operate a Food Pantry without the City's interference.

44. I am also aware that some secular Food Pantries are being operated in other redevelopment areas such as Bethune-Cookman University, an educational institution in the Midtown redevelopment area.

45. And some religiously affiliated organizations that are not Places of Worship, like the Salvation Army in the Ballough Road redevelopment area and Halifax Urban Ministries in the Main Street redevelopment area, also operate a Food Pantry.

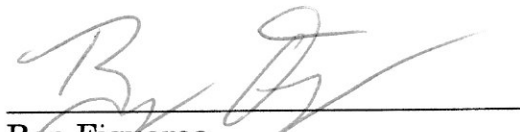
46. There are also some Places of Worship in other redevelopment areas that are being allowed to operate a Food Pantry, these include: Powerhouse Ministries, at 359 Jefferson St., Daytona Beach, Florida 32114,

Daytona Deliverance, 601 George W Engram Blvd., Daytona Beach, Florida 32114, and Greater New Zion Primitive Baptist Church, 201 Doctor M.L.K. Jr. Blvd., Daytona Beach, Florida 32114, all in the Midtown redevelopment area.

47. Because of the City's ordinance prohibiting the Church from operating a Food Pantry in a redevelopment area, and because of its continual enforcement of the ordinance, the Church has not been able to participate in its religious expression of serving those in need through its food ministry.

48. The Church desires to reopen the Food Pantry and continue serving the community we have served for so many years. But the City's actions are prohibiting the Church from doing so and, therefore, are prohibiting the Church from living out a central belief of its faith—to love God and to love others—and advancing the Church's religious mission: "We exist to honor Christ and care for His people."

**Pursuant to section 92.525, Florida Statutes and 28 U.S.C. § 1746, under penalties of perjury, I declare that I have read the foregoing Declaration and that the facts stated in it are true.**

  
\_\_\_\_\_  
Ben Figueroa  
Pastor

Date: 08-27-2024

# **EXHIBIT B**

**From:** Thomas, Ken </o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0235a2d6c3ef4714824614de67de4a6d-Thomas, Ken>  
**Subject:** Re: 400 S Palmetto  
**To:** Mrozek, Dennis <[REDACTED]>  
**Cc:** Toliver, Michele <[REDACTED]>  
**Sent:** September 23, 2022 3:30 PM (UTC-04:00)

Thanks Dennis!

---

**From:** Mrozek, Dennis <[REDACTED]>  
**Sent:** Friday, September 23, 2022 2:18 PM  
**To:** Thomas, Ken <[REDACTED]>  
**Cc:** Toliver, Michele <[REDACTED]>  
**Subject:** FW: 400 S Palmetto

Ken,

Please see the email thread below from Jack White. This is in reference to the place of worship at 128 Live Oak. The food pantry use is not permitted as an accessory use to a place of worship in the Redevelopment Area. Just want to keep you in the loop of this concern from the White's. The email below also includes the current activity at 400 S Palmetto, which appears to be another property in violation.

Dennis Mrozek AICP, LEED AP  
Planning Director - The City of Daytona Beach  
301 S. Ridgewood Ave  
Daytona Beach, FL 32115-2451  
[REDACTED]

**“Planning is bringing the future into the present so that you can do something about it now.”**  
**Alan Lakein**



---

**From:** Jack White <[REDACTED]>  
**Sent:** Friday, September 23, 2022 2:08 PM  
**To:** Kelly White <[REDACTED]>  
**Cc:** Morris, James <[REDACTED]>; Mrozek, Dennis <[REDACTED]>; Sykes, Denzil <[REDACTED]>; May, Quanita <[REDACTED]>; Feacher, Deric <[REDACTED]>; Henry, Derrick <[REDACTED]>  
**Subject:** Re: 400 S Palmetto

**[EXTERNAL EMAIL. EXERCISE CAUTION.]**

Since we are on the topic of following up, I wanted to follow up on the email I sent almost a year ago regarding the "food pantry" at the church on Live Oak (Email is below). After seeing a woman camped out in front of our house last week on the sidewalk waiting for the food pantry to open and then talking with the mailman who said he doesn't deliver on the advertised Food Pantry days because of the line of people waiting for food, it's difficult for me to see this as redevelopment and it certainly doesn't inspire any new investment into the area.

Let me know if I can help in any way!

Jack

Email I Sent Last Year:

Dear Captains Lee and Nikolow and other city officials,

I just wanted to follow up on my email from several weeks ago. It is still my understanding that food pantries are not allowed in redevelopment areas. Reed Berger forwarded to me this LDC Sec: 5.2.B.13 and 11.5. (full code is at the bottom of the email). I feel that these types of feeding programs are plagues to the efforts to redevelop a neighborhood. Just this morning, my wife found several people sleeping in the east alley facing Live Oak next to our house awaiting the food pantry opening (quick video below), but this is not the only evidence of homeless camping in and around this food pantry since my last email...it has happened on an almost daily occurrence. The food pantry hosted by the 7th day baptist church on Live Oak is a relatively new thing and as stated before we have seen crowds of people sleeping on church steps and in alleys beside homes steadily growing over the past few months. Since the First Step Shelter opened its doors, both the North Street facility has reopened and now we have another feeding program cropping up. It pains me to see this, especially since our core area neighborhoods have lost close to 20% of their population over the past two decades..a time when the greater area has seen record growth. As always, we are willing to be part of the solution, but I would appreciate some help or guidance in this matter.

Best Regards,

Jack White

LDC Sec. 5.2.B.13. states:

c. **Congregate Meal Facility.** A congregate meal facility shall comply with the following standards:

i. Irrespective of the districts in which congregate meal facilities are shown as allowed by the use tables in Section 5.2.A, Principal Use Tables, they shall be prohibited in any redevelopment area.

d. **Homeless Shelter or Services Facility.** A homeless shelter or services facility shall comply with the following standards:

i. Irrespective of the districts in which homeless shelters and service facilities are shown as allowed by the use tables in Section 5.2.A, Principal Use Tables, they shall be prohibited in any Redevelopment Area.

e. **Place of Worship.**

i. A place of worship shall comply with the following standards:

(d) Irrespective of the districts in which **food pantries** are shown as allowed by the use tables in Section 5.2.A, Principal Use Tables, they shall be prohibited as an accessory or principal use to a place of worship in any Redevelopment Area.

LDC Sec. 11.5 states:

**Food Pantry** - Any program that acquires food products through donations, canned

# **EXHIBIT C**

**From:** Morris, James <[REDACTED]>S>  
**Subject:** RE: Food Pantry at 128 Live Oak  
**To:** Sykes, Denzil <[REDACTED]>; Feacher, Deric <F[REDACTED]>; Mrozek, Dennis <[REDACTED]>; Gross, Ben <[REDACTED]>; Thomas, Ken <[REDACTED]>S>  
**Cc:** Morris, James <[REDACTED]>  
**Sent:** October 16, 2023 12:18 PM (UTC-04:00)

As a side note when the church was being relocated due to its acquisition by Brown & Brown it was made clear to Brown & Brown's attorney David Lotz that the feeding program desired by the church was not allowed. Regardless, they pushed on. The point is, from the start, they knew or should have known the activity was not permitted.

**James Morris**

City of Daytona Beach - Deputy City Manager  
Growth Management & Planning  
301 S. Ridgewood Avenue  
Daytona Beach, FL 32114  
(386) 671-8121

---

**From:** Sykes, Denzil <[REDACTED]>  
**Sent:** Friday, October 13, 2023 4:38 PM  
**To:** Feacher, Deric <F[REDACTED]>S>; Mrozek, Dennis <[REDACTED]>; Gross, Ben <[REDACTED]>; Morris, James <[REDACTED]>; Thomas, Ken <[REDACTED]>  
**Subject:** Re: Food Pantry at 128 Live Oak

Code has cited the property and provided a copy of the codes. They believe we are violating separation of church and state.

---

**From:** Feacher, Deric <[REDACTED]>  
**Sent:** Thursday, October 12, 2023 5:05:26 PM  
**To:** Mrozek, Dennis <[REDACTED]>; Gross, Ben <[REDACTED]>; Sykes, Denzil <[REDACTED]>; Morris, James <[REDACTED]>; Thomas, Ken <[REDACTED]>  
**Subject:** RE: Food Pantry at 128 Live Oak

Thanks. Denzil, please communicate with the property owner tomorrow to cease all food pantry services at this location immediately.

Deric C. Feacher  
City Manager/Chief Administrative Officer  
City of Daytona Beach, FL.  
[www.codb.us](http://www.codb.us)

---

**From:** Mrozek, Dennis <[REDACTED]>  
**Sent:** Thursday, October 12, 2023 4:11 PM  
**To:** Feacher, Deric <F[REDACTED]>; Gross, Ben <[REDACTED]>; Sykes, Denzil



<[REDACTED]>; Morris, James <[REDACTED]>; Thomas, Ken <[REDACTED]>

**Subject:** RE: Food Pantry at 128 Live Oak

Mr. Feacher,

Jack White's assertion below that a food pantry is not permitted at this location is correct. The LDC specifically prohibits food pantries as an accessory or principal use to a place of worship in Redevelopment Areas. 128 Live Oak is a place of worship and is located in the Downtown Redevelopment Zone. Also, Congregate Meal Facilities and Homeless Shelters or Services Facilities are also prohibited in Redevelopment Areas.

Regards,

Dennis Mrozek AICP, LEED AP  
Planning Director - The City of Daytona Beach  
301 S. Ridgewood Ave  
Daytona Beach, FL 32115-2451  
(386) 671-8152  
[REDACTED]

**“Planning is bringing the future into the present so that you can do something about it now.”**  
Alan Lakein



---

**From:** Feacher, Deric <[REDACTED]>  
**Sent:** Thursday, October 12, 2023 3:20 PM  
**To:** Mrozek, Dennis <[REDACTED]>; Gross, Ben <[REDACTED]>; Sykes, Denzil <[REDACTED]>; Morris, James <[REDACTED]>; Thomas, Ken <[REDACTED]>  
**Subject:** FW: Food Pantry at 128 Live Oak

Please advise if this is allowed at this location and if not what steps need to be taken to remedy immediately. There is no need for me to keep meeting with a group of citizens to listen to the same thing if there is nothing we can legally do. If we need to change the zoning, lets do this, but I would like to respond to this item as soon as possible. I was planning on meeting with the group, but as I stated if we have not come to an agreement on what is allowed it would be futile to waist anyone's time for the sake of just having a meeting.

Deric C. Feacher  
City Manager/Chief Administrative Officer  
City of Daytona Beach, FL.  
[www.codb.us](http://www.codb.us)

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**From:** Jack White <[REDACTED]>  
**Sent:** Thursday, October 12, 2023 12:57 PM

To: [REDACTED]  
[REDACTED] Joe Yarbrough <[REDACTED]>; Feacher, Deric  
<[REDACTED]>  
Subject: Food Pantry at 128 Live Oak

[EXTERNAL EMAIL. EXERCISE CAUTION.]

Mr. Feacher,

As a follow up to our last meeting, I was hoping today at our meeting to get clarification as to the Food Pantry operating next door to my house. I've taken a few photos of the continued operation as well as a character who decided to begin to live around this food pantry, on the church steps as well as just hanging around the corner not just on feeding days, but everyday and night.

I want to make note that my first email about this was exactly two years ago tomorrow. I am going to place the code below (per Reed Berger) as to what is allowed in redevelopment areas. Please let me know if I should speak with Code Enforcement or Ben Gross, but I have to believe there has to be some answer for the discrepancy between the sign they place in front of their building and LDC Sec. 11.5. Both refer to "Food Pantry". The church sign is to market theirs and the code clearly prohibits them.

I hate to have to bring up a personal matter, but choosing to live in the city, especially a redevelopment area, has long been met with challenges...most of those we've been willing to swallow. However my family and their safety are certainly the most precious thing I have and something I cannot just pass over when it comes to this issue. I don't mean to put you on the spot, but I would like to know the city's position on how the code is interpreted and if the city plans to take any action or continue to allow the Food Pantry to operate.

Jack

LDC Sec. 5.2.B.13. states:

c. **Congregate Meal Facility.** A congregate meal facility shall comply with the following standards:

i. Irrespective of the districts in which congregate meal facilities are shown as allowed by the use tables in Section 5.2.A, Principal Use Tables, they shall be prohibited in any redevelopment area.

d. **Homeless Shelter or Services Facility.** A homeless shelter or services facility shall comply with the following standards:

i. Irrespective of the districts in which homeless shelters and service facilities are shown as allowed by the use tables in Section 5.2.A, Principal Use Tables, they shall be prohibited in any Redevelopment Area.

e. **Place of Worship.**

i. A place of worship shall comply with the following standards:

(d) Irrespective of the districts in which **food pantries** are shown as allowed by the use tables in Section 5.2.A, Principal Use Tables, they shall be prohibited as an accessory or principal use to a place of worship in any Redevelopment Area.

LDC Sec. 11.5 states:

**Food Pantry** - Any program that acquires food products through donations, canned

food drives, food bank programs or purchases and distributes the food to individuals, and does not provide prepared food to clients for consumption on or off site.

**Congregate Meal Facility** - A facility at which nutritious meals are prepared and served to families or individuals. The facility may supplement the meal service with nutrition education, exercise programs, and socializing activities. The use does not include community centers, which provide more comprehensive services and activities, or food banks, which collect and distribute foodstuffs rather than serving meals.

--

Jack White

[REDACTED]  
[REDACTED]  
[REDACTED]

# **EXHIBIT D**

THE CITY OF DAYTONA BEACH, FLORIDA  
SPECIAL MAGISTRATE PROCEEDING

THE CITY OF DAYTONA BEACH,  
a Florida municipal corporation,  
*Petitioner,*

vs.

CASE NO. SMG 11-23-279

The Seventh Day Baptist Church of Daytona Beach Inc.  
128 Live Oak Ave  
Daytona Beach, FL 32114  
ce2023-1386

*Respondent(s)*

**COPY**

**ORDER OF NON-COMPLIANCE AND FINDING OF COMPLIANCE**

The Special Magistrate for the City of Daytona Beach heard testimony under oath at a public hearing on the above-styled case on **May 14, 2024** and based on the evidence received, the Special Magistrate thereupon issues his FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDER, as follows:

**FINDINGS OF FACT**

That The Seventh Day Baptist Church of Daytona Beach Inc. has been found in **NON-COMPLIANCE** at 128 Live Oak Ave for failure to correct violations of the Land Development Code, as stated in the Notice of Violation dated October 18, 2023, filed herein.

**CONCLUSIONS OF LAW**

The findings of fact constitute violations of the Land Development Code Art. 5 Sec. 5.2:B.13.e.i; Art. 5 Sec. 5.11.5.

**ORDER**

That The Seventh Day Baptist Church of Daytona Beach Inc. has been found in Non-compliance and subsequently in compliance as of May 14, 2024 and shall not violate The Land Development Code, Art. 5 Sec. 5.2.B.13.e.i; Art. 5 Sec. 5.11.5 by Operating food pantry at 128 Live Oak Ave, Daytona Beach, Florida.

**-AND-**

**FOR ANY FUTURE REPEAT VIOLATION THE RESPONDENTS MAY BE PLACED ON A SUBSEQUENT MEETING AGENDA FOR THE CONSIDERATION OF THE IMPOSITION OF A FINE UP TO FIVE THOUSAND (\$5,000.00) DOLLARS PER EACH OCCURRENCE AS PER CHAPTER 162, FLORIDA STATUTES.**

The Special Magistrate will retain jurisdiction in this matter.

**DONE AND ORDERED** on this 16<sup>th</sup> day of May, 2024.

**SPECIAL MAGISTRATE, CITY OF DAYTONA BEACH**

By: [Signature]  
David A. Vukelja

Attest: [Signature]  
Kimberly A. Reno, Secretary

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

**THE SEVENTH-DAY BAPTIST  
CHURCH OF DAYTONA BEACH,  
FLORIDA**

*Plaintiff,*

v.

**CITY OF DAYTONA BEACH,  
FLORIDA.**

*Defendant.*

Case No. 6:24-cv-858-JSS-DCI

**[PROPOSED ORDER] GRANTING PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

**THIS MATTER** comes before the Court on the Plaintiff's Motion for Preliminary Injunction (the "Motion") [ECF No. 46]. The Plaintiff, The Seventh-Day Baptist Church of Daytona Beach, Florida (the "Plaintiff"), moves for entry of a preliminary injunction against the Defendant City of Daytona Beach, Florida (the "City") pursuant to Federal Rule of Civil Procedure 65 and M.D. FLA. L.R. 6.02, enjoining the Defendant City of Daytona Beach, Florida (the "City"), from enforcing Daytona Beach, Fla., Land Dev. Code § 5.2.B.13.e.i.(c), which prohibits places of worship from operating a food pantry in a redevelopment area. The Court, having carefully reviewed the

Motion, the record, the applicable law, and finding good cause, hereby **ORDERS** and **ADJUDGES** that the Motion is **GRANTED** as follows:

- i. The City is **ENJOINED** from enforcing Daytona Beach, Fla., Land Dev. Code § 5.2.B.13.e.i.(c) against the Plaintiff, or any other place of worship, during the course of this litigation;
- ii. The City **SHALL NOT** interfere with any place of worship's operation of a food pantry on the basis of Daytona Beach, Fla., Land Dev. Code § 5.2.B.13.e.i.(c) during the course of this litigation; and
- iii. The Plaintiff **SHALL** be permitted to resume operation of its food pantry as of the date of this Order.

**ORDERED** in Orlando, Florida on August \_\_, 2024.

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JULIE S. SNEED  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
Counsel of Record