

Feeding Intolerance:

Prohibitions on Sharing Food with People Experiencing Homelessness



Photo Credit: Tim Feavel

**A Report by
The National Law Center on Homelessness & Poverty
and
The National Coalition for the Homeless**

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The National Law Center on Homelessness & Poverty (NLCHP) is the only national legal advocacy organization dedicated to ending and preventing homelessness. Our attorneys go into courtrooms and the halls of our legislatures to protect the needs of society's most vulnerable members. Through impact litigation, policy advocacy and public education we address the root causes of homelessness at the local, state and national levels.

Established by attorney Maria Foscarinis in 1989 and based in Washington, DC, NLCHP works with a wide variety of groups around the nation.

You are invited to join the network of attorneys, students, advocates and activists who make up NLCHP's membership. By becoming a member you can help make a difference in the lives of millions of homeless Americans. For more information about membership, please visit our website at www.nlchp.org/join_us.cfm.

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NCH focuses its work on four policy areas: civil rights of those who are without homes, housing that is affordable to those with the lowest incomes, accessible/comprehensive health care and other needed support services, and livable incomes that make it possible to afford the basic necessities of life. The strategies we use to implement our mission are: litigation, lobbying, policy analysis, public education, community organizing, research, and providing technical assistance.

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Table of Contents

Acknowledgements.....	1
I. Executive Summary.....	2
II. Introduction.....	5
III. Overview of the Problem.....	5
IV. Myths about Homeless People and Hunger.....	6
V. Types of Food Sharing Restrictions.....	7
VI. Alternatives to Food Sharing Restrictions.....	8
VII. Featured Cities:	
Atlanta, GA.....	10
Baltimore, MD.....	10
Chattanooga, TN.....	11
Cincinnati, OH.....	11
Dallas, TX.....	11
Denver, CO.....	12
Ft. Lauderdale, FL.....	12
Ft. Meyers, FL.....	13
Gainesville, FL.....	13
Hempstead, NY.....	13
Jacksonville, FL.....	14
Las Vegas, NV.....	14
Miami-Dade County, FL.....	15
Orlando, FL.....	15
Pinellas Park, FL.....	15
Portland, OR.....	16
San Francisco, CA.....	16
Santa Monica, CA.....	16
Sarasota, FL.....	16
Tampa, FL.....	17
West Palm Beach, FL.....	17
Wilmington, NC.....	17
VIII. Conclusions.....	18
IX. Policy Recommendations.....	18
X. Chart of Food Sharing Restrictions by City	20

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I. Executive Summary

The criminalization of homelessness in the United States remains a severe problem. Through measures ranging from anti-camping laws to selective enforcement of public intoxication laws, cities continue to implement measures that criminalize being homeless.

In the past few years, many cities have adopted a new tactic – one that targets not only homeless persons but also individual citizens and groups who attempt to share food with them.

Types of Food Sharing Restrictions

Cities use a wide variety of ordinances, policies, and tactics to discourage individuals and groups from sharing food with homeless and other poor persons. Over the past year and a half:

- The Las Vegas city council passed an ordinance that bans “the providing of food or meals to the indigent for free or for a nominal fee” in city parks;¹
- The City of Wilmington, N.C., passed an ordinance that prohibits the sharing of food on city streets and sidewalks;²
- The Orlando, Fla., city council passed an ordinance that prohibits sharing food with more than 25 people in city parks without a permit and limits groups to doing so to two times a year;³

Even as they pursue measures to target groups that share food with homeless people, most cities do not have adequate shelter or food resources to meet the need. According to the US Conference of Mayor’s 2006 Hunger and Homelessness Survey, an average of 23% of overall emergency shelter requests went unmet, while 29% of shelter requests by homeless families went unmet.⁴ The Mayor’s Survey also reported an average increase of 7% in the overall requests for emergency food assistance, with 74% of surveyed cities reporting an increase. In addition, 23% of the requests for emergency food assistance went unmet and 18% of requests made by families went unmet.⁵

Hunger is a severe problem for poor Americans, and especially for those who are homeless. A study published by the federal Interagency Council on Homelessness⁶ surveyed homeless people nationally and found:

- 28% sometimes or often do not get enough to eat, compared with 12% of poor American adults.
- 20% eat one meal a day or less.

¹ Las Vegas, Nev., Code of Ordinances, ch. 13.36, art. I, § 13.36.055 (2007).

² Wilmington, N.C., Code of Ordinances ch. 11, art. III, § 11-47 (2007).

³ Orlando, Fla., Code of Ordinances, ch. 18A, § 18A.01 (2007).

⁴ U.S. Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger & Homelessness in America’s Cities – a 23-City Survey* 4 (2006).

⁵ *Id.* at 3.

⁶ U.S. Interagency Council on Homelessness, *Homelessness: Programs and the People They Serve – Findings of the National Survey of Homeless Assistance Providers and Clients* 7-1 (1999).

- 40% went one or more days in the last 30 days without anything to eat because they could not afford food, compared with 3% of poor Americans.

Further, according to a 2000 report by the General Accounting Office:

- Most homeless people are probably eligible to receive food stamps, but only 37% receive them.

Punishment for violating food sharing restrictions can be extreme:

- In Orlando, police arrested a man who served food to 30 people in a public park for violating a city ordinance that prohibits sharing food with more than 25 people without a permit. He faced a penalty of up to a \$500 fine and 60 days in jail for violating this law.
- In Dallas, anyone caught sharing food with a homeless person without a permit may be fined up to \$2,000 and/or jailed for up to six months.⁷

Constructive Alternatives to Food Sharing Restrictions

As some cities take steps to punish, restrict, and discourage efforts to share food with homeless persons, other cities have explored novel ways to facilitate these efforts.

- The City of Cleveland contracted with the Northeast Ohio Coalition for the Homeless to bring religious congregations, Food Not Bombs, and individuals who serve food to homeless people together to improve and coordinate outdoor food programs.
- In Oregon, after first implementing an extended year-round free lunch program for children, the Coos Bay Public Schools have begun offering the meals to adults as well for the price of \$1.
- San Francisco has taken advantage of a provision of the Food Stamp Program that allows authorized restaurants to accept food stamps from homeless individuals.

Recommendations

- Instead of penalizing them, cities should collaborate with food sharing groups to effectively address the problems of hunger and homelessness.
- Cities should help bring homeless persons into existing programs by reaching out to food sharing groups that have already established relationships with homeless individuals and are thus best positioned to facilitate goals of city programs.
- Cities should work with advocates and service providers to press Congress to increase food stamp benefits and restore eligibility for non-disabled homeless adults between 18-50 who cannot meet minimum work requirements.
- Cities should help address the problems of hunger and homelessness by working with advocates and providers to improve access to food stamps and other food resources for homeless persons.

⁷ Dallas City Code § 17-10.2.

- Cities and the federal government should comply with globally recognized human rights norms by removing food sharing restrictions and ensuring access to food stamps for homeless people.
- Cities should work with advocates at the state and federal level to ensure the basic needs of homeless persons are met, including housing and health care.

II. Introduction

The criminalization of homelessness in the United States remains a severe problem. Through a variety of measures ranging from anti-camping laws to selective enforcement of public intoxication laws, cities continue to implement measures that criminalize being homeless. In recent years, many cities have adopted a new tactic – one that targets not only homeless persons but also individual citizens and groups who attempt to share food with them. These food sharing restrictions include a wide variety of ordinances, policies, and tactics intended to discourage individuals and groups from sharing food with homeless persons.

This Report first provides an overview of the problem and examines some alternatives to food sharing restrictions, including hopeful steps that cities have taken to combat hunger without criminalizing food sharing efforts. These examples suggest that alternatives to food sharing restrictions do exist and that local governments and homeless advocates can successfully work together to reach a common goal.

The remainder of the Report provides summaries of cities where food sharing restrictions and policies have been enforced. The list includes cities from every portion of the country and examples of many different types of laws or policies that have been used to criminalize sharing food with homeless persons. This list is not exhaustive. It presents a sampling of those cities and counties where food sharing restrictions have been implemented. But it also includes examples where cities have relaxed current food sharing restrictions and have taken steps to work with community groups to reach results that satisfy the city's interests while allowing groups to continue sharing food with homeless persons.

III. Overview of Problem

Even as cities are pursuing measures to target homeless people, most cities do not have adequate services, shelter space, or affordable housing to meet the need. In 2006, 68% of the 23 cities surveyed by the U.S. Conference of Mayors reported an increase in requests for emergency shelter, with the average increase being 9%.⁸ Despite this increase, cities do not have adequate shelter space to meet the need. According to the Mayors' Survey, an average of 23% of overall emergency shelter requests went unmet, while 29% of shelter requests by homeless families went unmet.⁹

Homeless people not only struggle with lack of shelter and housing, but also with hunger. The Mayor's Survey also reported an average increase of 7% in the overall requests for emergency food assistance, with 74% of surveyed cities reporting an increase. In addition, 23% of the requests for emergency food assistance went unmet, and 18% of requests made by families went unmet.¹⁰

⁸ U.S. Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger & Homelessness in America's Cities – a 23-City Survey* 4 (2006).

⁹ *Id.*

¹⁰ *Id.* at 3.

When homeless people are forced to live outside, obtaining something as vital as food to survive becomes a great challenge. Some cities may not have adequate indoor food programs to meet the need. In other cities, homeless persons may not be able to travel to indoor food programs due to work conflicts, illness, disability, or lack of adequate public transportation. According to a national survey of homeless people, 28% sometimes or often do not get enough to eat, compared with 12% of poor American adults; 20% eat one meal a day or less; and 40% did not have anything to eat on one or more days during the month previous to the survey.¹¹ Further, although most homeless people are probably eligible to receive food stamps, only 37% of them are receiving this benefit.¹²

The right to food is a well-recognized human right. This basic human right is explicitly mentioned in the International Covenant on Economic, Social, and Cultural Rights and over 120 instruments of international law.¹³ Twenty-two countries have included a right to food in their domestic constitutions.¹⁴ As the United Nations Special Rapporteur on the Right to Food has stated, a nation must refrain from taking “actions that result in increasing levels of hunger, food insecurity and malnutrition.”¹⁵ Food sharing restrictions deny homeless persons this basic human right. Placing restrictions on food sharing at a time where there is an increased need for housing and food assistance leaves many people with nowhere to turn for basic survival needs.

IV. Myths about Homeless People and Hunger

There are several myths about people who are homeless and their access to food that have led to current laws and attitudes. One common myth already mentioned is that food stamps are easily accessible to people who are homeless and many homeless people take advantage of this program. Over half of the homeless population does not receive food stamps. Lack of transportation, lack of knowledge about the program, mental illness, lack of an address, and lack of documentation are some of the common barriers that prevent homeless people from receiving food stamps.

Another misconception is that hunger is not a problem for homeless individuals. Many people believe that food pantries and soup kitchens are so abundant and accessible that every homeless person can get food if he or she desires. Food pantries do not effectively meet the needs of people without homes because homeless people lack the cooking facilities necessary to make use of the food. Additionally, many food pantries give only one box of food away per month which is not nearly enough.

Cities also may not have adequate food availability through soup kitchens. Many cities do not have enough facilities to serve all those in need three times a day, seven days a week. In addition, in many public discussions about food programs, proponents of food sharing restrictions frequently assume that people who are homeless are mentally and physically able to walk or travel by other means significant distances to get to a food program on time.

¹¹ Interagency Council on Homelessness, *Homelessness: Programs and the People They Serve – Findings of the National Survey of Homeless Assistance Providers and Clients* 7-1 (1999).

¹² Gen. Accounting Office, *Homelessness: Barriers to Using Mainstream Programs* 20 (2000).

¹³ Laura Niada, *Hunger and International Law*, 22 Conn. J. Int'l. L. 131, at 166.

¹⁴ Food and Agriculture Organization of the United Nations, Fact Sheet, *available at* <http://www.fao.org/WorldFoodSummit/english/fsheets/food.pdf>.

¹⁵ United Nations Special Rapporteur on the Right to Food, www.righttofood.org

Unfortunately, homeless people may not be able to travel significant distances for food due to work conflicts, illness, disability, or lack of adequate public transportation.

Some proponents of food sharing restrictions have argued that sharing food with people in outdoor locations enables them to remain homeless. More likely, persons who receive food from outdoor food programs may remain homeless due to lack of affordable housing, shelter space, and services, or due to their struggles with physical or psychiatric disabilities or substance addiction. Instead of removing food sources, cities would more likely reduce or end homelessness in their cities by finding solutions to the underlying causes of homelessness. Framing sharing food as a factor in enabling people to remain homeless is misleading. Food is not an addiction; food is necessary for survival. Depriving a person of food means that she must put all of her energy into obtaining food and less energy on improving other aspects of her life. Food sharing programs that reach out to those in public spaces may be the only way some homeless individuals can obtain healthy and safe food.

V. Types of Food Sharing Restrictions

Food sharing restrictions take a number of forms. Some laws explicitly prohibit or limit the sharing of food with indigent or homeless persons. These laws present troubling questions about individual rights and freedoms that have been examined in recent court challenges. Another group of laws use the selective enforcement of neutral permit and licensing requirements to limit food sharing. Almost all cities have regulations that require permits for large gatherings in city parks and licenses for food distribution in order to comply with local health and safety standards. In recent years, some cities have begun using these ordinances to prevent individuals and groups from giving away food to homeless persons.

The motivations behind city food sharing restrictions vary as greatly as the tactics themselves. For instance, some cities view the restrictions as a way to channel charitable activities through designated organizations and institutions that provide services. Other food sharing restrictions seem geared toward moving homeless persons out of downtown areas and away from tourist and business locations. Finally, some cities' restrictions demonstrate an open hostility to the presence of homeless persons anywhere in the city limits.

Violations of food sharing restrictions can result in severe penalties. In one extreme case, the Orlando police arrested a man under a city ordinance that prohibited sharing food with more than 25 people without a permit. The man, Eric Montanez, was a member of the group, Food Not Bombs (FNB), that had attempted to circumvent the Orlando ordinance by having each FNB member serve only 24 people.¹⁶ When the Orlando police, who had been observing FNB's activities, determined that Montanez had served food to 30 people, he was arrested and charged with a misdemeanor. The penalty for violating this law is up to a \$500 fine and 60 days in jail.¹⁷ Mr. Montanez was eventually found not guilty of violating the ordinance by a jury.¹⁸

¹⁶ Willoughby Mariano, *Activist Arrested While Feeding Homeless in Downtown Orlando*, Orlando Sentinel, April 4, 2007, available at <http://www.orlandosentinel.com/news/local/orange/orl-bk-homeless-040507,0,1876560.story?coll=orl-home-headlines>.

¹⁷ Orlando, Fla., Code of Ordinances, ch. 1, § 1.08 (2007).

¹⁸ Kate Santich, *Man not guilty in homeless feeding case*, Orlando Sentinel, October 9, 2007, available at <http://www.orlandosentinel.com/news/local/orange/orl-bk-montanez10092007,0,4192156.story?coll=orl-bucs>.

Complying with food sharing restrictions can also be quite difficult. In many cases when food sharing groups have attempted to obtain the proper permits or licenses, their applications have been denied or the groups have been told to move their operations to more remote locations.

Some local service providers and advocates often find themselves in an awkward position when these kinds of restrictions are passed and implemented in their communities. While many groups may not support these measures, some are fearful of speaking out against city actions when they rely on city funding to operate their organizations.

VI. Alternatives to Food Sharing Restrictions

In spite of the increase in food sharing restrictions in some cities, there are signs of hope. As some cities take steps to restrict and complicate efforts to share food with homeless persons, other cities have explored novel ways to facilitate these efforts.

Many cities across the country have begun extending school lunch programs into the summer months in an effort to feed hungry children year-round. One of the largest efforts is in the New York City school system which provided 4.4 million lunches and 2 million breakfasts last summer and plans to exceed those numbers this year.¹⁹ The city's program not only serves meals at schools but also brings lunches to places where children congregate in the summer: parks, pools, libraries, and community centers.

Other major cities across the country, including Los Angeles, Boston, Columbus, Ohio, Austin, Texas, and Louisville, Kentucky, have begun similar programs. Like New York, most of these programs are federally funded by the Summer Food Service Program.²⁰ While these summer lunch programs focus on hungry children, at least one city has attempted to extend the concept to adults as well. In Oregon, after first implementing a free program for children, the Coos Bay Public Schools have begun offering the meals to adults as well for the price of \$1.²¹

Summer lunch programs are not the only example of expanding existing programs to combat the problem of hunger among homeless persons in American cities. Authorized restaurants can receive food stamps for meals provided to homeless people.²² San Francisco has taken advantage of this provision of the Food Stamp Program so that homeless persons can now use food stamps to buy hot, pre-made meals at various restaurants throughout the city.²³ Allowing homeless food stamp participants to use their benefits at restaurants is important because food stamp participants are not permitted to use their food stamps to purchase hot, prepared food at

¹⁹ Julie Bosman, *Public Schools Feed Multitudes in the Summer*, N.Y. Times, July 10, 2007, available at <http://www.nytimes.com/2007/07/10/nyregion/10schools.html?ex=1341720000&en=3c438aee866f053f&ei=5088&partner=rssnyt&emc=rss>.

²⁰ See *id.*; City of Los Angeles, Department of Recreation & Parks, Summer Food Service Program, <http://www.laparks.org/dos/lunchprogram/lunch.htm>.

²¹ Azenith Smith, *Coos Bay Schools Serves Up Free Lunch*, KCBY-TV3451, June 18, 2007, <http://www.kcby.com/news/local/8057192.html>.

²² United States Department of Agriculture, *The National Nutrition Safety Net: Tools for Community Food Security* 11 (2003).

²³ See City and County of San Francisco, Human Services Agency, San Francisco, Programs, Food Stamps, <http://www.sfgov.org/site/frame.asp?u=http://www.sfhsa.org/>.

grocery stores. Further, since homeless people often do not have cooking or food storage facilities, this program greatly increases their ability to have access to a variety of nutritious foods.

In Portland, Oregon, the non-profit Sisters of the Road became the first café to accept food stamps. The price of a meal is \$1.25 and can be paid with food stamps, cash, or barter work. Nationwide, some non-profit cafes able to accept food stamps have closed, while new cafes are scheduled to open in several cities, including New York. Initiatives like this are important; however, low participation rates of homeless people in the Food Stamp Program inhibit the usefulness of such programs.

Cleveland, Ohio, has also pursued a more productive approach to help homeless persons access food. To better coordinate public food sharing, the City of Cleveland contracted with the Northeast Ohio Coalition for the Homeless (NEOCH) to bring religious congregations, Food Not Bombs, and individuals who serve food to homeless people together to talk about how to improve services. The coordination effort stemmed from a long-standing public debate related to serving food in downtown areas of the city, especially the center of downtown called Public Square.

The City of Cleveland contracted with NEOCH to coordinate all the professional outreach teams providing services to homeless people who are living outside. NEOCH began this process by organizing monthly meetings with outreach workers; including the PATH workers, the Salvation Army team, and the Healthcare for the Homeless team. The goal was to develop one contact number so that individuals could call an outreach worker in lieu of calling law enforcement about any concerns over a homeless person in the public space. Workers from many groups are now coordinating their schedules so that every person who is sleeping outside has contact with a trusted friend every few days. This coordinated outreach builds trusting relationships and reduces contacts between law enforcement and those experiencing homelessness.

The goal is to bring coordination to a disjointed system eventually moving all the food providers indoors, but still supporting the right of groups to share food with individuals who would like to eat outside. For example, NEOCH found that on Sundays on Public Square in the center of downtown over 700 meals are served by six different groups. However, on Monday nights no groups regularly shared food on the Square. Many service groups were skeptical of the city's motives for participating in the meetings and were concerned about losing access to the Public Square area as a distribution site. Prior to coordination, food providers faced space constraints due to construction, insufficient trash receptacles, waste that attracts vermin, and a lack of bathrooms and running water.

Despite some food providers' initial skepticism about how coordination of programs would impact their efforts, the professional outreach teams met with the downtown food distributors and began to work closely with them to provide services for homeless people. All providers have agreed to work together to provide food in a strategic and coordinated manner. All parties called together are now working on a plan to find an indoor location that will be available for any church or religious congregation to sign out and use for spiritual outreach and/or for food distribution. The city had existing licensing and health inspections already on the books, but decided not to use the heavy hand of law enforcement or bureaucratic obstacles to serve the needs of everyone who uses Public Square.

Another example of a long-standing well-run operation is McKenna's Wagon, a project of Martha's Table in Washington, DC. McKenna's Wagon is a meal van that goes to various locations throughout the city on a daily basis to serve food to homeless individuals. According to Lindsey Buss, Executive Director of Martha's Table, a key element to their program is working with the community to address any community concerns in a proactive manner. Throughout a meal service, McKenna's Wagon volunteers and staff clean up any trash they produce. McKenna's Wagon staff are always available to talk to community members and have worked with community members to find resolutions to any concerns in a timely manner.

Although there are hopeful signs, a nationwide trend in food sharing restrictions remains the reality. The next section documents these laws in various cities.

VII. City Summaries

Atlanta, Georgia

In 2003, the City of Atlanta completed the implementation of its homeless "service provider system."²⁴ As part of the system, the City designated eight organizations that will oversee the distribution of food to all homeless people in Atlanta. Any person wishing to provide food to homeless persons in Atlanta must now do so through one of these eight organizations. To ensure that the citizens of Atlanta use the system, the Mayor instructed the Chief of Police to begin enforcing existing Fulton County health ordinances.²⁵ These ordinances prohibit serving food to the public without a permit. Any person or group who is found in violation of the ordinances will be asked to stop serving food and can be fined. This action is an attempt to use the existing health codes to restrict food sharing as part of efforts to "clean up the city."²⁶

Baltimore, MD

The City of Baltimore's health code includes an ordinance that requires every food service facility to acquire a food license regardless of whether the food is provided for a fee or at no cost.²⁷ The City Health Department also requires all facilities to have access to hot and cold running water in food preparation areas. In 2005, a city health worker used these requirements to stop a group of Loyola College students from sharing food with homeless people in a location near City Hall.²⁸ The students had been volunteering as part of a college-sponsored service program. Following the warning from the Health Department, the school temporarily suspended the program. Eventually, the new city Health Commissioner, Dr. Joshua Sharfstein, stepped in and an agreement was reached: the students could continue to distribute food as long as they did so at one of Baltimore's designated outreach sites where additional services were available.

²⁴ City of Atlanta Online, *Homeless Service Providers Join City of Atlanta to Offer Better, Legal Alternatives to Feeding the Homeless in City Parks*, http://www.atlantaga.gov/media/homeless_071103.aspx (last visited August 13, 2007).

²⁵ Fulton County, Ga., Code of Ordinances ch. 34, art. V, §§ 34-151, 34-152 (2007).

²⁶ E-mail from Anita Beatty, Director, Metro Atlanta Taskforce for the Homeless, to National Coalition for the Homeless (Oct. 4, 2007) (on file with the National Coalition for the Homeless).

²⁷ Baltimore, Md., Health Code, tit. 6, §§ 6-101, 6-201 (2007).

²⁸ *Two Wrongs and a Right*, Baltimore Sun, Dec. 18, 2005 at A24.

Chattanooga, Tennessee

In May 2007, a group that had been sharing food with homeless persons at a downtown Chattanooga park for seven years was told to move their operations to a new location.²⁹ The group objected to the move stating that the new location was inconvenient and that the facilities were inadequate. The city also rescinded the group's park permit required by city law for any gathering in a public park. Without the permit, any attempts to continue operations at the original location would be illegal.³⁰ The city's actions are considered particularly troubling since the mayor of Chattanooga has cultivated a reputation for being an advocate for homeless persons and often notes that his father was homeless for a time.³¹

Cincinnati, Ohio

Cincinnati ordinances require a park permit for gatherings of 50 or more people.³² Additionally, the Cincinnati Park Board has established a policy of requiring any group wishing to undertake "outreach ministries" in a city park to obtain a special use permit.³³ According to Georgine Getty of the Greater Cincinnati Coalition for the Homeless, the Park Board, by refusing to issue the required permit, has severely limited food sharing in a key city park directly across from Cincinnati's largest shelter.³⁴ This action has forced groups to move their food sharing efforts to less convenient shelter spaces.

Dallas, Texas

In 2006, the city of Dallas began enforcing new ordinances that severely restrict the distribution of food to homeless persons.³⁵ Citing food safety concerns and problems with littering, the ordinances state that food can only be distributed at certain sites chosen by the city. In effect, these restrictions limit groups to sharing food in only one location in the city. Some groups that share food find the location restrictions interfere with their ability to reach out to unsheltered homeless individuals. Even though the city has claimed it is interested in ensuring the safety of food served to homeless people, the one location where groups are allowed to serve food is a highly unsanitary location. Some charitable organizations in Dallas have continued to operate in spite of the new ordinances. The city has issued warnings to at least two of these groups at separate times to cease operations and has threatened them with fines if the violations continue.³⁶ Penalties for violating the ordinance include a fine of up to \$2,000 and/or jail time for up to six

²⁹ Pam Sohn & David Flessner, *Mayor Wants Ministry for Homeless People Moved Out of Miller Park*, Chattanooga Times Free Press, May 24, 2007, available at <http://www.timesfreepress.com/absolutenm/templates/local.aspx?articleid=15764&zoneid=77>.

³⁰ Chattanooga, Tenn., City Code, ch. 26, art. I, §§ 26-13, 26-14 (2007).

³¹ Bill Poovey, *Homeless Can Relate to Film*, L.A. Times, Dec. 17, 2006, at A14.

³² Cincinnati, Ohio, Rules of the Board of Park Commissioners, Rule 1 (2007).

³³ See City of Cincinnati, Parks Department, Special Use/Events Permits, <http://www.cincinnati-oh.gov/cityparks/pages/-7470-/> (last visited Aug. 31, 2007).

³⁴ E-mail from Georgine Getty, Executive Director, Greater Cincinnati Coalition for the Homeless, Cincinnati, Ohio, to National Law Center on Homelessness and Poverty (Aug. 24, 2007) (on file with the National Law Center on Homelessness and Poverty).

³⁵ Matt Curry, *Dallas Criticized for Strict Homeless Laws*, Miami Herald, Mar. 12, 2006.

³⁶ Emily Bazar, *The "Lord's Table" Illegal in Dallas*, USA Today, Mar. 26, 2007, available at http://www.usatoday.com/news/nation/2007-03-26-homeless-inside_N.htm.

months.³⁷ In January 2007, NLCHP and Howrey, a law firm working in a pro bono capacity, filed a lawsuit against the city on behalf of these two organizations challenging these new ordinances. The case is pending.

Denver, Colorado

In 2006, groups that had been sharing food with homeless persons in a downtown Denver park were told to move their operations out of the downtown area. Denver ordinances require a permit for any scheduled event in a city park involving more than 25 people. To obtain a permit, a group may have to provide both proof of liability insurance and a security deposit.³⁸ Even if a group satisfies these permit requirements, according to city officials, mass feedings are not among the accepted activities for city parks.³⁹ In November 2006, the city made a temporary agreement with local groups that allowed food sharing activities to continue for 90 days while relocation options were discussed. The city is currently preparing to launch a public awareness campaign to match those who want to serve food with agencies where people congregate, including local day shelters and night shelters. Individuals or groups that want to share food will contact designated outreach workers and the outreach workers will direct these inquiries to appropriate service providers.⁴⁰ The Mayor of Denver, John Hickenlooper, said that he used to bring food to a homeless man living near him, but then he "began to realize the amount of harm that just giving food or money to homeless people does."⁴¹ While the Mayor has done some positive things for the homeless population, this perspective shapes much of his downtown policies.

Fort Lauderdale, Florida

As of August 2007, the group Food Not Bombs (FNB), continues a weekly food sharing program that has been operating for over a year in a Fort Lauderdale park. According to FNB, in July 2007, the Fort Lauderdale police threatened to shut down the program and to arrest anyone who attempted to continue the program.⁴² Fort Lauderdale Park Regulations prohibit using any city park for "social service purposes" without written authorization from the city.⁴³ The regulations define social services as providing "food, clothing, shelter or medical care to persons in order to meet their physical needs."⁴⁴ In spite of the police order, the group subsequently returned and operated the food sharing program without incident. The police later stated that no threats of arrest were made to the group and that the group would not be arrested for sharing food in the park.⁴⁵

³⁷ Dallas City Code § 17-10.2.

³⁸ Denver, Co., Rev. Code of Ordinances chp. 39, art. II, Div. 2. §§ 39-71, 39-72 (2007).

³⁹ David Migoya, *Park Meals for Homeless Can Continue for 90 Days*, Denver Post, Nov. 6, 2006, at B3.

⁴⁰ E-mail from Deb Deboutez, Colorado Coalition for the Homeless, to National Law Center on Homelessness & Poverty (Oct. 3, 2007) (on file with the National Law Center on Homelessness & Poverty).

⁴¹ Patrick O'Driscoll, *Parking Meters Make a Change for the Needy*, USA Today, October 18, 2007, at 3A.

⁴² Robert Nolin, *Group Gathers to Feed Homeless in Fort Lauderdale*, Sun-Sentinel (South Fla.), Aug. 4, 2007, available at <http://www.sun-sentinel.com/news/local/broward/sfl-flbhomeless0804nbaug04,0,6811463.story>.

⁴³ Fort Lauderdale, Fla., Park Rules and Regs., § 2.2 (2007), available at <http://ci.ftlaud.fl.us/life/rules.htm>.

⁴⁴ *Id.*

⁴⁵ Robert Nolin, *Group Gathers to Feed Homeless in Fort Lauderdale*, Sun-Sentinel (South Fla.), Aug. 4, 2007, available at <http://www.sun-sentinel.com/news/local/broward/sfl-flbhomeless0804nbaug04,0,6811463.story>.

Fort Myers, Florida

In response to public outcry, Fort Myers officials recently abandoned plans to limit food sharing with homeless persons in city parks.⁴⁶ The proposed ordinance would have prohibited the distribution of food in city parks to groups of ten or more people without a permit and would have limited groups to only two approved gatherings per year.⁴⁷ NLCHP and NCH both communicated with the city attorney's office and testified before the City Council along with local providers and advocates to oppose the proposed ordinance. Such negative public response and a subsequent initiative by a City Council member and local service providers to find an alternative solution led the City Council to reject the proposed ordinance and promise to work with homeless service providers to achieve better solutions.

Gainesville, Florida

In 2003, the city manager of Gainesville made distribution of food in front of City Hall illegal if not sponsored by the city.⁴⁸ Gainesville has also enacted an ordinance that requires any "food distribution center for the needy" to obtain a permit.⁴⁹ These centers are limited both in where they can be located and how many meals they can serve, though the city has shown some flexibility in accommodating groups regarding the number of meals served. One specific prohibition bans food sharing centers anywhere near the University of Florida campus. In September 2007, Gainesville city commissioners approved a plan to set up a one-stop homeless center that will be 33 blocks north of the downtown area.⁵⁰ Two homeless service providers tentatively agreed to move their food programs from the downtown area to the new one-stop homeless center.⁵¹ On a more positive note, another provider of meals to homeless individuals, Fire of God Ministries, has been able to continue its food program and other services at its facility as a result of the settlement of its lawsuit against the city.⁵²

Hempstead, New York

In early 2007, members of the group Food Not Bombs (FNB) reported being approached by Hempstead police and asked to stop distributing food to homeless people in Hempstead or face possible arrest.⁵³ Hempstead ordinances prohibit holding meetings of any kind in city parks without authorization from city officials.⁵⁴ Since those initial incidents, the Hempstead police

⁴⁶ Jennifer Booth Reed, *Plan to Stop Park Meals Scrapped*, The News-Press (Fla.), Mar. 20, 2007.

⁴⁷ Fort Myers, Fla., Proposed Food Distribution Ordinance No. 3371 (2007).

⁴⁸ Cindy Swirko, *In Protest Pie Served Near City Hall*, Gainesville Sun, Nov. 27, 2004, available at <http://www.gainesville.com/apps/pbcs.dll/article?AID=2004211270335&source>.

⁴⁹ Gainesville, Fla., Code of Ordinances ch. 30, art. IV, §§ 30-91, 30-111; art. V, app. D (2007).

⁵⁰ Jeff Adelson, *Plaza surrounded by controversy*, Gainesville Sun, Sept. 6, 2007, available at <http://www.gainesville.com/article/20070906/NEWS/709060320>.

⁵¹ *Id.*

⁵² Jeff Adelson, *Church allowed to serve meals*, Gainesville Sun, Sept. 25, 2007, available at <http://www.gainesville.com/article/20070925/NEWS/709250321>.

⁵³ E-mail from Alex Witkowski, Food Not Bombs, to National Coalition for the Homeless (May 3, 2007) (on file with National Coalition for the Homeless).

⁵⁴ Hempstead, N.Y., Code of Ordinances, ch. 78, art. I, § 78-23 (2007).

have not interfered with food sharing activities as long as FNB stays off Metropolitan Transit Authority property adjacent to the food sharing site.⁵⁵

Jacksonville, Florida

In 2004, the Jacksonville City Council passed an ordinance that prohibited the distribution of food on private or public property without a proper city permit.⁵⁶ Religious groups objected to the ordinance and filed a lawsuit claiming that it violated their First Amendment rights.⁵⁷ In May 2007, an apparent settlement was reached under which the city would amend the ordinance to allow religiously motivated sharing of food without a permit.⁵⁸ However, by the end of July, the two parties still had not agreed on appropriate language. The city insists it is working on an amendment that will pass constitutional muster. Meanwhile, the religious groups have threatened to re-instate their lawsuit.

Las Vegas, Nevada

On July 19, 2006, the Las Vegas City Council voted to approve an amendment to an existing ordinance that bans “the providing of food or meals to the indigent for free or for a nominal fee” in the city parks.⁵⁹ The ordinance defines an indigent person as someone who a reasonable person would believe to be entitled to receive public assistance.⁶⁰ A separate Las Vegas ordinance requires a park permit for gatherings of 25 or more in a city park.⁶¹ A lawsuit in opposition to these ordinances was filed in federal court. NLCHP, NCH, and a number of other homeless advocacy groups filed an amicus brief in the case to oppose restrictions on sharing food with indigent individuals.⁶² In January 2007, a federal judge granted a preliminary injunction preventing Las Vegas from enforcing its “sharing food with the indigent” ordinance. The court held that this ordinance was most likely unconstitutional because of its vague definition of “indigent” and because the city had not provided a rational reason for singling out indigent people as the only group with whom food could not be shared.⁶³ In August 2007, the court made this injunction permanent, but in the same decision upheld the ordinance containing the park permit requirement.⁶⁴

⁵⁵ E-mail from Alex Witkowski, Food Not Bombs, to National Law Center on Homelessness & Poverty (Sept. 3, 2007) (on file with the National Law Center on Homelessness and Poverty).

⁵⁶ Jacksonville, Fla., Ordinance Code, ch. 250, § 250.101 (2007).

⁵⁷ Steve Patterson, *Feeding Lawsuit Goes to Court*, The Times-Union (Fla.), July 18, 2007, available at http://jacksonville.com/tu-online/stories/071807/met_185068065.shtml.

⁵⁸ Proposed Amendment Introduced 5/22/2007: ORDINANCE 2007-611.

⁵⁹ Randal C. Archibold, *Las Vegas Makes It Illegal to Feed Homeless in Park*, N.Y. Times, July 28, 2006, available at <http://www.nytimes.com/2006/07/28/us/28homeless.html?ex=1311739200&en=30c047a011e5951c&ei=5088&partner=rssnyt&emc=rss>.

⁶⁰ Las Vegas, Nev., Code of Ordinances, ch. 13.36, art. I, § 13.36.055 (2007).

⁶¹ Las Vegas, Nev., Code of Ordinances, ch. 13.36, art. I, § 13.36.080 (2007).

⁶² An electronic copy of the brief is available at <http://www.nlchp.org/content/pubs/Sacco%20v%20Vegas%20Amicus1.pdf>.

⁶³ *Sacco v. City of Las Vegas*, No. 2:06-CV-0714-RCJ-LRL (D. Nev. Jan. 26, 2007) (order granting preliminary injunction).

⁶⁴ *Sacco v. City of Las Vegas*, 2007 WL 2429151 (D. Nev. Aug. 20, 2007).

Miami-Dade County, Florida

Miami-Dade County ordinances include a permit system that limits food distribution in certain areas of the city. Specifically, no food may be distributed on any public right-of-way, near any school, or in any city park or beach without a permit.⁶⁵ While the ordinance seems geared towards vendors, it applies to those who offer goods or foods in any way.

Orlando, Florida

With an estimated 8,000 homeless people, Orlando has one of the highest populations of homeless people in the state of Florida. In early 2006, the Orlando City Council passed an ordinance that prohibits sharing food with more than 25 people in city parks without a permit and limits permitted groups to doing so only two times a year.⁶⁶ In October of 2006, the ACLU filed a lawsuit in federal court challenging the constitutionality of the ordinance. While litigation continued, in April 2007, a member of Food Not Bombs was arrested for distributing food in violation of the anti-feeding ordinance and was found not-guilty in October 2007.⁶⁷ In an article in *Street Roots*, Montanez's attorney, Jacqueline Dowd, explains that food sharing restrictions are a new trend, "Instead of going after the homeless, they're going after people who serve the homeless."⁶⁸ Most homeless advocates have spoken out against these ordinances, however some local homeless service provider groups insist that the "ordinance is not against homeless people" and that "homeless people do have a place to eat" in Orlando.⁶⁹

Pinellas Park, Florida

A Pinellas Park soup kitchen has been involved in an ongoing dispute with the city over an ordinance that limits food sharing through parking lot capacity requirements. The ordinance requires any facility to have adequate off-street parking based on the seating capacity of the facility.⁷⁰ These requirements apply regardless of the type of individuals being seated or the type of facility. In January 2007, a tentative agreement was reached under which the soup kitchen would be able to continue distributing food but would do so at a city approved location rather than at the shelter itself.⁷¹

⁶⁵ Miami-Dade County, Fla., Code, ch. 21, art. IV, § 21-27.1 (2007).

⁶⁶ Orlando, Fla., Code of Ordinances, ch. 18A, §§ 18A.01, 18A.09-2 (2007).

⁶⁷ Willoughby Mariano, *Activist Arrested While Feeding Homeless in Downtown Orlando*, Orlando Sentinel, April 4, 2007, available at <http://www.orlandosentinel.com/news/local/orange/orl-bk-homeless-040507.0.1876560.story?coll=orl-home-headlines>; Kate Santich, *Man not guilty in homeless feeding case*, Orlando Sentinel, October 9, 2007, available at <http://www.orlandosentinel.com/news/local/orange/orl-bk-montanez10092007,0,4192156.story?coll=orl-bucs>.

⁶⁸ *Orlando Man Vows to Keep Feeding Homeless Despite Law*, Street Roots, Oct. 12, 2007 at 3.

⁶⁹ Brent A. Trotter, President/CEO, Coalition for the Homeless of Central Florida, Op-Ed., *Help that Hinders: We're not 'Mean' Toward Homeless*, Orlando Sentinel, Sept. 2, 2007, available at <http://www.orlandosentinel.com/news/opinion/orl-myword0207sep02,0,7579275.story>.

⁷⁰ Pinellas Park, Fla., Land Development Code, Ch. 18, art. 15, § 18-1511.2 (2007).

⁷¹ Thomas Michalski, *City, Suncoast Haven Come to an Agreement*, Tampa Bay Newspapers, Jan. 26, 2007, available at <http://www.tbnweekly.com/>.

Portland, Oregon

In August 2007, Portland Police asked a group sharing food with homeless people in a public park to stop its operation because the group did not have a permit. The food sharing events had been taking place in the city park for a number of years. However, the police had requested in May 2007 that the group obtain the necessary permit to serve food at that location.⁷² In addition, due to the large amount of traffic in that particular park, the city does not grant more than a one-time permit for that location.⁷³ Although Portland Parks and Recreation require groups sharing food to obtain a parks special use permit, several groups have been able to obtain permits and have continued their food sharing operations for a number of years.⁷⁴

San Francisco, California

San Francisco's food establishment laws include a category called "itinerant restaurants." Like all other food establishments, these entities must obtain a permit even if they are giving food away.⁷⁵ In spite of these ordinances, Food Not Bombs continues to hold regular food sharing events in San Francisco parks.

Santa Monica, California

Santa Monica has taken numerous steps to address the sharing of food with homeless persons in the community. The city's ordinances directly limit food sharing in two ways. First, in a law recently passed by the City Council, the city has prohibited leaving food or clothing in city parks as a means of donation.⁷⁶ Second, the city has an ordinance that requires any group who intends to "feed the needy" to first obtain a permit.⁷⁷ In order to meet constitutional requirements, the city has amended language in another ordinance that prohibited the distribution of food on city streets and sidewalks without a permit. The new language exempts noncommercial food distribution from the ordinance's scope.⁷⁸

Sarasota, Florida

The city of Sarasota requires any group planning a gathering of 75 or more people in a park to obtain a permit. The law further states that the city manager can, at his or her discretion, move a planned gathering from a requested site to any other park in the city.⁷⁹ In January 2006, the city

⁷² Vanessa Nix, *Permit Problems Put Lid on Soup Kitchen*, The Oregonian (Portland, Or.), Aug. 16, 2007.

⁷³ *Id.*

⁷⁴ E-mail from Monica Goracke, Oregon Law Center, to National Law Center on Homelessness & Poverty (Sept. 11, 2007) (on file with National Law Center on Homelessness & Poverty); E-mail from David Utzinger, Potluck in the Park, to National Law Center on Homelessness & Poverty (Sept. 28, 2007) (on file with National Law Center on Homelessness & Poverty).

⁷⁵ San Francisco, Ca., Health Code, art. 8, §§ 451-52 (2007).

⁷⁶ Santa Monica, Ca., Municipal Code, art. 4, § 4.55.075 (2007).

⁷⁷ Santa Monica, Ca., Municipal Code, art. 5, § 5.06.010 (2007).

⁷⁸ Santa Monica, Ca., Municipal Code, art. 5, § 5.06.020 (2007).

⁷⁹ Sarasota, Fla., Code ch. 2, art. II §§ 22-22, 22-23 (2007).

refused to grant a permit to a group hoping to share food with homeless persons in a city park. The group had been using this park for years but the city insisted that it move its operations to a different park.⁸⁰ The group complied with this request only to have their plans thwarted when the new park was closed for renovations. Eventually, the group was forced to acquire its own property to continue its food sharing program. Since acquiring this land, the city has not interfered with the group's activities.⁸¹

Tampa, Florida

Tampa has a "standing policy" against sharing food with homeless persons in city parks.⁸² Tampa police have taken steps to stop individuals and groups who have attempted to distribute food in defiance of this policy. In 2004, police arrested Food Not Bombs (FNB) members for serving food in a downtown city park without a permit. However, due to the advocacy of two attorneys, Michael Maddux and Joseph Jackson, the city dropped the charges against the FNB members and agreed to cease enforcing the ordinance.⁸³

West Palm Beach, Florida

West Palm Beach has a law requiring a permit for any "special event" to be held on public property and the law defines the term "special event" very broadly. Additionally, the law requires permit applications to be filed from six weeks to six months in advance of the event depending on its type and size.⁸⁴ In September 2007, West Palm Beach City Commissioners approved a ban on food sharing programs in several downtown city parks, despite public protests from city residents and providers.⁸⁵ Local charity groups and legal organizations plan to take action on the basis of freedom of speech and assembly violations.

Wilmington, NC

Following complaints from downtown businesses, Wilmington has been very direct in its opposition to sharing food with homeless persons.⁸⁶ The city passed an ordinance that prohibits the sharing of food on city streets and sidewalks.⁸⁷ The passage of this ordinance has forced

⁸⁰ Michael McNeese, Sarasota City Manager Blog, February 2, 2006, <http://srqcm.blogspot.com/2006/02/gifts-from-god-and-payne-park-it-has.html>.

⁸¹ E-mail from Michael Butterfield, Pastor/CEO, Gifts from God of Sarasota, Inc., to National Law Center on Homelessness & Poverty (Sept. 2, 2007) (on file with National Law Center on Homelessness & Poverty).

⁸² Janet Zink, *Homeless Advocates Say They Feel Heat*, St. Petersburg Times, Oct. 16, 2006, available at http://www.sptimes.com/2006/10/16/Hillsborough/Homeless_advocates_sa.shtml.

⁸³ E-mail from Joseph Jackson to National Law Center on Homelessness & Poverty (Oct. 15, 2007) (on file with National Law Center on Homelessness & Poverty).

⁸⁴ West Palm Beach, Fla., Code of Ordinances, ch. 78, art. VI, §§ 78-151, 78-153, 78-155 (2007).

⁸⁵ Dianna Cahn, *West Palm votes to ban feeding of homeless at downtown parks*, South Florida Sun-Sentinel, Sept. 25, 2007, available at <http://www.sun-sentinel.com/news/local/palmbeach/sfl-flphomeless0925pnsep25.0,6860944.story>.

⁸⁶ Emily Bazar, *Cities Set Limits on Serving Food to Homeless People*, USA Today, Mar. 27, 2007 at A1.

⁸⁷ Wilmington, N.C., Code of Ordinances ch. 11, art. III, § 11-47 (2007).

groups to seek out private property on which to conduct their food sharing activities. These private property activities continue to be monitored by Wilmington police.⁸⁸

VIII. Conclusion

As accessing food is a basic, well-recognized human right, cities should not be passing laws that make it more difficult for hungry people to obtain food. Both food sharing groups and cities should work toward the common goal: ending hunger and homelessness. Many cities state that they share this goal; yet despite city arguments to the contrary, food sharing restrictions demonstrate an ineffective and often destructive method of achieving this common goal.

For instance, some city arguments in favor of restrictions suggest that food sharing by private groups and individuals only serves to keep homeless persons homeless and away from shelters and other services. However, these arguments overlook the fact that many homeless persons suffer from mental illness, physical disabilities, inability to travel, or fear of institutional aid. For these individuals, outdoor food sharing programs may be their only source for nourishment.

Other city arguments suggest an interest in protecting the quality and safety of the food that homeless persons receive and ensuring that food sharing activities serve as part of a city's larger fight against homelessness. While these are laudable goals, criminalizing charitable groups who are willing to aid cities in their already budget-strapped efforts against homelessness does not further these interests.

Finally, some city arguments suggest that food sharing can continue but should be moved out of downtown areas and away from tourist and business locations. Moving food sharing operations away from city centers also moves homeless persons away from other services and programs upon which they rely for shelter and aid.

Policy Recommendations:

- Instead of penalizing them, cities should collaborate with food sharing groups to effectively address the problems of hunger and homelessness. If the goal is bringing homeless persons into existing programs, cities should reach out to food sharing groups to coordinate provision of food and educate providers on how to help homeless persons access services. Food providers can be an important part of this process, as they have already established relationships with homeless individuals. Cleveland's coordinated model serves as a good example of this process.
- Cities should also examine how they can assist homeless persons in accessing federal benefits like food stamps. As participation rates among the homeless population in the Food Stamp Program are relatively low, cities should work with their local food stamp offices to increase outreach and enrollment in the program. In addition, cities should pursue innovative ways to use the Food Stamp Program, such as San Francisco's initiative to allow restaurants to accept food stamps.

⁸⁸ E-mail from Anita Oldham, Housing Development Manager, Southeastern Center for Mental Health, Wilmington, N.C., to National Law Center on Homelessness & Poverty (Sept. 6, 2007) (on file with National Law Center on Homelessness & Poverty).

- Cities should work with advocates and service providers to press Congress to increase food stamp benefits and restore benefits for non-disabled homeless adults between the ages of 18-50 who are unable to meet minimum work requirements.
- Cities should work with advocates at the state and federal level to ensure the basic needs of homeless persons are met, including housing and health care.

Ultimately, in the face of scarce resources and shrinking budgets, cities would be well-served to utilize rather than criminalize groups with whom they share a common goal: ending hunger and homelessness.

City	Policy	Ordinance	Permit Req	Permit Revoked	Permit denied	Fines	Arrest Threat	Arrest	Coordination
Atlanta		X	X						X
Baltimore		X	X						X
Chattanooga			X**	X					
Cincinnati		X	X		X				
Dallas		X	X			X			
Denver		X	X						
Fairfax County									
Fort Lauderdale		X					X		
Fort Myers		*							
Gainsville		X	X						X
Hempstead		X					X		
Jacksonville		X	X						
Las Vegas		X	X						
Miami-Dade County		X	X						
Orlando		X	X					X	
Pineillas Park		X							
Portland			X						
San Francisco		X	X						
Santa Monica		X	X						
Sarasota		X	X		X				
Tampa	X							X	
West Palm Beach		X	X						
Wilmington		X	X						

*Fort Myers had a proposed ordinance but it was rejected
**Chattanooga requires a permit in select locations
Measures currently being challenged are in **bold**.