

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MICHAEL POTTINGER, PETER
CARTER AND BERRY YOUNG

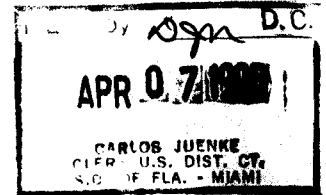
Plaintiffs,

vs.

Case No. 88-2406-CIV-ATKINS

CITY OF MIAMI,

Defendant.



FINDINGS AND ORDER ON LIMITED REMAND FROM
THE ELEVENTH CIRCUIT COURT OF APPEALS

I. Introduction

THIS MATTER is before the court on limited remand from the Eleventh Circuit Court of Appeals ("Eleventh Circuit"). After the Eleventh Circuit heard oral argument on the City of Miami's ("City") appeal from this court's injunction issued November 18, 1992 ("Injunction"), the panel remanded the case to this court for limited purposes. Specifically, the Eleventh Circuit wanted: (1) an update on the facts of the case; (2) clarification of the Injunction, especially regarding the City's duties under it; and, (3) a determination whether the Injunction should be modified in light of recent events.

On December 8, 1994, after receiving the Eleventh Circuit's directive, this court entered an Order Directing Parties to File Memoranda regarding the issues raised by the Eleventh Circuit. The City filed its initial memorandum on December 21, 1994, plaintiffs responded on January 4, 1995, and the City replied on January 11,

1995.

The court then held a series of evidentiary hearings on the following dates: January 19, 1995; January 27, 1995; January 30, 1995; February 10, 1995; and, February 16, 1995. Thereafter, in accordance with this court's Order of January 19, 1995, the parties filed proposed findings to aid the court in its task. The City filed its proposed findings on March 3, 1995, plaintiffs responded on March 17, 1995, and the City replied on March 30, 1995. The court is now prepared to address the issues raised by the Eleventh Circuit.

II. Update on the Facts¹

A. The Parties' Positions

Plaintiffs and the City, not surprisingly, have differing views as to whether the facts of this case have changed. On one hand, plaintiffs argue that the salient facts have not changed. There are still thousands of involuntarily homeless persons living on the streets of Miami with "no place to go." Additionally, while arrests for activities such as sleeping in public and being in parks after hours have decreased substantially since the years leading up to the trial of this cause, plaintiffs argue that the City still arrests homeless people for "being homeless." Next, while plaintiffs recognize that complaints of destruction of property have declined sharply, a few recent incidents demonstrate that the destruction continues, at least to some degree. Finally,

¹The court trusts that it does not have to re-state the facts as they existed when it granted injunctive relief in November, 1992.

plaintiffs contend that the City continues to force plaintiffs to move from place to place in order to render homeless people less visible. All of this remains true, argue plaintiffs, despite the laudable efforts of the Dade County Homeless Trust ("Trust") to provide shelter and services to the homeless people of Dade County.

On the other hand, the City argues that by virtue of the Florida Legislature's creation of a 1% food and beverage tax in Dade County -- 85% of which is dedicated to providing shelter and services to homeless people -- as well as the Trust,² a viable program exists to assist the homeless now. As regards arrests of homeless people, the City contends that it does not arrest people for merely being homeless. Finally, the City's position regarding destruction of property is that it takes great pains, through the Trust, to ensure that homeless persons' property is not destroyed, and in fact secures and holds property for pick-up. In essence then, the City argues that the facts have changed substantially, so much in fact that injunctive relief is no longer necessary.

B. Whether Homeless People Now Have "Someplace to Go"

At the core of the court's November 16, 1992 Injunction was the conclusion that homeless people in Miami "literally have no place to go." Injunction at p.14; see also Injunction at pp. 25, 27-28, 29 n. 19, 30, 72. Since homeless individuals have no choice but to live in public, they are forced to perform certain acts in public. Therefore, the court found that arresting homeless people

²The City is an active participant in the Trust through its representation on the Board of Directors and various committees.

for performing those acts in public violated various constitutional rights.

In light of recent events, particularly the establishment of the Trust, the issue is whether homeless people now have someplace else to go. To determine whether it is still true that homeless people have no place else to go, the court specifically asked the parties to provide it with the number of homeless people in Miami versus the number of shelter beds now available.

1. Number of Homeless Individuals

The court will start with the number of homeless people. Needless to say, the testimony on this issue varied and the court is convinced that determining the number of homeless people in Miami,³ or anywhere for that matter, is a difficult if not impossible task.

On behalf of the City, Ms. Livia Garcia testified. She heads

³There was some discussion at the hearings in this matter about whether the number of homeless people in the City of Miami or in Dade County was the relevant number for the court's consideration. No witness provided the court with a specific break-down.

In the Injunction, the court estimated that there were 6,000 individuals who were homeless at the time of trial. Injunction at p. 27. However, that number did not represent only those individuals found in the City of Miami. Plaintiffs' experts estimated that about 80% of those 6,000 resided in the City of Miami. Thus, the court previously considered the number of homeless both in the City of Miami and in Dade County.

Additionally, when considering the availability of shelter space, the number of homeless in the entire county becomes relevant because while homeless people from Miami can go to shelters outside of the City, homeless people from outside the City limits would also, presumably, use those shelters. Also, homeless individuals from outside the City may be placed in shelters within the City. Therefore, an argument can be made that the number of homeless in Dade County is relevant. Nevertheless, as discussed below the court concludes that several thousand homeless people still live in the City of Miami.

the City's Office of Homeless Programs. Ms. Garcia estimated that 1,000 to 1,500 homeless people reside in Miami. However, Ms. Garcia also admitted that her office only "counts" groups of five or more homeless people who have semi-permanent encampments, i.e., they leave their bedrolls and belongings at the site during the day as opposed to merely sleeping there at night and moving on during the day.

A survey conducted by the Trust in March through May 1994 indicated that the number of homeless was approximately 2,252. Once again, however, the survey only included encampments of five or more people.

By contrast, Dr. Pedro Jose Greer, who runs the Camillus House Clinic, a medical clinic for homeless people, testified that in 1994 approximately 8,600 individuals utilized the services of the Camillus House Clinic.⁴ True, Camillus House Clinic does not verify that each individual using its services is homeless. However, Dr. Greer estimated that only about 10-15% of those using Camillus House were very poor, but not homeless. He also stated that some homeless people in Miami use the services of Jackson Memorial Hospital rather than Camillus House Clinic.

Dr. Greer and Dr. Andrew Cherry both testified that counting the homeless is becoming more difficult as very large encampments are closed. In other words, the homeless are indeed becoming less

⁴Dr. Greer further testified that Camillus House Clinic is a walk-in clinic, thereby implying that all those who use it live in the immediate area surrounding the clinic. The Camillus House Clinic is located in downtown Miami.

visible, but they are still on the streets to be sure. Testimony indicated that many homeless people now live in groups comprised of less than five people and that many homeless people live a more transient lifestyle than previously, picking a place to sleep at night, but removing themselves and their belongings from the sleeping area during the day.

Given the difficulty of determining the number of homeless people living in Miami or Dade County, the court will not attempt to fix a number.⁵ Moreover, it is clear that the homeless population is mercurial; the number can, and probably will, grow and subside. However, the court is convinced from the testimony that a substantial number of homeless people -- several thousand at least -- still live on the streets of Miami, and many more live throughout Dade County.

2. The Number of Shelter Beds Available

At the time the court issued the Injunction, there were approximately 700 local shelter beds for homeless people. Injunction at p. 27. It is undisputed that the number of local shelter beds has increased since the court issued the Injunction.

The City attempted to offer a survey compiled by the Trust on the issue of how many shelter beds exist now. However, the court sustained the plaintiffs' objection to the survey on the basis that

⁵As will become evident in the following sections, it is not necessary for the court to fix a certain number.

it contains hearsay.⁶ The court adheres to its earlier ruling on plaintiffs' objections to the Trust survey.

However, Sergio Gonzalez, the Executive Director of the Trust, gave an approximation as to the number of beds in Dade County (2,900) and in Miami (1,500). It did appear that Mr. Gonzalez's testimony on this issue was based on his review of the hearsay documents and not on personal knowledge. Nevertheless, the court will, as plaintiffs suggested in their Proposed Findings of Fact and Conclusions of Law on Limited Remand from the Eleventh Circuit Court of Appeals at page 5 note 1, treat the figures Mr. Gonzalez gave as a maximum. The court further notes that Mr. Gonzalez testified that of all the beds (approximately 2,900 in Dade County and 1,500 in Miami), a percentage are reserved for people with specific problems, such as substance abuse. Therefore, many of the beds in Dade County and Miami are still "program beds" for which one must qualify. See Injunction at p. 27.

3. The Trust

Of course, the court cannot ignore the tremendous effort the Trust has made and is making on behalf of homeless people in Dade County. For example, the Trust receives approximately \$500,000 a

⁶The Trust apparently sent questionnaires to local service providers. The service providers provided information, including how many beds they had. The Trust then compiled the returned questionnaires and came up with a total number of beds in Dade County. The City argued that the survey is admissible on several grounds: (1) the survey is a public record; (2) the survey falls within the present state of mind exception to the hearsay rule; and, (3) the survey should fall within the "catch-all" exception to the hearsay rule, Fed. R. Evid. 803(24). The court rejects each of these arguments.

month from the 1% food and beverage tax alone. Additionally, the Trust has solicited substantial contributions from the community and has received at least one hefty grant from the federal government. All of these funds are dedicated to providing shelter and services to homeless people residing in Dade County.

Mr. Gonzalez testified that the Trust has funded or "created" 400 more beds in Dade County since its inception. Additionally, the Trust has plans to build three Homeless Assistance Centers ("HAC") throughout Dade County. Each will house and serve from 350 to 500 people. Construction has begun on the first HAC which will be located near downtown Miami. The Trust hopes that the first HAC will be operational sometime in 1995. The other two HACs are slated to be built in North Dade County and South Dade County, but the Trust has not yet selected the sites.

In sum, the court recognizes the great strides the Trust has taken to provide shelter and services to the homeless of Dade County. The court further recognizes that the Trust intends to continue to do so in the future and that it will prove instrumental in providing homeless people with a place to be.⁷

⁷The parties hotly contested the efficacy and propriety of the Trust's methods and of the services it has offered in closing encampments. While the court is concerned that homeless people receive appropriate services and are treated with dignity, it is not for the court to judge the efficacy of the Trust's efforts. Rather, the scope of this lawsuit encompasses whether homeless people have no place to be other than the streets such that it violates their constitutional rights to arrest them for engaging in certain activities they have no choice but to perform in public. Therefore, the court declines, at least for now, to enter the debate over the efficacy of the Trust's efforts. Of course, the reasonableness of the alternatives presented to involuntarily homeless persons may become relevant at some time in the future on

4. The Number Homeless People Versus the Number of Shelter Beds

The court notes that both the City and plaintiffs agree that the number of homeless persons -- whatever that specific number may be -- exceeds the number of available shelter beds in Miami and in Dade County.⁸ In fact, the City would be disingenuous in arguing otherwise since the Trust is planning to build a total of three Homeless Assistance Centers each of which is to house 350-500 people. That fact alone demonstrates to the court that a wide margin between the number of homeless and the number of shelter beds still exists.

Of course, with the Trust's efforts, the gap between the number of homeless and the number of shelter beds is expected to narrow in the coming months and years. However, the court has no doubt that the significant gap that exists now will not be totally eradicated in the immediate future. Obviously, this is not a static situation. The number of beds will surely increase; that much is in the control of the Trust. Yet, the number of homeless people may increase or decrease in the future. In short, while the situation appears to be improving, at this time, a substantial number of homeless people still have "no place else to go."

C. Arrests of Homeless Persons

Unlike at the trial of this cause, plaintiffs did not present

the issue of whether they truly have someplace else to be other than the streets.

⁸This statement does not even take into account that only a relatively small number of "non-treatment," or strictly boarding beds, exist.

thousands of arrests of homeless people for acts such as sleeping in public and being in parks after hours. Rather, plaintiffs presented the court with records for several hundred arrests for violations of Section 37-17(2) of the City of Miami Code. The conduct resulting in arrests under that code section was often begging or panhandling.⁹

Plaintiffs also presented several arrest affidavits for such things as being in a park after hours and trespass of seemingly public areas. Plaintiffs' Exh. 5o, 5p, 5q, 5r, 7k, 7m. All of these arrests occurred after the court issued the Injunction. And, all of the arrests were of presumptively homeless persons; the arrestees gave no address, were identified by the police as homeless, or gave the address of Camillus House, a homeless shelter. Therefore, it is apparent that the police still arrest homeless people for harmless, inoffensive conduct despite the court's Injunction, albeit not to the extent prior to the Injunction.

⁹Once again, this issue was hotly debated. The City claims that violations of the begging statutes were never part of this case and cannot be relied upon by plaintiffs now. Plaintiffs argue that these arrests are relevant; plaintiffs specifically never attacked a particular statute under which they were arrested or limited the lawsuit to particular statutes. This was so because of the City's practice of finding new statutes to arrest homeless people under once a court cast doubt on statutes previously relied on to arrest homeless people. As will be discussed below, the court need not determine whether these arrests fall within the scope of this lawsuit because arrests for conduct specifically described in the Injunction have occurred since the court issued the Injunction. Additionally, the City has not met its burden in convincing the court that injunctive relief is unnecessary.

D. Destruction of Property

Interestingly, no one argued that the portions of the Injunction regarding destruction of property should be modified or eliminated.¹⁰ The court assumes this is so because the court merely ordered the City to follow its own written policies and to not destroy property it knows or reasonably should know to belong to homeless people. Injunction at p. 77-78. Moreover, the court understands the main focus of the issues on limited remand to be related to the safe zone issue. Consequently, the court finds it unnecessary to recount the evidence presented regarding destruction of property.

The court, however, notes that even plaintiffs admit that the complaints of property destruction have declined sharply. Additionally, the City presented evidence of the steps Trust employees take to preserve homeless persons' property when an encampment is closed. But, as mentioned in footnote 10, the Trust's actions do not, in this instance, affect the City's responsibility under the Injunction.

E. Conclusion

It should be clear from the preceding sections that the salient facts of this case have not changed substantially. Though improvement in the overall situation is occurring via the Trust, a

¹⁰The City merely stated in its Proposed Findings of Fact and Conclusions of Law that this relief was "moot" because the Trust has procedures in place to hold homeless persons' property when an encampment is closed. However, what the Trust does does not necessarily mean that the City should be relieved from following its own written procedures regarding handling of property when it has the occasion to do so.

large number of homeless people still have no place to go and the City, through its police department, still arrests homeless people for harmless activity.

III. Clarification of the Injunction

The Eleventh Circuit asked for a clarification of the Injunction in some respects, including the City's duties under it. It is clear to this court, too, that some clarification is necessary. This impression is based on several things. First, witnesses who testified at the hearings on behalf of the City seem to have misconceptions about the purpose and scope of the safe zones this court attempted to create. Many people characterize the concept of safe zones under the Injunction as creating crime-ridden areas where homeless people can do whatever they want, forever, without repercussions. That simply is not true, as will be discussed below.

Second -- and this is very distressing to the court -- City employees have been misusing the Injunction and misrepresenting it to the public in ways the court is shocked to think about.¹¹ As background, the court wishes to point out that the City never established safe zones, as the court ordered it to do. And, the City even closed the default safe zones the court created. Finally, the Injunction was stayed in July of 1993. Yet, City employees have told members of the public that the City could not

¹¹Of course, the court never contemplated any misuse or misrepresentation of the Injunction whatsoever, but the court could have understood misunderstandings about the scope of the Injunction. What the court is discussing now goes way beyond misunderstandings about the scope of the Injunction.

fix a broken fire hydrant which was spewing water for several days, or take actions to prevent apparently homeless people from telling others that they could not park at public parking meters unless they paid the apparently homeless person money, because of the Injunction. See Notice to Counsel dated September 9, 1994; Letter to Ms. Karen Wilson dated December 7, 1994. The court cannot imagine how City employees got the idea that the Injunction (as inoperative as it is under the stay) stated or implied either of these things.

Due to misperceptions about the scope of the Injunction, the court will clarify it, as well as address specific questions the Eleventh Circuit has. However, the court reminds counsel for the City of its duty to keep all agents and employees of the City accurately apprised of their obligations, or lack thereof, under the Injunction. Likewise, the court reminds counsel for plaintiffs of his duty to inform, as best he can, his clients of what they are permitted to do and not do under the Injunction.

Let the court start by emphasizing that the safe zones were established as an interim or stop-gap measure only. Their existence was premised on the fact that homeless people had no place else to go. The court contemplated or hoped, though apparently did not communicate it adequately, that there would come a time in the future when safe zones would be unnecessary. In other words, the court hoped that someday all homeless people would have a "place to go."

Next, the undersigned feels compelled to comment on the City's

misapprehension that it was under some affirmative duty to construct something or provide services under the Injunction. The court issued primarily a negative injunction; the City was prohibited from arresting homeless people for "performing innocent, harmless, inoffensive acts such as sleeping, eating, lying down or sitting in at least two public areas. . ." Injunction at p. 76.¹²

All that meant was, a public area would exist where homeless people could feel safe to perform harmless daily activities without being arrested or harassed for performing those activities.

It did not mean that the City would be required to provide housing or amenities to homeless persons other than bathrooms and running water, as the City so recognizes. See Injunction at p. 75; Memorandum of the City of Miami on Limited Remand from the Eleventh Circuit Court of Appeals at p. 14.

It did not mean that the police could not arrest homeless people for criminal or harmful activity, either within or outside of the safe zones. See Injunction at p. 77. It also did not mean that the police could not arrest homeless people when they were outside the safe zones for any conduct proscribed by City Ordinance, State Law, or otherwise. For example, if a constitutional statute prohibited being in a park after hours, the police could arrest homeless persons under that statute if they were outside the safe zones.

¹²The only affirmative duty the City would have under the Injunction in relation to the safe zones would be to provide bathrooms and running water in the safe zones, as the City so recognized in the Memorandum of the City of Miami on Limited Remand from the Eleventh Circuit Court of Appeals at p. 14.

The court further did not impose a duty upon the City to transport homeless people to the safe zones. However, the court hoped that the City, "to the extent that it would be practicable . . . would attempt to accommodate homeless persons to get to the safe zones." Memorandum of City of Miami on Limited Remand From the Eleventh Circuit Court of Appeals at p. 11.

Similarly, the court did not contemplate that: people would have to be "registered" to be in the safe zones; people would be limited to a certain number of days they could remain in the safe zones, so long as the safe zones exist; curfews and restrictions on feeding, etc. would be imposed in the safe zones; or, many of the other things the City mentioned in its Memorandum of City of Miami on Limited Remand from the Eleventh Circuit Court of Appeals at page 15 would be a part of the injunctive relief in this case.

Rather, the court envisioned that the safe zones would be similar to the encampments homeless people have already developed; not ideal, but at least providing some stability and safety with the additional factor of being free from arrest for engaging in certain non-threatening, essential activities.

The court also directed that the parties, in agreeing on the location of safe zones, "consider the proximity to feeding programs, health clinics and other services." Injunction at p. 77. Thus, the court did not contemplate that the safe zones would be located in the outreaches of Dade County. It is important, in the court's view, for services provided by people or organizations other than the City to be accessible to homeless people, and thus,

the safe zones. However, as is clear from the Injunction, the court left it to the parties to agree on the location. Injunction at p. 77.

Just as the City does not want the court to create a "judicial welfare system" or become too embroiled in providing services to homeless people or finding a way to address the problem of homelessness, the court did not want that either. That is why the court attempted to fashion injunctive relief which was minimal and which left as much discretion to the parties as possible.¹³ The court hopes that these clarifications help the parties in understanding their duties under the Injunction.

IV. Should the Court Modify the Injunction?

A. Is There Still a Need for Injunctive Relief?

The court must first address the City's contention that all injunctive relief in this case should be abandoned. The City claims that it has stopped arresting people for being homeless and that, through the Trust, a viable program exists for giving homeless people a place to go.¹⁴ Thus, the City argues that

¹³However, the parties have shown that they could not work together on this front, as is evidenced by the fact that negotiations for the location of the two safe zones totally broke down.

¹⁴The City also claims that the portions of the Injunction ordering the City to not destroy homeless persons' property is moot due to the procedures the Trust follows. What the Trust does does not affect, in this instance, the City's responsibilities regarding homeless individuals' property. Additionally, as with the arrest issue, the City has failed to demonstrate that there is no reasonable expectation that destruction of property could occur in the future. See LaMarca v. Turner, 995 F.2d 1526, 1541-42 (11th Cir. 1993); Jones v. Diamond, 636 F.2d 1364, 1375 (5th Cir. 1981). Furthermore, the court understood that the main concern of the

injunctive relief is not necessary anymore.

The court adheres to the findings delineated in the Injunction that the City's conduct violates various of plaintiffs' rights, and the court did not understand the Eleventh Circuit's limited remand to require the court to revisit the legal issues. Unfortunately then, even if the City's claims are true regarding its cessation of arrests, injunctive relief is still proper unless the City can demonstrate that there is no reasonable expectation that the arrests will occur in the future and that the violative conduct has been completely and irrevocably eradicated. LaMarca v. Turner, 995 F.2d 1526, 1541-42 (11th Cir. 1993); see Jones v. Diamond, 636 F.2d 1364, 1375 (5th Cir. 1981).

The court cannot so find in this case. First, as noted above, a substantial number of homeless people still have no place to go. As the Trust implements its plans, this finding may become less true. However, for the time being, it is true.

Second, notwithstanding the City's proclamation that it does not arrest people for being homeless, the court finds that the City has made some arrests for non-threatening, inoffensive behavior since the issuance of the Injunction. If safe zones existed and the arrestees were in the safe zones, those arrests would not have occurred. Moreover, even if the court did not take those arrests into account, the City has failed to demonstrate that it would not arrest homeless people again for the purpose of driving them from public areas absent some injunctive relief. See Injunction at p.

Eleventh Circuit and the parties on remand was the safe zone issue.

74. Therefore, the court finds that injunctive relief is still warranted in this case. See LaMarca, 995 F.2d at 1541-42; Jones, 636 F.2d at 1375.

B. What Modifications, If Any, Should Be Made to the Injunction?

One thing the parties can agree on is that safe zones are not ideal. Several witnesses testified that safe zones may present health hazards, and may result in increased criminal activity, presumably within the safe zones.¹⁵ However, neither party has presented the court with a reasonable alternative to safe zones which would protect homeless persons' rights while taking into consideration the City's interest in preserving public order. See Injunction at p. 76. For example, the plaintiffs want the whole City to be an arrest-free zone for certain activities. That idea conflicts with the City's interests.

Similarly, the City has presented an option¹⁶ which the court finds will not completely address the plaintiffs' concerns. The City wants the court to have existing homeless encampments be safe zones until the Trust decides that a particular encampment should be closed. When the Trust decides to close an encampment that area would no longer be a safe zone. The court sees several problems with this solution. What would define an encampment? Under the

¹⁵No one clarified if increased criminal activity due to safe zones is expected to be homeless people committing crimes against other homeless people, homeless people committing victimless crimes, homeless people committing crimes against people with homes, or people with homes committing crimes against homeless people.

¹⁶Aside from doing away with all injunctive relief which this court is unwilling to do at this point.

City's definition for purposes of counting homeless, an encampment only means groups of five or more who leave their belongings at the site all the time. That definition does not take into account the possibly thousands of people who are mobile during the day who still need protection. And, encampments may spring up at any time, anywhere. Who decides when an encampment qualifies to be a safe zone? Therefore, the court declines to implement the City's suggestion.

Acknowledging that safe zones (as clarified above) are not ideal, the court can think of no reasonable alternative at this point. Granted, safe zones may create health hazards, but homeless people already have lived and do live in large encampments with similar hazards. Unfortunately, homeless people will face health hazards no matter where they stay on the streets, irrespective of whether it is a safe zone, an already established encampment, or a different place from night to night, and the harsh fact is that the majority of homeless people still have no choice but to stay on the streets. Not providing a place where homeless individuals can be safe from arrest for sleeping, eating, lying down, and other harmless activities will not change the health risks homeless individuals face.

As for the alleged increased criminal activity within safe zones, the court has no proof that this is true of safe zone areas. Indeed, we have never had safe zones to test that theory!¹⁷ At any

¹⁷In fact, some testimony indicated that when homeless persons live together in larger groups, they may be safer from crime than if they are alone on the streets, reminiscent of the maxim, "there

rate, if safe zones do incite more criminal activity, nothing in this court's Injunction prohibits the police from arresting people inside the safe zones for engaging in criminal activity. All in all, the specific problems raised with respect to safe zones¹⁸ do not warrant abandoning the safe zone concept at this time.

In sum, the court concludes that the Injunction should remain in effect as drafted in November, 1992 and as clarified above. The court would modify and add a few provisions, however. Accordingly, the court leaves intact its Injunction, but would add and/or modify the following provisions:

(4)¹⁹ Counsel for both parties are directed to meet no later than [date to be determined later] ²⁰ in order to establish

is safety in numbers." So, to the extent increased criminal activity is expected to be committed against homeless people due to safe zones, some testimony refutes that theory.

¹⁸In addition to health hazards and crime, the City raised the specter that the existence of safe zones will hinder the Trust's efforts because homeless people will be able to "languish and choose to do nothing" as opposed to take advantage of the Trust's services. Reply of City of Miami to Plaintiffs' Proposed Findings of Fact and Conclusions of Law on Limited Remand from the Eleventh Circuit Court of Appeals at p. 4-5 (citing testimony of Beth Lang 1/27/95 Transcript at 109). Yet, Ms. Lang also said that homeless people should not be arrested or harassed. 1/27/95 Transcript at 110). The court is concerned that homeless people have a place to be free from arrest and harassment if they truly have no place else to be but the streets. Right now, a substantial number of homeless people have no place to be but the streets and safe zones appear to be the most reasonable way to protect them from arrest for performing harmless activities. Therefore, whether safe zones are "counterproductive" is not an issue before the court at this point.

¹⁹To replace (4) on page 77 of the Injunction.

²⁰If the Eleventh Circuit affirms the Injunction, as modified, the court will pick a date by which the parties must meet.

at least two, but possibly more,²¹ "safe zones" where homeless people who have no alternative shelter can remain without being arrested for harmless conduct such as sleeping or eating. The court will appoint a Special Master from a joint list of potential candidates submitted by the parties; that joint list is to be submitted by _____ [date to be supplied later]²² _____. The Special Master will have the responsibility of facilitating the meeting between counsel on the establishment of safe zones. The court will enter a separate Order of Reference to the Special Master once it receives the joint list. In establishing these arrest-free zones, counsel should consider the proximity of the areas to feeding programs, health clinics and other services. In addition, the parties are encouraged to develop a procedure for maintaining the areas.²³ The Special Master will be directed to submit a report regarding the outcome of the meeting;

(5)²⁴ Until the parties reach an agreement on at least two arrest-free zones, the City is enjoined from arresting homeless individuals for sleeping, eating, lying down or sitting anywhere in

²¹The court specifically provides that the number of safe zones be at least two, but leaves to the parties the determination of whether more would be better so that the population in any given safe zone is not too large (e.g., a greater health hazard, etc.).

²²If the Eleventh Circuit affirms the Injunction, as modified, the court will pick a date by which the parties must submit a joint list of candidates.

²³For example, a cleaning schedule could be established which would involve the participation of homeless individuals in maintaining the areas where they are permitted to stay.

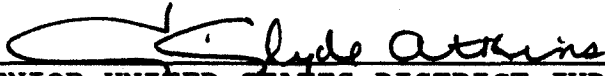
²⁴To replace (5) on page 77 of the Injunction.

the City;²⁵

* * *

(9)(a)²⁶ After the establishment of the safe zones, the parties shall submit joint status reports to the court on a quarterly basis. The status reports shall include: information regarding the number of shelter beds available with a break down of where they are located and how many are "program beds" versus regular boarding house type beds; information regarding a significant increase or decrease in the homeless population; and, any other information the parties find relevant. Additionally, either party may request a hearing at any time for the court to consider modifying the Injunction. The court specifically retains jurisdiction over this cause for that purpose.

DONE AND ORDERED at Miami, Florida, this 7th day of April, 1995.


SENIOR UNITED STATES DISTRICT JUDGE

cc: Clerk of the Court for the Southern District of Florida (to be forwarded to the Eleventh Circuit in compliance with the Eleventh Circuit Order dated December 7, 1994)
Leon Firtel, Esq.
Benjamin Waxman, Esq.

²⁵Since the two default safe zones created in the Injunction have been eliminated by the City and other encampments are being closed, the court finds that the whole City should be the default safe zone until the parties can agree. The court trusts that the parties will work cooperatively and swiftly to agree on designated areas.

²⁶To be added to the Injunction.