

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

CIRCUIT CIVIL DIVISION

CASE NO. _____

RED GINGER SB, LLC, d/b/a
PAPI STEAK,

Plaintiff,

vs.

CITY OF MIAMI BEACH, a Florida municipal
corporation,

Defendant.

_____ /

**PLAINTIFF'S VERIFIED EMERGENCY MOTION FOR TEMPORARY INJUNCTIVE
RELIEF REGARDING SPRING BREAK CURFEW**

Pursuant to Florida Rule of Civil Procedure 1.610, Plaintiff RED GINGER SB, LLC d/b/a/ PAPI STEAK ("Plaintiff"), hereby moves on an emergency basis for a temporary injunction against Defendant City of Miami Beach (the "City") to enjoin the City's enforcement of an State of Emergency establishing an unconstitutional curfew over a large portion of Miami Beach from March 24-28, 2022. This motion is brought as an emergency because absent immediate injunctive relief Plaintiff will suffer irreparable harm during the curfew period, which is this weekend.

INTRODUCTION

The City of Miami Beach City Manager issued a State of Emergency that adopted a curfew from 12:00 a.m. to 6:00 a.m. over an indiscriminate and overbroad portion of South Beach from March 24 to March 28, 2022. A copy of the Curfew declaration is attached to this motion as Exhibit "A" and hereinafter will be referred to as the "Curfew." According to the Curfew, it was enacted

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“in response to the excessively large and unruly spring break crowds and to mitigate dangerous and illegal conduct.” Ex. A.

To be clear, Plaintiff takes no issue with City Manager’s efforts to ensure a safe and secure environment for City residents and visitors. The unfortunate violent incidents that occurred in the City’s Entertainment District between Fifth Street and Sixteenth Street, however, should not be used as an excuse to improperly curtail the constitutional rights of Florida citizens in areas *outside* the areas that proved difficult for the City to control last weekend. As demonstrated below, the Curfew is unconstitutionally overbroad both in its geographic scope, because it applies to areas south of Fifth Street that have not been the site of violence or unruly crowds, and because it fails to contain any exceptions for constitutionally protected activities as Supreme Court requires. Simply put, the City has cast its Curfew too broadly. The Curfew acknowledge both that (i) it “must be narrowly tailored to serve a compelling ... safety purpose,” and (ii) that the “massive crowds” causing disturbance are in the area of Ocean Drive around Lummus Park. Ex. A at 3 & 4. But the Curfew illogically and improperly is imposed outside of the area where disturbances have occurred. While the City suggestions “migration” may occur to City parks outside the disturbance area if the Curfew is only applied within the area of Ocean Drive and Lummus Park, it is free to close its parks (South Pointe Park and Flamingo Park) to prevent such migration.

Plaintiff, a steakhouse restaurant, has its place of business in the area covered by the Curfew. This area is significantly far from the Miami Beach Entertainment District, where the Spring Break crowds have congregated. If the Curfew takes effect, Plaintiff will lose hundreds of thousands of dollars in revenue because it will be forced to curtail business hours. Because Plaintiff

will suffer irreparable damage, and because the Curfew is plainly unconstitutional under clear Florida precedent, Plaintiff has filed its Complaint for Injunctive Relief and this emergency motion seeking injunctive relief under Rule 1.610.

VERIFIED FACT STATEMENT

1. Plaintiff is an elegant and exclusive restaurant which operates in Miami Beach's South of Fifth neighborhood. The restaurant is located at 736 1st St., Miami Beach FL 33139.

2. Plaintiff has only 93 seats and so provides an intimate dining experience. Patrons are seated seven days a week from Plaintiff's opening at 6 PM until the last guest leaves which on most weekend nights is between 2AM to 3 AM.

3. Plaintiff derives significant revenue during the late-night hours between 10 PM and final closing between 2 AM or 3 AM. While Plaintiff is open seven days a week, its busiest nights are Thursday through Sunday nights. Particularly during the Spring Break season, which is an economically critical period for Miami Beach businesses, Plaintiff is especially busy and is dependent on the revenues derived during this period to sustain its operation.

4. During the Spring Break season of 2022, the area in and around Papi Steak has been quiet, peaceful, and free from large or unruly crowds, or any crowds for that matter.

5. While Plaintiff's executives have observed with alarm the crowd control problems in other parts of South Miami Beach, the area in and around Papi Steak, to Plaintiff's knowledge, has experienced zero crowd control problems.

6. Plaintiff's staff is heavily reliant on tips for their income. The Curfew will not only adversely impact Plaintiff's revenue, but it will also cause a significant decrease in staff wages.

7. And because Plaintiff will be open for a shorter period of time, Plaintiff's staff will have their hours reduced and the decreased revenue could potentially require an offset by temporary or permanent reduction in number of staff.

8. On March 22, 2022, the City Manager issued the Curfew which put in effect a curfew from 12:00 to 6:00 a.m. from Thursday March 24 until Monday, March 28.

9. The Curfew applies to the entirety of the City bounded to the north by 23rd St. and Dade Boulevard, to the south by Government Cut, to the west by Biscayne Bay to the south by the Atlantic Ocean—in other words, the entirety of South Beach. Ex. A at 4.

10. The Curfew requires all businesses within the impacted area to “close sufficiently in advance of the curfew and ordered permit patrons to avoid violating the curfew.” Ex. A at 4.

11. For Plaintiff, this means they will no longer be able to seat guests after approximately 10 PM, which is when most guests would be arriving on a typical weekend evening.

12. The Curfew contains no exception for religious, political, journalistic, or any other First Amendment activity

13. The Curfew bars the exercise of activities protected by the Florida Constitution including the right to travel and associate as set forth below.

ARGUMENT

Traditional standards of constitutional review apply to the Curfew as it does not address an emergency and there is no emergency exception to the Constitution.

Spring Break happens every year, and every year it brings large amounts of visitors and tourism revenue to Florida and Miami Beach due to Florida's unparalleled efforts to give

businesses the freedom to provide high quality amenities and entertainment to Florida’s citizens and visitors. Despite the fact that this influx of crowds is a predictable yearly occurrence, the City has thrown up its hands and claims that it has no choice but to pass a facially overbroad and unconstitutional Curfew to deal with this entirely predictable influx of visitors.

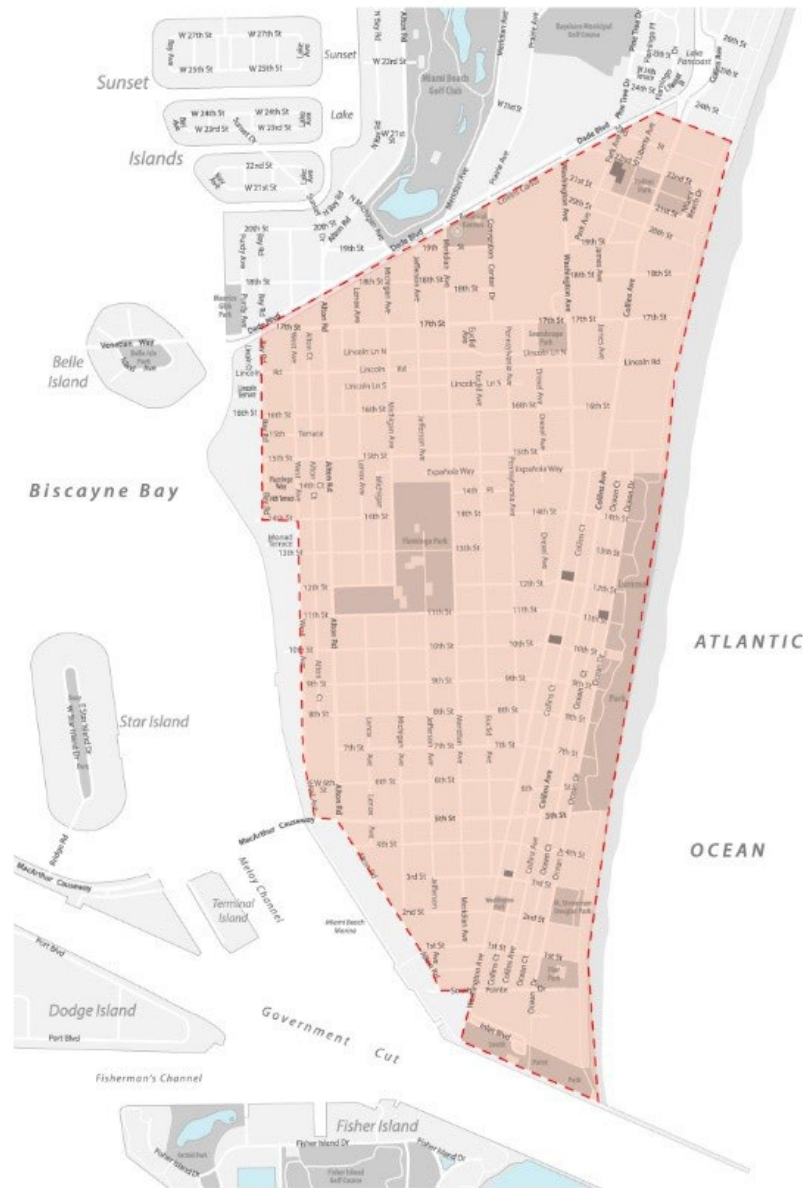
The City will undoubtedly claim that the Curfew was issued in response to an emergency and so it should be given some amount of, entirely undue, deference. But there is no emergency justifying the scope and breath of the Curfew. An increase in visitors that happens every year, on a clearly defined calendar basis, is not an emergency.

However, even if this Court concludes that a routine and predictable influx of visitors during a yearly occurring tourism season constitutes an “emergency” there is no emergency that suspends the Constitution. “The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection of classes of men, at all times, and under all circumstances.” *Ex Parte Milligan*, 71 U.S. 2, 120-1 (1866). As one member the Supreme Court recently put it, while issuing an injunction against the enforcement of an ordinance enacted due to the *actual* emergency of the Covid-19 pandemic, “we may not shelter in place when the Constitution is under attack.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 71 (2020) (Gorusch, J. concurring). Under all circumstances, the “usual constitutional standards should apply.” *Id.* The situation here should be treated no differently.

Plaintiff is substantially likely to succeed on the merits because the Curfew is unconstitutional under clear Florida Supreme Court precedent

The Curfew places a draconian and plainly unconstitutional curfew from 12:00 a.m. to 6:00 a.m. from March 24-28 over a massive swath of Miami Beach from 23rd St. in Dade Boulevard to the north to Government Cut to the south, and from the ocean to the Bay east to west. The Curfew has essentially suspended entirely the right to privacy, travel, and assembly from midnight to 6:00 a.m. from March 24 to 28 in its entire Curfew Area of application. This “broad coverage” that prohibits “otherwise innocent and legal conduct,” including conduct protected under the First Amendment, totally unrelated to the problems caused by drunk and unruly Spring Break crowds congregating in a small number of Miami Beach streets in an area between Fifth Street and Sixteenth Street north to south and from Ocean Drive to Pennsylvania Avenue east to west, “must necessarily fail the strict scrutiny test.” *State v. J.P.*, 907 So. 2d 1101, 1117-18 (Fla. 2004) (citing *State v. T.M.*, 832 So. 2d 118, 120 (Fla. 2d DCA 2002)).

The stated purpose of the Curfew is to respond to “excessively large and unruly spring break crowds” but it impacts an area far beyond where those crowds have been a problem. The area affected by the curfew is depicted here:



The Curfew clearly violates precedent set by the Florida Supreme Court in *State v. J.P.*, 907 So. 2d 1101 (Fla. 2004) which found that two similar, but much more nuanced, curfews were unconstitutional. There, the Florida Supreme Court ruled that two Curfews that applied *only to juveniles* unconstitutionally “impaired” the “fundamental rights to privacy and freedom of

movement.” *Id.* at 1115. The Florida Supreme Court reviewed the juvenile curfew under strict scrutiny, and that is the standard that must guide this Court’s review of the curfew. To survive strict scrutiny the Curfew “must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest.” *Id.* (citing *Quib v. Strauss*, 11 F. 3d 488, 492 (5th Cir. 1993)). It is on the second part of that analysis, being narrowly tailored, where the Curfew here fails.

In *J.P.*, the Florida Supreme Court emphasized that when reviewing whether a Curfew is “narrowly tailored” the highest significance should be placed on “the scope of the exceptions to the curfew.” *Id.* And when “a curfew sweeps too broadly and includes within its ambit ‘a number of innocent activities which are constitutionally protected’ it does not satisfy the narrowly tailored aspect of strict scrutiny.” *Id.* (quoting *Johnson v. City of Opelousas*, 658 F. 2d 1065, 1075 (5th Cir. 1981)).

The Curfew is not narrowly tailored because it carves out no exceptions for “legal, wholesome activity.” *Id.* at 1118. The Curfew could have easily been narrowly tailored to address the problem the City claims it was enacted to address: the congregation of drunken and unruly crowds in the streets of Miami Beach’s Entertainment District. Florida law already criminalizes being drunk and disorderly in public. § 856.011 Fla. Stat. (criminalizing being “intoxicated” or drinking “an alcoholic beverage in a public place” and causing a “public disturbance”). The Curfew could have gone a step further and set a curfew that prohibited loitering in the problematic areas until Spring Break has ended. That would have been the “least restrictive alternative to achieve” the ordinance’s goals. *Id.* at 1117.

But instead, the City has chosen to prohibit anyone in a massive and demonstrably overbroad area from doing *anything* past 11:59 p.m. It is irrelevant if someone is heading to a restaurant for a dinner with their family, meeting a friend at a coffee shop to discuss the latest political news, or traveling to a church for religious counseling. The only exception carved out in the Curfew is for individuals traveling to and from their place of business. This exception does not separate the Curfew from *J.P.* as the ordinances struck down there allowed the juveniles to travel “to and from lawful employment.” *Id.* at 1106.

However, there is a significant difference in the exceptions carved out in the ordinances reviewed in *J.P.* and the Curfew—which demonstrates the Curfew’s infirmity. The juvenile ordinances reviewed in *J.P.* protected First Amendment activities: “e.g. religious services, government meetings, political party meetings.” *Id.* The Florida Supreme Court relied upon these exemptions to conclude that “the ordinances at issue here do not implicate the juveniles’ rights to free speech and assembly as these activities are specifically exempted from their ambit.” *Id.* at 1112. The Curfew has no such exemptions. It is therefore geographically overbroad, as well as substantively overbroad by failing to discriminate between protected and prohibited activities.

There is no First Amendment activity protection under the Curfew. Individuals are prohibited from engaging in their First Amendment rights in the public forum from the hours of midnight to 6:00 a.m. in the affected area while the curfew is in effect. Appellate courts have been quick to grant injunctions stopping the enforcement of similar Curfews that “restrict...access to any public forum during curfew hours.” *Hodgkins ex rel. Hodgkins v. Peterson*, 335 F. 3d 1048, 1064 (Fla. 7th Cir. 2004); *see also Waters v. Barry*, 711 F. Supp. 1125, 1134 (D.D.C. 1989)

(concluding that ordinance that did not allow for First Amendment exemptions trampled “upon the associational and liberty interests” of the juveniles it affected.). By failing to exempt First Amendment activity, the Curfew is, by definition, not narrowly tailored.

In *J.P.* the Florida Supreme Court also found that the juvenile Curfews were not narrowly tailored because they applied city-wide, when there was no demonstrated “city-wide emergency or problem.” *Id.* at 118. The Curfew suffers the same problem. The City Manager wants to stop drunken crowds from growing violent in the streets of Miami’s Entertainment District between Fifth and Sixteenth Streets where problems have admittedly arisen. And yet, it has passed an ordinance that applies well beyond that District. Because the City cannot point to a “need or problem” that exists beyond a few select streets in the Entertainment District, the Curfew is not narrowly tailored. *Id.*

Plaintiff in this case proves the point. Plaintiff is a restaurant, not a nightclub. Plaintiff is not located in Miami Beach’s Entertainment District where the City claims the Spring Break crowds have grown unruly and violent. As stated in this verified motion, there have been no crowds and no violence near Plaintiff’s place of business. And yet, being nowhere near and having **nothing to do** with the drunken and unruly crowds the Curfew seeks to address, the ordinance prohibits Plaintiff from conducting their business. By including areas under its ambit “without any finding” that the “emergency or problem” the Curfew seeks to address exists in those areas, the “ordinance...must necessarily fail the strict scrutiny test.” *Id.* at 1117-1118 (citing *T.M.*, 832 So. 2d at 120).

And finally, the Curfew makes its violation punishable by “arrest and criminal prosecution pursuant to Sections 26-36 and 1-14 of the City Code, or Fla. Stats. 252.47 and 252.50.” This again runs afoul of *J.P.* There the Court found that “the penalties imposed by the ordinance” were “possibly the most troubling aspect of [their] strict scrutiny review.” *Id.* at 1118. The Court found that “the imposition of criminal sanctions is not narrowly tailored to achieve the stated interests” of the ordinances because “the same goals could be achieved by imposing a civil penalty.” *Id.* The Curfew here is no different, jumping straight to criminal sanctions for its violation. For that reason too, the Curfew fails to satisfy strict scrutiny.

In sum, the Curfew fails every prong of the strict scrutiny analysis applied to curfews in *J.P.* It does not create exceptions for innocent behavior, carves out no exception for First Amendment activity, sweeps over a broad region untethered to the problems it seeks to correct, and imposes a criminal penalty. The statute is clearly unconstitutional under the precedent of *State v. J.P.* As such, Plaintiff is substantially likely to succeed on the merits of this action and is entitled to injunctive relief.

Plaintiff is entitled to injunctive relief because they will suffer irreparable harm with no other remedy, the threatened injury outweighs any possible harm, and the granting of the injunction will not disserve the public interest.

As demonstrated, Plaintiffs have shown their substantial likelihood of success on the merits of this action. This Court need only apply clear Florida Supreme Court precedent to conclude the Curfew is unconstitutional. The other three factors for injunctive relief, that without an injunction there will be irreparable harm, that the threatened injury outweighs any harm to the respondent, and that the injunction will not disserve the public interest are also present here.

Plaintiff will unquestionably suffer irreparable harm if the Curfew is allowed to take effect. Plaintiff is a steakhouse, with hours of operation beginning from 5:00 PM and 6:00 PM in serving guests into the late-night hours as late as 2 AM to 3 AM. And the Curfew requires restaurants to close before the curfew takes effect: “commercial businesses must admit their last guests within a time frame that allows them to leave by 11:59 p.m. each night.” Ex. A, at 4. By being forced to seat their last guests around 10:00 PM, Plaintiff estimates substantial losses while the Curfew is in place.

This loss of business is irreparable harm, impossible to quantify and, as a matter of law, supports injunctive relief. *See Lefebvre v. Weiser*, 967 So. 2d 405, 406 (Fla. 3d DCA 2007) (no adequate remedy at law existed to address threat to a business’ viability and loss of client goodwill due to mismanagement by co-owner, so injunction was warranted); *Tiffany Sands, Inc. v. Mezhibovsky*, 463 So. 2d 349, 351 (Fla. 3d DCA 1985) (injury to business’ goodwill and business reputation that could result from former employee’s solicitation of customers supported injunction); *see also Planco Fin. Servs., LLC v. Guzzetta*, 2009 WL 1070090, at *3 (S.D. Fla. Mar. 23, 2009) (loss of customers and goodwill are “an irreparable injury” not easily compensable and, therefore, “an appropriate basis for injunctive relief.”). Equitable relief is the appropriate remedy. *See City of Oviedo v. Alafaya Utilities, Inc.*, 704 So. 2d 206, 207 (Fla. 5th DCA 1998) (affirming temporary injunction on finding of irreparable harm due to “incalculable amount of loss that would occur”).

The harm to the Plaintiff outweighs any potential harm to the City. As previously stated, there are already criminal statutes that outlaw the problems the Curfew seeks to address: crowds

engaging in drunk and disorderly conduct. The City does not need the Curfew to keep individuals from engaging in what is already illegal behavior. And there is nothing stopping the City from passing a more narrowly tailored ordinance to prohibit loitering in the Entertainment District during Spring Break.

And finally, the public will benefit from the granting of the injunction. Plaintiff, as a business, will be damaged by the Curfew in the form of economic losses. But the enforcement of the Curfew will damage the public in ways that are antithetical to American ideals. Miami Beach should not be permitted to create a “zone” where there is no right to speak in the public forum, no right to travel, and no right to privacy, no matter how limited a time frame it applies for. The public will be served by the issuance of an injunction and the avoidance of the “particular judicial impulse to stay out of the way in times of crisis.” *Roman Catholic Diocese*, 141 S. Ct. at 72 (Gorsuch, J. concurring). As Justice Gorsuch said: “We may not shelter in place when the Constitution is under attack. Things never go well when we do.” *Id.*

CONCLUSION

The Curfew is plainly unconstitutional under the controlling precedent of *State v. J.P.* Plaintiff, along with the public, will be irreparably harmed if the City is permitted to enforce the Curfew while the City has multiple avenues left available to control Spring Break crowds. This Court should issue an injunction enjoining the enforcement of the Curfew during the pendency of this litigation.

Dated: March 24, 2022

Respectfully submitted,

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By: /s/ Paul J. Schwiep

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal (and by electronic mail) pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this 24th day of March, 2022, to the parties in the below Service List:

Service List	
<p>Robert F. Rosenwald, Jr., City Attorney robertrosenwald@miamibeachfl.gov Rafael A. Paz, City Attorney RafaelPaz@miamibeachfl.gov City of Miami Beach 1700 Convention Center Drive, 4th Floor Miami Beach, Florida 33139 Telephone: (305) 673-7470</p> <p><i>Defendant City of Miami Beach, a Florida municipal corporation</i></p>	<p>Jamie Cole, Esq. JCole@wsh-law.com Edward G. Guedes, Esq. EGuedes@wsh-law.com Eric P. Hockman, Esq. EHockman@wsh-law.com Joseph H. Serota, Esq. JSerota@wsh-law.com WEISS SEROTA HELMAN COLE & BIERMAN, P.L. 2525 Ponce de Leon Boulevard, Suite 700 Coral Gables, Florida 33134 Telephone: (305) 854-0800 SZavala@wsh-law.com LMartinez@wsh-law.com</p> <p><i>Counsel for Defendant City of Miami Beach</i></p>

/s/ Paul J. Schwiep
Paul J. Schwiep

Exhibit A

to

**Plaintiff's Verified Emergency Motion
for Temporary Injunctive Relief
Regarding Spring Break Curfew**

**CITY OF MIAMI BEACH
DECLARATION OF A STATE OF EMERGENCY AND EMERGENCY MEASURES
SPRING BREAK 2022 – DANGEROUS CRIMINAL CONDUCT, PUBLIC DISORDER, AND
UNRULY CROWD CONTROL
(E.O. NO. 2022-01-SB)**

EFFECTIVE THURSDAY, MARCH 24, 2022

WHEREAS, the City of Miami Beach is a small barrier island nestled between Biscayne Bay (on the west) and the Atlantic Ocean (on the east); and

WHEREAS, the City only has approximately 90,000 residents and fifteen (15) square miles of land within its territorial jurisdiction; and

WHEREAS, nonetheless, the City of Miami Beach is an internationally renowned tourist destination that is famous for its beautiful beaches, world-class shopping, entertainment, fine dining, and vast array of artistic and cultural events; and

WHEREAS, however, in recent years, the City (which has a limited capacity for ingress and egress) has seen a tremendous number of visitors during the Spring Break period, which has posed significant challenges including, but not limited to, extreme traffic and congestion, and severe impacts to the City's Police, Fire, Sanitation, and Code Compliance services; and

WHEREAS, in 2021, similar unruly crowd control issues during Spring Break resulted in the imposition of emergency measures, including an 8:00 p.m. curfew in the area between 5th Street and 16th Street, from Pennsylvania Avenue to Ocean Drive, while the remainder of the entire City was subject to a Miami-Dade County midnight (12:00 a.m.) curfew; and

WHEREAS, during this Spring Break period, this City has seen massive crowds, including this past weekend (March 18 – 20), which crowds have been beyond the capacity of the City and its law enforcement partners to control, and the City anticipates such crowds will continue based upon the Spring Break schedule of colleges and universities; and

WHEREAS, many of the visitors to the City during high impact periods, such as Spring Break, are under the influence of alcoholic beverages and have demonstrated a blatant disregard for the rule of law; and

WHEREAS, there have been multiple fights, shootings, armed robberies, reports of shots fired, and various other incidents and police calls for service; and

WHEREAS, such incidents include two (2) shootings that occurred just this past weekend, each after 12:00 a.m. (on March 20, 2022 and March 21, 2022, respectively), which resulted in the shooting of 5 different innocent pedestrians and created stampedes and mayhem in the public streets and rights-of-way; and

WHEREAS, despite the vast and highly-visible police officer presence in the City, criminals and their illegal behavior continue undeterred, as one (1) of those shootings even took place within feet of a police officer who had to take cover behind a police vehicle for safety; and

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WHEREAS, the City's police officers have been faced with unruly crowds and dangerous situations, and have been working twelve (12) to fourteen (14) hour shifts and up to six (6) days a week during the pendency of Spring Break, resulting in the Miami Beach Fraternal Order of Police stating that the City's police officers are exhausted and calling on the City to provide for their safety by ending the mayhem; and

WHEREAS, nine (9) separate police officers have been injured in the performance of their duties during this year's Spring Break period; and

WHEREAS, the police have responded to at least six (6) incidents concerning shots fired, including one such incident that took place in a residential neighborhood located in the western portion of the City, in which ten (10) spent shell casings were located, and projectiles were found to have pierced through a vehicle and a second floor residential bedroom window; and

WHEREAS, the Police Department and its law enforcement partners have impounded one-hundred (100) firearms from February 18, 2022 – March 21, 2022, with approximately thirty-seven (37) of such firearms having been impounded on Friday, Saturday, and Sunday (March 18 – 20); and

WHEREAS, these armed robberies, brawls, and various other transgressions and illegal acts that have taken place have resulted in numerous injuries to police officers and civilians, and caused extensive property damage (to both public and private property); and

WHEREAS, in response to the illegal and unruly behavior exhibited by these large crowds during Spring Break 2022, and in order to provide for the health and safety of persons and property, the City deployed 371 law enforcement officers this past weekend, which included the assistance of police officers from various law enforcement agencies, such as the Miami-Dade County Police Department (43 uniformed officers this past weekend) and approximately 60 uniformed police officers from the Multi-Agency Gang Task Force ("MAGTF") (including law enforcement officers from the Miami-Dade County Police Department, the Miami Gardens Police Department, the Aventura Police Department, the Florida City Police Department, the Homestead Police Department, along with ATF agents), in an attempt to control the unruly crowds and maintain some semblance of law and order in the City; and

WHEREAS, the City's Police Department and its law enforcement partners have effectuated 618 arrests from February 18, 2022 through March 20, 2022; and

WHEREAS, the overwhelming majority of these incidents and arrests have taken place in the area bounded by 23rd Street and Dade Boulevard on the north, Government Cut on the south, Biscayne Bay on the west, and the Atlantic Ocean on the east; and

WHEREAS, regrettably, some of these disturbing incidents and arrests in the above-referenced area have garnered attention (including national attention) from various news outlets and media; and

WHEREAS, the City's Police and Fire Departments have notified the City Administration that the sheer volume and level of crowds have made it extremely difficult for Police and Fire emergency vehicles to get through portions of the area in order to adequately protect the health, safety and welfare of the public; and

WHEREAS, these crowds of people have taken over City streets, sidewalks, and rights-of-way, and have refused to obey lawful orders of law enforcement officers to refrain from obstructing the rights-of-way; and

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WHEREAS, these crowds of unruly revelers have even gone so far as to block the road, surround a police vehicle, and force it to retreat in reverse from the crowd that had intentionally surrounded it to block its path; and

WHEREAS, the sale and distribution of alcoholic beverages for off-premises consumption fuels the reckless and illegal behavior exhibited by the throngs of unruly crowds on the City's streets, sidewalks, and rights-of-way, increases the number of individuals drinking and driving, and greatly exacerbates crowd control issues during Spring Break; and

WHEREAS, many of the unruly revelers in the City during this Spring Break period are lodging in illegal short-term rentals ("STR") in the area south of 23rd Street and Dade Boulevard, as evidenced by the 46 calls for service involving short-term rentals in this area resulting in 17 issued STR violations involving illegal STRs in the area and there is a legitimate concern that unruly revelers forced to vacate the Ocean Drive area may migrate to their STRs in the South Beach residential neighborhoods and commence illegal house parties in this area, disturbing the peace and tranquility of those neighborhoods, therefore requiring those neighborhoods to be included in the emergency curfew zone; and

WHEREAS, it is the necessary and the most narrowly-tailored approach to include the entire South Beach area (south of 23rd Street and Dade Boulevard) in the emergency curfew area in order to prevent the migration of massive crowds from the Ocean Drive area into the surrounding residential areas, which contain many large parks (Lummus Park, Flamingo Park, and South Pointe Park) and open-space corridors (such as Lincoln Road) where crowds of unruly revelers could easily congregate and create mayhem if forced to leave the Ocean Drive area but allowed to otherwise remain in the area; and

WHEREAS, the City has broad authority pursuant to its inherent police powers, and "cases have consistently held that it is a proper exercise of police power to respond to emergency situations with temporary curfews that might curtail the movement of persons who would otherwise enjoy freedom from restriction." See, *7020 Entertainment, LLC v. Miami-Dade County*, Court Case No. 20-25138, U.S. District Court for the Southern District of Florida (citing *Smith v. Avino*, 91 F.3d 105, 109 (11th Cir. 1996)); and

WHEREAS, in *Smith*, the Court also held that, "governing authorities must be granted the proper deference and wide latitude necessary for dealing with the emergency." *Id.*; and

WHEREAS, pursuant to Section 26-31 of the City Code, if the City Manager determines that there has been an act of violence or a flagrant and substantial defiance of or resistance to a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the City, the City Manager may declare that a state of emergency exists within the City's territorial jurisdiction; and

WHEREAS, the City Manager has determined that, based upon the preceding recitals and pursuant to Section 26-31 of the City Code, a State of Emergency exists in the City; and

WHEREAS, the City Manager is authorized, pursuant to Section 26-33 of the City Code, to order and promulgate any (or all) of those discretionary emergency measures set forth therein, in whole or in part, with such limitations and conditions as the City Manager may deem appropriate; and

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WHEREAS, pursuant to Section 26-35 of the City Code, the duration of such discretionary emergency measures is limited to a period of seventy-two (72) consecutive hours, unless an extension is authorized by the City Commission by duly enacted ordinance or resolution in a regular or special session; and

WHEREAS, pursuant to Chapter 252 of the Florida Statutes and, more specifically, Florida Statutes §252.38 and §252.46, the City also has the power and authority to declare a local state of emergency and promulgate emergency orders to protect the health and safety of persons and property, and to make, amend and rescind such orders and rules as are necessary for such purposes; and

WHEREAS, Florida Statute §252.38 also requires that any such emergency order enacted by the City, pursuant to Chapter 252, must be narrowly tailored to serve a compelling public health or safety purpose, and must also be limited in duration (of no more than 7 days), applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible.

NOW, THEREFORE, I, ALINA T. HUDAK, as City Manager for the City of Miami Beach, Florida, pursuant to the authority vested in me pursuant to Sections 26-31 through 26-36 of the City of Miami Beach Code of Laws and Ordinances (the “City Code”) and Chapter 252 of the Florida Statutes, have determined that there is reason to believe that there exists a continuing clear and present danger of riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order, and to the general welfare of the City of Miami Beach.

In order to avert such clear and present dangers, and in order to mitigate dangerous and illegal conduct, to maintain control of unruly crowds, and to protect the public health, safety and welfare of the residents and visitors of the City of Miami Beach, I take this emergency action in good faith, which I deem to be necessary and narrowly tailored to serve a compelling public health and safety purpose that is properly limited in duration, applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible.

Accordingly, I hereby declare a State of Emergency in the City, pursuant to Sections 26-31 through 26-36 of the City Code and Chapter 252 of the Florida Statutes, and order the following emergency measures, which are narrowly tailored, reasonable in duration, applicability and scope, and necessarily implemented in response to this declared State of Emergency, and shall be effective on Thursday, March 24, 2022 at Noon, and shall continue in full force and effect until Monday, March 28, 2022 at 6:00 a.m., as extended by the Mayor and City Commission at its March 22, 2022 Special Commission Meeting.

- Effective each night, from 11:59 p.m. through 6:00 a.m., a **curfew** shall be imposed for that area of the City bounded by 23rd Street and Dade Boulevard on the north (including properties fronting the north side of 23rd Street or Dade Boulevard), Government Cut on the south, Biscayne Bay on the west, and the Atlantic Ocean on the east (the “Curfew Area”). Businesses within the Curfew Area shall close sufficiently in advance of the curfew in order to permit patrons to avoid violating the curfew.
- Notwithstanding the foregoing, businesses shall be permitted to continue to operate from 11:59 p.m. – 6:00 a.m. for delivery services **only**, and all City residents requiring access to or from their homes, guests requiring access to or from their hotels, and employees of business

Declaration of a State of Emergency

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establishments requiring access, including business deliveries, shall be permitted. Pursuant to Section 26-33(a)(1) of the City Code and Florida Statute §252.46(4), the curfew shall not apply to the provision of designated essential services, such as fire, police, and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians, and the curfew shall also not apply to persons traveling to their places of employment to report for work and to return to their residences after their work has concluded.

- The sale or distribution of any alcoholic beverage(s) for off-premises consumption, with or without payment or consideration therefor, shall be prohibited in the curfew area after 6:00 p.m. on Thursday (March 24th), Friday (March 25th), and Saturday (March 26th), pursuant to Section 26-33(a)(2) of the City Code.

If any section, sentence, clause, portion, or phrase of this Declaration of a State of Emergency and Emergency Measures is held to be invalid or unconstitutional by any court of competent jurisdiction, then said ruling shall in no way affect the validity of the remaining portion(s) of these Emergency Measures.

THE EMERGENCY MEASURE(S) SET FORTH HEREIN SHALL BE EFFECTIVE ON THURSDAY, MARCH 24, 2022 AT NOON, AND SHALL CONTINUE THEREAFTER THROUGH MONDAY, MARCH 28, 2022 AT 6:00 A.M.

Any violation of these Emergency Measure(s) shall subject the violator(s) to arrest and criminal prosecution pursuant to Sections 26-36 and 1-14 of the City Code, or Florida Statutes §252.47 and §252.50.

CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:

Alina Hudak
7AE29EF3401349E...
Alina I. Hudak, City Manager

Date: 3/23/2022 | 10:43 AM EDT

Time: _____

ATTEST:

DocuSigned by:

Rafael E. Granado
FAB8BA0BF85E4CF...
Rafael E. Granado, City Clerk

Verification

On behalf of Plaintiff and pursuant to the provisions of Florida Statutes § 92.525, I hereby declare that the verified facts set forth above are true and correct to the best of my knowledge and belief.

BY: David Einton
FOR: RED GINGER SB, LLC d/b/a/ PAPI STEAK
ITS: Authorized Signor
Title