



March 18, 2025

City Commission  
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Miami Beach, FL 33139

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Dear Commissioners:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned by Resolution C7 AA, which terminates the city’s lease with a local theater and withdraws grant funding in response to its decision to screen recent Oscar-winner *No Other Land*.<sup>1</sup> Mayor Steven Meiner’s characterization of the film as “propaganda” promoting “antisemitism” makes clear that the resolution is intended to penalize speech based on its viewpoint—an action strictly prohibited by the First Amendment.<sup>2</sup> FIRE thus calls on the Commission to rescind or reject this unconstitutional resolution and uphold the First Amendment rights of its constituents and of venues in the City of Miami Beach going forward.

### **I. The Mayor Pressures O Cinema to Cancel Screenings of *No Other Land***

1130 Washington Avenue, otherwise known as Old City Hall, is a historic landmark owned by the City of Miami Beach. Formerly the municipal headquarters, it now houses a mixture of government offices and spaces leased to independent private entities that serve the public.<sup>3</sup> In 2019, the city entered into a lease agreement with the independently owned theater O Cinema,<sup>4</sup>

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<sup>1</sup> City of Miami Beach, *Commission Meeting*, <https://miamibeachfl.primegov.com/Portal/Meeting?meetingTemplateId=5146>.

<sup>2</sup> Lauren Costantino and Aaron Leibowitz, *Miami Beach mayor moves to end O Cinema lease after screening of Israeli-Palestinian film*, MIAMI HERALD (March 14, 2025), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article301920089.html>.

<sup>3</sup> City of Miami Beach Department of Planning, *1130 Washington Avenue, Designation Report*, <https://www.miamibeachfl.gov/wp-content/uploads/2021/05/HPS-1-Old-City-Hall.pdf>.

<sup>4</sup> O Cinema describes itself as an “independent, community-based, mission-driven, nonprofit arthouse cinema” with a mission “to provide intriguing, entertaining, and superior quality films that audiences will otherwise not see in South Florida,” and “to ensure that the films we present are a reflection of our diverse community and that prices are accessible to the broadest possible audience.” *See About*, O CINEMA, <https://www.o-cinema.org/about>.

reserving the right to terminate the lease “for the convenience of the City with 180 days’ prior notice.”<sup>5</sup>

According to the resolution that motivates this letter, the city provided O Cinema two grants in December 2024 and January 2025, for \$25,831 and \$54,071, respectively, half of which the city has paid to date.<sup>6</sup> The resolution also states that, per the Grant Agreements, the city “may, at its sole discretion, discontinue funding of the Grant if it is not satisfied with the progress of the grant project” and that the city manager “may, at his sole discretion, suspend each agreement and all funding if any portion of the Grantee’s project is found to be contrary to the City’s values and/or interests in promoting a safe and inclusive environment for residents and visitors.”<sup>7</sup>

On March 5, Mayor Meiner wrote Vivian Marthell, CEO of O Cinema, calling its decision to screen *No Other Land* “disappointing” and requested it be pulled from programming. The mayor cited concerns about antisemitism, which he said conflicts with the city’s “strong policy of support for the State of Israel in its struggle to defend itself.”<sup>8</sup> The mayor highlighted that “Miami Beach has one of the highest concentrations of Jewish residents in the United States,”<sup>9</sup> and claimed he was “surprised that O Cinema, utilizing Miami Beach taxpayer funding, would willingly disseminate” what he called “such hateful propaganda.”<sup>10</sup>

Marthell initially responded by acknowledging that despite the film’s then-nomination for an Oscar, “the highly anticipated screening of *No Other Land* has led to divisiveness within our community” and that O Cinema would cancel the screenings of it.<sup>11</sup> But Marthell reversed that decision the next day through “a bold reaffirmation of our fundamental belief that every voice deserves to be heard, even, and perhaps especially, when it challenges us,” while also stressing “our decision to screen NO OTHER LAND is not a declaration of political alignment.”<sup>12</sup>

Mayor Meiner is reported to have replied in his newsletter—prefaced with the usual censor’s caveat, “I am a staunch believer in free speech. But ...”—in which he protested that assertedly “normalizing hate and then disseminating antisemitism in a facility owned by the taxpayers of Miami Beach ... is unjust to the values of our city and residents and should not be tolerated.”<sup>13</sup> Subsequently, the mayor proposed Resolution C7 AA, scheduled for a vote March 19, which

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<sup>5</sup> City of Miami Beach, *supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Costantino and Leibowitz, *supra* note 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Lauren Constantino, *Miami Beach mayor urges theater to cancel Oscar-winner he calls ‘hateful propaganda,’* MIAMI HERALD (March 11, 2025), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article301657229.html>

<sup>13</sup> Costantino and Leibowitz, *supra* note 2.

authorizes and directs the city manager to not only immediately cease grant funding to O Cinema but to terminate the lease with 180 days' notice.<sup>14</sup>

## II. Resolution C7 AA Violates the First Amendment Bar on Viewpoint Discrimination

The city should reject Resolution C7 AA because terminating O Cinema's lease and funding in retaliation for screening *No Other Land* would be impermissible viewpoint discrimination in violation of the First Amendment's protection of artistic expression—including the curation and screening of films without government interference.<sup>15</sup>

Viewpoint discrimination is an “egregious” form of censorship, and government bodies like the Commission “must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale.”<sup>16</sup> When “the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.”<sup>17</sup> The Supreme Court has made clear restricting speech on the asserted ground it is “offensive” is viewpoint discriminatory.<sup>18</sup> The First Amendment makes no exception for speech that others find subjectively offensive or objectionable.<sup>19</sup> This core principle is based on “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”<sup>20</sup>

If passed, the resolution would penalize O Cinema for screening a film that has (or is perceived to have) a message or viewpoint with which city officials disagree. That is textbook viewpoint discrimination, and violates O Cinema's right to curate its film selections and make its own judgments about which have value for the community. *No Other Land* is an Oscar-winner with a subject matter of enduring relevance and significant public interest. While some may find the film offensive, or even antisemitic, that does not deprive it of constitutional protection.

The First Amendment recognizes government authorities simply “cannot make principled distinctions” in assessing what speech is sufficiently offensive to suppress.<sup>21</sup> Ultimately, it is up to individuals—not the government—to decide what ideas to accept or reject. In fact, even proposing the resolution, in the context of Mayor Meiner's comments and previous attempts

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<sup>14</sup> City of Miami Beach, *Commission Meeting*, *supra* note 1.

<sup>15</sup> *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 790 (2011); *United States v. Stevens*, 559 U.S. 460 (2010); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952).

<sup>16</sup> *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

<sup>17</sup> *Id.*

<sup>18</sup> *Matal v. Tam*, 582 U.S. 218, 243 (2017) (“Giving offense is a viewpoint.”); *see also Iancu v. Brunetti*, 588 U.S. 388, 394 (2019) (determination of whether something is “immoral” or “scandalous” is viewpoint-based as it “distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation”).

<sup>19</sup> *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).

<sup>20</sup> *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

<sup>21</sup> *Cohen v. California*, 403 U.S. 15, 25 (1971).

to prevent O Cinema from screening *No Other Land*, itself likely violates the First Amendment by trying to coerce the theater to suppress disfavored speech on the city's behalf.<sup>22</sup>

The fact that the resolution would pull O Cinema's public funding and terminate its lease—rather than directly prohibit screening the film—is of no constitutional significance. As the Supreme Court has made clear:

Even though a person has no “right” to a valuable governmental benefit, and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest, *especially his interest in freedom of speech*.<sup>23</sup>

In line with this principle, the Supreme Court has held that the First Amendment prevents the government from terminating or not renewing a contract because of the contractor's speech on matters of public concern.<sup>24</sup> More to the point, the Supreme Court has also held denying the use of municipal property due to disfavored speech was unconstitutional and the burden is on the censor to prove the speech is unprotected with prompt judicial review.<sup>25</sup>

Other federal courts have found First Amendment violations in comparable circumstances. The Commission would do well to note that the U.S. District Court for the Southern District of Florida has held the City of Miami violated the First Amendment when it took actions highly similar to those proposed by Miami Beach here. In *Cuban Museum of Arts & Culture, Inc. v. City of Miami*, the court held Miami's non-renewal of a museum's lease for exhibiting artists who had not denounced Fidel Castro was unconstitutional, and it accordingly barred the city from evicting the museum.<sup>26</sup> The decision is hardly an outlier.

For example, the U.S. District Court for the Eastern District of New York preliminarily enjoined New York City from evicting a museum for showcasing a portrait of the Virgin Mary covered in elephant dung, which the mayor deemed blasphemous and offensive to Catholics. That court emphasized the city's concern about being perceived as endorsing the works did not make its actions constitutional: “No objective observer could conclude that ... showing of the work of an individual artist which is viewed by some as sacrilegious constitutes endorsement

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<sup>22</sup> *NRA of Am. v. Vullo*, 602 U.S. 175, 190 (2024) (“A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf.”).

<sup>23</sup> *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (emphasis added).

<sup>24</sup> *See, e.g., id.* (nonrenewal of one-year teaching contract at public college could not be predicated on faculty member's exercise of First and Fourteenth Amendment rights); *Bd. of Cnty. Commr's v. Umbehr*, 518 U.S. 668 (1996) (county violated First Amendment when it terminated lease with independent contractor for his criticism of county government in public meetings).

<sup>25</sup> *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975) (government officials unconstitutionally denied use of publicly owned theater to a production group due to concerns that the rock musical *Hair* was obscene; city's permitting scheme constituted prior restraint that did not provide adequate procedural safeguards to protect freedom of expression).

<sup>26</sup> 766 F. Supp. 1121, 1125–27 (S.D. Fla. 1991).

of anti-religious views by the City or the Mayor.”<sup>27</sup> The U.S. District Court for the District of Columbia similarly invalidated as unconstitutional viewpoint discrimination the Librarian of Congress’s decision to cease funding braille translations of Playboy magazine because of its “sexual orientation.” It held that: “Although individuals have no right to a government subsidy or benefit, once one is conferred, as it is here through the allocation of funds for the program, the government cannot deny it on a basis that impinges on freedom of speech.”<sup>28</sup> These precedents leave no doubt about Resolution C7 AA’s unconstitutionality.

To be sure, the resolution recites that the city’s agreements with O Cinema give the city sole discretion to terminate grant funding if it is not satisfied “with the progress of the grant project” and that the city manager “may, at his sole discretion, suspend each agreement and all funding if any portion of the Grantee’s project is found to be contrary to the City’s values and/or interests in promoting a safe and inclusive environment for residents and visitors.”<sup>29</sup> But neither of those conditions legally suffice to terminate O Cinema’s lease or funding. Even assuming the grant conditions are facially valid—which we are not suggesting—the city may not enforce them in a viewpoint-discriminatory manner, as it now proposes to do. No contractual provision can trump the Constitution.<sup>30</sup>

### III. Conclusion

There are no constitutionally permissible grounds for terminating O Cinema’s lease and grant funding. The First Amendment strictly prohibits government punishment of speech based on viewpoint, including through revocation of government benefits. O Cinema’s CEO defended the theater’s decision to screen *No Other Land* as “a bold reaffirmation of our fundamental belief that every voice deserves to be heard, even, and perhaps especially, when it challenges us.”<sup>31</sup> That sentiment speaks to why the government has no authority to punish speech because of its message. FIRE thus calls on the city to rescind or reject Resolution C7 AA and ensure the protection of its constituents’ free speech rights going forward.

Sincerely,



Stephanie Jablonsky  
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<sup>27</sup> *Brooklyn Inst. of Arts & Sciences. v. City of New York*, 64 F. Supp. 2d 184, 205 (E.D.N.Y. 1999).

<sup>28</sup> *Am. Council of the Blind v. Boorstin*, 644 F. Supp. 811, 815 (D.D.C. 1986).

<sup>29</sup> *City of Miami Beach*, *supra* note 1.

<sup>30</sup> U.S. CONST. ART. VI (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”). There also is no credible argument that showing *No Other Land* jeopardizes anyone’s safety.

<sup>31</sup> Costantino and Leibowitz, *supra* note 2.