



INSTITUTE FOR JUSTICE

October 11, 2018

Mayor Greg Fischer
527 W. Jefferson Street, 4th Floor
Louisville, KY 40202

Re: Ordinance O-374-18

Dear Mayor Fischer,

I write today concerning a proposed ordinance that would greatly restrict vending opportunities in Louisville, Kentucky, and that violates a federal consent decree Louisville Metro entered into in June. As you may be aware, the Institute for Justice (“IJ”) is a public interest, civil liberties law firm that works to vindicate economic liberty—the right to earn an honest living. IJ’s National Street Vending Initiative works with city officials to reform local laws and has also sued municipalities to challenge laws that unconstitutionally restrict vendors’ rights.

As part of that effort, in June 2017, IJ sued Louisville Metro in federal court concerning its requirement, contained in LMCO § 115.369(E), that food trucks not operate within 150 feet of a restaurant without permission. In response, Louisville repealed LMCO § 115.369(E) and entered into a consent decree (attached to this correspondence) requiring, among other things, that Louisville not disadvantage mobile vendors by treating them differently than other commercial vehicles, which are permitted to park at public parking spaces as part of conducting their trade. *See* Consent Decree ¶ 7, *King v. Louisville/Jefferson Cty. Metro Gov’t*, Civ. A. No. 3:17-cv-00390-DJH-CHL (June 18, 2018) (ECF No. 25) (requiring Louisville not to “treat[] mobile food unit vendors differently than other commercial vehicles permitted or otherwise allowed in Louisville Metro’s rights of way”). This consent decree is legally binding, and violations of it can be enforced through the federal district court’s contempt power.

The proposed ordinance that is scheduled to be introduced today would violate that consent decree by greatly restricting vending operations and treating mobile vendors differently from other commercial vehicles. It does so in three distinct ways.

First, the proposed ordinance would prohibit mobile vendors from parking in a metered parking space in order to vend. Ordinance O-374-18, § I (amending LMCO § 72.803). It therefore treats vendors differently than other commercial vehicles, which can park in a space as part of their commercial enterprise. For instance, a UPS truck can park in a metered parking space so that its driver can pick up or deliver packages, just as a repair truck can park in a metered parking space so that the repairperson has a base of operations during his or her repair job.

Second, the proposed ordinance would eliminate the authority of the Assistant Director of PARC from issuing “meter bags,” permits that authorize the holder to cover a parking meter temporarily for various purposes, including “construction or maintenance work.” Again, this elimination treats mobile vendors differently than other commercial vehicles, such as the repair trucks discussed above, and deprives vendors of a valuable parking option that is available for numerous other commercial vehicles.

Third, the proposed ordinance rewrites Louisville Metro’s municipal code concerning vendors. It eliminates a previous legal classification, used in the consent decree, of “mobile food unit vendor,” instead combining all mobile vendors under one label in violation of the consent decree. *See* Consent Decree ¶ 5 (stipulating that food trucks are “mobile food unit vendors” under the LMCO and “do not fall within the scope of any other category of regulated vendors” including “itinerant vendor” and “mobile vendor,” among others). The proposed ordinance then severely restricts the operations of “mobile vendors” by imposing requirements not shared by other commercial vehicles, also in violation of the consent decree. The proposed ordinance, for instance, would force food trucks to move at least 250 feet every ten minutes. It tells food trucks that they can only operate during daylight hours, as opposed to other commercial vehicles which can park and operate whenever they see fit. And it would ban mobile vendors, but not other commercial vehicles, from operating within 1,000 feet of any hospital and/or public or private school.

These amendments further no health-or-safety rationale: For instance, the ordinance would force a gourmet food truck, with hot fryers and grills, to move every ten minutes. Far from making Louisville residents safer, this misguided action would endanger food truck operators. Furthermore, by forcing mobile vehicles to start up and move every ten minutes, Louisville would be creating a situation that worsens, rather than ameliorates, traffic safety. Nor does requiring a mobile vendor to secure the permission of any and all persons within twenty feet of a proposed private-property location further any interest, given that current law already requires the vendor to secure the signed and notarized permission of the property owner.

Instead, these legislative changes, just like the unconstitutional 150-Foot Rule IJ brought suit about in 2017, exist for only one purpose: To destroy the viability of mobile vending in Louisville in order to serve the private, financial interests of politically-connected restaurateurs. But such actions violate the United States Constitution, which both the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit have held does not countenance blatantly protectionist laws like the one under consideration. *See, e.g., City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978) (“[W]here simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected.”); *Craigsmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) (“Courts have repeatedly recognized that protecting a discrete interest group from economic competition is not a legitimate governmental purpose.”).

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These proposed legislative amendments are not just unconstitutional. They also violate, both in substance and procedure, the terms of the June 2018 Consent Decree entered into by Plaintiffs and Louisville Metro. Plaintiffs reasonably believe that, in introducing proposed amendments without first giving Plaintiffs' counsel 30 days of notice, as required by Section 9 of the Decree, and by failing to post the consent decree to its website, as required by Section 13, Louisville Metro has failed to maintain substantial compliance with its legal obligations. Plaintiffs therefore request, pursuant to Section 15 of that Decree, that the parties meet within thirty (30) days to attempt to resolve this ongoing dispute. They furthermore urge Louisville Metro to withdraw the proposed ordinance so that Metro residents can continue to decide for themselves whom to patronize for lunch.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arif Panju', with a large, stylized flourish extending to the right.

Arif Panju
Attorney