

IN THE CIRCUIT COURT OF THE
19TH JUDICIAL CIRCUIT IN AND FOR
ST. LUCIE COUNTY, FLORIDA

GENERAL CIVIL DIVISION

CASE NO.

BENIGNO DIAZ;
TACO TRAP, LLC;
BRIAN PEFFER; and
CREATIVE CHEF ON WHEELS LLC,

Plaintiffs,

vs.

CITY OF FORT PIERCE, FLORIDA;
LINDA HUDSON, Mayor of Fort Pierce,
in her official capacity;
RUFUS J. ALEXANDER, III, Fort Pierce
City Commissioner, in his official capacity;
JEREMIAH JOHNSON, Fort Pierce City
Commissioner, in his official capacity;
THOMAS K. PERONA, Fort Pierce City
Commissioner, in his official capacity;
REGINALD B. SESSIONS, Fort Pierce City
Commissioner, in his official capacity; and
PEGGY ARRAIZ, Fort Pierce Code
Compliance Manager, in her official capacity,

Defendants.

PLAINTIFFS' COMPLAINT

Plaintiffs are food truck owners and operators. They bring this civil rights lawsuit to vindicate their economic liberty rights under Article I, Sections 2 and 9 of the Florida Constitution. Plaintiffs wish to accept invitations from private property owners in Fort Pierce to operate their food trucks on those owners' properties. But they cannot because Fort Pierce's government has enacted a rule prohibiting food trucks from operating anywhere within a 500-

foot radius of any business that sells a similar product. This rule exists solely for one, constitutionally illegitimate, purpose: to protect established brick-and-mortar restaurants from competition.

Therefore, Plaintiffs Benigno Diaz, Taco Trap, LLC, Brian Pepper, and Creative Chef on Wheels LLC, by and through their undersigned counsel, hereby file this Complaint and sue the City of Fort Pierce, Florida; Linda Hudson, in her official capacity as Mayor of Fort Pierce; Rufus J. Alexander, III, Jeremiah Johnson, Thomas K. Perona, and Reginald B. Sessions, in their official capacities as members of the Fort Pierce City Commission; and Peggy Arraiz, in her official capacity as Fort Pierce Code Compliance Manager, as follows.

PARTIES

1. Plaintiff Benigno Diaz (“Benny”) is a Florida citizen and resident of Saint Lucie County, Florida. He is the owner of Plaintiff Taco Trap, LLC, which is a food truck business operating in Saint Lucie County, Florida.

2. Plaintiff Taco Trap, LLC, is a Florida limited liability company and a food truck business operating in Saint Lucie County, Florida.

3. Plaintiff Brian Pepper (“Brian”) is a Florida citizen and resident of Okeechobee County, Florida. He is the owner of Plaintiff Creative Chef on Wheels LLC, which is a food truck business operating in Saint Lucie County, Florida.

4. Plaintiff Creative Chef on Wheels LLC is a Florida limited liability company and a food truck business operating in Saint Lucie County, Florida.

5. Defendant City of Fort Pierce, Florida (the “City”) is a municipality incorporated pursuant to Chapter 165 of the Florida Statutes and located in Saint Lucie County, Florida.

6. Defendant Linda Hudson (“Hudson”) is the Mayor of Fort Pierce. Defendant Hudson is sued in her official capacity.

7. Defendant Rufus J. Alexander, III (“Alexander”) is a Fort Pierce City Commissioner. Defendant Alexander is sued in his official capacity.

8. Defendant Jeremiah Johnson (“Johnson”) is a Fort Pierce City Commissioner. Defendant Johnson is sued in his official capacity.

9. Defendant Thomas K. Perona (“Perona”) is a Fort Pierce City Commissioner. Defendant Perona is sued in his official capacity.

10. Defendant Reginald B. Sessions (“Sessions”) is a Fort Pierce City Commissioner. Defendant Sessions is sued in his official capacity.

11. Defendant Peggy Arraiz (“Arraiz”) is the Fort Pierce Code Compliance Manager. Defendant Arraiz is sued in her official capacity.

JURISDICTION AND VENUE

12. At all times pertinent to this action, the acts complained of have occurred in, or are currently occurring in, Saint Lucie County, Florida.

13. This action arises under Article I, Sections 2 (Basic Rights and Equal Protection) and 9 (Due Process) of the Florida Constitution. Accordingly, this Court has subject matter jurisdiction over this action.

14. This Court has jurisdiction over declaratory judgment actions pursuant to Section 86.011 of the Florida Statutes.

15. Venue is proper in this circuit, as most of the parties and all of the Defendants are located in this circuit, and the dispute arose in this circuit.

FACTUAL ALLEGATIONS

The Food Truck Industry in the United States

16. Mobile food establishments, including the food trucks operated by Plaintiffs, are commercial vehicles that enable entrepreneurs to travel from place to place, or remain in a fixed location, in order to sell and serve food to customers.

17. Food trucks can take many different forms. Some only serve food that is prepared and prepackaged. Other food trucks, like those Plaintiffs operate, are self-sufficient mobile kitchens where people prepare and serve food directly from the food truck.

18. Historically, food trucks served simple products such as sandwiches and tacos, often to construction workers and manual laborers.

19. Today, food trucks serve a wide variety of cuisines to diverse clientele. The general public now benefits from food options that can range from Korean fusion, to cupcakes, to barbecue.

20. Food trucks provide a number of benefits to their communities, including both convenience and a greater number of food choices for consumers. For these and other reasons, countless communities around the nation, as well as countless communities in Florida, welcome food trucks and do not impose any barriers to competition.

21. Food trucks, including those operated by Plaintiffs, are job creators. In addition to the job created by and for the entrepreneur who opens a food truck, food trucks often hire additional staff. Food trucks also provide jobs to those who build, equip, and maintain the trucks.

22. Food trucks also serve as complements to brick-and-mortar restaurants. Many food truck entrepreneurs go on to open restaurants, and restaurant entrepreneurs may later open food trucks. Moreover, the customers who follow food trucks into a community often also spend

money at brick-and-mortar restaurants that otherwise would not have happened, either during the initial visit or during subsequent visits.

Plaintiffs' Food Truck Businesses

Taco Trap

23. Benigno “Benny” Diaz, through his business Taco Trap, LLC, owns and operates the Taco Trap food truck.

24. Benny specializes in unique taco flavors and creations, inspired by his grandmother’s recipes that he grew up enjoying.

25. Benny started his food truck business after being encouraged by many happy customers to start his own business.

26. Benny now has a loyal and growing following in the area around Fort Pierce and has been asked by property owners in Fort Pierce to set-up on their property.

27. Benny would also like to operate at other locations that are currently prohibited by the 500-foot ban.

28. Benny currently operates his food truck outside Fort Pierce, from Stuart to Indian Town to West Palm Beach, and at various food truck events in the region.

29. The locations where Benny would like to operate include, but are not limited to, locations where private commercial property owners in Fort Pierce have unsuccessfully attempted to invite Plaintiffs’ food trucks onto their properties.

30. But for the 500-foot rule, Benny could have and would have accepted the invitations.

31. All of the locations in Fort Pierce where Benny would like to operate are barred by the 500-foot rule.

Creative Chef on Wheels

32. Brian Pepper, through his business Creative Chef on Wheels, LLC, owns and operates the Creative Chef on Wheels food truck.

33. Brian has traveled all over the world, working in the culinary industry along the way, and has brought the skills and experiences from his travels home to provide a unique food truck experience to his customers.

34. Brian uses his talent to cook almost any type of food, and he takes pride in varying his offerings in order to satisfy any customer's tastes or dietary restrictions.

35. Consequently, he has developed a loyal following of fans who love the options he provides.

36. Brian operates his food truck outside of Fort Pierce and at food truck events in the region, but he would also like to operate in Fort Pierce.

37. Brian's fans would also like him to operate in Fort Pierce, as would property owners in Fort Pierce.

38. The locations where Brian would like to operate include, but are not limited to, locations where private commercial property owners in Fort Pierce have attempted to invite Plaintiffs' food trucks onto their properties.

39. But for the 500-foot rule, Brian could have and would have accepted the invitations.

40. All of the locations in Fort Pierce where Brian would like to operate are barred by the 500-foot rule.

Fort Pierce's 500-Foot Ban on Food Trucks

41. The City of Fort Pierce regulates all mobile vendors, including food trucks, under Chapter 9, Article IV of the Fort Pierce Code of Ordinances (“Code”).

42. The Code defines a “mobile food dispensing vehicle (MFDV)” as “a vehicle-mounted public food service establishment, self-propelled or otherwise movable from place to place.” Fort Pierce Code § 9-76.

43. The Code defines a “mobile food vehicle,” like the food trucks Plaintiffs operate, as “any motorized MFDV used to store, prepare, cook and/or serve food and beverages for immediate consumption.” Fort Pierce Code § 9-76(e).

44. Fort Pierce’s food truck permits allow a food truck to operate while staying parked at one fixed location. Any additional locations require additional permits. Fort Pierce Code § 9-111(e).

45. Food trucks are subject to a variety of regulations. Most are straightforward and not challenged by this lawsuit, such as not “block[ing] the ingress/egress to any property, sidewalk or street,” Fort Pierce Code § 9-111(c), providing a trash receptacle around the truck, Fort Pierce Code § 9-111(i), and preventing waste water leakage. Fort Pierce Code § 9-111(k).

46. But Fort Pierce’s law also states that food trucks “must comply with the [] minimum distance requirements.” Fort Pierce Code § 9-111(b).

47. Even when the food trucks want to operate on private property at the invitation of the property owner, this minimum distance requirement mandates that the food trucks cannot be set up within “[f]ive hundred (500) feet from a similar type business.” Fort Pierce Code § 9-111(b)(1). This is known as the “500-foot ban.”

48. While enforcing the 500-foot ban, Fort Pierce’s code enforcement officers have repeatedly explained that for food trucks, a “similar type business” means any business that serves any food or sells any food.

49. The distance is measured from property line to property line, and it is personally measured by a code enforcement officer prior to issuing a permit to the food truck.

50. The 500-foot ban applies to any mobile vendors operating on public or private property.

51. The City actively enforces the 500-foot ban.

52. When food truck owners seek permits, the first thing that happens is the code enforcement officer explains the 500-foot ban and asks them whether the proposed location is within 500 feet of the property line of any business that sells food. Even if the food truck owner answers that it is not, the code enforcement officer then personally visits the proposed location and measures to confirm.

53. Under this law, Plaintiffs are each prohibited from operating anywhere within 500 feet of any brick-and-mortar restaurant or any other business that sells food.

54. A mobile vendor that violates the 500-foot ban commits a class II violation of the Code. Fort Pierce Code § 9-95(a). A class II violation carries a penalty of a \$100.00 fine for the first offense, a \$200.00 fine for the second offense, and a mandatory court hearing for the third. Fort Pierce Code § 2-260(a). Additionally, the City may revoke a mobile vendor’s permit for any violation of the 500-foot ban. Fort Pierce Code § 9-95(b)(4).

55. Moreover, the code provisions are unequivocal. Even a location that is more than 500-feet from a business that sells food when the food truck originally obtains the permit could subsequently become barred if a restaurant were to open nearby.

56. On August 4, 2014, City Commissioners met to consider a first reading on the 500-foot ban, at which time they explained that the ban's purpose would be to protect brick-and-mortar businesses from facing competition from food trucks.

57. At that same meeting, Defendant Commissioner Sessions explained that "from my perspective in looking at this, it appears that that distance requirement would protect the preexisting business, uh, 500 feet, so, at least I believe that protects that." Defendant Commission Sessions also expressly recognized the harm this would cause to food truck owners, but was expressly willing to hurt food truck owners in order to prevent competition with brick-and-mortar restaurants. In Defendant Commissioner Sessions' words, "ultimately that's what this boils down to, denying an opportunity to someone to work."

58. At that same August 4 meeting, then-Commissioner Edward Becht confirmed the 500-foot ban's protectionist purpose, admitting that "we're actually protecting the employees of the existing businesses as much as we are protecting the owner, we are protecting the suppliers of the existing businesses, and the purveyors and all of that, and the customers that like going there."

59. The City did not complete the first reading of the 500-foot ban at that August 4, 2014 meeting. Further "first reading" consideration was undertaken on September 2, 2014.

60. At the September 2, 2014 reading, Defendant Commissioner Sessions again explained that the goal of the 500-foot ban was to protect existing businesses: "I can see the first one, 500 feet from any similar type business, now in that particular instance, I feel that's a necessity to protect businesses that are existing . . . if our overall objective and goal is protecting businesses that are already existing . . ."

61. Defendant Mayor Hudson also admitted at the September 2, 2014 reading that “[w]e have been conscious, since you have been talking about this ordinance for at least two years, and we have been very conscious as a city that we did not want to compete with existing restaurants.”

62. The actual “second reading,” which included the final City Commission vote, took place on September 15, 2014, at which point the 500-foot ban was officially enacted.

Fort Pierce’s Enforcement of the 500-Foot Ban

63. Fort Pierce enforces the 500-foot ban.

64. Food truck permits in Fort Pierce are for a food truck to park and operate at a fixed location. Even with a permit, food trucks must stay parked at the specific approved location whenever they are operating and serving customers.

65. Whenever a food truck owner requests a permit, the City’s immediate response is to inform the food truck owner about the 500-foot ban and ask the food truck owner whether the proposed location is within 500 feet of any restaurant or any business that sells food.

66. When evaluating whether to approve a requested permit location under the law, Fort Pierce’s code enforcement department sends an officer to the proposed location. That officer personally measures the distance from where the food truck intends to operate to ensure that it is not within 500 feet of the property line of any restaurant or business that sells food.

67. On repeated occasions, Plaintiffs have been invited by local business owners to operate on their property, only for Fort Pierce’s code enforcement officers to inform Plaintiffs and the local business owners that this was barred by the 500-foot ban.

68. One recent example where a Fort Pierce business owner invited a Plaintiff to operate, only to be forced by Fort Pierce code enforcement officers to rescind the invitation, was at Sunrise City Café.

69. Another recent example where a Fort Pierce business owner invited a Plaintiff to operate, only to be forced by Fort Pierce's code enforcement officers to rescind the invitation, was at McCoy Blends Barbershop.

70. Despite receiving offers Plaintiffs would like to accept from these and other private property owners in Fort Pierce to set up on their property, Fort Pierce's code enforcement officers have consistently prevented them from doing so, always citing the 500-foot ban.

71. But for the 500-foot ban, Plaintiffs would have accepted the offers to operate on private property in Fort Pierce.

INJURIES TO PLAINTIFFS

Plaintiffs Benigno Diaz and Taco Trap, LLC

72. Benny's business has suffered due to the 500-foot ban contained in Chapter 9, Article IV, Section 9-111 of the Fort Pierce Code of Ordinances.

73. But for the 500-foot ban, Benny would have served customers in Fort Pierce while operating on one of the private commercial properties where the respective property's owners have invited him.

74. But for the 500-foot ban, Benny would serve customers in Fort Pierce in the future.

75. But for the 500-foot ban, Benny could and would legally vend within 500 feet of existing brick-and-mortar food establishments.

76. The 500-foot ban and the City's zealous enforcement of the 500-foot ban have irreparably harmed, and are irreparably harming, Benny and his business.

77. The 500-foot ban also prevents Benny from reaching new customer bases, thereby further irreparably harming Benny and his business.

Plaintiffs Brian Peffer and Creative Chef on Wheels LLC

78. Brian's business has suffered due to the 500-foot ban contained in Chapter 9, Article IV, Section 9-111 of the Fort Pierce Code of Ordinances.

79. But for the 500-foot ban, Brian would have served customers in Fort Pierce while operating on one of the private commercial properties where the respective property's owners have invited him.

80. But for the 500-foot ban, Brian would serve customers in Fort Pierce in the future while operating on one of the private commercial properties where the respective property's owners have invited him.

81. But for the 500-foot ban, Brian could and would legally vend within 500 feet of existing brick-and-mortar food establishments on one of the private commercial properties where the respective property's owners have invited him.

82. The 500-foot ban and the City's zealous enforcement of the 500-foot ban have irreparably harmed, and are irreparably harming, Brian and his business.

83. The 500-foot ban also prevents Benny from reaching new customer bases, thereby further irreparably harming Brian and his business.

COUNT I – DUE PROCESS

84. Plaintiffs reassert and reallege paragraphs 1 through 83 as if fully stated herein.

85. On its face and as applied, the 500-foot ban violates Plaintiffs' due process rights because it arbitrarily prohibits Plaintiffs from selling food within 500 feet of any brick-and-mortar store that sells items that are "similar" to Plaintiffs' food trucks.

86. There is neither a rational nor reasonable relationship between the 500-foot ban and any legitimate government interest.

87. There is neither a rational nor reasonable relationship between the City's enforcement of the 500-foot ban and any legitimate government interest.

88. The 500-foot ban is unconstitutionally arbitrary.

89. The express purpose of the 500-foot ban, as repeatedly confirmed by Fort Pierce officials, is to protect brick-and-mortar businesses from competition by mobile vendors.

90. Economic protectionism is not a legitimate government interest under the Florida Constitution.

91. The Florida Constitution does not allow Defendants to harm Plaintiffs and other mobile vendors for no reason other than to financially benefit brick-and-mortar establishments by preventing the former from competing with the latter.

92. Unless the Defendants are enjoined from committing the above-described violations of the Due Process Clause of Article I, Section 9 of the Florida Constitution, Plaintiffs will continue to suffer substantial irreparable harm.

93. Pursuant to Article I, Section 9 of the Florida Constitution, Plaintiffs respectfully ask the Court to enter a judgment declaring that the 500-foot ban, contained in Chapter 9, Article IV, Section 9-111(b)(1) of the Fort Pierce Code of Ordinances, is unconstitutional both on its face and as applied to Plaintiffs as a violation of the Due Process Clause of Article I, Section 9 of the Florida Constitution, and to enjoin the 500-foot ban's continued enforcement.

94. As Plaintiffs believe the 500-foot ban is unconstitutional, Plaintiffs seek declaratory relief to resolve the extent of their rights.

95. Plaintiffs have incurred costs related to this lawsuit and seek an award of reasonable costs pursuant to Florida Statutes Section 86.081.

96. Plaintiffs have an inadequate remedy at law for the substantial irreparable harm being caused by the 500-foot ban.

97. The 500-foot ban will continue to cause substantial irreparable harm to Plaintiffs unless ruled unenforceable by this Court.

98. The public interest would be served by striking down the 500-foot ban.

COUNT II – EQUAL PROTECTION

99. Plaintiffs reassert and reallege paragraphs 1 through 83 as if fully stated herein.

100. On its face and as applied, the 500-foot ban violates the Florida Constitution's equal-protection guarantee because it arbitrarily prohibits Plaintiffs from selling food within 500 feet of any store that is "similar" to Plaintiffs' businesses.

101. The 500-foot ban irrationally, unreasonably, and arbitrarily distinguishes between food trucks and brick-and-mortar restaurants in situations where they are similarly situated.

102. The 500-foot ban irrationally, unreasonably, and arbitrarily distinguishes between food trucks operating near brick-and-mortar businesses that do not sell food and those that do.

103. The 500-foot ban irrationally, unreasonably, and arbitrarily distinguishes between food trucks operating closer than 500 feet and further than 500 feet from a brick-and-mortar restaurant.

104. There is neither a rational nor reasonable relationship between the 500-foot ban and any legitimate government interest.

105. There is neither a rational nor reasonable relationship between enforcing the 500-foot ban and any legitimate government interest.

106. The 500-foot ban imposes unfair and illogical burdens on Plaintiffs by excluding them from viable locations simply because brick-and-mortar restaurants are already in the area.

107. The express purpose of the 500-foot ban, as repeatedly confirmed by Fort Pierce officials, is to protect brick-and-mortar businesses from competition by mobile vendors.

108. Economic protectionism is not a legitimate government interest.

109. The Florida Constitution does not allow Defendants to harm Plaintiffs and other mobile vendors for no reason other than to financially benefit brick-and-mortar establishments by preventing the former from competing with the latter.

110. Unless Defendants are enjoined from committing the above-described violations of the Equal Protection Clause of Article I, Section 2 of the Florida Constitution, Plaintiffs will continue to suffer substantial irreparable harm.

111. Pursuant to Article I, Section 2 of the Florida Constitution, Plaintiffs respectfully ask the Court to enter a judgment declaring that the 500-foot ban, contained in Chapter 9, Article IV, Section 9-111 of the Fort Pierce Code of Ordinances, is unconstitutional both on its face and as applied to Plaintiffs as a violation of the Equal Protection Clause of Article I, Section 2 of the Florida Constitution, and to enjoin the rule's continued enforcement.

112. As Plaintiffs believe the 500-foot ban is unconstitutional, Plaintiffs seek declaratory relief to resolve the extent of their rights.

113. Plaintiffs have incurred costs related to this lawsuit and seek an award of reasonable costs pursuant to Florida Statutes Section 86.081.

114. Plaintiffs have an inadequate remedy at law for the substantial irreparable harm being caused by the 500-foot ban.

115. The 500-foot ban will continue to cause substantial irreparable harm to the Plaintiffs unless ruled unenforceable by this Court.

116. The public interest would be served by striking down the 500-foot ban.

WHEREFORE Plaintiffs respectfully request relief as follows:

- i. A declaratory judgment that the 500-foot ban violates the due process and equal protection guarantees located in Article I, Sections 2 and 9 of the Florida Constitution;
- ii. A preliminary injunction against Defendants to prohibit enforcement of the 500-foot ban;
- iii. A permanent injunction against Defendants to prohibit enforcement of the 500-foot ban;
- iv. An award of nominal damages of one dollar;
- v. An award of costs; and
- vi. Any further relief as this Court deems just and proper.

DATED this 6th day of December, 2018.

Respectfully submitted,

By: /s/ Justin Pearson
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