



INSTITUTE FOR JUSTICE

September 19, 2022

Via Email and USPS

Long Beach Mayor and City Council
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*Re: Long Beach's Unconstitutional Efforts to Limit Competition Between
Food Trucks and Restaurants*

To the Long Beach Mayor and City Council:

Hello, I am Justin Pearson, a Senior Attorney at the Institute for Justice (IJ). I am writing today to express IJ's concern about Long Beach's plan to draft a new food truck ordinance that would unconstitutionally limit competition between restaurants and food trucks by creating food truck "zones" or "designated areas" away from restaurants.

IJ is a national public interest, civil liberties law firm that advocates in courts, state houses, and city councils to protect the right to earn an honest living. IJ has victoriously sued numerous jurisdictions whose laws impermissibly restricted vendors' right to economic liberty as guaranteed by the U.S. Constitution and the respective state constitutions. IJ also has a long history of working with state and local officials to craft vending laws that ensure the public's health and safety while maximizing opportunities for vendors and consumers alike.

As you are undoubtedly aware, the Long Beach City Council met on August 23, 2022. During this public meeting, city officials discussed a proposed plan to write a new food truck ordinance. City officials stated on the record that it was acting due to concerns raised by restaurant owners about competition from food trucks. City officials also said that they agreed with the restaurant owners' anti-competitive concerns and would address these concerns in a new food truck ordinance. Specific ideas to reduce competition between food trucks and restaurants that these city officials discussed included creating food truck "zones" or "designated areas" away from where the restaurants are located. At the end of the discussion, the City Council voted to move forward with a plan directing staff to draft a new food truck ordinance along these lines.

If the City Council follows through with this plan, the new ordinance would suffer from three major defects. First, it would be bad policy. Second, it would be unconstitutional. Third, it would be illegal under California law.

First, the food truck restrictions would be bad policy. Food trucks do not hurt brick-and-mortar businesses, including restaurants. A [recent study](#), conducted by IJ, tested whether this allegation of harm is true, and the simple fact is that it is not. To the contrary, food trucks often help brick-and-mortar businesses, *including restaurants*, by drawing tourists and customers into their neighborhoods. Cities sometimes spend substantial amounts of money attempting to attract people to their downtown areas, but food trucks can accomplish the same thing for free. And, by doing so, the food trucks help to make the neighborhoods they visit safer. [A 2012 study](#) conducted by IJ found that food trucks actually “serve as eyes on the street and make the street a safer, more enjoyable place to visit. Their presence can help prevent crime and revitalize underused public spaces.” In other words, banning food trucks makes an area less safe.

Second, the food truck restrictions would be unconstitutional. Both the United States Supreme Court and the U.S. Court of Appeals for the Ninth Circuit have expressly explained that protecting businesses from competition is not a constitutionally legitimate basis for a law. *See Metro. Life Ins. Co. v. Ward*, 470 U.S. 869 (1985); *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir 2008). Moreover, California courts have held that these types of anti-competitive restrictions violate the California Constitution as well. *See People v. Ala Carte Catering Co.*, 159 Cal. Rptr. 479, 484 (Cal. Ct. App. 1979). In other words, the effect of the Long Beach city officials’ statements during the August 23rd public meeting was that they repeatedly admitted that their plans were unconstitutional, apparently without realizing it. Indeed, IJ has won court victories against cities across the nation relying on less evidence than what the Long Beach City Council has already provided.

Third, the food truck restrictions would violate California law. As you must be aware, the California Legislature has enacted a number of laws limiting cities’ ability to restrict food trucks. These include, but are not limited to, the oft-discussed SB 972. To Long Beach’s credit, your current ordinance already appears to comply with these laws. However, if you were to pass the type of new ordinance discussed during the City Council meeting, you would be in direct violation of California law. In fact, not only would the new ordinance violate the statutes’ plain text, but California courts have already held that these types of ordinances are illegal. *See Barajas v. City of Anaheim*, 15 Cal. App. 4th 1808 (4th Dist. 1993); *Gonzalez v. City of Los Angeles Dep’t of Transp.*, Case No. 09K08485 (Los Angeles Sup. Ct. June 8, 2009); *People v. Garcia*, Case No. 8EA0584 (Los Angeles Sup. Ct. Aug. 27, 2008).

The solution is for the Long Beach City Council to immediately cease and desist these efforts to limit competition, and the Institute for Justice calls on you to do so. While considering this request, please remember that a vibrant food truck industry benefits everyone. Food trucks put people to work, create opportunities for self-sufficiency, and enrich the communities in which they operate. Moreover, the presence of food trucks boosts local businesses—including restaurants. And they make communities safer places. However, if you insist on moving forward with your blatantly unconstitutional plans, then we would seriously consider bringing a legal challenge.

Please feel free to contact me if you have questions or would like to discuss IJ's model [legislation](#). In addition to the telephone number listed on this letterhead, you are welcome to email me at JPearson@IJ.org. Together, we can work to ensure that all of the city's entrepreneurs are allowed the opportunity to thrive and succeed. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Justin Pearson", with a long horizontal flourish extending to the right.

Justin Pearson