



INSTITUTE FOR JUSTICE

April 14, 2023

VIA EMAIL

Jon Derby
Code Enforcement
jderby@simpsonville.com

RE: City's Illegal Stoppage of Tires 2 Go, LLC's Legal Property Use

Dear Mr. Derby,

This letter regards your August 15, 2022 Notice of Violation letter to Tires 2 Go, LLC, located at 106 Loma St, Simpsonville, SC 29681. The letter ordered Tires 2 Go, owned and operated by Rafael Chinchilla, to cease leasing or storing U-Haul vehicles and to remove all such trucks or trailers within 30 days or face “fines up to \$500 and/or 30 days in jail” per day of “violation.” Mr. Chinchilla has been renting and repairing U-Haul vehicles safely at 106 Loma St for almost twelve years. Making him stop now isn't just patently unfair, it's also illegal. The City's letter contravenes binding South Carolina Supreme Court caselaw. The City Attorney has not provided reason or explanation for this action. Mr. Chinchilla—a small business owner who has harmed no one—should be permitted to continue renting and repairing U-Haul vehicles at Tires 2 Go without draconian threat of jail time and ruinous fines.

The Institute for Justice (“IJ”) is the nation's leading law firm for liberty and a nationally recognized advocate for property rights. IJ has enjoyed repeated success at the state and federal level in defense of property rights over the last 30 years, including last year in nearby Mauldin. There, IJ's lawsuit on behalf of an automotive and U-Haul rental business forced the City of Mauldin to amend its unconstitutional ordinance that would have closed IJ's client's U-Haul business, along with several others. It is in my capacity as a property rights advocate that I am contacting you today. Simply put, I believe Simpsonville's enforcement action against Mr. Chinchilla violates his right to continue his safe, legal nonconforming business.

Mr. Chinchilla opened Tires 2 Go, LLC in 2011 at 106 Loma St and has been selling used tires and renting and repairing U-Hauls there since. This business helped provide for his family, including by employing several family members. Before the City

illegally ordered him to remove all U-Haul equipment from the property, Mr. Chinchilla had five employees. He has had to lay off three because of the lost U-Haul revenue. He and his family have been personally harmed because the City's action has drastically reduced the income from his business.

When Mr. Chinchilla opened, 106 Loma St was in the C-2 zone, where automobile service was permitted. At that time, truck and trailer rentals were not encompassed by the zoning code, meaning that Tires 2 Go, both its automotive service and U-Haul rental, was entirely legal at 106 Loma St. In 2013, Simpsonville rezoned such that Mr. Chinchilla's U-Haul rental business would not be permitted at his location. But, under South Carolina Supreme Court caselaw, a property owner has a vested right to continue a nonconforming use in existence when his property is rezoned, barring a factual showing that continuing the use would harm the public health, safety, or welfare. *DeStefano v. City of Charleston*, 304 S.C. 250, 254 (1991) (citing *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269 (Ct. App. 1986)). So even though the 2013 rezoning placed Mr. Chinchilla's property within a zone that *today* would not permit a U-Haul rental business, Tires 2 Go's U-Haul rental business was a legally established use at the time of the zoning change and allowed to continue. The City has made no showing that Tires 2 Go's U-Haul rentals harm the public health, safety, or welfare, and no such showing could be made. Therefore, it is now a legal nonconforming use and allowed to continue operating under South Carolina law, and the City's order to remove all U-Haul trucks and trailers is illegal. Indeed, the South Carolina Constitution protects vested rights to prevent exactly what the City is doing: pointlessly destroying an established and productive small business for no identifiable reason.

In the City's Notice of Violation letter to Tires 2 Go, it stated that Tires 2 Go did not have a business license to operate a rental service, implying that this made it illegal. But the City may not strip Mr. Chinchilla's property of its grandfathered status and destroy his livelihood because he doesn't have the "right" business license (he did have one for tire service). The above-discussed South Carolina law does not say grandfathering depends on business licensure. Grandfathering instead depends on a conforming use existing at the time of the rezoning. *DeStefano*, 304 S.C. at 254. Mr. Chinchilla's U-Haul rental business conformed with the Simpsonville Zoning Ordinance at the time he was rezoned in 2013. The inquiry ends there.¹ Furthermore, under the City's own Code of Ordinances, the result of not obtaining the proper licenses

¹ Additionally, the City cannot now use circular reasoning—"You can't get a business license because you are nonconforming, and you are nonconforming because you can't get a business license"—to deny Mr. Chinchilla a business license. That is a distinction without a difference under the above-cited law.

is not to be shut down, but to have the proper license fees assessed with notice of such and an opportunity to appeal. Simpsonville Code of Ordinances § 10-51. To the extent the City is seeking to enforce its business license ordinance, it is out of compliance with its own Code. It is shameful that the City is playing licensing “gotcha” games to destroy a man’s livelihood. Normal cities recognize the mind-numbing complexity of their regulations and help people comply when there is a deficiency. They don’t heartlessly trample on a citizen’s American Dream.

The illegal and callous nature of the City’s order is highlighted by the fact that Mr. Chinchilla’s tire-service side of his business—the legality of which was never in doubt—has also been severely damaged. That business, not surprisingly, includes performing tire-related services on U-Haul trucks and trailers; and the City’s order forces him to remove all U-Haul vehicles from the property, regardless of whether they were there for rental or to be serviced by Tires 2 Go. This robs him of his use that has been unquestionably legal from 2011 until today.

The City’s demand that Mr. Chinchilla remove all U-Haul vehicles from his property, after almost twelve years of business, or face excruciating fines and/or jail time is unjust, arbitrary, unreasonable, and unlawful. Tires 2 Go is a safe, profitable business that provides for Mr. Chinchilla and his employees and generates tax revenue for the City. His use as a U-Haul rental business was grandfathered in, and the City should not violate South Carolina law to destroy it. The bottom line is that Mr. Chinchilla should be allowed to continue his business, and the City should give him a chance to obtain whatever license it requires. Small businesses like Mr. Chinchilla’s make America, and Simpsonville, special. The City should conduct itself accordingly.

Sincerely,



Seth Young*

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