

June 29, 2023

VIA EMAIL

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Re: City's Enforcement of Code against Amy Crevola's Free Pantry for the Poor

City Attorney, Mayor Maughan, City Councilor Cadena, and other members of the City Council:

My name is Erica Smith Ewing and I'm a senior attorney at the national civil liberty law firm, the Institute for Justice. I am writing regarding the City of Corvallis' order for Amy Crevola to bring her "free pantry" into compliance with City ordinances regarding home businesses.

Amy is a resident of an area of Corvallis where many people live in subsidized apartments, group homes and other supported housing. There is also a significant population of people in Amy's area experiencing homelessness, at the edge of homelessness, or at risk of displacement due to increasing rents. She has been using her carport and driveway at 969 NW Sycamore Ave to provide clothes, hygiene items, household goods, baby things, and some food for the neighborhood. In the winter, she also provides a warming station with hot cocoa, socks, mittens, and other warm clothes. In the summer, she provides a hydration station with bottled waters, juices, hats, and



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sunscreen. Many of the residents using the pantry have expressed to Amy how the pantry had made a major difference in their lives, as they are unable to pay ever-increasing rents, are moving into their car, or are living in overcrowded situations with residents. According to Amy, most of her neighbors are very supportive of her free pantry, with many donating and some even volunteering at the pantry.

When the City received a complaint about Amy's pantry, however, officials sent her a letter on June 9 requiring her to comply with the City's home business code. Amy also had a meeting with city officials on June 21 to discuss these alleged code violations.

Amy is willing to bring her pantry into compliance with most of the code's restrictions on home businesses, including limiting her hours to 40 hours a week. However, the City has instructed Amy that, to comply with the requirement that no merchandise or materials be stored outside, she would have to convert her carport into a garage, which would easily cost \$10,000, if not significantly more. This requirement is unreasonable, burdensome, and unconstitutional. For this reason, we ask that the City allow Amy to pursue a more financially viable method of enclosing the carport, such as by using a tarp to shield the inside of the carport from view.

About the Institute for Justice

The Institute for Justice (IJ) is a national nonprofit law firm that has fought to protect individuals' constitutional rights for over 30 years. We have litigated our cases at the U.S. Supreme Court ten times, as well as at state and federal courts across the country. One of our areas of expertise is property rights. The Institute for Justice has sued dozens of local governments for infringing citizens' property rights, including through unreasonable and unfair regulations on how individuals may use their property. We also advise local governments on how they can ensure their codes are compliant with the constitution and also good policy.

We have a particular interest in preventing local governments from restricting citizens' use of their property for charitable purposes. One of our current cases, for example, challenges Winston-Salem, North Carolina's zoning restrictions on a family operating an animal sanctuary on their farm.¹ We are also litigating a case against Bullhead City, Arizona, for its arrest of a grandmother feeding the homeless in a public park in violation of a city ordinance. The Arizona case in particular has drawn national attention from news outlets including *NPR*, *CBS*, and *USA Today*.² Most relevant to this situation, we recently won a case against Washington State and a local county after they used state and local codes to prevent a resident from operating a "little free pantry"

¹ See: <https://ij.org/case/north-carolina-animal-sanctuary/>

² See: <https://www.npr.org/2022/10/30/1132319984/norma-thornton-bullhead-city-arrest>, <https://www.cbsnews.com/news/bullhead-city-lawsuit-feeding-homeless-norma-thornton/>, <https://www.usatoday.com/story/news/nation/2022/10/26/woman-arrested-feeding-homeless-sues-bullhead-city-arizona/10608907002/>



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in her backyard. After suing, we helped both the state and county rewrite its laws to allow little free pantries across the state.³

We are not currently representing Amy, but that is subject to change in the future.

The City’s Restrictions on Amy’s “Free Pantry”

We are concerned about the City’s restrictions on Amy and we are hoping to pursue an amicable solution. As an initial matter, the home business code should not apply to Amy because no commercial activity takes place on her property. The code defines home businesses as “Lawful commercial activity commonly conducted within a dwelling by members of the Household” Since a home business needs to involve “commercial activity,” it cannot apply to Amy because she is giving away all her goods for free. As a result, Amy should not have to limit her activities to fit the provisions of the City’s home business provisions.

We understand that the City’s position is that if Amy’s pantry is not a home business, it is banned under city ordinances because the code does not explicitly allow the use of her property as a pantry. However, it is our position that citizens should not be limited to only those uses of their property which are explicitly allowed in the zoning code. It is often difficult for zoning codes to anticipate all potential uses of a property, and forcing property owners to only use their property for a predefined list of activities unnecessarily stunts creative ventures, like Amy’s. Indeed, either banning or severely restricting a property owner from using their property to help neighbors and community members in need creates constitutional problems, as discussed later below.

Nevertheless, we understand that the City has chosen to regulate Amy’s pantry under the home business code. Neither we nor Amy take issue with the City’s request that she only operate her pantry 40 hours a week. Amy is also willing to move all items related to the pantry into her carport so that there is “no outside storage of merchandise or materials.” However, we believe that it is extremely unreasonable to require Amy to convert her carport into a garage to comply with the “no outside storage” requirement. This would represent a significant financial burden, likely costing Amy thousands of dollars. Amy should not have to undergo such a major change in her home just to use her own private property to help her community. Indeed, this requirement is so burdensome as to be unconstitutional.

Federal and state constitutions protect property rights as well as “economic liberty” (the right to run a business, including a home business). Courts in the Ninth Circuit have previously struck down restrictions on such rights if the restrictions were not reasonably related to a legitimate government interest.⁴ Moreover, courts have held that

³ See <https://ij.org/press-release/washington-woman-claims-victory-for-the-right-to-feed-others-in-need/>

⁴ See, e.g., *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008) (striking down licensing restrictions on pest controllers as irrational); *Cornwell v. Hamilton*, 80 F. Supp. 2d 1101



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the government can violate the Constitution when it prevents private parties from helping those in dire need.⁵

Here, forcing Amy to spend thousands of dollars to convert her carport into a garage before she can continue operating her free pantry is flatly unreasonable, especially as it would prevent her from using her property to help community members in dire need. Amy estimates that half of the people her pantry helps are either homeless or in danger of being homeless. They need Amy's services, and Amy should be able to help them without complying with arbitrary and burdensome requirements.

As an alternative to converting the carport into a garage, we suggest that Amy instead enclose her carport using a more financially viable method such as hanging a tarp over the opening. Would that be acceptable to the City?

In addition, we request clarification regarding what type of signage Amy is allowed to use. The code allows signage for home businesses, but Amy was left with the impression that she may not be able to have any signs. How many signs and of what dimensions would Amy be allowed to use for her pantry? Please be aware that overly restricting Amy's signage would cause serious free speech issues.

Since this matter is still in flux, we request that you extend Amy's current date to comply with the City's order—July 9—for an additional 60 days. We also request clarity on when and how Amy should appeal a final order from the City to the City Council, as there seems to be significant confusion among city officials on that point. Amy already spent a significant amount of time following a city official's instructions to file an appeal, only to be told that it was premature to do so by another city official. Clarity on this point is essential.

I would like to set up a time to discuss further. My number is 631-383-5302 and my email is esmith@ij.org.

Erica Smith Ewing
Senior Attorney
Institute for Justice

CC: Linda Natalizio, Code Compliance Specialist, at Linda.Natalizio@corvallisoregon.gov

(S.D. Cal. 1999) (an IJ case, striking down licensing restrictions on those performing certain hair services as irrational).

⁵ See, e.g., *Ross v. U.S.*, 910 F.2d 1422 (7th Cir. 1990) (holding both county and a sheriff's deputy liable for young boy's death when they prevented private rescuers from saving him as he was drowning).