



INSTITUTE FOR JUSTICE

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Via Email and USPS

Mount Vernon City Council
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Re: Mount Vernon's Protectionist Discussions Regarding Food Trucks

To the Mount Vernon 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 the Mount Vernon City Council's troubling discussions during public meetings on October 9 and 23 that a new food truck ordinance might be needed to protect brick-and-mortar restaurants from competition.

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 sued numerous jurisdictions whose laws have 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.

The possible restrictions discussed by the City Council would suffer from two major defects. First, they would be bad policy. And second, they may also be unconstitutional.

First, the statements made on the record that restrictions might be needed to "protect" restaurants from competition or to be "fair" to restaurants were incorrect as a matter of policy. Contrary to some City Councilmembers' mistaken belief, food trucks do not hurt restaurants. To the contrary, [a 2022 study](#), conducted by IJ, found that "more food trucks today do *not* lead to fewer restaurants tomorrow." Instead, "far from harming the restaurant industry, food trucks can complement it. Growth in the number of food trucks goes hand in hand with growth in the number of restaurants." Among other reasons, this is because food trucks tend to attract customers from outside of an area to visit the area, the effects of which benefit the entire area, including the restaurants.

Banning food trucks could also harm public safety. [Another IJ study](#), published in 2012, found that the presence of food trucks “can help prevent crime and revitalize underused public spaces.” In other words, removing these “eyes on the street” from an area not only makes the area less prosperous but less safe too.

Second, these restrictions would likely raise a host of constitutional concerns. The United States Supreme Court has expressly held that economic protectionism violates the U.S. Constitution. *See Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 877–83 (1985). And Ohio courts, to their credit, have a long history of ruling unreasonable restrictions on competition to be in violation of the Ohio Constitution, *see City of Cincinnati v. Correll*, 49 N.E.2d 412 (Ohio 1943), including in a remarkably similar situation involving ice cream trucks, *see Frecker v. City of Dayton*, 85 N.E.2d 419 (Ohio Ct. App. 1949).

Rather than restricting food trucks, the city should 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.

IJ stands ready to help you revise your ordinances to improve public safety, increase consumer choice, and expand economic opportunity. 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 the city’s entrepreneurs are allowed the opportunity to thrive and succeed. Thank you.

Very truly yours,



Justin Pearson