



INSTITUTE FOR JUSTICE

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VIA EMAIL

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RE: The City's Illegal and Unconstitutional Ordinance No. 24-2066 Regarding Food Trucks

City Attorney Reilly, Mayor Tyler, Vice-Mayor Arroyo, and members of the City Commission:

Several food truck owners contacted us regarding Ordinance No. 24-2066, which passed its first reading on January 16 and is expected to pass into law on February 1. This ordinance would ban most food trucks in your city, and we have emails showing that city officials are already enforcing the ordinance to ban new trucks from operating. The ordinance violates state law protecting food trucks and is also unconstitutional under the Florida Constitution's protections for economic liberty. We strongly suggest that the City not pass the ordinance into law. We also strongly suggest that the City immediately allow all food trucks with a state license to operate in the City.

The City's illegal and unconstitutional enforcement is harming hard working entrepreneurs who are just trying to support themselves and their families. One of these entrepreneurs is Lenora Crawford, who owns and operates the "Touch of Philly" food truck. Lenora Crawford has stage 4 kidney failure and is now unable to sleep at night because the City has used the ordinance to shut down her food truck. Another is Gloribel Zamora, who runs and operates Chaufa Mania. Gloribel is an amputee and had to leave her job as an occupational therapist after she lost her leg. But the ordinance would force her food truck to shut down in October.

These women both have state licenses for their food trucks. Their trucks are popular in the community, with customers traveling miles to buy their food. Lenora and Gloribel shouldn't have to worry about losing their livelihood because of the City's illegal and unconstitutional actions.

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 twelve times, as well as at multiple state supreme courts. One constitutional right we fight to protect is the right to economic liberty.

We have special expertise in protecting the economic liberty of food trucks. We launched our National Street Vending Initiative almost 15 years ago. As part of that Initiative, we have sued multiple cities for imposing unreasonable and burdensome restrictions on food trucks and other street vendors. These suits include those against Fort Pierce, Florida (2019) (state trial court issuing preliminary injunction enjoining city's proximity restrictions on food trucks because they were likely unconstitutional); Fish Creek, Wisconsin (2020) (state trial court striking down town's ban on food trucks as unconstitutional),¹ Louisville, Kentucky (2018) (federal district court issuing consent decree in favor of food trucks),² Atlanta, Georgia (2012) (state trial court holding that city had acted illegally by giving only one company the authority to vend on public property),³ and El Paso, Texas (2011) (city repealing law restricting food trucks after federal lawsuit filed) (2011).⁴ We are currently suing Parksley, Virginia,⁵ and Jacksonville, North Carolina,⁶ for their restrictions on food trucks.

We have also helped multiple cities and states reform their food truck laws. Most relevant here, the attorneys in our Florida Office were integral in helping Florida pass a state law protecting food trucks from local regulations in 2020. Fla. Stat. § 509.102. That law is discussed further below.

¹ <https://ij.org/case/fish-creek-wi-vending/>

² <https://ij.org/case/louisville-vending/>

³ <https://ij.org/case/atlanta-vending/>

⁴ <https://ij.org/case/el-paso-vending/>

⁵ <https://ij.org/case/virginia-retaliation/>

⁶ <https://ij.org/case/north-carolina-food-trucks/>

Haines City Is Trying to Ban Food Trucks

We have reviewed Ordinance No. 24-2066, spoken to several food truck owners in your city, and reviewed their relevant documents. We have determined the following facts.

Ordinance No. 24-2066 would ban most food trucks from operating in the City. The City currently requires food trucks (also known as mobile food vendors) to have a business tax receipt before they can operate. But Section 1 of the Ordinance (amending Code of Ordinances § 15-62(d)) would prevent any food truck from obtaining a business tax receipt after February 1, 2024. The police department is already enforcing Section 1. According to email correspondence we have from City Code Compliance Supervisor Steve Shifley, as well as conversations with Permit Supervisor Sabrina Jackson, the City has been using Section 1 as an excuse to deny food trucks a business tax receipt, despite the ordinance not even passing into law yet. Making matters worse, the police department is also citing and fining food trucks for operating without a business tax receipt, with the citations carrying a fine of up to \$500 per day. In other words, the city is punishing food trucks for not having a permit that the city won't give them. One of these food trucks is "Touch of Philly." Its owner, Lenora Crawford, has stage 4 kidney failure. Because of the city's enforcement, Lenora had to stop operating her food truck and now has no way to support herself and her family.

For food trucks that already have a business tax receipt, the ordinance would shut most of them down after their business tax receipts expire on October 1, 2024. Ordinance No. 24-2066, § 1 (amending Code of Ordinances § 15-62(e)). One of these food trucks is Chaufa Mania, run by Gloribel Zamora and her husband Luis. Gloribel is an amputee and had to leave her job as an occupational therapist after she lost her leg. Like Lenora, Gloribel relies on her food truck to support herself and her family.

Ordinance No. 24-2066 would allow only a few food trucks to continue operating, and only if these trucks qualify for the ordinance's strict criteria to be grandfathered in under the ordinance. Ordinance No. 24-2066, § 1 (amending Code of Ordinances § 15-62(f)). This strict grandfathering provision would not apply to Lenora, Gloribel, or many of the other food trucks in the City.

We are also concerned about the City's proximity restrictions for food trucks. The current city ordinance requires that food trucks stay at least 150 feet from "the same type of permanent food or restaurant establishment." Code of Ordinances § 15-63(a)(8). But Ordinance No. 24-2066 would expand this by requiring food trucks to stay at least 150 feet from *any* "existing restaurant, drive-in, fast food, or refreshment stand." Ordinance No. 24-2066, § 2 (amending Code of Ordinances § 15-63(8)).⁷ This would make it much more difficult for food trucks to find parking, even for food trucks who pay to rent space on private property. Many food trucks currently pay hundreds of dollars of

⁷ The new ordinance also seems to expand the proximity restriction by stating that "the applicable distance shall be measured from the closest property line where the mobile food vendor is located to the closest property line where the existing restaurant, drive-in, fast food or refreshment stand is located." Ordinance No. 24-2066, § 2 (amending Code of Ordinances § 15-63(8)).

rent every month to park on private property. Some trucks even pay over \$1,000 in monthly rent. But under Ordinance No. 24-2066, many trucks would be unable to continue using their rented spaces if the space is within 150 feet of any restaurant. And come October, Ordinance No. 24-2066 would then force most of these trucks to shut down completely.

Ordinance No. 24-2066 is thus illegal under state law and unconstitutional under the Florida Constitution, as shown below.

Ordinance No. 24-2066 Violates State Law

Florida Statute § 509.102(2)(a) protects food trucks from local regulations. It does so in two ways: First, it prevents local governments from requiring additional licensing, registration, permitting, or fees for food trucks to operate. Instead, food trucks just need to be licensed under state law. Second, Section 509.102 prevents local governments from banning food trucks.

Section 509.102(2)(a) states:

A municipality, county, or other local governmental entity may not require a separate license, registration, or permit other than the license required under s. 509.241, or require the payment of any license, registration, or permit fee other than the fee required under s. 509.251, as a condition for the operation of a mobile food dispensing vehicle or temporary commercial kitchen within the entity's jurisdiction. A municipality, county, or other local governmental entity may not prohibit mobile food dispensing vehicles or temporary commercial kitchens from operating within the entirety of the entity's jurisdiction.

Here, however, the City is violating both of these protections. First, the City is violating Section 509.102(2)(a)'s prohibition on cities "requir[ing] a separate license, registration, or permit" than that required by the state. The City is not allowing food trucks to operate without a business tax receipt. While the City may claim that the business tax receipt is merely a requirement that applies to all businesses, the City has a special application for the business tax receipt just for food trucks. Worse yet, the City is using the business tax receipt requirement to single out food trucks and prevent them from operating. Ordinance No. 24-2066 itself states that new food trucks will no longer be able to obtain a business tax receipt and that existing food trucks (except the few that are grandfathered in) will be unable to renew their business tax receipts on October 1. This flatly violates Section 509.102(2)(a).

Second, the City is violating Section 509.102(2)(a)'s ban on cities "prohibit[ing] mobile food dispensing vehicles ... from operating within the entirety of the entity's jurisdiction." Ordinance No. 24-2066 would ban many food trucks, including Touch of Philly and Chaufa Mania, from operating anywhere in the City. While the ordinance would allow some food trucks to occasionally operate at "City sponsored special events or City approved special events held on City-owned real property," this tiny exception is not enough to save the ordinance from violating Section 509.102(2)(a). Nor does

allowing a small number of grandfathered food trucks to continue operating save the ordinance. Ordinance No. 24-2066 is illegal under Section 509.102(2)(a).

Ordinance No. 24-2066 is Also Unconstitutional

In addition to violating state law, the ordinance also violates the Florida Constitution's substantive due process provision by violating economic liberty. Fla. Const. art. 1, § 9. Courts strike down laws infringing economic liberty when courts find those laws to be unreasonable, with an insufficient connection to a legitimate government interest. Courts are particularly skeptical of laws that have little connection to health and safety, and that are instead meant to protect favored businesses from competition.

In *Diaz v. City of Pierce*, for example, a Florida trial court preliminarily enjoined the City of Pierce from enforcing its 500-foot proximity restriction on food trucks. Case No. 2018-CA-2259, 2019 WL 1141117 (St. Lucie Cnty. Cir. Ct. 2019).⁸ The Court held that the restriction was arbitrary, had nothing to do with any legitimate health or safety concern, and was instead motivated to protect other businesses from competition. As a result, the Court stated that "Plaintiffs have a substantial likelihood of succeeding on their argument that the ban is facially unconstitutional under Florida's Constitutional Due Process Clause." *Id.* at *2. The city later repealed the restriction.

Here, Ordinance No. 24-2066 is similarly unconstitutional. The ordinance does nothing to protect legitimate government interests like health or safety. The ordinance does not even cite health or safety concerns (nor could it credibly do so). Instead, the ordinance states that it is meant to protect the "economic values" of the city—those economic values presumably being those favoring existing restaurants and other food businesses. The City memorandum supporting the ordinance likewise states its goals are to "attract[] economic opportunity and sustain[] economic viability." Pushing some businesses out in order to create a more attractive environment for other businesses is not a legitimate government interest and the ordinance must be struck down.

Conclusion

We strongly urge the City not to pass Ordinance No. 24-2066. We also urge the City to allow Touch of Philly and other state licensed food trucks to immediately resume operations. I am available to discuss further. My number is 631-383-5302 and my email is esmith@ij.org.

Sincerely,



Erica Smith Ewin
Senior Attorney
INSTITUTE FOR JUSTICE

⁸ Opinion also available at <https://ij.org/wp-content/uploads/2018/12/Order-Granting-MPI.pdf>.

Justin Person

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

Managing Attorney of Florida Office
INSTITUTE FOR JUSTICE

CC: Code Compliance Supervisor Steve Shifley, via Steve.Shifley@hainescity.com