



INSTITUTE FOR JUSTICE

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Via Email and Overnight Mail

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Re: Alleged Zoning Violations by Naomijoy's Hopeful Hearts

City Attorney Laird, Mayor Buckhaults, and City Aldermen,

I am contacting you about the zoning dispute with Haven Overstreet and her education center for low-income children with autism, Naomijoy's Hopeful Hearts. My name is Erica Smith Ewing and I am a senior attorney at the Institute for Justice, a national nonprofit law firm. I am working with Haven and her attorney, Lee Turner. We

understand that the City is concerned that Naomijoy's Hopeful Hearts does not comply with the City's zoning code for home businesses.

First, thank you for letting Naomijoy's stay open as this dispute is resolved. Special needs children rely on Naomijoy's and it would be an extreme setback to these children if Naomijoy's suddenly closed. Disruptions are especially damaging to children with severe autism, which many of Naomijoy's clients have. Naomijoy's clients range from ages 3 to 15, and all suffer from difficult behavioral challenges. Some are also non-verbal. Several of these children also rely on Naomijoy's for skilled childcare while their parents are working, and these families would have been left high and dry if Naomijoy's had suddenly closed.

We ask that the City again do the right thing by granting Naomijoy's a special exception or variance to stay at its current location. This would ensure that Naomijoy's could continue to provide an essential service to these needy families.

To instead force Naomijoy's to move would not only be unjust, but also unlawful and unconstitutional. Forcing Naomijoy's to move would essentially invalidate Naomijoy's privilege license, violating the principles of equitable estoppel. Forcing Naomijoy's to move would also violate the substantive due process and equal protection clauses under the state and federal constitutions. Allowing Naomijoy's to stay would avoid these constitutional violations.

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. We focus on four areas: economic liberty, property rights, educational choice, and free speech—all of which this matter implicates.

Our economic liberty and property rights work has involved several cases similar to this one. For example, we recently sued Lakeway, Texas, after they tried to shut down a home daycare that was in violation of its zoning ordinance; the town voluntarily changed its zoning code to allow the daycare to stay rather than continue with litigation.¹ We are now litigating against Winston-Salem, North Carolina, after the City tried to use its zoning code to restrict a nonprofit animal sanctuary because the sanctuary was in a residential zone.² Over the years, we have worked to protect similar small businesses from burdensome zoning codes nationwide.

We are also the national experts on educational choice. We fight to protect the right of families to guide the education of their children, whether through traditional schooling, alternative schooling, or in supplemental educational options like Naomijoy's provides. Our educational work has a long track record of fighting for educational opportunities for families with special needs. We also work to ensure that "learning pods" and "microschools" can provide more educational options to parents.

In addition, our free speech work has a long history of fighting onerous sign code

¹ <https://ij.org/case/texas-home-daycare/>.

² <https://ij.org/case/north-carolina-animal-sanctuary/>.

regulations, with victories at the U.S. Supreme Court and several federal circuit courts.

Along with litigation, the Institute for Justice helps guide local governments in reforming restrictive and unconstitutional laws. We happily work with government officials to help them redraft laws and ordinances, using our expertise, model sign codes, and knowledge of similar laws in other municipalities.

Naomijoy’s Hopeful Hearts

Naomijoy’s Hopeful Hearts caught our attention immediately. Before Naomijoy’s opened two months ago, there was a dire need for local educational resources for low-income autistic children. Naomijoy’s Hopeful Hearts fills that need. Through Naomijoy’s Hopeful Hearts, Ms. Overstreet and her two employees use their expertise to teach these children. They give them the skills to get by in the world—teaching them everything from getting dressed and feeding themselves, to learning how to talk, play ball, and make friends. Ms. Overstreet’s clients love her, as evident from their letters of support to the City.

At the same time, Naomijoy’s small size allows it to fit into the community. The center cares for only five children at a time, and there are rarely more than two or three cars in the driveway at once, including from Ms. Overstreet and her two employees. Before this dispute, most neighbors had no idea the center even existed.

Ms. Overstreet also thought she was doing everything by the book. She waited to open until she had received a “privilege license” from the City to operate an “education center” with “three employees or less” at 800 E. Ivy Street. She received this license on February 1, 2024.

To move now would be extremely difficult, expensive, and damaging. Ms. Overstreet has already invested over \$10,000 in the current location. Children with autism also suffer from breaks in their routine. To rip them from this home, where they’ve gotten into a routine and are comfortable, would send them into a behavioral spiral.

Ms. Overstreet shouldn’t have to move her business or these children.

A. Alleged Violations of the Zoning Code

Despite the City giving Naomijoy’s a privilege license to operate at 800 E. Ivy Steet, the City is claiming that Naomijoy’s is in violation of its zoning code by operating at that same address. The City has not detailed these alleged violations in writing. But we understand that City officials are claiming that Naomijoy’s violates three provisions of the requirements for home businesses, also known as “home occupations.” These provisions are: (1) a requirement that the business be “carried on wholly by a member of a family residing on the premises,” and (2) a requirement that “no person outside the family is employed,” and (3) a requirement that the business is “incidental” and “secondary” to the house of the home as a residence.

The City Attorney also apparently told a reporter that Ms. Overstreet violated the home occupation provision by advertising her business,³ as the home occupation

³ <https://www.wjtv.com/news/pine-belt/ellisville-special-needs-daycare-seeks-zoning-exception/>.

provision requires that “there [should be] no advertising [of the business] other than an identification sign of not more than two square feet in area.” It is unclear why the City Attorney alleged a violation of the advertising provision, as Ms. Overstreet has no signage outside the property.

In any event, Naomijoy’s was unaware of these alleged zoning violations. City officials never mentioned its zoning code before granting her license. And unlike other cities, the City has not posted its zoning code online. Ms. Overstreet also had no idea she should be looking for a zoning code. The privilege license did not mention any conditions other than compliance with state law, with which Ms. Overstreet is already in compliance.

Even so, as soon as Ms. Overstreet learned of the alleged zoning violations, she made her best efforts to comply with them. Ms. Overstreet spoke to City Inspector Richard Wilson and asked if it would resolve the first violation if her fiancé’s mother moved into the house. Inspector Wilson assured her on March 13 that this would cure the violations. Thus, Ms. Overstreet’s future mother-in-law, Angela Strickland, immediately terminated her lease and moved into the house on 800 E. Ivy Street. Ms. Strickland now uses the house as her only residence. Inspector Wilson also told Ms. Overstreet that because the two employees were Ms. Overstreet’s fiancé’s cousins, this was sufficient to satisfy the second violation.

Yet days later, City officials again changed their mind and told Ms. Overstreet that she was still in violation of all three provisions. It is unclear why. Now, unless Ms. Overstreet secures a special exception or variance from the City, she will be forced to move.

Failing to grant the special exception or variance would create serious constitutional problems.

B. Forcing Naomijoy’s to move would be unlawful and unconstitutional.

Forcing Naomijoy’s to move would create three legal problems. It would violate equitable estoppel, the substantive due process provisions of the state and federal Constitutions, and the equal protection provisions of both these constitutions. Attempting to restrict Naomijoy’s advertising would likely also violate the First Amendment of the U.S. Constitution.

1. *Forcing Naomijoy’s to move would violate the principles of equitable estoppel.*

The City gave Naomijoy’s a privilege license to operate at her address for one year. Forcing Naomijoy’s to move would violate the principles of equitable estoppel.

Equitable estoppel, also known as “laches,” prevents one from “speak[ing] against his own act, representations, or commitments” if it would injure another who has relied on that act, representation, or commitment. *Mayor & Bd. of Aldermen of Clinton v. Welch*, 888 So. 2d 416, 424 (Miss. 2004). The doctrine is based on “public policy, fair dealing, good faith and justice.” *Id.*

In *Welch*, the Mississippi Supreme Court affirmed the lower court’s enjoining of a city from enforcing its zoning ordinance against an illegal treehouse, which the plaintiffs had built in their front yard after the City gave them verbal permission to do so. The

Court found that since plaintiffs had relied on the City's (disputed) verbal statement by investing thousands of dollars and countless hours to build their treehouse, the City could not later revoke that permission and force the plaintiffs to remove it.

Here, the facts are even more clear than in *Welch*. Ms. Overstreet relied not on a disputed verbal representation, but upon the privilege license she paid for and received from the City. The license states she can operate an "education center" with "three employees or less" at the address on February 1, 2024. While State law states that privilege licenses shall not make lawful any business ...contrary to any statute of this state, or any ordinance of any municipality thereof," Miss. Code Ann. § 27-17-473, it is standard practice in other cities for city officials to inform applicants of this. But here, City officials never informed Ms. Overstreet of the need to check to make sure her business complied with local ordinances. Indeed, while the license itself states that it "does not make lawful any act or thing declared to be illegal by the State of Mississippi,"⁴ it says nothing about the City's own laws, including the City's zoning laws. Ms. Overstreet thus reasonably construed the license as authorization to operate Naomijoy's and assurance that the business is legal under city ordinances.

Ms. Overstreet relied on this license to build her business. She developed a clientele, hired her two employees, signed a rent-to-own contract for the house, and invested over \$10,000. Under *Welch*, the City is estopped from revoking permission for Ms. Overstreet to operate at the location now.

2. *Forcing Naomijoy's to move would also violate substantive due process*

The Mississippi and U.S. Constitutions protect the rights to substantive due process. Miss. Const. art. 3, § 14; U.S. Const., amend. XIV. As commonly recognized by both state and federal courts, the right to substantive due process includes people's economic liberty to run a business and make reasonable use of property. *See, e.g., St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013) (holding state licensing law for funeral directors violated substantive due process when applied to plaintiffs).

In Mississippi, a law violates substantive due process if the law is not "reasonably necessary to accomplish" a "public purpose" or if the law is "unduly oppressive." *Carpenter v. City of Petal*, 699 So. 2d 928, 932–33 (Miss. 1997) (finding zoning law regulating mobile and modular homes violated due process when the city's justification for the law rang "hollow" and the law was not "necessary to meet its intended purposes").

In addition, the U.S. Constitution protects the substantive due process right of parents to guide the education of their children. The Supreme Court and federal courts have indicated that this right is subject to heightened scrutiny.⁵

⁴ There is no dispute that Ms. Overstreet's business complies with state law.

⁵ *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925). *See also Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 256 (2022) (describing *Society of Sisters* as establishing "the right to make decisions about the education of one's children"); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.) ("[T]he interest of parents in the care, custody, and control of their children[] is perhaps the oldest of the fundamental liberty interests

Here, applying the City’s zoning code against Naomijoy’s cannot survive scrutiny, whether under the “reasonably necessary” standard or under heightened scrutiny. The City has argued that applying the home occupation requirements to Naomijoy’s is necessary to protect the residential character of the neighborhood, including protecting neighboring homes from too much vehicle traffic and protecting property values. These rationales are not sufficient.

Naomijoy’s is a tiny business that serves only five children a day. It cannot genuinely be argued that the business is harming the neighborhood. The children all arrive at staggered times, and the business has comparable traffic to ordinary households. Most neighbors didn’t even realize Naomijoy’s was there until this dispute arose. Naomijoy’s also has less traffic than other businesses in the same residential neighborhood, including an assisted living community three blocks away and what seems to be a nearby hair salon—neither of which seem to be lived in by their owners (more investigation is needed into these businesses). We are not saying that these businesses should be shut down, only pointing out that they apparently existed for years without a problem. Thus, the City’s claim that it needs to restrict Naomijoy’s to protect the neighborhood rings “hollow.” *Carpenter*, 699 So. 2d at 932.

While city officials have suggested that Naomijoy’s may be harming property values, cities do not have carte blanche to make regulations solely to protect property values. And in any case, there is no reason to think that a few children spending the day in a nearby house with two or three cars in the driveway would hurt property values.

Notably, City officials are not claiming that Naomijoy’s cannot exist at its location, only that it cannot exist because Ms. Overstreet does not live there and/or because her employees are not living there or sufficiently related to her. But this is irrational. Even assuming the City had an interest in someone living at the property, having Ms. Overstreet’s future mother-in-law living there should be enough (and it is unclear why the City believes this is not enough). It doesn’t make sense that one woman living at the home, but not another, would magically legalize the business. For the same reasons, it shouldn’t matter whether Ms. Overstreet’s employees are family or living at the property. In fact, having more people living in the home would only create more traffic, not less.

The City also seems to be arguing that the business violates the code because it is not “incidental” or “secondary” to the residential use of the property. But this is also an arbitrary and subjective standard. Home businesses are commonplace; what criteria determine whether a home business is secondary to a person living there? In this case, is it that the business opened before Ms. Strickland moved in? In other words, would the business have been legal if Ms. Strickland moved in before February 1, but the business is illegal because she moved in during March? The day a person moves into a home has no relation to whether the business will harm the community.

recognized by this Court.”); *Peterson v. Minidoka City Sch. Dist. No. 331*, 118 F.3d 1351, 1358 (9th Cir. 1997), amended, 132 F.3d 1258 (1997).

Thus, a court is likely to find that applying the home occupation provisions against Naomijoy's is not necessary to serve a public purpose. And it certainly cannot withstand heightened scrutiny.

3. *Forcing Naomijoy's to move would also violate equal protection.*

Both the Mississippi and U.S. Constitutions also protect the rights to equal protection. Miss. Const. art. 3, § 14; U.S. Const., amend. XIV. Forcing Naomijoy's to move would cause equal protection concerns. As stated above, it seems that an assisted living community and a hair salon are allowed to operate in the same R-1 zoning district as Naomijoy's. Yet neither of those businesses seem to be a primary residence for their owners. And both businesses have more traffic than Naomijoy's. To be clear, it is not our position that these businesses should be shut down, only that Naomijoy's should also be allowed to stay.

The City having allowed those businesses for years, but denying Naomijoy's now would therefore create serious constitutional problems. *See, e.g., City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) (holding that City violated equal protection when it denied a special use permit for a group home with special-needs adults).

4. *Restricting Naomijoy's advertising would violate free speech.*

The City Attorney also apparently told a reporter that Ms. Overstreet violated the home occupation provision by advertising her business, as the provision prohibits advertising "other than an identification sign of not more than two square feet in area." It is unclear why the City Attorney alleged a violation of the advertising provision. Naomijoy's has never had signage in front of the house. And if the City were to try to limit Ms. Overstreet's ability to discuss her services elsewhere, like on Naomijoy's website and on Facebook, that would violate black-letter First Amendment law.

Conclusion

In conclusion, we greatly appreciate you allowing Naomijoy's to stay open until this point. We now strongly urge you to grant a special exception or variance to allow Naomijoy's to remain. I am available to discuss further. My number is 631-383-5302 and my email is esmith@ij.org.

Sincerely,



Erica Smith Ewing
Senior Attorney
INSTITUTE FOR JUSTICE