



INSTITUTE FOR JUSTICE

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Via Email and USPS

Chadron Mayor, City Council, and Building and Zoning Department
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Re: Chadron's Protectionist Discussions Regarding Food Trucks

To Mayor Klein, City Councilmembers, and Building and Zoning Administrator Johnson:

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 troubling discussions at Chadron's City Council meeting on July 1st regarding the supposed need to impose new food truck permit requirements with increased fees. These discussions included misguided statements that this might be required to "level the playing field" with brick-and-mortar restaurants or to "protect" the city from food trucks. Worse, these discussions resulted in instructions from the City Council to staff to create a more-detailed plan to impose these unnecessary burdens.

IJ is a national public interest, civil liberties law firm that advocates in courts, statehouses, and city councils to protect the right to earn an honest living. IJ has victoriously sued jurisdictions across the nation on behalf of small-business owners. We have also had 12 U.S. Supreme Court cases, winning almost all of them. Indeed, we currently have a Nebraska Supreme Court case challenging a barrier to competition. *See N'Da v. Hybl*, Case No. S-23-0945. 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, property owners, and consumers alike.

The new food truck permit requirements and corresponding fees discussed at your City Council meeting would suffer from two major defects. First, they would be bad policy. Second, they may also be unconstitutional.

First, the idea that burdens must be imposed on food trucks to "level the playing" field with brick-and-mortar restaurants or "protect" the city is incorrect as a matter of policy.

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. In other words, if you want to help your brick-and-mortar restaurants, you should want more food trucks, not fewer.

Second, no one needs to be protected from food trucks. [An IJ study](#), published in 2014, showed that food trucks are as safe as—and often safer than—brick-and-mortar restaurants. Therefore, it makes no sense to say that the public needs to be protected from food trucks. If you want the public to eat safer, more sanitary food, then you should want more food trucks.

Limiting food trucks could also harm public safety in another way. [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. Much like with helping brick-and-mortar businesses and increasing the amount of sanitary food, if you want to make Chadron safer too, you should want more food trucks.

Second, these restrictions would likely raise a host of constitutional concerns. The U.S. 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 the Nebraska Supreme Court, to its credit, takes a similarly dim view of protectionism, as such laws also tend to violate the Nebraska Constitution. *See U.S. Brewers’ Ass’n, Inc. v. State*, 192 Neb. 328, 334 (1974).

Rather than restricting food trucks, your city government 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