

NORTH CAROLINA
COUNTY OF ONSLOW

BY: K. Turner IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22-CVS-3264

Anthony L. Proctor, Sr.; Nicole Gonzalez;)
Octavius Raymond; The Spot Florida Style)
Seafood, LLC; The Cheesesteak Hustle LLC;)
and Noah and Isidore, L.L.C,)

Plaintiffs,)

vs.)

City of Jacksonville; Mayor Sammy Phillips;)
and Councilmembers Jerry Bittner, Brian H.)
Jackson, Logan Sosa, Cindy Edwards, Robert)
Warden, and Angelia Washington, in)
their respective official capacities,)

Defendants.)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

THIS MATTER came before the undersigned Superior Court Judge during the March 23, 2026, Onslow County Superior Court Civil Session upon Plaintiffs' Motion for Summary Judgment. After careful consideration of Plaintiffs' Motion, hearing the arguments of counsel, reviewing the materials in the Court's file, the materials presented by the parties, and the applicable law and legal standards, the Court makes the following Findings of Fact and Conclusions of Law:

1. On December 7, 2022, Plaintiffs initiated this action by filing a complaint that asserted five claims challenging three provisions of Jacksonville's Unified Development Ordinance. Those three provisions were: (1) food-truck-specific Signage Restrictions, which were previously located at Section 4.3.C.5(12) of Jacksonville's Unified Development Ordinance, (2) a 250-foot proximity ban that prohibited food trucks from operating on private commercial or industrial zoned property, if that property was within 250-feet of a brick-and-mortar restaurant, another food truck, or a

residentially zoned property, which were previously located at Section 4.3.C.5(2) of Jacksonville’s Unified Development Ordinance, and (3) the \$300 annual food truck permit fee for Jacksonville residents.

2. At a hearing on January 2, 2024, the presiding Superior Court Judge granted Defendant City of Jacksonville’s Motion to Dismiss.
3. On December 3, 2024, the North Carolina Court of Appeals reversed and remanded on all five of Plaintiffs’ claims. *See Proctor v. City of Jacksonville*, 296 N.C. App. 665, 910 S.E.2d 269 (2024). Specifically, the court of appeals reversed and remanded on:
 - a. Plaintiffs’ “freedom of speech claim” brought under “Article I, section 14 of the North Carolina Constitution[,]” which allege that the challenged Signage Restrictions “impose speaker- or content-based restrictions on truthful and accurate speech by food trucks and the property owners who host them without being directly related to any substantial or important interest, let alone being narrowly tailored to a compelling government interest.” *Id.* at 670–71;
 - b. Plaintiffs’ “Equal Protection Claim made under Article I, section 19 of the North Carolina Constitution[,]” which allege, among other things, that the “250-foot proximity bans do not draw the classification between food trucks and all other businesses offering food and drink for sale to the general public, including brick-and-mortar restaurants, based on any legitimate distinguishing feature of food trucks or the property owners who would host them.” *Id.* at 671–72;
 - c. Plaintiffs’ “claims brought under the Fruits of Their Own Labor clause contained in Article I, section 1 and the Law of the Land clause contained in Article I, section 19 of the North Carolina Constitution” which “protect citizens’ constitutional right to earn a living from arbitrary regulations.” *Id.* at 673–74; and

- d. Plaintiffs' "claim that the [City's food truck] permitting fee is unreasonable and *ultra vires*." *Id.* at 676.
4. On remand, Plaintiffs secured a preliminary injunction on their Freedom of Speech claim. *Proctor v. City of Jacksonville*, No. 22CVS003264-660, 2025 WL 1548345, at *2 (N.C. Super. Ct. May 13, 2025).
 5. On February 11, 2026, Plaintiffs filed a motion for summary judgment, which was calendared for a hearing on March 23, 2026.
 6. After Plaintiffs filed their motion for summary judgment, but prior to the March 23, 2026, hearing, Defendant City of Jacksonville repealed the three challenged provisions that were the subject of this lawsuit.
 7. At the March 23, 2026, hearing on Plaintiffs' Motion, the Court determined that Plaintiffs' claims for forward-looking relief were made moot because Defendant City of Jacksonville repealed the challenged provisions of its ordinance.
 8. The Court holds that Plaintiffs prevailed on all their claims for retrospective relief and are therefore entitled to, and are so awarded, \$4 in nominal damages each.
 9. The Court further holds that Plaintiffs were the prevailing party in this action and are entitled to recover their costs pursuant to N.C. Gen. Stat. § 6-20.
 10. The Court therefore orders that the costs of this action are taxed against Defendant City of Jacksonville.

Accordingly, the Court GRANTS IN PART and DENIES IN PART Plaintiffs' motion for summary judgment against Defendant City of Jacksonville as set forth in this Order and ORDERS as follows:

1. Plaintiffs' claims for forward-looking relief against the challenged provisions of Jacksonville's Unified Development Ordinance, specifically the 250-foot proximity

bans, the Signage Restrictions, and the \$300 annual permit fee for food trucks, are now moot because the challenged provisions have been repealed.

2. Plaintiffs are awarded \$4 each in nominal damages for the harm caused by the since repealed Signage Restrictions, 250-foot proximity bans, and \$300 annual food truck permit fee.
3. The Court, in its discretion, determines that an award of costs to Plaintiffs is appropriate pursuant to N.C. Gen. Stat. § 6-20.
4. Plaintiffs are awarded their costs pursuant to N.C. Gen. Stat. § 6-20, in an amount to be determined upon submission of a bill of costs and taxation. Plaintiffs shall submit their bill of costs within 21 days of entry of this Order.

SO ORDERED, this the 9th day of April, 2026.



The Honorable Robert C. Roupe
Superior Court Judge