INSTITUTE FOR JUSTICE
FLORIDA

November 3, 2026

City of Clewiston Mayor & City Commission
115 W. Ventura Ave.
Clewiston, FL 33440
fransheska.berrios@clewiston-fl.gov

Re: City of Clewiston's Protectionist Food Truck Limitations

To Mayor Pittman and City Commissioners,

Hello, I am Katrin Marquez, an attorney and the current Elfie Gallun Fellow in Freedom and the Constitution at the Institute for Justice (IJ). I am writing today to express IJ's concern about Clewiston's food truck ordinance and reforms under consideration. Ordinance 2024-14 currently limits food trucks' days of operation to Mondays and Tuesdays and bars them from operating within 200 feet of an open restaurant without that restaurant's permission. And the proposals under consideration to expand food trucks' days of operation do not go far enough. Such limitations are unconstitutional barriers to food truck owners that deprive the public of food options. We encourage the City to amend its ordinances to allow food trucks on equal footing with brick-and-mortar restaurants.

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. That includes bringing successful litigation on behalf of food truck owners nationwide, including in Florida. In 2018, IJ brought a lawsuit against the city of Fort Pierce for its ordinance that banned food trucks from operating within 500 feet of any restaurant or business that sells food. In 2019, a Florida circuit court enjoined the ban as likely unconstitutional, and Fort Pierce signed a consent decree conceding that the ban was illegal. You can read about that litigation here.

IJ has continued to fight for reforms that allow aspiring entrepreneurs to break through local governments' unconstitutional barriers that keep food trucks from bringing jobs and the joy of discovering new food to the people of Florida. In fact, IJ worked with the Florida Legislature to pass Florida Statute § 509.102, which protects food trucks from unreasonable local regulations.

Clewiston's existing food truck ordinance and the proposals now under consideration suffer from two major defects. First, they violate the Florida Constitution. And second, they are bad policy.

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First, Ordinance 2024-14 and the proposals currently under consideration violate the Florida Constitution. Ordinance 2024-14 and the proposals under consideration limit when food trucks may operate to prevent competition on the days when brick-and-mortar restaurants are busiest. They are motivated by the constitutionally illegitimate purpose of favoring some business owners over others. *See Chi. Title Ins. Co. v. Butler*, 770 So. 2d 1210, 1220 (Fla. 2000); *Eskind v. City of Vero Beach*, 159 So. 2d 209, 211 (Fla. 1963); *Liquor Store, Inc. v. Cont'l Distilling Corp.*, 40 So. 2d 371, 374 (Fla. 1949). *See also Diaz v. City of Fort Pierce*, 2019 WL 1141117 (St. Lucie Cnty. Cir. Ct. Feb. 22, 2019). The Florida Supreme Court has been clear that the Florida Constitution "banish[es] the thought that the state may subordinate the right of one group of citizens to advance the welfare of another." *Liquor Store, Inc.*, 40 So. 2d at 374. But that's what Ordinance 2024-14 and these proposals do.

This is particularly concerning here. As we understand it, Ordinance 2024-14 limits food trucks to operating only on Mondays and Tuesdays because those are the days of the week when most brick-and-mortar restaurants are closed. In other words, the ordinance was passed specifically to permit food trucks only when they are unlikely to compete with brick-and-mortar restaurants. And it is this same protectionist instinct that has driven opposition to expanding the days food trucks may operate. The ordinance's buffer zone confirms this point. Ordinance 2024-14 bars food trucks from operating within 200 feet of any existing retail food establishment while that establishment is open, unless the establishment gives written permission. That is the same kind of restriction a Florida court enjoined in Fort Pierce. *Diaz*, 2019 WL 1141117. Proposals that insulate brick-and-mortar restaurants from competition from food trucks violate the Florida Constitution. *See id.* What's more, they may also be suspect under the federal Constitution because the United States Supreme Court has ruled that a law justified on economic protectionism violates the U.S. Constitution. *See Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 877–83 (1985). *See also*, *e.g.*, *St. Joseph Abbey v. Castille*, 712 F.3d 215, 222–23 (5th Cir. 2013) (holding that shielding one group of businesses from competition is not a legitimate government interest).[1]

Second, Ordinance 2024-14 and the proposals are bad policy. In fact, they harm the very restaurants they seek to help. Food trucks attract consumers to the City, invigorating commercial areas and increasing foot traffic. This has beneficial impacts on all entrepreneurs—especially restaurant owners. Our experience shows that it is simply untrue that food trucks hurt brick-and-mortar restaurants. Indeed, the opposite is true.

[1] We are aware the City has also floated allowing food trucks owned by Clewiston residents to operate more freely than food trucks owned by non-residents. In addition to protectionism concerns, this would likely otherwise violate the Florida Constitution. *See Hamilton v. Collins*, 154 So. 201, 204 (Fla. 1934) (equal protection violation to charge bread and pastry sellers without a local place of business a higher license fee than sellers with a place of business in the city).

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Cities across Florida and the nation have experienced the boon that food trucks provide. Brick-and-mortar restaurants in cities throughout Florida like Hollywood and Tampa have benefited from the increase in foot traffic that food trucks bring. Our research shows that food trucks have helped restaurants all over the country. *See* Bert Gall & Lancée Kurcab, Seven Myths and Realities About Food Trucks: Why the Facts Support Food-Truck Freedom 1–3 (2012). A rigorous study by the Institute for Justice put empirical support behind that research, showing that there was "a positive relationship between the number of food trucks and the number of restaurants in the same year, suggesting both sectors can thrive at the same time." *See* Dick M. Carpenter & Kyle Sweetland, Food Truck Truth: Why Restaurants—and Cities—Have Nothing to Fear from Mobile Food Businesses 2 (2022).

IJ works with state and local governments to assist in crafting legislation that achieves the goals Florida sought to accomplish by passing § 509.102. For example, we advised Haines City in crafting its food truck ordinance. More recently, both Miami Gardens and Aventura each changed course after we highlighted that their proposals suffered from constitutional and statutory deficiencies. Please feel free to contact me if you have questions or would like to discuss IJ's model food truck legislation. In addition to the telephone number listed on this letterhead, you are welcome to email me at kmarquez@ij.org. We are ready to work with you to revise your ordinances to come into compliance with state constitutional law while increasing safety, dining choices, and economic opportunity in the City of Clewiston.

Thank you for your consideration.

Sincerely,



Katrin Marquez
Attorney & Elfie Gallun Fellow
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