INSTITUTE FOR JUSTICE

October 30, 2026

VIA E-MAIL

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RE: The City's New Proposed Restrictions on Mobile Food Vendors

Mayor Bruner and Members of the City Council,

My name is Zoe Tishaev, and I am a City Policy Coordinator at the Institute for Justice. We are concerned about the city of Nampa, Idaho's proposed new food truck restrictions, which threaten to put hardworking food truck owners out of business. The restrictions also raise serious constitutional problems under both the state and federal constitutions.

Two years ago, Senior Attorney Erica Smith Ewing at the Institute for Justice sent a letter to the city expressing concerns about proposed regulations that threatened the very same food truck vendors that are once again at risk. We are disappointed that the city has returned with similar restrictions to the ones we flagged as constitutionally dubious in years past. However, the Institute for Justice stands ready to work with the city to create a food truck ordinance that preserves health and safety without needlessly restricting law-abiding food truck entrepreneurs.

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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 35 years. We have litigated our cases at the U.S. Supreme Court and numerous state supreme courts, protecting the economic liberty of entrepreneurs across the country, including food truck owners.

Through our Cities Work initiative, IJ collaborates with cities across the nation to make it cheaper, faster, and simpler to start a small business.[1] Cities Work has researched the regulatory complexity burdening food trucks in over 20 cities and has worked closely with cities across the country, including Buffalo, New York;[2] Washington, D.C.;[3] and York, Pennsylvania,[4] to reform their food truck ordinances.

Nampa's Mobile Food Vending Ordinances

We applaud the city's attempts to streamline the mobile food vendor application process by simplifying the permitting process into one license. However, we are greatly concerned about additionally restrictive provisions included in the proposed ordinance and the speed at which this ordinance was introduced without sufficient input from the food truck community.

On April 15, 2024, the city considered a set of amendments to Titles 5 and 10 of the city code. After pushback from the community, and after IJ sent a letter cautioning adoption of these constitutionally-dubious changes, the city directed staff to work directly with the food truck community on a better solution.

On September 30, 2026, food truck owners received a notice that the city is considering code changes to regulate mobile food vendors. In the two years that have elapsed since the initial hearing, IJ has found little evidence that city staff have engaged the broader food truck community in a comprehensive fashion.

The ordinance was originally scheduled to be heard at the October 19, 2026, City Council meeting, and the language of the proposed code was not made available to the food truck owners until that day. The ordinance is now scheduled to be heard at the November 2, 2026, City Council meeting, and we understand that public comment will not be permitted at that time.

Included in the proposed ordinance are several provisions that would render existing food trucks difficult or impossible to operate. Those proposed code changes:

- Maintain a ban on parking overnight;
- Prohibit mobile food vendors' connections to utilities;
- Limit vending hours to 9:00 a.m. through 11:00 p.m. in nonresidential zones and 7:00 a.m. through 10:00 p.m. in residential zones;

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[1] https://citieswork.org
[2] https://ij.org/issues/economic-liberty/vending/national-street-vending-initiative-buffalo-n-y/
[3] https://code.dccouncil.gov/us/dc/council/laws/25-21
[4] https://ij.org/issues/economic-liberty/vending/national-street-vending-initiative-pittsburgh-pa-2/

- Prohibit more than one vendor from operating in one lot, unless the property owner applies for additional permits to become a food truck court;
- Prohibit mobile food vendors from having drive-thrus;
- Prohibit seating, umbrellas, or benches in connection with mobile vending operations;
- Prohibit the use of flags, portable signs, or signage over 15 feet above the ground; and
- Require that mobile food vendors acquire the written consent of adjoining property owners when vending on public property.

One food truck that would be forced to shut down is The Perking Spot, owned and operated by Rae-Ann Stine and Sonia Champlin. Rae-Ann and Sonia are best friends who have been operating their food truck on private property for over six years with a loyal customer base that delights in their coffee. Rae-Ann and Sonia have put their life savings into The Perking Spot and have recirculated hundreds of thousands of dollars in Nampa's local economy—in addition to employing 10 Nampa residents.

The proposed restrictions would force food trucks like Rae-Ann's to shut their doors. As a coffee truck, the Perking Spot receives over half of its revenue before 9:00 a.m. The Perking Spot has a lease to operate on private property and has been doing so for over five years with no problem or safety concerns, so it should be able to continue to do so.

At the September 17 City Council special meeting, staff emphasized that the nature of this ordinance gives the city discretion. However, processes that favor staff discretion can risk leaving cash-strapped entrepreneurs vulnerable to extended deliberation and processes. According to this ordinance as written, any food truck owner who would like to park overnight, operate alongside another food truck on the same lot, or even set out a chair for customers to sit on would have to operate on a food truck court. The food truck court in turn requires a conditional use permit. The city of Nampa's conditional use permit process requires a $350 application fee, a public hearing before Nampa's Planning and Zoning Commission, and, if appealed, an additional public hearing before City Council. These processes add time and complexity for small-business owners who may not have the resources to go before the Commission or City Council. Regulations should be tailored to mitigate specific nuisance behavior, rather than unintentionally creating a complex, burdensome process for entrepreneurs and city staff alike.

Additionally, a food truck court may require five spaces per vendor pad, a spatial and cost restriction that is infeasible for property owners who currently have more than one food truck operating on their lot.

Recommendations

The Institute for Justice stands ready to work with the city to implement a food truck code that addresses health and safety concerns without needlessly impacting well-meaning food truck owners. Attached to this letter, please find an annotated version of the proposed ordinance that was shared with mobile vendors on October 19. This draft ordinance is intended to be a starting point, and we welcome the opportunity to discuss it with you.

In summary, we recommend:

- Striking provisions of the code that violate the substantive due process protections of the Idaho and U.S. Constitutions, as explained below, including restrictions on one food truck per lot and preventing overnight parking;
- Striking provisions of the code that violate the right to free speech, as protected by the Idaho and U.S. Constitutions, as explained below, including restrictions on signage;
- Striking explicit protectionist provisions, including the provision that mobile food vendors acquire the written consent of adjoining property owners when vending on public property;
- Relaxing the number of food trucks permitted on one lot before it qualifies as a food truck court;
- Relaxing hour requirements to allow early-morning food trucks like Rae-Ann's to operate; and
- Replacing these provisions with narrowly-tailored rules that target health and safety concerns.

The City's Vending Regulations Raise Serious Constitutional Concerns

Article 1, Section 13 of the Idaho Constitution provides that "[n]o person shall . . . be deprived of life, liberty or property without due process of law." Idaho Const. art. I, §13. The clause protects both economic liberty and property rights. See, e.g., *Eddins v. City of Lewiston,* 150 Idaho 30, 34–36 (2010); *Pace v. Hymas,* 111 Idaho 581, 586 (1986). The 14th Amendment provides similar protections in the U.S. Constitution. Under both constitutions, economic protectionism is not a constitutionally legitimate governmental purpose for a state or local restriction. *See Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 877–83 (1985); *Merrifield v. Lockyer*, 547 F.3d 978, 985 (9th Cir. 2008); *Heck v. Comm'rs of Canyon Cnty*., 123 Idaho 826, 830 (1993) (citation omitted); *Cole-Collister Fire Prot. Dist. v. Boise*, 93 Idaho 558, 569 (1970).

Here, the mobile food vendor regulations preventing overnight stays and allowing only one food truck per lot are not sufficiently connected to any constitutionally legitimate governmental interest. This is underscored by the fact that the city has been allowing vendors, including The Perking Spot, to engage in these activities for years with no safety problems. Further, proposed restrictions on operating hours raise similar concerns, as vendors have been operating outside of the proposed times for years and have done so without issue. It is unclear why the city is now trying to prevent vendors from engaging in these activities. There is no good reason to apply these prohibitions to vendors on private property. If a private property owner allows vendors to park overnight and willingly has more than one vendor on the same property, why should the city prohibit this?

Similarly, the city has no genuine interest in preventing connections to power poles when the power pole is privately installed and paid for by the vendor on private property, as is the case with The Perking Spot. At most, any prohibition should be limited to vendors connecting to city-owned utilities.

In addition, while we understand that there needs to be some regulation of drive-thrus to protect safety, The Perking Spot had been operating its drive-thru for over five years with no

problems. The Perking Spot would be more than happy to accept reasonable rules regarding reestablishing its drive-thru operation. But depriving them of their drive-thru entirely with a blanket ban has upset customers and will continue to do so, especially during the harsh winter months when drivers don't want to leave their cars to order coffee.

Thus, the city seems to lack a constitutionally legitimate reason to impose these regulations on The Perking Spot and other existing vendors on private property. As a result, the regulations likely violate both the United States and Idaho Constitutions.

Regulations Motivated by Economic Protectionism are Particularly Suspect

Courts are particularly skeptical of laws that seem to have the purpose of protecting favored businesses from competition. In our experience, cities often restrict vendors for the misguided purpose of protecting brick-and-mortar restaurants from competition. Such protectionism is blatantly unconstitutional,[5] and courts have repeatedly said so, including in IJ's own vending cases.

For instance, we successfully challenged restrictions on food trucks in Fish Creek, Wisconsin. The trial court invalidated the restrictions after finding that they "were enacted by the Defendant's Town Board in an effort to protect brick-and-mortar restaurants in the downtown Fish Creek area from competition from mobile food trucks or establishments." *See White Cottage Red Door, LLC v. Town of Gibraltar*, No. 18 CV 191, 2020 WL 1296078 (Wis. Cir. Ct. Sept. 3, 2020).[6] As the court said, such protectionism served no legitimate government interest and was unconstitutional.

Similarly, in *Diaz v. City of Fort Pierce*, we successfully challenged food truck restrictions in the city of Fort Pierce, Florida. A Florida trial court preliminarily enjoined the city from enforcing the restrictions after finding that the restrictions were arbitrary, had nothing to do with any legitimate health or safety concerns, and were instead motivated by a desire to protect other businesses from competition. Case No. 2018-CA-2259, 2019 WL 1141117 (St. Lucie Cnty. Cir. Ct. 2019).[7] As the court stated, "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. In response to the preliminary injunction, the city repealed the restrictions to avoid further litigation.

Here, there is reason to believe that Nampa's proposals and enforcement actions are intended to protect restaurants from competition. Indeed, this has even been discussed during public meetings. This compounds the regulations' constitutional concerns.

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[5] *E.g.*, *St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013) (finding law that allowed only licensed funeral directors to sell caskets to lack a rational basis and instead just protect funeral directors from competition); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002) (same); *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008) (finding licensing scheme for pest controllers that exempted those dealing with certain pests to lack a rational basis and have the primary purpose of protectionism); *Bruner v. Zawacki*, 997 F. Supp. 2d 691 (E.D. Ky. 2014) (finding regulations on moving companies lacked a rational basis and were instead just protectionist); *Santos v. City of Houston*, 852 F. Supp. 601, 608 (S.D. Tex. 1994) (finding ban on jitneys lacked a rational basis and was "economic protectionism in its most glaring form").

[6] Opinion available at https://ij.org/wp-content/uploads/2018/10/Fish-Creek-MSJ-Opinion.pdf.

[7] Opinion also available at https://ij.org/wp-content/uploads/2018/12/Order-Grandting-MPI.pdf.

Nampa is Also Violating the Right to Free Speech

Even when a food truck owner is able to overcome the unconstitutionally protectionist barriers mentioned above, they then face an additional problem—Nampa is violating the First Amendment to the U.S. Constitution and Article I, Section 9 of the Idaho Constitution by imposing a content-based speech restriction that treats signage about food trucks differently than signage about restaurants. Specifically, the proposed ordinance bans food trucks from using portable signs, flags, or any signage extending 15 feet above the ground, even though restaurants can and do use these same types of signs. This is a blatant constitutional violation that would likely be subject to strict scrutiny. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); *In re Idaho State Bar Resolution 21-01*, No. 50356 (Idaho 2023). In fact, just last year we obtained an injunction on this very signage issue in Jacksonville, North Carolina. *See Proctor v. City of Jacksonville*, 2025 WL 1548345 (N.C. Super. 2025).

Not only are the signage restrictions unconstitutional, but they are also terrible policy. From a public safety perspective, the last thing you should be doing is making it harder for automobile drivers to see the places they are trying to find. By forcing drivers to engage in "compensatory scanning" by taking their eyes off the road for longer periods of time to locate a smaller sign, these signage restrictions make driving more dangerous. *See* Han, et al., *Analysis of Traffic Signs Information Volume Affecting Driver's Visual Characteristics and Driving Safety*, Int. J. Res. Public Health (2022).

Conclusion

For the reasons stated above, Nampa's proposals and enforcement actions against its food trucks may be unconstitutional. Not only would Nampa be violating mobile vendors' constitutional right to economic liberty and free speech, but it would also be violating the property rights of the property owners who have leases with mobile vendors.

IJ's Cities Work team stands ready to work collaboratively with the city to implement an ordinance that is narrowly tailored to health and safety concerns while preserving vendors' constitutional rights.

Sincerely,

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