

Good afternoon. My name is Leah Stewart, I live at 1386 S. 6th St. I own the Louisville Dessert Truck, and am here in my role as President of the Louisville Food Truck Association. I am speaking in opposition to I proposed ordinance O-374-18.

I have been both perplexed and dismayed at statements that have been made that Council members had no idea that there was a problem with the 2011 food truck ordinance until two of our members sued Louisville Metro. On October 1, 2015 (now) President James convened a meeting that included himself, his legislative aide, the legislative aide for the David Yates who then chaired the Public Safety Committee, two representatives from Codes and Regulations, two County Attorneys and me. I detailed some history of how the food trucks had previously been able to work with Codes and Regulations to resolve issues, noted that that cooperation had changed, asked for a path toward working out some "gray areas" in the ordinance and laid out a general framework for a 14th Amendment challenge to the 2011 ordinance. At the conclusion of the meeting I asked how would follow-up be made. I was informed that no one would follow up with me. Codes and Regulations really didn't really acknowledge a problem and the county attorneys politely informed me that I was not their client and they would not be contacting me. Then street enforcement ramped up.

On May 7, May 29 and in the first week of June 2017, three meetings occurred among restaurant owners centered around 5th and Market, representatives from Codes and Regulations, members of the Downtown Development Partnership, the president of KRA and Barbara Sexton Smith. Conversations as related to me by an attendee included how to keep food trucks off the corners at 5th and Market, objections to PARC bagging meters, and general disagreement with the perception that Mayor Fischer supported food trucks. The Downtown Development Partnership purported to be willing to broker discussions between the stakeholders as long as in the end the restaurants were satisfied. Soon after these meetings began, the No Food Truck Parking signs started going up downtown in the most lucrative spots for food trucks.

Of course we were going to fight back.

Economic liberty is the right to earn a living in the occupation of your choice without unnecessary government interference. In June 2017, two local food truck owners represented by the Institute for Justice sued Louisville Metro in federal court to preserve our rights under the 14th Amendment. You know that we won and in March 2018 the Metro Council repealed a portion of the Ordinance governing food trucks and in June of 2018 entered into a Consent Decree filed in the 6th Circuit.

Paragraph 7 of the Consent Decree states that Louisville will not disadvantage mobile vendors by treating them differently than other commercial vehicles, which are permitted to park at public parking spaces as part of conducting their trade. The proposed Ordinance greatly restricts vending operations and absolutely does treat mobile vendors differently from other commercial vehicles. It does so in three distinct ways:

- 1) First, the proposed ordinance would prohibit mobile vendors from parking in a metered parking space in order to vend. Section I (amending LMCO § 72.803). It therefore treats vendors differently than other commercial vehicles, which can park in a space as part of their commercial enterprise. For instance, a UPS truck can park in a metered parking space so that its driver can pick up or deliver packages, just as a repair truck can park in a metered parking space so that the repairperson has a base of operations during their repair job.
- 2) The proposed Ordinance prohibits food trucks' ability, at our own significant expense, to bag a meter, yet allows others to bag a meter temporarily for various purposes, including "construction or maintenance work." This provision deprives food trucks of their primary vending locations. As with point 1, this provision treats food trucks differently than other commercial vehicles, which is specifically forbidden by the Consent Decree.
- 3) Paragraph 5 of the Consent Decree stipulates that food trucks are "mobile food unit vendors" under the LMCO and "do not fall within the scope of any other

category of regulated vendors” including “itinerant vendor”, “mobile vendor, peddler, and/or stationery vendor.” You can not reclassify us or combine us into any other category.

This proposed Ordinance violates the Consent Decree. It is not about health or safety but is a thinly veiled secondary attempt to favor one industry, restaurants, over our food truck industry. It was illegal before and it’s illegal now. Governments simply are not permitted to pass protectionist laws.

City of Philadelphia v. New Jersey, 437 U.S. 617, 624 (1978) states that (“[W]here simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected.”); similarly in *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) it states that (“Courts have repeatedly recognized that protecting a discrete interest group from economic competition is not a legitimate governmental purpose.”).

This Ordinance needs to be withdrawn immediately.

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

TROY KING and ROBERT MARTIN,

Plaintiffs,

v.

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT,

Defendant.

Civil Action No. 3:17-CV-390-DJH-CHL

CONSENT DECREE

This Consent Decree is made and agreed upon by and between Troy King and Robert Martin (“Plaintiffs”) and the Louisville/Jefferson County Metro Government (“Louisville Metro”). Plaintiffs and Louisville Metro shall jointly be referred to as the “Parties.”

RECITALS

WHEREAS, on June 28, 2017, Plaintiffs filed suit against Louisville Metro in the case captioned *King, et al. v. Louisville/Jefferson County Metro Government*, in the United States District Court for the Western District of Kentucky, Louisville Division, under docket number 3:17-CV-390 (“Litigation”). The Litigation raised claims that Louisville/Jefferson County Metro Government Code of Ordinances (“LMCO”) § 115.369(E) violates Plaintiffs’ rights under the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the United States Constitution. The allegations in Plaintiffs’ Complaint, which was served on Louisville Metro on June 29, 2017, are incorporated herein by reference. In the Litigation, Plaintiffs sought a declaratory judgment that LMCO § 115.369(E), facially and as

applied to Plaintiffs, violates the Fourteenth Amendment; Plaintiffs also sought a permanent injunction, attorneys' fees, costs, and nominal damages in the amount of \$1 to each Plaintiff for the alleged violations of their constitutional rights;

WHEREAS, Louisville Metro filed and served its Answer to Plaintiffs' Complaint on August 3, 2017, disputing Plaintiffs' claims, said responses of which are incorporated herein by reference;

WHEREAS, in order to resolve their differences, the Parties have agreed that it is reasonable and necessary to enter into this Consent Decree.

NOW, THEREFORE, IT IS HEREBY ORDERED PURSUANT TO AGREEMENT OF THE PARTIES AS FOLLOWS:

1. It is stipulated and agreed that an actual case and controversy exists sufficient to enter the instant Consent Decree.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983.
3. Venue lies in this Court pursuant to 28 U.S.C. § 1391.
4. The Parties recognize, and, by entering this Consent Decree, this Court finds that this Consent Decree has been negotiated by the Parties in good faith and that it is fair, reasonable, adequate, and in the public interest.
5. It is stipulated and agreed that Plaintiffs' food truck businesses, and all other food trucks that operate on public and private property, are considered "mobile food unit vendors" under the Louisville/Jefferson County Metro Government Code of Ordinances, *see* LMCO § 115.350(G), and that they do not fall within the scope of any other category of

regulated vendors (including but not limited to the categories of “itinerant vendor,” “mobile vendor,” “peddler,” and/or “stationary vendor”).

6. It is stipulated and agreed that, until LMCO § 115.369(E) is repealed, Louisville Metro, its employees, agents, representatives, and successors, will not enforce LMCO § 115.369(E).
7. It is stipulated and agreed that Louisville Metro, its employees, agents, representatives, and successors hereby agree that they will not now or hereafter enforce any of its ordinances, administrative rules, or policies in a manner that is inconsistent with this Consent Decree, or that treats mobile food unit vendors differently than other commercial vehicles permitted or otherwise allowed in Louisville Metro’s rights of way. These entities will not enforce any ordinances, administrative rules, or policies in a manner that prohibits mobile food unit vendors from conducting vending operations solely because they are within a certain distance of another commercial food establishment, including but not limited to restaurants, cafés, or other eating establishments. Louisville Metro’s rights to govern its restaurants, roads and rights of way to protect public safety, convenience, or health remains unaffected by this Consent Decree.
8. Louisville Metro, its employees, agents, representatives, and successors hereby agree to not promulgate or enforce any regulation, rule, ordinance, or policy that prohibits mobile food unit vendors from conducting vending operations solely because they are within a certain distance of another commercial food establishment, including but not limited to restaurants, cafés, or other eating establishments.
9. For a period of time of five years following the entry of this Consent Decree, prior to promulgating an administrative rule, or voting on any amendment to LMCO Chapter

115.369 or other ordinance addressing vending operations conducted by mobile food unit vendors, Louisville Metro will provide Plaintiffs' counsel with 30-day notice of such rules, proposed amendments, or ordinances. Plaintiffs may then take appropriate steps pursuant to paragraph 15 of this Consent Decree to voice their concerns.

10. Louisville Metro agrees to remove all street signage containing the words "No Food Trucks" (or variations of the same message) immediately upon entry of this Consent Decree, and to cease installing any new street signage containing the words "No Food Trucks" (or variations of the same message).
11. Louisville Metro agrees to dismiss any pending tickets issued to mobile food unit vendors for alleged violations based solely on LMCO § 115.369(E).
12. Louisville Metro agrees to not consider past violations of LMCO § 115.369(E) when issuing or renewing mobile food unit vending licenses.
13. Louisville Metro understands, once entered, this Consent Decree will become a public record, and Louisville Metro will post this Consent Decree and the ordinance repealing LMCO § 115.369(E) on its website.

EFFECTIVE DATE

14. This Consent Decree shall be effective the date this Court enters it as recorded on this Court's docket.

ENFORCEMENT

15. If Plaintiffs reasonably believe that Louisville Metro is not in substantial compliance with the terms of this Consent Decree, Plaintiffs' counsel shall, by written notice, call a meeting with counsel for Louisville Metro to be held at a mutually agreeable time and

place within thirty (30) days of the request to discuss and attempt to resolve the dispute. Counsel for Louisville Metro shall attend such a meeting.

16. In the event that counsel for Louisville Metro and counsel for Plaintiffs cannot come to an agreement that resolves the claimed violations, Plaintiffs may move this Court, pursuant to Rule 70 of the Federal Rules of Civil Procedure or any other applicable rule or procedure, for an order enforcing the provisions of this Consent Decree and any other enforcement and implementation mechanisms as may be necessary or appropriate. If this Court issues such an order, this Court may, in its discretion, award Plaintiffs' counsel their reasonable attorneys' fees and costs associated with obtaining such an order.
17. This Consent Decree constitutes final relief entered by this Court and is enforceable through this Court's contempt powers. This Court shall retain jurisdiction over this matter for all purposes and may issue such orders as may be necessary or appropriate to enforce this Consent Decree.
18. The Parties may jointly agree to make changes, modifications, and amendments to this Consent Decree, which shall be effective if approved by this Court.
19. The Parties agree to defend the provisions of this Consent Decree. Each party shall notify the other of any legal challenge to this Consent Decree, whether such challenge arises in a court, an administrative proceeding, or otherwise. If any provision of this Consent Decree is challenged in any state or municipal court, the Parties shall agree to consent to removal to Federal Court.
20. Louisville Metro shall require compliance with this Consent Decree by its respective officers, employees, agents, agencies, representatives, assigns, or successors.

June 15, 2018

A handwritten signature in black ink, appearing to read 'D.J. Hale', is positioned above the printed name of the judge.

David J. Hale, Judge
United States District Court

Stipulated and Agreed to:

/s/ Arif Panju

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