

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES NUCCIO; GABRIEL WIESEN)	
and AFTER HOURS PIZZA LLC, an Illinois)	
limited liability company, d/b/a)	Case No.
BEAVERS DONUTS,)	
)	In Chancery
Plaintiffs,)	Injunction/Temporary Restraining Order
)	
v.)	
)	
CITY OF EVANSTON, a municipal)	
corporation,)	
)	
Defendant.)	

VERIFIED COMPLAINT

Introduction

1. This civil rights lawsuit seeks to vindicate entrepreneurs' rights to earn an honest living free from anticompetitive, arbitrary, and irrational government regulation. Plaintiffs James Nuccio, Gabriel Wiesen, and After Hours Pizza LLC (d/b/a Beavers Donuts) want to serve coffee and gourmet donuts to the public from their food truck in the City of Evanston. They are legally barred from doing so, however, for just one reason: An Evanston ordinance prohibits anyone who does not own a brick-and-mortar restaurant in Evanston from operating a food truck there. This restriction serves no health or safety concern; rather, it exists only to protect established restaurants from competition. The City's unequal treatment of people who are not restaurant owners deprives Plaintiffs of their right to equal protection under the law and their right to due process of law.

Parties

2. Plaintiff James Nuccio is a resident of Cook County, Illinois.
3. Plaintiff Gabriel Wiesen is a resident of Cook County, Illinois.
4. Plaintiff After Hours Pizza LLC d/b/a Beavers Donuts is an Illinois limited-liability company co-owned by Plaintiffs Nuccio and Wiesen, based in Cook County, Illinois.
5. Defendant City of Evanston (the “City”) is an Illinois municipal corporation.

Factual Allegations

Evanston’s Mobile Food Vendor Ordinance

6. The Evanston City Code (the “Code”) regulates the operation of a mobile food vehicle, defined as a “commercially manufactured, motorized mobile food unit in which ready-to-eat food is cooked, wrapped, packaged processed, or portioned for service, sale or distribution.” Evanston City Code § 8-26-1.
7. The Code requires that anyone who seeks to operate a mobile food vehicle in Evanston obtain a license from the City. Evanston City Code § 8-26-2.
8. The Code imposes numerous requirements on mobile-food-vehicle operators, some of which are related to health and safety.
9. For example, applicants for a mobile-food-vehicle license must describe their food-preparation methods and must provide proof that employees will have access to restrooms. Evanston City Code § 8-26-2.
10. The Code also requires food vehicle operators to submit to “such inspections as may be necessary to ensure all mobile food vehicles are kept in a safe and sanitary condition.” Evanston City Code § 8-26-5.

11. The Code also requires that all “food storage, preparation and distribution of food, and vehicle equipment . . . meet applicable Illinois Department of Health Standards and requirements, as well as standards to be determined by the City Manager or his/her designee,” and it includes detailed requirements regarding handling of waste liquids, garbage, litter, and refuse. Evanston City Code § 8-26-5.

12. In addition to those regulations related to health and safety – which are not the subject of this Complaint – the Code also restricts who can own and operate a food truck: It decrees that a “mobile food vehicle must be owned and operated by the owner or agent of a licensed food establishment in the City, and must be affiliated with that establishment.” Evanston City Code § 8-26-1.

Beavers Donuts

13. Plaintiffs James Nuccio and Gabriel Wiesen (through their company, Plaintiff After Hours Pizza LLC) operate Beavers Donuts, a food truck that serves gourmet donuts and coffee.

14. Plaintiffs operate their business legally outside of Evanston. For example, they became the first food truck licensed to operate in Glenview, Illinois on December 9, 2011, at that village’s invitation.

15. Plaintiffs have also operated their business legally within Evanston on a limited, temporary basis. For example, they received a temporary food vending license to operate their food truck at Northwestern University’s “Dillo Day,” held on Memorial Day weekend in 2012.

16. Plaintiffs’ preparation, storage, and distribution of their coffee and donuts meet or exceed applicable Illinois Department of Health Standards and Requirements, and Plaintiffs are willing to submit to an inspection of their food truck by the Evanston City Manager at any time.

17. Indeed, Plaintiffs are ready, willing, and able to satisfy all conditions for receiving a mobile-food-vendor license listed in Evanston City Code § 8-26-2.

18. Plaintiffs are barred from receiving a mobile food vehicle license, however, only because they do not own a licensed food establishment in Evanston, and thus do not satisfy the requirement of Evanston City Code § 8-26-1 that all mobile food vehicles “must be owned and operated by the owner or agent of a licensed food establishment in the City.”

Harm to Plaintiffs

19. Plaintiffs satisfy all requirements to be licensed to operate in Evanston – except that they do not own a brick-and-mortar restaurant there. But for that barrier, Plaintiffs are ready, willing, and able to operate their food truck in full compliance with the law. The City’s mobile-food-vehicle ordinance therefore harms Plaintiff by preventing them from engaging in their occupation and operating their business in Evanston.

**COUNT I – VIOLATION OF EQUAL PROTECTION
(ILLINOIS CONSTITUTION ARTICLE I, SECTION 2)**

20. Plaintiffs reallege Paragraphs 1 through 19 of this Complaint as though fully set forth herein.

21. The City of Evanston’s mobile food ordinance’s discrimination against people who are not owners or agents of a “licensed food establishment” does not address any health or safety concern; rather, it serves only to protect Evanston restaurant owners from competition, which is not a legitimate governmental purpose and cannot survive the rational-basis test.

22. This requirement therefore violates the right to equal protection of the law guaranteed by Article I, Section 2 of the Illinois Constitution on its face.

COUNT II – VIOLATION OF SUBSTANTIVE DUE PROCESS
(ILLINOIS CONSTITUTION ARTICLE I, SECTION 2)

23. Plaintiffs reallege Paragraphs 1 through 22 of this Complaint as though fully set forth herein.

24. The Due Process Clause of the Illinois Constitution protects every citizen's right to pursue a legitimate occupation, subject only to regulations that are rationally related to a legitimate governmental purpose.

25. Protecting a discrete interest group from economic competition is not a legitimate governmental purpose. Any law that exists only for that protectionist purpose cannot survive the rational-basis test.

26. Because Evanston's ordinance restricting ownership and operation of food trucks to owners or agents of "licensed food establishment[s]" serves only to protect restaurant owners from competition, it violates the guarantee of substantive due process of law of Article I, Section 2 of the Illinois Constitution.

Relief Requested

WHEREFORE, Plaintiffs request that this Court:

A. Enter a declaratory judgment that the Evanston City Code's requirement that a mobile food vehicle "must be owned and operated by the owner or agent of a licensed food establishment in the City" is unconstitutional on its face because it violates the equal protection guarantee of Article I, Section 2 of the Illinois Constitution;

B. Enter a declaratory judgment that the Evanston City Code's requirement that a mobile food vehicle "must be owned and operated by the owner or agent of a licensed food establishment in the City" is unconstitutional on its face because it violates the due process guarantee of Article I, Section 2 of the Illinois Constitution;

C. Enter a permanent injunction against Defendant prohibiting enforcement of the Evanston City Code's requirement that a mobile food vehicle "must be owned and operated by the owner or agent of a licensed food establishment in the City";

D. Award Plaintiffs their reasonable costs and attorneys fees; and

E. Award Plaintiffs any additional relief it deems just and proper.

Dated: August 7, 2012.

**JAMES NUCCIO
GABRIEL WIESEN
AFTER HOURS PIZZA LLC**

By: _____
One of their attorneys

Diane S. Cohen (#6199493)
Jacob H. Huebert (#6305339)
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VERIFICATION BY CERTIFICATION

I, JAMES NUCCIO, on behalf of myself and After Hours Pizza LLC, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, do certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as above that I verily believe the same to be true.

James Nuccio

I, GABRIEL WIESEN, on behalf of myself and After Hours Pizza LLC, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, do certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as above that I verily believe the same to be true.

Gabriel Wiesen