

CAUSE NO. 2019-DCL-01284

SURFVIVE; ANUBIS AVALOS; AND
ADONAI RAMSES AVALOS,

Plaintiffs,

v.

CITY OF SOUTH PADRE ISLAND,

Defendant.

IN THE DISTRICT COURT

CAMERON COUNTY, TEXAS

Cameron County - 138th District Court

_____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION,
APPLICATION FOR INJUNCTIVE RELIEF,
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, SurfVive; Anubis Avalos; and Adonai Ramses Avalos, Plaintiffs herein, and file their Original Petition, Application for Injunctive Relief, and Request for Disclosure against the City of South Padre Island, Texas, Defendant herein. In support of their Original Petition, Application for Injunctive Relief, and Request for Disclosure, Plaintiffs would show the Court the following:

I. INTRODUCTION

1. This lawsuit seeks to vindicate Plaintiffs' economic liberty rights under Article I, § 19 of the Texas Constitution, to operate their mobile-food-unit businesses, colloquially known as "food trucks," free from unreasonable and protectionist government interference.

2. Plaintiffs challenge the constitutionality of two restrictions under the City of South Padre Island's vending laws, which: (1) prohibit entrepreneurs from operating a food truck

business in South Padre Island unless the owner of a restaurant signs off on their permit application, contained in § 10-31(C)(3) of the South Padre Island City Code (the “Restaurant Permission Requirement”); and (2) prohibit more than twelve food trucks from obtaining operating permits for South Padre Island, Texas, contained in §§ 10-31(C)(2), (F)(2)(a) of the South Padre Island City Code (the “Permit Cap”).

3. Plaintiffs own and operate food trucks that offer their customers affordable, freshly prepared food. The food trucks that Plaintiffs operate allow them to support their families and communities, and also to employ others seeking to do the same.

4. With four million annual visitors, South Padre Island is an attractive location for food-truck entrepreneurs seeking to feed hungry residents and the island’s many visitors. But in response to complaints by brick-and-mortar restaurants, the City of South Padre Island has made it impossible for independent mobile vendors like Plaintiffs to operate on private property on the island.

5. The City of South Padre Island’s (“Defendant”) enforcement of its Restaurant Permission Requirement prohibits Plaintiffs SurfVive, Anubis Avalos, and Adonai Ramses Avalos (collectively, the “Plaintiffs”) from operating their food trucks unless the owner of a brick-and-mortar restaurant in South Padre Island signs off on their permit applications. To have any chance at satisfying this restriction, the City forces Plaintiffs and other vendors to ask owners of competing restaurants to sign off on their permit applications, or else not open for business. The Restaurant Permission Requirement applies to all food trucks seeking to operate on private property in South Padre Island, Texas.

6. Defendant also enforces its Permit Cap in order to limit the number of food trucks in South Padre Island. To have any chance at operating a food truck once Defendant issues twelve

active mobile-food-unit permits, the food truck entrepreneurs must wait, indefinitely, until a food truck operating in South Padre Island relinquishes its permit. Plaintiffs want to operate their existing food trucks and, in the case of the Avalos brothers, expand by adding additional trucks, and do so regardless of whether they are the first, twelfth, or twentieth truck seeking to operate on the island.

7. Defendant's Restaurant Permission Requirement and Permit Cap do not address any public health or safety concern; their purpose and actual real-world effect are to protect restaurants and other brick-and-mortar food establishments from competition by food trucks.

8. Defendant's actions deprive Plaintiffs of their right to pursue a lawful occupation free from unreasonable government interference, impose oppressive burdens with no countervailing public benefits, and violate the guarantees afforded Plaintiffs by the Due Course of Law Clause of Article I, § 19 of the Texas Constitution. Accordingly, Defendant's Restaurant Permission Requirement and Permit Cap should be declared unconstitutional and permanently enjoined.

II. PARTIES AND SERVICE OF PROCESS

PLAINTIFFS

9. Plaintiff SurfVive is a 501(c)(3) nonprofit organization based in Bayview, Cameron County, Texas that owns the SurfVive food truck, a permitted mobile food unit in Cameron County, Texas. SurfVive was founded in 2016, and its operations are run by Erica Lerma. Defendant's enforcement of its Restaurant Permission Requirement is barring SurfVive from operating its food truck in South Padre Island, Texas because the owner of a restaurant did not sign off on SurfVive's permit application. Defendant has further interfered with SurfVive's ability to operate its food truck by enforcing its Permit Cap, which prohibits SurfVive from operating its food truck until a permit becomes available.

10. Plaintiffs Anubis Avalos and Adonai “Ramses” Avalos are brothers who reside in Cameron County, Texas. Anubis and Ramses are co-owners of the Chile de Árbol food truck, a permitted mobile food unit in Cameron County, Texas. The Chile de Árbol food truck currently operates on private commercial property in Cameron County, Texas. Plaintiffs Anubis and Ramses Avalos seek to grow their food truck business to South Padre Island, Texas, but Defendant’s enforcement of its Restaurant Permission Requirement prohibits Anubis and Adonai from opening a Chile de Árbol food truck on the island without the signed permission of a South Padre Island restaurant owner. Defendant is further interfering with their ability to operate a food truck on the island by enforcing its Permit Cap, which prohibits the opening of a Chile de Árbol food truck on the island until a permit becomes available.

DEFENDANT

11. Defendant City of South Padre Island is a municipality organized under the laws of the State of Texas. Defendant is located at City Hall, 4601 Padre Boulevard, South Padre Island, Cameron County, Texas.

III. DISCOVERY CONTROL PLAN

12. Plaintiffs intend to conduct Level 2 discovery under Rule 190.3 of the Texas Rules of Civil Procedure.

IV. JURISDICTION AND VENUE

13. Plaintiffs bring this lawsuit pursuant to the Due Course of Law Clause contained in Article I, § 19 of the Texas Constitution, and the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. § 37.003.

14. Plaintiffs seek declaratory and injunctive relief against the enforcement of Defendant’s Restaurant Permission Requirement and Permit Cap, related implementing rules and

regulations, and the practices and policies of Defendant, that unconstitutionally deny Plaintiffs the ability to operate their mobile food establishments free from unreasonable and protectionist government interference.

15. The Court has subject matter jurisdiction because Plaintiffs seek to vindicate their rights under the Texas Constitution, because Plaintiffs seek a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code Ann. § 37.003, and because Plaintiffs seek injunctive relief against a municipality organized under the laws of the State of Texas, *see* Tex. Civ. Prac. & Rem. Code Ann. § 65.021.

16. Venue is proper in Cameron County pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1), (3).

V. FACTS

THE FOOD TRUCK INDUSTRY IN THE UNITED STATES

17. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully alleged here.

18. Mobile food establishments, such as the food trucks operated by Plaintiffs, are commercial vehicles that allow entrepreneurs to travel from place to place, or remain at a fixed location, in order to sell and serve food to customers.

19. Food trucks take many different forms. Some only serve food that is prepared and prepackaged in a licensed commercial kitchen. Others, like those operated by Plaintiffs, are self-sufficient mobile kitchens that let those working on board prepare and serve food directly from the truck.

20. In addition to providing new jobs, food trucks offer communities a greater and more varied selection of food choices.

21. Food trucks complement, rather than replace, existing brick-and-mortar restaurants. Many mobile vending entrepreneurs later open restaurants, and many restaurant entrepreneurs expand by opening food trucks.

PLAINTIFFS AND THEIR FOOD TRUCKS

SURFVIVE

22. Plaintiff SurfVive is a 501(c)(3) non-profit organization whose mission is “to sow love through surfing, food, and all forms of art.” SurfVive’s mission centers on promoting healthy living. In pursuit of this mission, SurfVive runs a free surfing school, operates learning gardens to teach the importance of responsible food choices, and runs a composting service. SurfVive’s operations are run by one of its co-founders, Erica Lerma.

23. To support its mission and promote healthy eating, SurfVive purchased a food truck in March 2018 in order to sell smoothies, coffee, and vegetable bowls in South Padre Island.

24. After purchasing its food truck, SurfVive obtained a mobile-vending-unit permit from Cameron County, Texas. Before issuing the permit, the Cameron County Public Health Environmental Health Program required that SurfVive’s food truck pass a fire inspection, along with submitting proof of a Texas sales and tax permit, insurance, contract for disposal of waste water, and certified food manager certification, among other requirements.

25. SurfVive sought to operate its food truck in South Padre Island, Texas beginning in April 2018, but it learned that Defendant had no permits available. As a result, SurfVive could not operate its food truck on the island.

26. To vend in South Padre Island, Defendant requires mobile food units to operate on private property in designated areas identified in § 10-31(C)(1) of the South Padre Island City Code.

27. On June 2, 2018, Defendant's Environmental Health Director, Victor Baldovinos, contacted Erica Lerma to inform her that the mobile-food-unit permit cap had been raised from six to twelve, and that SurfVive could apply for one of the newly available permits.

28. In her capacity as SurfVive's director, Erica Lerma obtained Defendant's application and scouted potential vending locations. In the course of doing so, Erica noticed a section of the application labeled "Local Establishment Support," which asked for a name, address, and signature. Erica interpreted this as requiring the name, address, and signature of the owner on whose property SurfVive would vend; in an attempt to satisfy the application requirement, Erica identified the Plaza Island Center at 5009 Padre Boulevard as SurfVive's would-be vending location, and obtained signatures from the Plaza's owner.

29. Erica Lerma submitted SurfVive's application for a mobile-food-unit permit on September 24, 2018.

30. Defendant's Environmental Health Director, Victor Baldovinos, contacted Erica on September 24, 2018, the same day SurfVive filed its mobile-food-unit application, asking her to come meet with him because SurfVive's "application [was] missing information."

31. On October 1, 2018, Erica Lerma met with Director Baldovinos to discuss SurfVive's permit application. At the appointment, Director Baldovinos informed Erica that SurfVive's mobile-food-unit permit application needed the signature of a local restaurant owner, and explained that the "Local Establishment Support" section of the permit application was the Restaurant Permission Requirement, and that SurfVive's application would not be approved until the owner of a South Padre Island restaurant signed the permit application.

32. Erica asked Director Baldovinos why SurfVive needed to obtain permission from a would-be brick-and-mortar competitor in order to apply for a permit, and Director Baldovinos

informed her that the Restaurant Permission Requirement was necessary for passage of Defendant's mobile-food-unit ordinance. Director Baldovinos further informed Erica that several local restaurant owners had included the Restaurant Permission Requirement in the ordinance and were on a committee, but he refused to identify the restaurant owners who served on this committee without an open records request. In response, Erica filed an open records request.

33. Erica filed an open records request seeking documents regarding Defendant's Food Truck Planning Committee, formalized in section 10-31.1 of the City of South Padre Island's City Code. Entitled "Evaluation," the Code describes the Committee as being responsible for "evaluat[ing] the program's effectiveness" and for "tak[ing] their recommendations to City Council no later than April 17, 2017." In response to Erica's open records request, Mr. Baldovinos informed Erica that the Committee was "headed by Arnie Crennin from Gabriela," an Italian restaurant and pizzeria in South Padre Island, and that the "[o]wners" of the following restaurants were invited to the Committee: Parrot Eyes, Padre Rita Grill, Padre Island Brewing Company, Louie's Backyard, Pier 19, and Laguna Bob's.

34. SurfVive rejects, on principle, Defendant's Restaurant Permission Requirement and being forced to get a would-be brick-and-mortar competitor to sign off on their mobile-food-unit permit application in order to open for business on the island.

35. Defendant's Permit Cap, together with its Restaurant Permission Requirement, also interferes with SurfVive's efforts at expanding its programs, including having to invest in a second SurfVive food truck without knowing if Defendant will ever have an available mobile-food-unit permit for the second truck.

ANUBIS AND ADONAI “RAMSES” AVALOS

36. Plaintiffs Anubis and Adonai “Ramses” Avalos own and operate Chile de Árbol, a permitted mobile food unit in Cameron County, Texas. Anubis and Ramses co-own their business, which they operate on nights and weekends.

37. Ramses and Anubis Avalos are brothers who share passions for music and healthy food. A local piano teacher and accompanist for school choirs, Ramses shares his musical gift with students in the community. His brother, Anubis, similarly passes on his love of music to his guitar students, when he is not working his day job as a high school teacher.

38. In spite of their busy schedules, the Avalos brothers decided to embark on a new venture. Both Ramses and Anubis adhere to a vegan diet and, after having difficulty finding affordable and flavorful meatless food options, they decided to open a food truck, Chile de Árbol.

39. Before opening for business, Anubis and Ramses had to satisfy the requirements for Cameron County’s mobile-vending-unit permit. The Cameron County Public Health Environmental Health Program required that their Chile de Árbol food truck pass a fire inspection, along with providing proof of a Texas sales and tax permit, insurance, contract for disposal of waste water, and certified food manager certification, among other requirements.

40. Anubis and Ramses opened Chile de Árbol in November 2017, setting up shop on Tuesdays through Saturdays at The Broken Sprocket, a food truck park in Brownsville, Texas. They serve a wide variety of meals, including tacos, burgers, and Indian-inspired bowls. All options are free of meat, eggs, or dairy. Since opening Chile de Árbol, the Avalos brothers have earned a loyal customer following.

41. Anubis and Ramses want to expand their Chile de Árbol food truck business by bringing their tasty food options to residents and visitors in South Padre Island. Like SurfVive, however, they reject Defendant's Restaurant Permission Requirement and being forced to get a would-be brick-and-mortar competitor to sign off on their mobile-food-unit permit application in order to open for business on the island. Defendant's Permit Cap also interferes with the Avalos brothers' efforts at expanding their food truck business, including having to invest in a new Chile de Árbol food truck without knowing if Defendant will ever have an available mobile-food-unit permit that allows them to open for business on the island.

SOUTH PADRE ISLAND'S RESTAURANT PERMISSION REQUIREMENT FOR FOOD TRUCKS

42. Defendant severely restricts the marketplace for mobile food vending in the city of South Padre Island.

43. A permitted mobile food unit (referred to herein as a "food truck" or "food trucks") is subject to Chapter 10 of the South Padre Island Code, including the operation requirements and restrictions contained in § 10-31.

44. According to Defendant's Restaurant Permission Requirement, an applicant for a mobile-food-unit permit "must be supported locally and have the signature of an owner or designee of a licensed, free-standing food unit in South Padre Island before being eligible for a permit." South Padre Island, Tex., Code § 10-31(C)(3).

45. Section 10-31(C)(3) means that, for food trucks to have any chance at vending in South Padre Island, an applicant must persuade the owner of a brick-and-mortar restaurant to sign their permit application, even though the applicant would be competing with the restaurant.

46. The Restaurant Permission Requirement applies to all food trucks seeking to operate on private property in South Padre Island, Texas.

47. Upon information and belief, the Restaurant Permission Requirement was written, and advocated for, by South Padre Island restaurant owners.

SOUTH PADRE ISLAND’S PERMIT CAP ON FOOD TRUCK PERMITS

48. Defendant further restricts food trucks from operating in South Padre Island by severely limiting the number of available mobile-food-unit permits. Under the Permit Cap, “[n]o more than Twelve (12) mobile food unit permits may be issued per month on the island[,]” South Padre Island, Tex. Code § 10-31(C)(2), and a mobile-food-unit permit is “valid for 30 days[,]” *id.* at § 10-31(F)(2)(a).

49. Under South Padre Island, Tex. Code §§ 10-31(C)(2) and 10-31(F)(2)(a), there can only be only twelve permitted mobile food units in South Padre Island at any given time.

50. The Permit Cap applies to all food trucks seeking to operate on private property in South Padre Island, Texas.

51. Upon information and belief, the Permit Cap was written, and advocated for, by South Padre Island restaurant owners.

**IMPACT OF RESTAURANT PERMISSION REQUIREMENT AND PERMIT CAP
ON SOUTH PADRE ISLAND’S FOOD TRUCKS**

52. Defendant’s Restaurant Permission Requirement and the Permit Cap significantly burden food truck businesses wishing to vend in South Padre Island.

53. The Restaurant Permission Requirement significantly burdens food truck owners seeking to vend in South Padre Island because it gives restaurant owners power to veto their food-truck competition by refusing to sign a mobile-food-unit permit application.

54. In order to submit a complete permit application to Defendant, a food truck owner must approach restaurant owners in South Padre Island and ask for a signature granting them permission to compete with the restaurant for customers in South Padre Island.

55. Owners of South Padre Island restaurants, or other brick-and-mortar food establishments, may refuse to sign an application for any reason, and need not provide a reason for refusing to do so.

56. Upon information and belief, owners of restaurants and other brick-and-mortar food establishments often refuse to sign off on a food truck owner's mobile-food-unit application.

57. Even if a South Padre Island restaurant owner does sign a food truck's permit application, Defendant will deny the application under the Permit Cap if it has already issued twelve mobile-food-unit permits.

58. The Permit Cap significantly burdens would-be vendors once twelve food trucks obtain mobile-food-unit permits; Defendant flatly prohibits any other food trucks from vending on the island until an existing permit holder relinquishes their permit.

59. Both the Restaurant Permission Requirement and Permit Cap create significant business risk for existing and aspiring food truck entrepreneurs. There are many fixed and variable costs involved with starting a new food truck or growing an existing food truck business. This investment can be lost if no South Padre Island restaurant owner is willing to sign a food truck's permit application (or renewal). Further risking a food truck owner's investment in their food truck business is Defendant's Permit Cap, including food truck owners having to invest in a new food truck without knowing if Defendant will ever have an available mobile-food-unit permit allowing the truck to open for business.

60. In South Padre Island, food truck entrepreneurs are forced to weigh their business investment against the prospect that no restaurant owner will allow them to enter the market by signing their permit application, or that none of Defendant's twelve mobile-food-unit permits will ever become available.

**THE RESTAURANT PERMISSION REQUIREMENT'S FAILURE TO ADVANCE
A LEGITIMATE GOVERNMENTAL INTEREST**

61. The Restaurant Permission Requirement advances no public health or safety purpose, nor any other legitimate governmental interest.

62. Defendant has no evidence that the Restaurant Permission Requirement advances any legitimate governmental interest.

63. The purpose and effect of the Restaurant Permission Requirement is to protect restaurants and other brick-and-mortar food establishments from competition by food trucks.

**THE PERMIT CAP'S FAILURE TO ADVANCE
A LEGITIMATE GOVERNMENTAL INTEREST**

64. The Permit Cap advances no public health or safety purpose, nor any other legitimate governmental interest.

65. Defendant has no evidence that the Permit Cap advances any legitimate governmental interest.

66. The purpose and effect of the Permit Cap is to protect restaurants and other food establishments from competition by food trucks.

VI. INJURY TO PLAINTIFFS

67. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

68. The Restaurant Permission Requirement prohibits Plaintiffs from operating their food trucks in South Padre Island unless they obtain the signature of a South Padre Island restaurant owner on their permit applications.

69. The Restaurant Permission Requirement allows owners of South Padre Island restaurants and other brick-and-mortar food establishments to veto their food-truck competition by refusing to sign Plaintiffs' mobile-food-unit permit applications.

70. The Permit Cap prohibits Plaintiffs from operating their food trucks in South Padre Island unless Defendant happens to have issued fewer than twelve mobile-food-unit permits.

PLAINTIFF SURFVIVE

71. Plaintiff SurfVive seeks to operate its SurfVive food truck on private property at the Plaza Island Center, 5009 Padre Boulevard, South Padre Island, without first obtaining the signed permission of a South Padre Island restaurant owner.

72. But for the specific application of the Restaurant Permission Requirement against Plaintiff SurfVive, it would have obtained a mobile-food-unit permit and began operating its food truck in South Padre Island in September 2018.

73. But for the specific application of the Restaurant Permission Requirement against Plaintiff SurfVive, its attempt to obtain a mobile-food-unit permit would not require approaching its would-be brick-and-mortar restaurant competitors and asking for their signed permission to open for business.

74. But for the specific application of the Permit Cap against Plaintiff SurfVive, it would have applied for a mobile-food-unit permit in South Padre Island in April 2018.

75. But for the specific application of the Permit Cap against Plaintiff SurfVive, it would be eligible for a mobile-food-unit permit, regardless of how many permits Defendant has issued to other food truck owners.

76. But for the specific application of the Restaurant Permission Requirement and Permit Cap against Plaintiff SurfVive, it would immediately obtain a mobile-food-unit permit and

operate in South Padre Island. In so doing, Plaintiff SurfVive's food truck would be able to generate revenue that supports SurfVive's programs; instead, SurfVive's food truck cannot operate on the island.

77. But for the specific application of the Restaurant Permission Requirement and Permit Cap against Plaintiff SurfVive, it could expand its programs and invest in a second food truck free from the significant business risk created by Defendant's Restaurant Permission Requirement and Permit Cap.

PLAINTIFFS ANUBIS AND ADONAI "RAMSES" AVALOS

78. Plaintiffs Anubis and Adonai "Ramses" Avalos seek to operate their food truck, Chile de Árbol, in South Padre Island.

79. But for the specific application of the Restaurant Permission Requirement against Plaintiffs Anubis and Ramses Avalos, they would seek a mobile-food-unit permit in order to expand their Chile de Árbol food truck business in South Padre Island, something they have found very difficult to do because the Restaurant Permission Requirement prevents them from operating a food truck without first obtaining the signed permission of a South Padre Island restaurant owner.

80. But for the specific application of the Permit Cap against Plaintiffs Anubis and Ramses Avalos, they would seek a mobile-food-unit permit in order to expand their Chile de Árbol food truck business in South Padre Island, something they have found very difficult to do because the Permit Cap bars food trucks from operating on the island once Defendant issues mobile-food-unit permits to twelve food trucks.

81. But for the specific application of the Permit Cap against Plaintiffs Anubis and Ramses Avalos, they would be eligible for a mobile-food-unit permit, regardless of how many permits Defendant has issued to other food truck owners.

82. But for the specific application of the Restaurant Permission Requirement and Permit Cap against Plaintiffs Anubis and Ramses Avalos, they would obtain a mobile-food-unit permit and operate in South Padre Island as soon as possible.

83. But for the specific application of the Restaurant Permission Requirement and Permit Cap against Plaintiffs Anubis and Ramses Avalos, they could pursue new vending locations and invest in a second food truck free from the significant business risk created by Defendant's Restaurant Permission Requirement and Permit Cap.

VII. CAUSES OF ACTION

(TEX. CONST. ART. I, § 19—DEPRIVATION OF LIBERTY; DUE COURSE OF THE LAW OF THE LAND)

84. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

85. Article I, § 19 of the Texas Constitution provides that:

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land.

86. Among the rights secured by the due course of the law of the land guarantee of the Texas Constitution, commonly known as the constitution's "substantive due course of law" guarantee, is the right to earn an honest living in the occupation of one's choice free from unreasonable government interference.

87. Defendant has violated the substantive due course of law guarantee in Article I, § 19 of the Texas Constitution by enacting and enforcing the Restaurant Permission Requirement,

which bars Plaintiffs from operating their food trucks on private property in South Padre Island without first obtaining the signature of a South Padre Island restaurant owner on their mobile-food-unit permit application.

88. Defendant's Restaurant Permission Requirement violates Article I, § 19 of the Texas Constitution both on its face and as-applied to Plaintiffs.

89. Defendant has no legitimate governmental interest for enacting or enforcing the Restaurant Permission Requirement against Plaintiffs, or other mobile food establishments.

90. The purpose of Defendant's Restaurant Permission Requirement is not rationally related to a legitimate governmental interest.

91. The Restaurant Permission Requirement's actual, real-world effect is not connected to a legitimate governmental interest.

92. The Restaurant Permission Requirement's actual, real-world effect is so burdensome as to be unconstitutionally oppressive.

93. Defendant has violated the substantive due course of law guarantee in Article I, § 19 of the Texas Constitution by enacting and enforcing the Permit Cap, which bars Plaintiffs from operating their food trucks on private property in South Padre Island once Defendant issues mobile-food-unit permits to twelve food trucks.

94. Defendant's Permit Cap violates Article I, § 19 of the Texas Constitution both on its face and as-applied to Plaintiffs.

95. Defendant has no legitimate governmental interest for enacting or enforcing the Permit Cap against Plaintiffs or other mobile food establishments.

96. The purpose of Defendant's Permit Cap is not rationally related to a legitimate governmental interest.

97. The Permit Cap's actual, real-world effect is not connected to a legitimate governmental interest.

98. The Permit Cap's actual, real-world effect is so burdensome as to be unconstitutionally oppressive.

99. Defendant's police power does not extend to engaging in economic protectionism benefitting restaurants and other food establishments at the expense of food trucks and other mobile food establishments.

100. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001–37.011, Plaintiffs respectfully request the Court enter a judgment declaring that the Restaurant Permission Requirement, contained in § 10-31(C)(3) of the South Padre Island City Code, violates the Due Course of Law Clause of Article I, § 19 of the Texas Constitution, both on its face and as-applied to Plaintiffs.

101. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001–37.011, Plaintiffs respectfully request the Court enter a judgment declaring that the Permit Cap, contained in §§ 10-31(C)(2) and 10-31(F)(2)(a) of the South Padre Island City Code, violates the Due Course of Law Clause of Article I, § 19 of the Texas Constitution, both on its face and as-applied to Plaintiffs.

VIII. APPLICATION FOR PERMANENT INJUNCTION

102. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

103. Plaintiffs respectfully ask the Court to set their application for permanent injunction for a hearing and, following the hearing, to issue a permanent injunction against Defendant.

IX. ATTORNEYS' FEES

104. Plaintiffs hereby request all costs and reasonable attorneys' fees, as permitted by section 37.009 of the Texas Civil Practices and Remedies Code.

X. REQUEST FOR DISCLOSURE

105. Plaintiffs request that Defendant disclose to Plaintiffs, within 50 days of the service of this request, the information and materials described in Rule 194.2(a), (b), (c), (e), (f), (i), and (l) of the Texas Rules of Civil Procedure.

XI. PRAYER AND RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for judgment as follows:

A. For a permanent injunction barring Defendant from enforcing South Padre Island City Code § 10-31(C)(3);

B. For a permanent injunction barring Defendant from enforcing South Padre Island City Code §§ 10-31(C)(2) and 10-31(F)(2)(a);

C. For a declaratory judgment that Defendant's enforcement of South Padre Island City Code § 10-31(C)(3) against Plaintiffs violates the Due Course of Law Clause contained in Article I, § 19 of the Texas Constitution, both on its face and as-applied, by unreasonably interfering with Plaintiffs' right to earn a living free from unreasonable government interference;

D. For a declaratory judgment that Defendant's enforcement of South Padre Island City Code § 10-31(C)(2) and 10-31(F)(2)(a) against Plaintiffs violates the Due Course of Law Clause contained in Article I, § 19 of the Texas Constitution, both on its face and as-applied, by unreasonably interfering with Plaintiffs' right to earn a living free from unreasonable government interference;

E. For an award of one dollar in nominal damages;

- F. For an award of attorneys' fees and court costs; and
- G. For all other legal and equitable relief to which Plaintiffs may be entitled.

RESPECTFULLY SUBMITTED this 28th day of February, 2019.

INSTITUTE FOR JUSTICE

By: /s/ Arif Panju
Arif Panju (TX Bar No. 24070380)
INSTITUTE FOR JUSTICE
816 Congress Avenue, Suite 960
Austin, TX 78701
Tel: (512) 480-5936
Fax: (512) 480-5937
Email: apanju@ij.org

Kirby Thomas West (PA Bar No. 321371)*
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
Email: kwest@ij.org

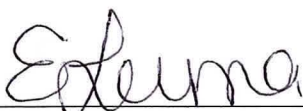
Attorneys for Plaintiffs

* Motion for Admission *Pro Hac Vice* to be filed.

VERIFICATION

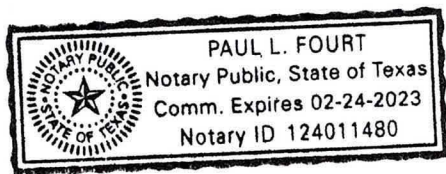
STATE OF TEXAS §
 §
COUNTY OF CAMERON §

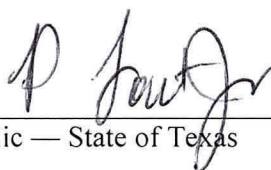
BEFORE ME, the undersigned authority, on this day personally appeared Erica Lerma, in her capacity as Director of SURFVIVE, a 501(c)(3) nonprofit organization, whose name is subscribed below and after having been duly sworn, on her oath stated that the facts set forth in paragraphs 9, 22–35, 52–60, 71–77, of the foregoing Plaintiffs’ Original Petition, Application for Injunctive Relief, and Request for Disclosure are within her personal knowledge and are true and correct.



ERICA LERMA
DIRECTOR OF SURFVIVE

SUBSCRIBED AND SWORN TO before me on this the 27 day of February, 2019.





Notary Public — State of Texas

My Commission Expires: 2/24/23

VERIFICATION

STATE OF TEXAS

§

COUNTY OF CAMERON

§

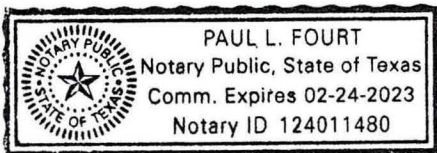
§


BEFORE ME, the undersigned authority, on this day personally appeared ANUBIS AVALOS, whose name is subscribed below and after having been duly sworn, on his oath stated that the facts set forth in paragraphs 10, 36–41 52–60, 78–83 of the foregoing Plaintiffs’ Original Petition, Application for Injunctive Relief, and Request for Disclosure are within his personal knowledge and are true and correct.



ANUBIS AVALOS

SUBSCRIBED AND SWORN TO before me on this the 27 day of February, 2019.





Notary Public — State of Texas

My Commission Expires: 2/24/23

