

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

ILLINOIS RESTAURANT ASSOCIATION, an)
Illinois not-for-profit corporation, and A.N.A.C.)
d/b/a Allen's New American Café)
)
)
Plaintiffs,)
) Case No. _____
v.)
)
CITY OF CHICAGO, a Municipal Corporation,)
)
)
Defendant.)

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiffs, Illinois Restaurant Association and A.N.A.C., d/b/a Allen's New American Café, (hereinafter, "Plaintiffs") by their undersigned attorneys, Sachnow & Weaver, Ltd., complain against the Defendant, CITY OF CHICAGO, a Municipal corporation, as follows:

THE NATURE OF THE CASE AND ITS CONSTITUTIONAL IMPLICATIONS

1. On April 26, 2006, the City of Chicago ("Chicago" or "City"), a home rule unit under the 1970 Illinois Constitution (the "Illinois Constitution"), passed an Ordinance banning the restaurant sale of "foie gras" (fattened liver) within the City of Chicago ("the Foie Gras Ordinance" or "the Ordinance").
2. This complaint seeks to void the Ordinance.
3. Chicago does not contend that its ban on restaurant sale of foie gras within the City limits was enacted to address the health or safety of Chicago residents. In fact, imported foie gras is subject to inspection by the U.S. Government upon entry into the country and foie gras is approved as a safe food by the United States Department of Agriculture ("USDA").

4. Chicago passed the ban on the sale of foie gras by restaurants in Chicago because of the purportedly inhumane manner in which foie gras is *produced*.

5. But there is *no* production of foie gras within the City of Chicago limits or, for that matter, within Illinois.

6. All of the foie gras sold in Chicago restaurants is produced in Canada, France, and New York, where its production is permitted under the laws of those countries, states and localities.

7. Thus, the Foie Gras Ordinance's ban on local restaurant sale of foie gras is not designed to address any *local* problems or concerns; for example, the way animals are treated within Chicago.

8. Accordingly, this case is not about whether the method of production of foie gras is or is not humane.

9. Instead, this case presents the question of whether, in the absence of any local health, safety, moral or welfare concerns, a local government can legally ban the restaurant sale of a certain food item altogether because it disagrees with the manner in which that food is elsewhere lawfully produced.

10. Under the Illinois Constitution, the City of Chicago's delegated authority permits it to legislate only with respect to problems in which Chicago has a legitimate and substantial *local* interest.

11. Under the Illinois Constitution, the City of Chicago's delegated authority permits it to legislate only with respect to its *own* problems, regarding its *own* government and affairs, not with respect to perceived problems that exist in other states or localities.

12. Under the Illinois Constitution, the City of Chicago's delegated authority permits it to legislate only with respect to problems in which its government, as opposed to some other

governmental unit, has the most vital interest and in an area in which local governments traditionally occupy.

13. The City of Chicago's Foie Gras Ordinance fails each of these tests.

14. Whether the treatment of animals in Canada, France, or New York leading to the production of foie gras is or is not humane is not a problem suitable for legislation by the City of Chicago, let alone a substantial Chicago problem.

15. The City of Chicago is not the unit of government that has the most vital interest in how animals in Canada, France, or New York are treated.

16. It is not a traditional area of local governance for municipalities to ban the sale of products that are lawfully produced elsewhere because the municipality disagrees with the manner in which those products are elsewhere lawfully produced.

17. Accordingly, Plaintiffs challenge the validity of the Ordinance on the ground that it unconstitutionally exceeds those powers vested in Chicago as a home rule unit found in Article VII, Section 6 of the Illinois Constitution.

18. Plaintiffs also challenge the validity of the Ordinance on the ground that it has an impermissible extraterritorial effect on the production of foie gras, which lawfully occurs entirely outside of the jurisdiction.

19. Plaintiffs seek a judicial declaration that the Ordinance and accompanying Municipal Code sections enacted by it are unconstitutional, void and of no further force and effect under the Illinois Constitution; injunctive relief prohibiting Chicago from enforcing the Ordinance or the attendant newly enacted Municipal Code provisions; as well as such other relief as justice demands, including awarding Plaintiffs' attorneys' fees under the Illinois Civil Rights Act of 2003, as codified at 740 ILCS 23/5(c)(2).

THE PARTIES, STANDING, VENUE AND JURISDICTION

20. Plaintiff, Illinois Restaurant Association, is an Illinois non-profit organization consisting of member-restaurants that prepare and serve food to customers. A number of its member-restaurants consist of restaurants located in the City of Chicago which currently offer foie gras on their menus and, but for the Ordinance, intend to continue to sell dishes containing foie gras. Were they to do so, these members of the Illinois Restaurant Association would be subject to the penalty provisions contained in the Ordinance should it become effective. The Illinois Restaurant Association's bringing of this suit is germane to the organization's purpose, which is to advocate and promote on behalf of its members the common economic interests of its members. The Illinois Restaurant Association has properly authorized the bringing of this lawsuit in accordance with its own internal procedures. The Illinois Restaurant Association, therefore, has associational standing to challenge the Ordinance on its members' behalf.

21. Plaintiff, A.N.A.C., d.b.a., Allen's New American Café (hereinafter, "Allen's New American Café") is, and at all times relevant hereto, has been, a well-known and established restaurant located in Chicago, Illinois. Allen's New American Cafe has been recognized as offering among the finest cuisine and dining experiences to its customers. Among the dishes that Allen's New American Cafe provides as part of this fine dining experience is "foie gras."

22. Defendant City of Chicago is a municipal corporation, a body politic, existing under and by virtue of the laws of the State of Illinois.

23. Venue and jurisdiction is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-103 (a) because Chicago is a resident of this county and because all of Chicago's actions and the enforcement of the Ordinance against the Illinois Restaurant Association's members and against Allen's New American Café will occur in this county.

FACTUAL ALLEGATIONS

Foie Gras Is Produced And Manufactured Entirely Outside Of Chicago And The State Of Illinois

24. Foie gras is neither produced nor manufactured anywhere within Chicago's City limits or in the State of Illinois. No live bird that ultimately provides the liver for foie gras at Allen's New American Cafe or at any of the Illinois Restaurant Association's members, or to be served anywhere in Chicago, is kept or maintained in Chicago.

25. To Plaintiffs' knowledge, foie gras is produced domestically at farms located in California and New York. Foie gras is also produced and imported into the United States from farms in Canada and France. The production of foie gras is currently entirely lawful in all of these locations.

26. The foie gras that is served in Chicago restaurants is subject to approval by the United States Department of Agriculture ("USDA") and is safe for human consumption.

27. The foie gras that is served in Chicago restaurants and imported from Canada and France is subject to federal tariffs or other federal regulation.

28. On information and belief, over seventy Chicago restaurants, catering kitchens, or culinary educational institutions offer at least one item containing foie gras on their menus, including Allen's New American Café and numerous members of the Illinois Restaurant Association.

29. Foie gras is shipped into Illinois from either other states or foreign countries in the form of whole livers, which are then prepared for consumption, or in pre-packaged and pre-processed pâté or mousse form, typically in tins or sealed packages to be sold to consumers at retail. All of the foie gras that is served or sold in Chicago originates from either another state or

a foreign country and is imported into Illinois as a result of interstate or foreign commerce regardless of form.

The Foie Gras Ordinance

30. The City Council passed Ordinance PO-05-1895 on April 26, 2006 (a copy of which is attached hereto as Exhibit A).

31. Section 2 of the Ordinance enacts Section 7-39 of the Municipal Code to add the following provisions:

7-39-001 Food Establishments - Banned Items

All food dispensing establishments, as defined in Section 4-8-010 of the Municipal Code, shall prohibit the sale of foie gras.

7-39-005 Violation - Penalty

Any business that violates any provision of this chapter shall be fined not less than \$250 and no more than \$500 for each offense, and a separate and distinct offense shall be deemed to have been committed for each and every day on which any business shall be guilty of such violation.

32. Section 4-8-010 of the Municipal Code defines “food dispensing establishments” as:

[A]ny fixed location where food or drink is routinely prepared and served or provided for the public for consumption on or off the premises with or without charges. Such establishments include, but are not limited to, restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, grills, tearooms, sandwich shops, soda fountains, taverns, bars, cocktail lounges, nightclubs, industrial feeding establishments, take-out establishments, private institutions or organizations routinely serving food, catering kitchens, commissaries or any other eating or drinking establishment or operation.

33. Section 3 of the Ordinance provides that the Ordinance shall go into effect “ninety (90) days after its passage and publication.”

34. Foie gras constitutes the sole food item that Chicago has banned from sale by food dispensing establishments operating in Chicago. Prior to passage of the Ordinance, Section 7-39 was not a part of the Municipal Code.

35. The City Council published the Ordinance on the City's website on or about May 26, 2006.

36. Under the terms of the Ordinance, it will go into effect on or about August 23, 2006.

The Ordinance Was Not Created To Address A Local Problem Or Concern

37. Section 1 of the Ordinance expressly adopts the recitals into the codified Ordinance.

38. The Ordinance's recitals first state that Chicago is a home rule unit government granted the authority by Article VII, Section 6 of the Illinois Constitution to "exercise any power and perform any function relating to its government and affairs including protecting the health, safety and welfare of its citizens"

39. Although the Ordinance makes this single passing reference to the "health, safety and welfare" of *its* citizens, the Ordinance nowhere indicates how the ban on the sale of foie gras by food dispensing establishments impacts any one of these purported concerns.

40. Instead, the remaining recitals make clear that the *actual* purpose of the Ordinance is to prevent what the City Counsel believed was the unethical treatment of animals, even though *all* of the allegedly unethical treatment of animals addressed by the Ordinance takes place in other jurisdictions and is currently lawful in those jurisdictions.

41. The remaining recitals, in their entirety, state as follows (emphasis added):

WHEREAS, The City of Chicago is home to many famous restaurants offering the finest cuisine and dining experiences to their customers; and

WHEREAS, Millions of people visit Chicago every year, attending cultural events and dining in our legendary restaurants; and

WHEREAS, Recently the media has shed light on the unethical practices of the care and preparation of the livers of birds; and

WHEREAS, Birds, in particular geese and ducks, are inhumanely force fed, via a pipe inserted through their throats several times a day, in order to produce a rare delicacy, foie gras, for restaurant patrons; and

WHEREAS, Arguably our City's most renowned chef, Charlie Trotter, has stopped serving the delicacy, foie gras, in his restaurants; and

WHEREAS, Similar legislation requiring the ethical treatment of birds is being introduced throughout the United States; and

WHEREAS, The State of California passed legislation prohibiting the act of force feeding birds as well as banning the sale of the product made from this inhumane treatment;¹ and

WHEREAS, The State of Illinois is currently considering a similar ban of the practice of force feeding and the resulting product; and

WHEREAS, According to a recent Zogby poll, nearly eighty percent (80%) of Americans, when educated about foie gras, support a ban on the force feeding of birds; and

WHEREAS, The people of the City of Chicago and those who visit here have come to expect, and rightfully deserve, the highest quality in resources, service and fare; and

WHEREAS, By ensuring the ethical treatment of animals, who are the source of the food offered in our restaurants, the City of Chicago is able to continue to offer the best in dining experiences; now, therefore,...

42. Thus, the Ordinance, pursuant to its own terms, is designed to “*ensur[e] the ethical treatment of animals....*”

43. But, there are no animals in the City limits that are the subject of the allegedly unethical treatment.

¹ The California legislation described in the Ordinance is not set to go into force or effect until 2012. As such, the production of foie gras remains lawful in California until at least 2012.

44. The Ordinance, therefore, does not, in any way, ensure the ethical treatment of animals within Chicago.

45. Instead, the Ordinance's practical effect and intent is to influence conduct that takes place exclusively outside of the City boundaries and to involve the City in affairs more pertinent to regulation by the jurisdictions in which that conduct takes place, all of which, at present, deem the preparation of foie gras in their jurisdictions to be lawful.

COUNT I (FOR DECLARATORY AND INJUNCTIVE RELIEF)

Illinois Constitution Article VII, Section 6(a): **Unconstitutional Exercise of Home Rule Authority**

46. Plaintiffs, Illinois Restaurant Association and Allen's New American Café, reallege and incorporate by reference paragraphs 1 through 45 as if fully set forth herein.

47. Article VII, Section 6(a) of the Illinois Constitution authorizes a local home rule unit to legislate only on matters that pertain to local government or affairs.

48. A home rule unit may legislate on issues that relate only to its own problems, not those of its own state, other states, or the nation.

49. Thus, Ordinances enacted by the City of Chicago that do not deal with local problems and have extraterritorial effects exceed the scope of the constitutional authority granted to the City and are, therefore, unconstitutional.

50. The Ordinance at issue in this lawsuit falls into this category.

51. The alleged treatment of animals, which occurs wholly outside the jurisdiction of the City of Chicago (in such places as New York, Canada or France, where foie gras is produced and manufactured), does not pertain to Chicago's own local problems or its local government or affairs.

52. As a home rule municipality, the City of Chicago has no jurisdiction beyond its corporate limits except what is expressly granted by the Illinois General Assembly by statute.

53. Here, the Ordinance has an improper and unconstitutional extraterritorial effect on the production of foie gras, which occurs solely outside of its corporate limits. The Illinois General Assembly has not granted Chicago explicit authority to regulate in this area.

54. Since the Ordinance is not based on the exercise of authority granted to the City by Article VII, Section 6 of the Illinois Constitution and has an impermissible extraterritorial effect that the Illinois General Assembly has not explicitly granted to Chicago, the Ordinance and Sections 7-39-001 and 7-39-005 of the Municipal Code enacted by it are an unconstitutional exercise of Chicago's home rule powers.

55. Plaintiff Illinois Restaurant Association, in bringing this action, is enforcing the rights of its members under the Illinois Constitution to be free of legislation by a local home rule government unit that exceeds the authority granted by Article VII, Section 6 of the Illinois Constitution. Plaintiff Allen's New American Cafe is likewise entitled to be free of legislation by a local home rule government unit that exceeds the authority granted by Article VII, Section 6 of the Illinois Constitution.

56. By passing this Ordinance and enacting Sections 7-39-001 and 7-39-005 of the Municipal Code, Chicago has exceeded its powers under Article VII, Section 6 of the Illinois Constitution.

57. Plaintiffs will suffer irreparable injury in the absence of injunctive relief.

58. Plaintiffs lack any adequate remedy at law.

59. The balance of harms weighs in favor of Plaintiffs, and against the City, as the issuance of injunctive relief will not adversely affect the public interest, but will adversely affect the Plaintiffs' interest if injunctive relief is denied.

WHEREFORE, Plaintiffs, Illinois Restaurant Association and Allen's New American Café, request that this Court grant the following relief:

- a) enter a declaratory judgment that the City of Chicago exceeded the authority granted to it by Article VII, Section 6 of the Illinois Constitution by enacting Ordinance PO-05-1985, which implemented Sections 7-39-001 and 7-39-005 of the City of Chicago Municipal Code, and declaring that the Ordinance and these sections of the Municipal Code to be unconstitutional, void and of no further force and effect;
- b) enter a preliminary and then a permanent injunction barring Defendant City of Chicago and its officers, agents, servants, employees, attorneys and all those acting in concert with them, from enforcing the Ordinance, and Sections 7-39-001 or 7-39-005 of the City of Chicago Municipal Code;
- c) enter judgment awarding Plaintiffs Illinois Restaurant Association and Allen's New American Cafe their reasonable attorneys' fees and costs incurred in bringing this action pursuant to 740 ILCS 23/5(c)(2); and
- d) granting Plaintiffs any and all such other relief as law and justice demand.

Respectfully submitted,

Illinois Restaurant Association and
A.N.A.C., d/b/a Allen's New American
Café, *Plaintiffs*

By: _____
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DATED: August 22, 2006

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