

The New Food Truck Advocacy: Social Media, Mobile Food Vending Associations, Truck Lots, & Litigation in California & Beyondⁱ

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Introduction

Street vending is one of the world's oldest professions.¹ Food is and always has been one of the most popular items

offered for sale by vendors. In America, food has been sold on the streets since well before the birth of the nation.²

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1. See, e.g., LENDAL H. KOTSCHVAR & VALENTINO LUCIANIA, PRESENTING SERVICE 7 (2006) (“Vending and street eating were. . . common in ancient China[.]”).

2. See, e.g., Jennifer 8. Lee, *Street Vending as a Way to Ease Joblessness*, N.Y. TIMES, City Room (Apr. 29, 2009 7:00 A.M.), <http://cityroom.blogs.nytimes.com/2009/04/29/street-vending-as-a-way-to-eae-joblessness/> (noting that regulations have applied to street vending in New York City at least since 1691).

In many ways the practice of setting up a stationary stall on the side of a road or in a public square or market for the purpose of selling food changed very little over the course of recorded history. In recent years, though, both the practice and the popularity of street food have undergone a sea change.

The vast scope and dramatic pace of this change has been remarkable. In April 2008, the Los Angeles County Board of Supervisors proposed a law that would have jailed the owners of food trucks who remained in the same parking spot for more than one-half hour.³ After the law went into effect, vendors successfully challenged it in court.⁴ But the problem remained to varying degrees in other municipalities, and the lawsuit did nothing to solve the problem of how mobile food vendors could best attract customers as they regularly changed locations.

Then, in November 2008, the Kogi BBQ food truck—which marries Korean protein fillings (like beef bulgogi) with Mexican starch (like tortillas)—solved the chief marketing obstacle for these modern mobile vendors: how to let potential customers know where the food truck

would sell on a given day and time. Kogi’s Mike Prasad came upon the idea of using the social-media tool Twitter to market the business.⁵ Thanks to Prasad, potential customers became “followers.” That strategy helped the mom-and-pop operation clear \$2 million in sales in its first full year of operation.⁶ Today close to 100,000 people “follow” Kogi on Twitter.⁷ Vendors from coast to coast have mimicked Kogi, helping the practice of tweeting food trucks spread from Los Angeles to other large urban centers like New York City, to mid-sized cities like Rochester, NY, and even to isolated small towns like Marfa, TX (population 1,916).⁸

While social media can help mitigate the impact of discriminatory regulations, it has not proven able to eliminate that impact altogether. This is largely true because fights over food trucks take place within a much broader context. The fight over the rights of mobile food vendors and their customers involves differing and often-competing views over access to public and private spaces. For these reasons, food truck advocates in several American cities have established associations to represent their joint interests before regu-

3. See Jennifer Steinhauer, *In Taco Truck Battle, Mild Angelenos Turn Hot*, NY TIMES, May 3, 2008, <http://www.nytimes.com/2008/05/03/us/03taco.html> (describing the ban).

4. See John Rogers, *LA County Judge Tosses Out Taco Truck Restrictions*, USATODAY.COM, Aug. 28, 2008 http://www.usatoday.com/news/nation/2008-08-28-2917838081_x.htm (reporting on the demise of the ban).

5. See Shaya Tayefe Mohajer, *Foodies Flock to Twitter-Savvy Food Trucks*, MSNBC.COM, (May 15, 2009, 7:22 P.M.), http://www.msnbc.msn.com/id/30769388/ns/technology_and_science-tech_and_gadgets/t/foodies-flock-twitter-savvy-food-trucks/ (noting Prasad saw social media as a way to “inspire repeat business while solving ‘the problems of being a moveable venue’”).

6. See Katy McLaughlin, *The King of the Streets Moves Indoors*, WALL ST. J., Jan. 15, 2010, <http://online.wsj.com/article/SB10001424052748704842604574642420732091490.html> (noting Kogi cleared \$2 million in its first year).

7. See Kogi BBQ Twitter page, <http://www.twitter.com/kogibbq> (last visited Feb. 29, 2012).

8. Warren Belasco, *FOOD: THE KEY CONCEPTS* 117 (2008) (noting the propensity of technology to “transform. . . the food chain”).

latory and legislative bodies that regulate such spaces; litigated when denied their basic rights to operate; and in many cases shifted their focus to so-called “truck lots” as a way of finding strength (and drawing customers) in numbers.⁹

This article explores the many ways that food truck owners have worked together to defend their economic rights. In part I we introduce common characteristics of many of today’s food trucks. In part II we introduce the regulations that impact food trucks, paying particular attention to regulations in the state of California. Also in this part we discuss a survey one of the authors administered to several food truck owners around the country. In part III we discuss several ways food trucks have coped with and countered these regulations, including using social media, forming associations, litigating, and vending at public and private truck lots. Also in this part we discuss a survey the authors administered to several association leaders around the country. In part IV we introduce a framework within which to consider model food truck regulations. Finally, in part V, we conclude that only through continued cooperation across economic, social, and geographic lines will food trucks be able to ensure their permanency in the face of

opposition from large, powerful, and entrenched opposition.

I. Food Trucks Today

A. General Characteristics

The term “food truck” refers generally to a motorized vehicle—often customized—from which an operator sells food to consumers. These trucks typically contain cooking facilities the operator uses to prepare food—sometimes customized according to a particular consumer’s order.

The base price of a typical food truck is at least \$40,000.¹⁰ Enhancements to the interior (like stainless-steel cooking appliances) and exterior (many trucks feature eye-catching paint jobs, and some even boast flat-screen TV displays to entice customers) of a truck can easily double that cost.¹¹ A food truck usually has a compartment for a driver in the front of the vehicle and a much larger space in the back of the vehicle that the operator uses to take customer orders and to cook and serve food.¹² Often part of the exterior side of a food truck—generally the right-hand side of the truck, which faces the sidewalk when a truck is parked on a street—will feature one or more cut-away sections through which customers may place food orders and an

9. See *infra* part III.

10. See, e.g., Raymund Flandez, *Three Best Ways to Start a Food Truck Business*, WALL ST. J., Aug. 20, 2009, available at <http://online.wsj.com/article/SB125079598384547231.html> (describing some of the costs associated with launching a food truck).

11. See, e.g., Sharon Bernstein, *Costs of Having a Food Truck*, L.A. TIMES, May 8, 2011, available at <http://articles.latimes.com/2011/may/08/business/la-fi-food-trucks-box-20110508> (noting that common improvements to a truck can cost several hundred thousand dollars).

12. See generally DAVID WEBER, *THE FOOD TRUCK HANDBOOK* (forthcoming 2012).

operator may serve the customer's food order.¹³

Food trucks vary widely in terms of their height, width, and length. Many are the same model of truck as a UPS or FedEx delivery vehicle, while others are no larger than the smallest automobile. This variety means the dimensions of some food trucks are small enough that only one operator may work within the truck, while other trucks boast enough space to permit several employees to work within a truck on a variety of tasks at the same time.

Traditional food trucks include those that sell food like ice cream, hot dogs, and tacos.¹⁴ While newer food trucks sometimes sell such items, they are distinguishable in that they often embrace a broader and more dynamic vision of food sales through their utilization of technology, lack of attachment to a fixed vending location, and expansion of the possibilities of mobile cuisine—which often extends well beyond a traditional food “truck” to include a food pushcart, trailer, or other form.¹⁵ These modern food trucks often rely (like Kogi) on social media tools to promote and grow their businesses. Such food trucks may travel to different

locations nearly every day, and may sell at more than one location in a given day.¹⁶ The cuisine sold by these food trucks is characterized by its incredible diversity, high quality, and often-radical ingenuity.¹⁷ Food trucks around the country now offer high-quality, scratch-made foods of innumerable variety, including dumplings, cupcakes, schnitzel, and braised duck.

In many ways these modern trucks are restaurants on wheels that share as much with brick-and-mortar restaurants as they do with many traditional food trucks. Not surprisingly, the taxonomy used to identify today's food trucks has proven problematic. They are currently known by many names, including “mobile food vendors,” “gourmet” food trucks, and “roving” or “rolling” restaurants. According to commentator Ernesto Hernández-López:

[T]he terms “food trucks” or “truck vendors” . . . refer to food vendors who operate from mobile vehicles, even though technically they don't need to be in trucks and can be in other vehicles. California codes and local ordinances use other terms such as “catering trucks” or “peddlers.” “Taco Trucks” is the common term given to many such vendors who sell Mexican food, including but not limited to tacos. The lo-

13. *Id.*

14. See, e.g., Jesus Sanchez, *King Taco Got Start in Old Ice Cream Van*, L.A. TIMES, Nov. 16, 1987, available at http://articles.latimes.com/1987-11-16/business/fi-14263_1_ice-cream-truck (describing the success of a 1980s taco-truck entrepreneur).

15. “Food carts” are a smaller, non-motorized variant of a food truck. Like food trucks, they are mobile. But they are often towed or otherwise driven to a foodservice location to remain for a longer period of time.

16. In this manner, these modern food trucks are akin to the ice-cream trucks that wander cities and towns in search of customers. On the other hand, the modern trucks' use of social media distinguishes them from the ice-cream trucks.

17. Price sometimes serves as a distinguishing characteristic. The food sold by traditional vendors is known for its low prices. Consumers can expect to pay about \$1.50 for a boiled hot dog, for example, compared to \$15 for a lobster roll. However, many modern vendors sell foods like cupcakes (or smaller portions of entrée-sized menu items) at a price point that is much closer to the cost of a hot dog than to the cost of a lobster roll.

cal Spanish terminology for such trucks is “loncheros” or “taqueros.” For sake of simplicity and consistency, this essay mostly uses the terms “food trucks” and “truck vendors” and “loncheros” and “taco trucks,” even though they may not be completely accurate.¹⁸

By any name, food sold by mobile vendors has become increasingly common and popular with the buying public.

B. Widespread Acclaim & Support

There are three key factors that can account for the fact food trucks have become so popular. First, with the expansion of American “foodie” culture—a movement that revels in using the palate as a tool to explore both objectively authentic cuisine like traditional Indian samosas and bold new fusion cuisine like Korean tacos—more people have become passionate about eating. Furthermore, because food trucks often feature cuisine that falls outside the American mainstream—including so-called “ethnic” foods cooked by immigrant food-truck operators—food trucks help sate foodies’ yearning for this objectively authentic cuisine.¹⁹ Second, the ongoing economic recession has harmed many existing brick-and-mortar restaurants and

steered others away from launching new restaurant ventures. Because the startup and maintenance costs of a food truck are a fraction of those required to open a brick-and-mortar restaurant—considering permitting, rent, other overhead, and applicable taxes—many chefs and entrepreneurs now see food trucks as a viable alternative to traditional restaurants. Third, the recession has also hurt consumers, who have less money to spend on dining outside the home. Food trucks, most of which sell food at lower price points than comparable foods sold in traditional restaurants, can be a cost-effective substitute for dining out in a restaurant.

In Los Angeles, food served by mobile vendors is so renowned that at least one company in the city, Melting Pot Tours, offers walk-and-eat tours in which tourists, accompanied by a paid guide, travel on “a food tour of local favorites and little known haunts.”²⁰ Food trucks have become so much a part of the culinary culture of Southern California that their cuisine can be found on the menus of some of Los Angeles’s (and the state’s) more popular brick-and-mortar restaurants.²¹ Mobile food vendors are even the sole inspiration for a Los Angeles brick-

18. See Ernesto Hernández-López, *LA’s Taco Truck War: How Law Cooks Food Culture Contests* 2, n.1, Legal Studies Research Paper Series, Paper No. 10-29, (Oct. 18, 2010 version), available at <http://ssrn.com/author=522295>.

19. In this way, food trucks also suggest a bridge between what Belasco calls a “technological fix” (the quest for high-tech solutions to any one of today’s food problems) with what he calls an “anthropological fix” (the quest for foods that represent an “authentic tradition”). See GENERALLY WARREN BELASCO, *FOOD: THE KEY CONCEPTS* (2008).

20. MELTING POT TOURS, *FOOD TASTING TOURS*, http://www.meltingpottours.com/Food_Tours.html (last visited Mar. 25, 2009).

21. See Tina Dirman, *International Street Food Finally Gets a Place at the Table*, USA TODAY, Mar. 12, 2009, http://www.usatoday.com/travel/destinations/2009-03-12-gourmet-street-food_N.htm (noting the pres-

and-mortar restaurant, simply called *Street*.²²

But it is not just chefs and hungry consumers who have embraced food trucks. Those who closely monitor the world of cuisine have taken notice in unprecedented fashion. Food trucks have been featured in most major national print newspapers;²³ have been the subject of a Food Network television show;²⁴ are the topic of a recently published book;²⁵ and are the focus of an annual national street food conference.²⁶

In 2010, *Food & Wine* magazine named a Kogi chef to its list of Best New Chefs.²⁷ In 2011, a *Washington Post* restaurant critic awarded two stars to a Washington, DC food truck.²⁸ In fall 2010—in what may be the surest sign of the embrace of food trucks by mainstream America—the official magazine of the American Association of Retired Per-

sons (AARP) featured an article, *Tweet to Eat*, extolling the food truck phenomenon.²⁹ In the piece, the AARP advised its graying readers not only how to use social media tools to track down “movable feasts” but described how a 64-year-old AARP member had made the leap from restaurant consultant to tweeting food truck entrepreneur.³⁰

While data on the rise and spread of food trucks is incomplete and disjointed, selected data from various sources can help paint an accurate picture. The first comprehensive list of “gourmet” food trucks that employ social media, compiled by the foodie website Serious Eats in May 2009, counted 53 trucks nationwide.³¹ Less than two years later, a *partial* list of food trucks employing social media presented at the website TruxMap included more than 600 such trucks.³² Taking into account that TruxMap lists

ence of Cuban sandwiches, Mexican sopes, and Vietnamese pho, all street staples of immigrant communities, on the menus of popular restaurants).

22. Julie Wolfson, *Yum! Susan Feniger's Street Food Themed Restaurant to Open Soon*, LAIST.COM, Mar. 18, 2009, http://laist.com/2009/03/18/susan_fenigers_says_her_new_restaur.php.

23. See, e.g., *supra* notes 2, 6, and 11 and accompanying text.

24. See The Great Food Truck Race, FOODNETWORK.COM, <http://www.foodnetwork.com/the-great-food-truck-race/index.html>.

25. See Heather Shouse, FOOD TRUCKS: DISPATCHES AND RECIPES FROM THE BEST KITCHENS ON WHEELS (2011).

26. See LA COCINA SAN FRANCISCO STREET FOOD FESTIVAL, <http://www.sfstreetfoodfest.com/>.

27. See *Best New Chefs 2010*, FOOD & WINE, available at http://www.foodandwine.com/best_new_chefs/roy-choi (last visited Feb. 29, 2012).

28. See Raphael Brion, *Washington Post Critic Defends Giving Food Truck Two Stars*, EATER.COM, Oct. 21, 2010, <http://eater.com/archives/2010/10/21/washington-posts-critic-defends-giving-two-stars-to-red-hook-lobster-truck.php> (noting the unprecedented inclusion of a food truck in a best-of dining guide).

29. *Tweet to Eat*, AARP THE MAGAZINE, Sept./Oct. 2010, available at <http://www.aarp.org/technology/innovations/info-07-2010/tweet-to-eat.html>.

30. *Id.*

31. Erin Zimmer, *A List of Street Food Vendors Using Twitter*, SERIOUS EATS, (May 19, 2009, <http://www.seriousseats.com/2009/05/a-list-of-street-food-vendors-trucks-carts-using-twitter.html> (9:55 A.M.)) [<http://www.seriousseats.com/2009/05/1-list-of-street-food-vendors-trucks-carts-using-twitter.html>].

32. Today Truxmap lists more than a thousand trucks in more than three-dozen cities. See Truxmap.com [<http://www.truxmap.com>].

trucks in only twelve U.S. cities, the list represents an increase of greater than 1200% in just twenty-two months when compared to the Serious Eats list. Indeed, food trucks are present in every U.S. state—from Alabama to Wyoming.³³

How many food trucks operate today in America? Our conservative estimate puts the number at well over 117,000 food trucks across the country.³⁴

II. Mobile Food Regulations

A. Regulations Generally

Because food trucks are regulated for the most part by local governments, it often appears as if there are as many laws governing food trucks as there are trucks themselves. Keeping in mind that it would be a fool's errand to catalog every possible regulation that applies to food trucks in the United States, we focus

more broadly in this section on local regulations generally and on local regulations common in California.³⁵

Most cities or counties have in place a health code that governs food prepared in and sold by restaurants. While codes vary greatly across the country, these generally require an operator to go through some training and to obtain a license as a capstone to that training. Often, all or some of a municipality's restaurant health code applies to food trucks. Food trucks may also be subject to unique requirements of the health code. For example, some local health codes do not permit food trucks to sell certain foods.³⁶ Until recently, New York City prohibited the sale of seafood from a food truck.³⁷

In addition to health codes, various local regulatory bodies may develop or apply diverse rules to food trucks. The manner a local government applies these

33. See Melissa Brown, *Tuscaloosa's First Food Truck Serves up Southern Creole for a Late-Night Clientele*, AL.COM, Feb. 16, 2012, http://blog.al.com/tuscaloosa/2012/02/tuscaloosas_first_food_truck_s.html (describing one Alabama food truck's cuisine); Jackson Hole Food Truck, <http://www.letseat.at/jhft> (last visited Feb. 29, 2012) (listing the foods featured by a Wyoming food truck, including "elk sliders").

34. Formal estimates do not exist at this time, though the number is easily in the tens of thousands. Los Angeles alone has at least 7,000 such vendors. Searching one popular website that lists many food trucks, FourSquare, yields at least 117,000 results. See FourSquare. [<http://www.foursquare.com>] Other estimates—which seem inflated—put the number of food trucks (including food carts) in the United States at upwards of 8–9 million. See, e.g., Entrepreneur Press & Rich Mintzer, *Food Trucks 101: How to Start a Mobile Food Business*, ENTREPRENEUR.COM, July 25, 2011, <http://www.entrepreneur.com/article/220060>.

35. The Institute for Justice (IJ), a Washington, DC-area nonprofit that litigates on behalf of entrepreneurs, recently published a report identifying five categories of discriminatory regulations that food trucks in America's fifty largest cities face. See Erin Norman, Robert Frommer, Bert Gall, & Lisa Knepper, *Streets of Dreams*, Institute for Justice, July 2011, available at <http://www.ij.org/publications/3939> (listing five types of common regulations: public property bans, restricted zones, proximity bans, stop-and-wait restrictions, and duration restrictions). This list does not include permitting, health inspection, taxation, and other common regulations that we describe briefly in this section.

36. See, e.g., Lauren Drewes Daniels, *Deep Ellum Now Has Its Own Food Truck Rally, but Restaurant Owners Aren't All Thrilled*, City of Ate, DALLAS OBSERVER, Apr. 16, 2012 http://blogs.dallasobserver.com/cityofate/2012/04/resaturants_and_food_truck_per.php (noting that Dallas food trucks may not serve alcohol beverages).

37. See, e.g., Baylen J. Linnekin, *Lobster Underground*, REASON, Apr. 2011 (noting that New York City and Washington, DC banned the sale of seafood from a food truck).

rules to food trucks can have a great impact on the business and regulatory climate in which food trucks operate.

Local governments usually require food-truck operators to obtain some combination of licenses and permits before the municipality will allow them to operate. These requirements vary, and can have a dramatic impact on a city's food trucks. New York City, for example, requires that any truck operator must have a vendor's license (akin to a driver's license).³⁸ The city also requires that any food truck must have a valid permit.³⁹ However, the city has capped the number of permits available.⁴⁰ So many applicants were on a waiting list—which was estimated to be at least 15-20 years long—that the city eventually scrapped the list entirely.⁴¹ As a result of the cap, thousands of would-be food truck owners have had to choose either to sacrifice their dream of operating a food truck or to partner with a current permit holder (which often involves payment of what amounts to a bribe).⁴²

Food truck parking regulations demonstrate perhaps the widest variety of rules faced by mobile vendors. Some cities—including Marfa, TX—have few if any restrictions in place that govern where trucks may travel or park.⁴³ Others do not permit food trucks to park in any public parking space or sell on public property. Consequently, these trucks may operate only on private property. Rochester, NY, does not currently allow mobile food trucks to vend on public property, with two exceptions.⁴⁴ Trucks in the city may park in and sell from a designated space (awarded through a lottery system) or may sell at events taking place in the city (subject to various fees).⁴⁵ Meanwhile, food trucks operating in Cincinnati, OH may only park in limited designated downtown areas.⁴⁶ In Jersey City, NJ, food trucks may only park in a given space for twenty minutes,⁴⁷ while in Arlington, VA the limit is one hour (recently increased from five minutes).⁴⁸ Many local governments also prohibit parking within a certain number of feet of another food truck or a brick-and-mortar restau-

38. *See id.* (describing the arcane licensing and permitting process for food trucks in New York City).

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *See* Response of Food Shark Truck, Mobile Food Vending Questionnaire, Feb. 2011 (on file with authors).

44. *See* Response of Gourmet Waffle Truck, Mobile Food Vending Questionnaire, Feb. 2011 (on file with authors).

45. *Id.*

46. *See* Response of Café de Wheels Truck, Mobile Food Vending Questionnaire, Feb. 2011 (on file with authors).

47. *See* Terrence T. McDonald, *Food Carts Face New Regulations That Cause Indigestion for Vendors*, NJ.COM, Dec. 11, 2011, http://www.nj.com/jjournal-news/index.ssf/2011/12/food_carts_face_new_regulation.html (“[U]nder the current regulations, portable food trucks are required to move every 20 minutes”).

48. *See* Arlington, VA Dept. of Human Services, Guidelines for Vendors In Arlington County, Mar. 19, 2010.

rant.⁴⁹ Short of a wholesale ban on food trucks, this latter limitation is perhaps the most onerous regulation faced by mobile food trucks.

Some local governments have completely separate sets of regulations for mobile food trucks than for traditional stationary trucks. In Washington, DC, for example, different sections of the District's regulatory code apply to these sellers.⁵⁰ Thus, stationary trucks must park in a designated space.⁵¹ Mobile food trucks, though, have no right to any particular parking space in the city, and may park in a metered parking spot no longer than the maximum time allowed by the meter (usually two hours).⁵² Mobile vendors in the District are also subject to what is often referred to as the "ice cream truck rule."⁵³ This decades-old regulation mandates that a food truck may not pull over and serve customers unless customers have already queued up in line.⁵⁴

B. California Regulations

Los Angeles County is the epicenter of the modern food truck industry, and leads the nation in its number of street

vendors.⁵⁵ The speedy emergence of the "gourmet" food truck industry could only have happened in Los Angeles County because there were already over 3000 trucks permitted in 2007.⁵⁶ In 2008, after the fall of the real estate market, many of the traditional food trucks went out of business because construction sites had been their primary market. Many of the permitted trucks were just sitting on commissary lots waiting for a new lessee.

While some trucks sell hot dogs, coffee, or candy—foods one can obtain from carts in nearly any urban American setting—Los Angeles vendors are famous for offering high-quality, low-cost immigrant fare, including tacos, burritos, churros, bacon-wrapped hot dogs (popular in central Mexico),⁵⁷ pho, and kimchi. It is this rich, diverse immigrant fare, consisting of foods made by new arrivals from countries like Mexico, Vietnam, Cambodia, and India,⁵⁸ that has made the city's street food famous—and voluminous. In December 2009, there were around 40 "gourmet trucks."⁵⁹ By May of 2011, there were 150,⁶⁰ and now there are more than

49. See generally INSTITUTE FOR JUSTICE, *supra* note 35.

50. See Linnekin, *supra* note 37.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. See Gregg W. Kettles, *Regulating Vending the Sidewalk Commons*, 77 TEMP. L. REV. 1, 8 (2004).

56. See, e.g., City of Long Beach Staff Report to City Council, December 6, 2011.

57. On a visit to Guadalajara, Jalisco, Mexico in early 2009, co-author Baylen Linnekin saw bacon-wrapped hot dogs on several occasions at Oxxo, a popular convenience store chain that is similar to 7-Eleven.

58. See Kettles, *supra* note 55.

59. See Zimmer, *supra* note 31.

60. See Sharon Bernstein, *Food Truck Makers Revived by Gourmet Trend*, LA TIMES, May 2011 <http://articles.latimes.com/2011/may/08/business/la-fi-food-trucks-20110508>

300 in the Los Angeles County area.⁶¹ Predictably, the emergence led cities to attempt to ban or severely restrict food trucks in Los Angeles and surrounding areas.

More broadly, California best illustrates how regulatory change can be and is being accomplished by mobile food vendors. The state has a unique regulatory framework due to the legacy of mobile vending arising from the traditional lonchero trucks—which have been vending in the state for decades—and their long fight to lessen an overly burdensome regulatory regime.

In 1985, the California State Legislature passed Vehicle Code Section 22455.⁶² This provision initially authorized local governments to ban mobile vending or to regulate the type of vending for the public safety.⁶³ The provision was amended in 1986 to remove the right to prohibit, which led to the landmark case of *Barajas v. City of Anaheim*.⁶⁴ The provision was amended against expanding “type” restrictions to time, place, and manner restrictions.⁶⁵ Municipal courts hearing challenges (all successful) to municipal laws did not strictly construe the “type” limitation and considered what were time, place, and manner restrictions with their connection to public safety.⁶⁶

In spite of this fact, cities like Oakland still have outright bans on the books.⁶⁷ West Hollywood continues to have an illegal restaurant proximity rule.⁶⁸ These laws are unlawful—either as controverted by *Barajas* directly or facially because they are based only on a competitive justification. Many other cities continue to enforce arbitrary time and distance limits. These laws are often relics of a time when local governments and their outside lawyers devised frameworks to cripple mobile vending and ensure it was limited to construction sites and short-term lunch routes.

Independent analysis of California vending regulations going back almost a decade supports our contention that many still-current regulations are wrong-headed at best and illegal at worst. Professor Gregg Kettles describes the main justifications underlying Los Angeles’ street-vendor regulations in a 2004 law-review article.⁶⁹ Kettles discusses claims that vendors compete with storefront merchants; that vending leads to a misuse of public space—known as a “tragedy of the commons”; that street vending facilitates the commission of various

61. See Truxmap, <http://www.foodtrucksmap.com/la/alltrucks?p=1> (listing gourmet food trucks operating in and around Los Angeles).

62. CAL. VEHICLE CODE § 22455

63. *Id.*

64. *Barajas v. City of Anaheim*, 15 Cal. App. 4th 1808 (1993).

65. CAL. VEHICLE CODE § 22455 (as amended 2008).

66. See Hernández, *supra* note 18, at 15.

67. See Oakland Municipal Code, *infra* note 79.

68. WEST HOLLYWOOD MUNICIPAL CODE § 5.92.050 (defining the 250 foot rule).

69. See generally Kettles, *supra* note 44.

crimes; and that street vending poses an unacceptable risk to consumers.⁷⁰

Kettles goes on to refute the arguments, describing how these four main critiques of street vending do not hold up to criticism. First, Kettles notes that sidewalk vendors rarely compete with storefront merchants because vendors typically set up shop in front of stores selling different wares, so as to complement (rather than compete with) the fixed-location merchant.⁷¹ Second, sidewalk vending does not lead to a tragedy of the commons because sidewalk vendors, especially those who sell food in the same place on a daily basis, have an incentive to keep their sales area clean, lest customers view their place of business as filthy and seek out other food.⁷² Third, rather than facilitate the commission of crimes, street vending combats crime because small businesspeople deter crime, and street vending therefore simply “put[s] additional eyes on the street, and thereby constitute[s] a further deterrent to crime.”⁷³ Finally, writes Kettles, food vending does not pose any unacceptable risk to consumers because foods sold by street vendors are not necessarily any less safe than foods sold in restaurants or consumed in the home.⁷⁴

In addition to de facto bans and other local regulatory obstacles, current and proposed California state laws pose several hurdles for mobile food vendors. Current law requires uniform regulation of mobile vending under the California Retail Food Code. Regulation is delegated to local health departments, primarily at the county level. Regulatory issues have cropped up due to the relative lack of power of mobile vendors compared to other powerful interests. For example, Los Angeles County’s Health Department regulates two sub-groups of mobile vendors differently. Vendors operating under the “Vehicle Inspection Program” have one set of rules, while mobile vendors who serve Hollywood studios are regulated by the “Food and Milk” division.⁷⁵ The result of this separate regulation is often unequal treatment.

A recent effort in California by the nonprofit California Food Policy Advocates, which took shape in Assembly Bill 1678,⁷⁶ would have banished food trucks from within 1,500 feet of any school during school hours.⁷⁷ The bill’s sponsor, Asm. Bill Monning (D-Fresno), asserted the bill would compel children to eat subjectively healthy school lunches in favor of subjectively unhealthy food served by

70. *Id.*

71. *See id.* at 27–32.

72. *See id.* at 32–35.

73. *See id.* at 35–36.

74. *See id.* at 38–40.

75. *See* LA County Public Health, Environmental Health, http://publichealth.lacounty.gov/eh/SSE/Food-Milk/foodmilk_montionPic.htm (noting a separate regulatory category for “motion picture catering vehicles”).

76. Assemb. B.1678, 2011-12, (Ca. 2012), available at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1651-1700/ab_1678_bill_20120214_introduced.html.

77. *See* Baylen Linnekin, California’s Bogus War on Food Trucks, REASON.COM, Apr. 14, 2012, <http://reason.com/archives/2012/04/14/californias-bogus-war-on-food-trucks/singlepage>.

food trucks.⁷⁸ The bill discriminated on its face by failing to address in the same manner fast food and quick-serve restaurants, gas stations, liquor stores, or convenience stores within the same 1,500-foot radius. Furthermore, both CFPA and Asm. Monning failed to offer data to support their claims about food trucks.⁷⁹ Amid a firestorm of criticism, Asm. Monning proposed to lower the radius ban to 500 feet.⁸⁰ When the controversy refused to die, Asm. Monning soon scrapped his bill entirely.

Another key issue pertaining to food trucks in California is taxation. One of the issues mobile food vendors face is a misunderstanding by legislators that vendors do not pay taxes. This is the result of mobile vendors paying taxes to counties who then apportion those taxes back to cities based on a formula. The transitory nature of mobile vendors makes measurement of taxation difficult in areas with small municipalities such as the south bay region of Los Angeles County. A direct link needs to be created to remove the oft-repeated canard that fixed location and mobile restaurants pay different tax rates. The rise in the popularity of the so-called ‘gourmet food truck’ movement, spearheaded by the Southern California Mobile Food Vendor Association (SoCalMFVA) and its robust mem-

bership, and other high-profile mobile vendors, has driven the call to revisit these proposed regulations.

III. How Food Trucks Cope With Regulations

A. Social Media as an Advocacy Tool

Before describing how modern food trucks benefit from social media advocacy, it is important to first define what social media is and to describe some of its more popular tools. The term “social media” refers to technology that facilitates interactions between and among users of that technology (and, oftentimes, other technologies). It is characterized by its relative ease of use, broad accessibility across a range of digital platforms, diffuse nature, constant evolution, reliance on and encouragement of asynchronous communication, and ability to create and foster online and physical communities.

A vital and necessary feature of social media is that it presents users of technology with information that is capable of manipulation. Unlike a book, a news broadcast, or the contents of a static website, social-media tools allow those who use them to add to, subtract from, otherwise modify, and share the information they encounter. If the promise of the In-

78. See Post of Paolo Lucchesi, *Q&A with Assemblyman Bill Monning on AB 1678 and his Anti-Food Truck Crusade*, INSIDESCOOPSF, Feb. 22, 2012, <http://insidescoopsf.sfgate.com/blog/2012/02/22/assemblyman-bill-monning-on-ab1678-and-his-anti-food-truck-crusade/>.

79. See Linnekin *supra* note 77 (noting that after the bill’s death, CFPA did furnish to co-author Baylen Linnekin four data sources. See *id.* Perhaps the most relevant report was written several years ago by two students pursuing graduate degrees in public policy. *Id.*)

80. See *id.* (Asm. Monning did publish an op-ed that promised data but provided only one data point unrelated to food trucks).

ternet and related technologies was that these technologies would help users gain unprecedented *access to information*, the characteristic manipulability of social-media information means that users of these technologies not only have unprecedented *access to information* but also *unprecedented influence and power to shape, respond to, and share that information*. In this manner, social media promotes broader cultural participation and the development of new cultures and experiences.

Food trucks and their customers have employed social media tools like Twitter with great effect to secure social and “cultural capital” and promote mutual political interests.⁸¹ This form of advocacy is largely the result of the politicization of the space within which food trucks must operate.

For example, beginning in 2010 in Washington, DC—after the District’s regulatory authority opened up proposed regulatory changes to public comment—a social-media blitz by food trucks and their customers, followers, supporters, and fans helped ensure the agency received more than 2,000 comments in favor of these mobile food trucks.⁸² Over-

all, the agency received more comments on the issue than any other issue it had ever opened to public comment, and 98% of those comments favored food trucks.⁸³ The Red Hook Lobster Pound DC Truck (@LobstertruckDC on Twitter) acknowledges its “large base of fans/followers represents a powerful political force and can be a catalyst for regulatory change” in the District.⁸⁴ @LobstertruckDC also notes they “are careful how and when” they call on supporters to lean on District officials.⁸⁵ One such example took place recently, when @LobstertruckDC tweeted the following message:

DC Food Truck Assoc. asks for a seat at the table before City Council levies sales tax on our customers #DCFTA. . . <http://bit.ly/i9OmTj>

5:43 PM Mar 14th via Twitter for BlackBerry®⁸⁶

This message was re-tweeted by five followers of @LobstertruckDC. It was also tweeted by other District food trucks, and re-tweeted by followers of those food trucks.

The relationship between the relative importance of social media and the degree of oppression faced by those who use it is readily apparent. As conditions become more oppressive, social media be-

81. See Krishnendu Ray, *THE MIGRANT’S TABLE* 160–61 (2004).

82. See Linnekin, *supra* note 37.

83. *Id.*

84. See Response of Red Hook Lobster Pound DC Truck, Mobile Food Vending Questionnaire, Feb. 2011 (on file with authors).

85. *Id.*

86. The Twitter search term “#DCFTA” refers to the DC Food Truck Association, which is modeled after the Southern California Mobile Food Vendors’ Association (SoCalMFVA), a similar association in California. The DCFTA bills itself as “a collaborative group of food truck owner-operators. . . [who] seek to elevate and sustain the well-being of food trucks, foster a sense of community and work in partnership with the District to revise food truck regulations.” The hyperlink “<http://bit.ly/i9OmTj>” goes to a *Washington Post* story outlining the issues and the position of the food trucks.

comes a more essential tool for communicating. “The cities that are the easiest to food trucks are the ones that least need social media,” says author Heather Shouse, author of *Food Trucks: Dispatches and Recipes from the Best Kitchens on Wheels*.⁸⁷

B. The Association Model

Food trucks have followed the lead of other businesses that have banded together over the years and found strength in numbers in the face of opposition from entrenched forces. Mobile food vendors have learned that by joining a nonprofit membership association that represents their mutual interests, they can benefit both politically and financially.

1. Southern California

The confusing regulatory framework and the emerging drive for more restrictive regulations led to the creation of the Southern California Mobile Food Vendors’ Association (SoCalMFVA) in January 2010. Co-author Matthew Geller, now CEO, was asked by several vendor associates to help with enforcement issues. This led to the establishment of the group by its initial 30 initial members. Since that time, SoCalMFVA has followed a policy of analysis, engagement, and advocacy to expand the rights of mobile vendors across Southern California. SoCalMFVA has successfully advocated for

improved regulations in more than two-dozen municipalities.

SoCalMFVA’s success is due to its measured policy of engaging local governments with a deep understanding of the legal limitations and the market realities. The group’s message is that consumers should have the right to choose from a panoply of licensed food vendors. Many local governments (and their city attorneys) have eventually acknowledged the limits of government authority and, more importantly, the manifest importance of consumer choice.

2. Northern California

Southern California, due to its history of *loncheros* and the development of the gourmet food truck movement and the effectiveness of SoCalMFVA, has seen many cities engage and change their laws to reflect consumer preference and lawful regulation. Northern California is quite the opposite. The northern part of the state lacks any meaningful or organized industry groups. As a result, the only brake on oppressive regulation appears to be 1) individual truck owners using ongoing litigation in Southern California as leverage in the public discussion and 2) the power of the marketplace that has led to minor reforms in San Francisco.⁸⁸

But reform has not yet worked. For example, San Francisco recently replaced its old regulations with new regulations that are primarily based on competition and not public safety.⁸⁹ San Francisco re-

87. Baylen J. Linnekin, telephone interview with Heather Shouse, Mar. 22, 2011.

88. See *infra* part III.c.

89. SAN FRANCISCO, CAL, PUB. WORKS CODE, ART. 5.8, § 184.80.

quires a permit at all times on the public streets.⁹⁰ The city restricts trucks to particular locations—with a maximum of seven per applicant—and each location permit is good for only one day.⁹¹ San Francisco has numerous illegal bans in residential districts (violating *Barajas*'s most narrow interpretation) adjacent to wealthy areas (Twin Peaks district) and within 1,500 feet of the property line of any public school.⁹²

Perhaps the most egregious part of San Francisco's regulations is that part of the city's required hearing process allows anyone with an "interest" to protest the issuance of a permit. The major issues for consideration of "interest" are whether a business operating within 300 feet is opposed and the number of mobile vending locations approved on adjacent blocks.⁹³ The permit is non-transferable absent special consent, and San Francisco can suspend or revoke the permit if the vendor changes the types of food it sells.⁹⁴ The city also requires permit holders to indemnify and hold harmless the city and county for numerous claims, including

"false or fraudulent" claims.⁹⁵ Taken together, the impact of these regulations is that vendors must waive many rights; pay high fees; operate only where no fixed location is even possible; and be limited to a total of seven permits that by definition limit business scale and growth.

Across San Francisco Bay, Oakland's vendors and citizens are similarly subject to an illegal regulatory scheme. That city recently enacted an "interim" regulation that altered its prior comprehensive and illegal ban on mobile vending to a highly restrictive regulation allowing for some vending in specially designated areas.⁹⁶ While lobbyists are pushing Oakland's city council to reform the city's regulation of food trucks,⁹⁷ the absence of a meaningful association has led to acceptance of flawed premises for regulatory reform—that competition is a legitimate consideration in mobile vending regulation and that a local government may presumptively close certain city streets.

Other communities in Northern California, including Sacramento⁹⁸, Napa,⁹⁹ and Fresno,¹⁰⁰ have growing gourmet

90. *Id.* at § 184.81.

91. § 184.84–.86.

92. § 184.88

93. *Id.*

94. § 184.97–.98

95. San Francisco, Cal., Dept. Pub. Works, Permit App DPW Order No. 179,044, § III, (approved February 25, 2011).

96. OAKLAND, CAL. MUN. CODE § 5.48.050 (2010); OAKLAND, CAL. MUN. CODE § 5.51 (2012).

97. Catherine Traywick, *New Mobile Vending Proposal Could Create "Food Pods" Throughout Oakland*, OAKLAND NORTH (Dec. 6, 2011), <http://oaklandnorth.net/2011/12/06/new-mobile-vending-proposal-could-create-food-pods-throughout-oakland/>.

98. Chris Macias, *Public Meeting Tonight to Discuss Elk Grove Food Truck Regulations*, Appetizers, SACRAMENTO BEE (Nov. 30, 2011), <http://blogs.sacbee.com/dining/archives/2011/11/public-meeting.html>.

99. NAPA, CAL. MUN. CODE § 10.36.180 (2011) (discussing the 15 minute rule; 1,000 foot bar from commercial restaurants).

100. Fresno, Cal. City Council Agenda, Oct. 2011 (proposing time limits to replace prior "flagging down" requirement).

scenes with outspoken advocates. However, they currently lack organized management. As a result, local chambers of commerce¹⁰¹ have advocated the imposition of time and proximity limits from mobile vendors to one another, other restaurants, and special district bans. City councils that had been eager to impose limits on food trucks appear at present to be keeping a watchful eye on the lawsuit against Monrovia, considering how that suit might overturn some of their own regulations.¹⁰²

The success of the SoCalMFVA and other advocates threatens the status quo. The perceived lack of control of local governments may very well lead to attempts to remove the protections afforded by Vehicle Code § 22455. The authors have reviewed several draft bills that have not been introduced which purport to expand regulatory authority beyond the public safety requirement. The South to North strategy that SoCalMFVA and its attorneys are carrying out—using legislative and legal victories won in Southern California to resonate and improve the regulatory climate for food trucks in Northern California—is tied into the understanding that Southern California is currently far more familiar and comfortable with mobile vending in general. As local governments across the state are becoming

increasingly aware that the mobile food concept is a good one, creating jobs with little or no public safety impacts, the prospect of legislative reform that would harm mobile food vendors and their customers may recede over the next twelve months. The current risk is that a large city in the north like San Francisco would use its historic links with nearby Sacramento to stamp out the mobile vending renaissance in the state.

3. Outside California

Formed in 2010, the SoCalMFVA had to create a unique funding model due to the lack of an existing membership base. In 2010 there were very few gourmet food trucks on the road. Instead of charging a high monthly fee, the SoCalMFVA created truck lots where they could organize trucks and charge a small booking fee. This model helped with both funding and outreach, as many new vendors coveted access to the lots. Newly formed associations in several states have replicated this fiscal model across the country. The SoCalMFVA has helped start associations in Washington, DC; Baton Rouge, LA; Denver, CO; New York City, NY; Baltimore, MD; Philadelphia, PA; and Detroit, MI. Currently, the SoCalMFVA is also

101. Napa, Cal. Chamber of Commerce, Press Release, *Chamber Encourages City to Create a New Mobile Food Truck Ordinance That Will Meet Community Needs* (Apr. 5, 2009), available at http://www.napachamber.com/press_article.html?ID=5382.

102. See *Mobile Cuisine, Fresno Delays Changing Food Truck Ordinance*, MOBILE CUISINE, (Oct. 21, 2011), <http://mobile-cuisine.com/off-the-wire/fresno-delays-changing-food-truck-ordinance/> (discussing the stalls outlined by the Fresno ordinance); Felicia Mello, *City to Hold Public Meeting on Food Truck Rules*, ELK GROVE PATCH, (Nov. 29, 2011), <http://elkgrove.patch.com/articles/city-to-hold-public-meeting-on-food-truck-rules> (describing how Sacramento vendors are using the ongoing Monrovia lawsuit as a tool to ward off opposition from the local chamber of commerce).

providing guidance to trucks in Columbus, OH and Nashville, TN.

The success of the SoCalMFVA has led food trucks in other markets to reach out for advocacy support. In January 2011, Washington, DC food trucks reached out to the SoCalMFVA because the District's Consumer and Regulatory Affairs (DCRA) agency was considering new food truck regulations. DCRA was looking towards San Francisco, which has very restrictive regulations, as the model for its ordinance. District food trucks contacted SoCalMFVA's Matt Geller to ask for help. Geller traveled to the District and met with a few selected representatives of the trucks and the DCRA to explain the pros and cons of various regulatory models. DCRA scrapped its plan when the agency learned, thanks to Geller, that San Francisco's regulations do not comply with California state law. While in the District, Geller also attended the inaugural meeting of the DC Food Truck Association (DCFTA). In addition to Geller and Washington-area food vendors, others in attendance included lawyers, public relations experts, and a documentary film crew. Geller spoke about the SoCalMFVA and took questions about issues ranging from truck lots to successful advocacy strategies. The lawyers agreed to work with Geller to use the SoCalMFVA bylaws for the new organization.

In December 2011, the fledgling Baltimore Food Truck Association (BFTA) and Philadelphia Mobile Vendors Associ-

ation (PMVA) reached out for support. Both association cities restrict access to valuable vending areas. The BFTA had started to form, but needed additional guidance. The SoCalMFVA again provided their bylaws and some added guidance to the board of the newly formed BFTA. Geller also attended the first meeting of the PMVA and provided similar background and support as he had done in Baltimore. As other cities see expanding customer bases, Geller will continue to work to help new associations form and advises that new associations utilize the popularity of their members to persuade regulators that food trucks are a welcome addition to any city's culinary scene.

4. Association Survey Results

In February 2012, we administered a questionnaire¹⁰³ to the leaders of several mobile food vending associations (MFVAs) around the country. This is likely the first such survey of its kind. The purpose of the open-ended, nineteen-question survey was to gather basic data about associations that have formed across the country and to investigate the regulatory hurdles they face and how the associations cope with these obstacles. We received six responses (including the response of co-author Matt Geller of SoCalMFVA) to our questionnaire,¹⁰⁴ with only one association failing to complete the questionnaire within the allotted time. The respondents represent associa-

103. Attachment 1: MFVA Survey Questionnaire.

104. Responses are on file with authors.

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tions in Denver; Philadelphia; Washington, DC; Baton Rouge; New York City; and greater Los Angeles. The responses serve to illustrate the growing popularity both of food trucks and the association model, highlight issues that are common across geographic boundaries, and reveal the important services that MFVAs provide to members. Table 1 summarizes the data.¹⁰⁵

The data reveals the earliest MFVA (SoCalMFVA) we surveyed formed in January 2010, while the most recent formed in January 2012. MFVA membership ranges from seven (Baton Rouge) to 132 (SoCalMFVA0), with a mean of 48 (including estimated members in Philadelphia and Denver, which have not yet accepted formal members). Base annual

dues range from \$50 (SoCalMFVA) to \$200 (Washington).

Of the six MFVA respondents, only Baton Rouge’s MFVA did not describe any ongoing or potential obstacles to members’ success. Two MFVAs described only one obstacle. MFVAs in Philadelphia and New York City listed only regulations as an obstacle. Two MFVAs described two obstacles. Southern California’s MFVA listed both regulations and brick-and-mortar restaurants as obstacles. Denver’s MFVA listed regulations and the state restaurant association as obstacles. And only one MFVA described three obstacles. Washington, DC listed regulations, brick-and-mortar restaurants, and the state restaurant association as obstacles.

On the issue of coping with regulations, all six MFVAs described their use

Table 1: MFVA Survey Results: Highlights

Association Data				Ongoing and/or Potential Obstacles to Success (Y/N)					Tools for Accessing Public & Public Spaces (Y/N)		
Association	Established (Year)	Members (#)	Dues (\$)	Regulations (R)?	Brick & Mortar Restaurants (B&M)?	State Restaurant Association (SRA)?	Other Mobile Vendors (MV)?	Primary Opponent?	Social Media Advocacy	Litigation	Truck Lots
Southern California	01/10	132	50	Y	Y	N	N	R	Y	Y	Y
Washington	01/11	33	Varies ¹	Y	Y	Y	N	SRA ²	Y	N	Y
Baton Rouge	02/11	7	N/A	N	N	N	N	N/A	Y	N	Y
New York City	02/11	33	N/A	Y	N	N	N	R	Y/N	N	Y
Philadelphia	12/11	60 ³	N/A	Y	N	N	N	N/A	Y	N	N
Denver	01/12	25 ⁴	N/A	Y	N	Y	N	R	Y	N	N

¹ Annual dues are \$200 per truck. Members with more than one truck also pay \$70 for a second truck and \$40 for each additional truck. Monthly and/or quarterly fees range from \$50 to \$200.

² Opponents also include some local business improvement districts (BIDs) and professional associations.

³ Potential members.

⁴ Access to truck lots currently restricted by law.

of social media as prevalent and important. Only one MFVA, SoCalMFVA, has engaged in litigation as a tool to combat discriminatory or otherwise illegal regulations. Finally, four of six respondents (MFVAs in Southern California, Washington, Baton Rouge, and New York City) described their use on truck lots. The two MFVAs that are not currently sponsoring truck lots (Philadelphia and Denver) described how the law in their jurisdictions currently restricts the use of truck lots, and that ensuring access to truck lots is one of their key issues for the coming year.

The services that MFVAs provide to their members track closely with the regulatory obstacles and approaches for coping with those hurdles we describe above. For example, each of the six MFVAs list advocacy as the primary service they offer member. Responses pertaining to regulations ranged from “[a]dvocacy to change vending regulation” (New York City) to “[p]rimarily government relations/lobbying in District of Columbia for improved food truck regulations” and “[s]upport for city zoning and communication” (Denver).

Four of the six respondents (New York City, Washington, Southern California, and Philadelphia, which is “working on a pilot lot structure”) described truck lots as an important service they provide to members. Other benefits described by respondents include event booking (New York City, Philadelphia, Baton Rouge), group purchasing discounts (New York

City, Denver), and developing plans for training and classes that could benefit current and future members (New York City, Baton Rouge).

C. Litigation & Negotiation

When presented with questions about the legality of various local ordinances pertaining to mobile food vending, municipal governments in California have demonstrated two divergent responses. The first and less frequent response we have seen we characterize as retrenchment (heel digging) or de minimis revision (heel dragging). The second, much more common, response we both differentiate from the first and welcome, because it is typified by acknowledgement of the rights of mobile vendors and consumers, by engagement with representatives from the mobile food vending industry, and by subsequent revision or repeal of outdated, protectionist, or otherwise discriminatory regulations.

One unfortunate example of the first camp is Monrovia, a small community near the affluent communities of Pasadena, Arcadia, and West Hollywood. Monrovia, fearing a mobile vendor might possibly vend in its “Old Town” area, added new regulations limiting vending on particular blocks to once a day and one truck to either side of a street.¹⁰⁶ Nearby West Hollywood is similarly considering greatly restricting the areas where mobile vendors for so-called “long term” vending can sell by requiring permits

106. See Nathan McIntire, *Gourmet Food Trucks Banned from Old Town*, MONROVIA PATCH, (Dec. 27, 2010), <http://monrovia.patch.com/articles/gourmet-food-trucks-banned-from-old-town>.

that are granted based on discretion, and by creating thirty-minute time limits everywhere else.¹⁰⁷

The Monrovia regulations, along with statements to the press made by council members that they would “stand[] behind Old Town Merchants,” led to a lawsuit by the SoCalMFVA for a declaratory judgment on all of its restrictions. Monrovia has made multiple attempts to justify its laws under the police power of facial deference to its claims of “public safety,” which were denied by the trial judge.¹⁰⁸ Trial is currently set for August 2012.¹⁰⁹

Unlike Monrovia and West Hollywood, many other Southern California municipalities have been receptive to the engagement strategy of the SoCalMFVA. For example, the City of Santa Monica, a municipality known for its highly regulated business climate, acknowledged vendors’ rights and adopted a common-sense interpretation of state law.¹¹⁰ In a staff report, Santa Monica states:

[T]he Vehicle Code limits local governments’ ability to specifically regulate mobile food or non-food vendors on public streets to their detriment unless there is a public safety concern. Courts have consistently struck down mobile vending reg-

ulations enacted by other municipalities that rely on other justifications, such as the need to protect local brick-and-mortar businesses from mobile competition.¹¹¹

The end result of Santa Monica’s in-depth analysis was to remove its previous restrictions and impose a very limited time and place ban after providing factual studies that, it claims, established a specific public safety issue on its popular Main Street area at specific times. While this law may still be unlawful, Santa Monica’s engagement with SoCalMFVA, along with justification based on a time, place, and manner factual investigation, demonstrate a good-faith intent to comply with state law and desire to not place an undue burden on food trucks.

Like Santa Monica, Manhattan Beach, Hermosa Beach, and Torrance have also revised existing laws. Each city is part of the elite “South Bay” area between Los Angeles and Long Beach, which also is revisiting its regulations. Torrance was the first to act after significant engagement with SoCalMFVA. The end result was a common-sense licensing requirement that food trucks be “road worthy.”¹¹² This is a novel concept, and one of the first that appears facially re-

107. West Hollywood, Cal. City Council Leg. Agenda Rep., (Feb. 6, 2012), available at <http://www.weho.org/ftp/packets/cc/6A.pdf>.

108. *SoCal Mobile Food Vendors Association v. City of Monrovia*, Los Angeles Superior Court, No. BC-458142, (Cal. Sup. Ct. Mar. 25, 2011). See Orders of Court of June 24, 2011 and October 12, 2011 denying Monrovia’s First and Second Demurrers to the Operative Complaints.

109. *SoCal Mobile Food Vendors Association v. City of Monrovia*, Los Angeles Superior Court, No. BC-458142, (Cal. Sup. Ct. Mar. 25, 2011) available at <http://www.google.com/search?client=safari&rls=en&q=SoCal+Mobile+Food+Vendors+Association+v.+City+of+Monrovia,+Los+Angeles+Superior+Court&ie=UTF-8&oe=UTF-8>.

110. SANTA MONICA, CAL. MUN. CODE, § 6.36 (2011).

111. Santa Monica, Cal. City Council Agenda Rep., (June 21, 2011), available at <http://www01.smgov.net/cityclerk/council/agendas/2011/20110621/s2011062104-A.htm>.

112. Nick Green, *Torrance Eyes Food Truck Solution After School Raid*, DAILY BREEZE, Dec. 3, 2011, http://www.dailybreeze.com/news/ci_19467029.

lated to a bona fide public safety issue. Torrance also repealed various bans and time limits. This was all done after significant engagement between industry, politicians, and SoCalMFVA. Manhattan Beach similarly repealed its prior thirty-minute time limit and backed off from its attempt to retrench with a variety of competition and control-related laws after significant good-faith engagements between SoCalMFVA and outside counsel for Manhattan Beach.¹¹³

The major city of Long Beach is similarly engaged with SoCalMFVA. Previously, it had wholesale bans, time limits, and other restrictions. In December 2011, Long Beach passed an interim revision of its Municipal Code.¹¹⁴ The revised rules do not fully comply with state law but are now far less onerous.¹¹⁵ The staff report acknowledges the power of the gourmet trucks to shape public opinion and the city's desire to lessen regulation and comport with the market and state law.¹¹⁶

D. Truck Lots

While advocacy battles have largely centered upon the use of streets to vend, the market is responding with what may be the future of mobile food vending: “truck lots.” These private parking lots

permit many trucks to gather and vend to numerous customers from a given location. Portland has had variants on truck lots for many years.¹¹⁷ The SoCalMFVA began to develop lots in conjunction with different types of non-profit interests in early 2010. The premier food truck lot in greater Los Angeles is based in Santa Monica. The lot hosts 10 trucks every week and generates a significant portion of the operating budget for the nonprofit California Heritage Museum of Santa Monica.¹¹⁸ It brings together a charity, the city—which granted a use permit—and an adjacent brick-and-mortar restaurant to provide seating and alcohol service. SoCalMFVA has developed many other lots in conjunction with special use districts, religious organizations, chambers of commerce, and commercial landlords.¹¹⁹ In Northern California, companies such as Off the Grid have developed lots and special-events businesses in much the same manner.¹²⁰

We contend that the truck-lot model likely represents the future of the industry. The ability to put land to its highest and best use while reducing claimed externalities is a very promising value proposition. Lots that could not support a viable business can be used instead to

113. Manhattan Beach, Cal., Staff Report, Adoption of Ordinance No. 2157 Amending the Manhattan Beach Municipal Code and Adding a New Chapter 3.68 Regarding Mobile Food Vendors on the Public Right-of-Way, (Feb. 21, 2012), available at <http://www.citymb.info/agenda/2012/Ag-Min20120221/20120221-02.pdf>.

114. LONG BEACH, CAL. MUN. CODE, Ch. 5.37 (2011).

115. *Id.*

116. Long Beach, Cal., Staff Report to City Council, (December 6, 2011).

117. See, e.g., *Portland Food Carts-Best Portland Food Carts*, PORTLANDNEIGHBORHOOD, <http://www.portlandneighborhood.com/portland-food-carts.html>, (last visited Feb. 29, 2012).

118. See McIntire, *supra* note 90.

119. See Southern California Mobile Food Vendors' Association, <http://www.SoCalMFVA.com>.

120. See Markets, OFF THE GRID, <http://offthegridsf.com/markets>.

create a diverse and rotating food court of market-tested concepts. Truck lots provide mobile vendors with the advantages of competing on location and capturing the synergies available with complementary food offerings. Municipalities, meanwhile, can satisfy any anti-vendor sentiment in their community because lots move vending off the street and onto private property. Because typical opponents of mobile vending—including some chambers of commerce and commercial landlords—can financially benefit from lots, the future of truck lots likely rests on much more solid footing than does street vending. Finally, while truck lots sometimes face the issues of land use regulation, they do so in the same manner that slows private development in myriad other endeavors.

IV. Framework for Model Regulation

SoCalMFVA, in conjunction with other industry groups, currently is developing a Mobile Vendors' Bill of Rights. The purpose of this document is twofold: 1) to establish a baseline for fair treatment of food trucks and other mobile vendors across the country and 2) to share best practices with food trucks and regulators across the country. The six principal elements of the draft Bill of Rights are as follows:

1) Limit regulations to matters of public safety and public health

Public safety and health are the traditional areas for regulation. Local govern-

ments have systematically abused traditional police powers in this area. To enable them to pick what retail food vendors can look like and how they can compete is to invite discriminatory and oppressive laws.

2) Prohibit regulations based on competition and aesthetics

This section of the Bill of Rights is the contrapositive of the first element. Simply put, the consuming public should make these decisions through the marketplace.

3) Equalize the right to operate on private property

Food trucks have found that private, lot-based, group vending is superior to the street in many ways. Some regulators are following suit. For example, the city of Oakland's new regulations favor truck lots. Private lots do not impact public streets. Yet many vendors find they have more rights to operate on public streets than they currently do on private property. Government can lessen use of public streets by lessening the burden on trucks that seek to vend from private property.

4) Shift taxation from indirect (county) model to direct (city) model

In California, vendors currently pay taxes to the county, which in turn re-allocates that revenue to cities on a pro-rata basis (as opposed to where the sales actually occurred). The result is a preference for fixed location sales versus mobile

sales. Cities assume they are disadvantaged by what they cannot see and measure. Changing from a county-based to a city-based model would eliminate the hidden revenue element and equalize treatment of fixed-location and mobile vendors.

5) Ensure reasonableness of commercial roadworthiness standards

Vehicle suppliers should be required to ensure they meet reasonable safety standards. In California, counties currently serve this role with respect to the preparation equipment. Municipalities should be free to have reasonably higher standards so long as they apply across the board to similar vehicles.

6) Require proof of licensing of for-profit event promoters

Some unscrupulous, fly-by-night promoters (in mobile vending and event promotion in general) have at times taken advantage of mobile food vendors and the public. A local licensing regime could have beneficial results if done in a reasonable fashion.

V. Conclusion

The rapid rise of food trucks over the past few years represents a sea change in the American culinary scene. Some food trucks have managed to combat regulatory hurdles through the use of social media tools. But social media has proven so far to be a tool, rather than a solution. Food truck advocates in several Ameri-

can cities have established associations to represent their joint interests before regulatory and legislative bodies that regulate such spaces; have litigated when denied their basic rights to operate and negotiated in many cases to avoid litigation; and are increasingly shifting the focus of their sales to “truck lots.” Mobile food vendors must continue to cooperate in these areas—and across economic, social, and geographic barriers—to ensure the permanency of America’s ongoing love affair with food trucks.

Attachment 1: MFVA Survey Questionnaire

Mobile Food Vendors' Association Questionnaire¹ | February 2012

What is the name & geographic location of your mobile food vendors' association (MFVA)?

What is your position/title with your MFVA?

When (month & year) did you found your MFVA?

How many members did you have when you founded your MFVA?

How many members does your MFVA have today?

How much does it cost to join your MFVA?

What services & benefits does your MFVA provide?

Are all mobile vendors in your geographic area members of your MFVA? If not, please explain.

Please describe why you founded your MFVA.

Please describe your MFVA's relationship with...

- a) Local regulators (including, but not limited to, elected officials and health, zoning, traffic, and police officers).
- b) Local brick-and-mortar restaurants.
- c) Your state restaurant association(s).
- d) Other mobile vendors who are not MFVA members.

If your MFVA has one particularly strong opponent—such as a restaurateur, city councilor, or restaurant association—please describe that person or entity.

What regulations has your MFVA opposed in your geographic location?

Has your MFVA's opposition to those regulations resulted in changes to the regulations? Please explain.

Has your MFVA been involved in litigation? If so, please describe (to the extent possible).

How important is social media (e.g., Twitter) to your members' business model? To your MFVA's business model?
(Note: Please address whether & how your MFVA & your members use social media both for marketing *and* for advocacy.)

How important is your MFVA to your members' business model?

How important are truck lots (public or private parking areas where many trucks can congregate & serve customers) to your members' business model? To your MFVA's business model?

What is the most important regulatory change your MFVA expects may occur (whether positive or negative) in your geographic area in 2012?

Have you partnered with other MFVAs around the country (by receiving or giving advice, comparing notes, etc.)? Please explain.

¹ **Disclosure:** The purpose of requesting your response to this questionnaire is to gather data for a law-journal article that will likely be published in 2012. By completing this questionnaire you agree to the unrestricted public dissemination of your responses in the law journal & elsewhere.