

FOOD TRUCK

FREEDOM

*How to Build Better Food-Truck Laws
in Your City*



A FOOD TRUCK HOW TO.



By Robert Frommer & Bert Gall
November 2012

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FOREWORD

This report is a project of the Institute for Justice's National Street Vending Initiative, which the Institute created in 2010 to promote freedom and opportunity for food-truck operators and other street vendors. The initiative also seeks to combat anti-competitive and protectionist laws that stifle the economic liberty of mobile-food operators and street vendors.

Through this initiative, the Institute has successfully fought protectionist restrictions in court, and it encourages cities to instead enact narrowly tailored laws that address legitimate public health and safety concerns while not stifling entrepreneurial drive and opportunity. (For current news about the initiative, go to <http://www.ij.org/vending>.) In 2011, as part of its educational efforts, the Institute published *Streets of Dreams: How Cities Can Create Economic Opportunity by Knocking Down Protectionist Barriers to Street Vending*, which for the first time documented anti-competitive laws and regulations that restrict street vendors in the 50 largest cities in America.

In response to that report and the growing popularity of food trucks, officials and food-truck operators have asked for examples of good laws that allow the food-truck industry to flourish while also protecting public health and safety. The Institute for Justice, drawing on its research of food-truck laws nationwide, as well as its experience litigating vending cases and its discussions with food-truck operators, associations and government officials, created this document: *Food Truck Freedom: How to Build Better Food-Truck Laws in Your City*.



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EXECUTIVE SUMMARY

America is experiencing a food-truck revolution. These mobile kitchens are a way for new and innovative chefs who are long on ideas but short on capital to try out new concepts and dishes. Thanks to their low start-up costs, food trucks give new entrepreneurs the opportunity to get into business for themselves at a fraction of what it would cost to open a restaurant. These new businesses offer consumers more dining options, create jobs, and improve the overall quality of life in their communities.

In order to foster the conditions that will let food trucks thrive in their cities, officials should remember the two principles of good food-truck policy: 1) no protectionism; and 2) clear, narrowly tailored, and outcome-based laws. The following recommendations—based on the legislative best practices of Los Angeles and other cities that have experience regulating food trucks—exemplify those principles.

FOOD SAFETY: The Institute for Justice recommends that cities follow their state and county health codes. To the extent the county or state food code does not deal with a specific issue, the Institute recommends that officials follow the requirements of Chapter 10 of the California Retail Food Code, which governs food trucks.

FOOD-SAFETY ENFORCEMENT: The Institute recommends that cities follow the approach of Los Angeles County, which inspects trucks both when they are first permitted and periodically when they are in the field. Inspectors should hold food trucks and restaurants to the same standards.

PARKING:

Proximity Restrictions and Restricted

Zones: Cities should not pass or retain laws that tell food trucks they may not operate either within a certain distance of a brick-and-mortar competitor or in select parts of the city. Protecting a few select businesses from competition is not a proper government role; instead, cities should regulate only to protect the public against actual health and safety concerns.

Distance to Intersections: The Institute recommends that cities follow the example of El Paso, Texas, which states allows food trucks to operate on the public way so long as they are not parked within 20 feet of an intersection.

Use of Metered Parking Spaces: The Institute recommends that cities follow the example of Los Angeles by allowing food trucks to operate from metered locations.

Duration Restrictions (How Frequently Food Trucks Must Move): The Institute recommends that cities follow the examples of Philadelphia and New York City, which do not force food trucks to move after a certain period of time.

Potential Sidewalk Congestion: The Institute for Justice recommends that cities follow the example of Los Angeles, which specifies only that food trucks not operate in a manner “which will interfere with or obstruct the free passage of pedestrians or vehicles along any such street, sidewalk or parkway.”

REFUSE: The Institute recommends that cities follow Los Angeles’ approach, which requires trucks to “pick up, remove and dispose of all trash or refuse which consists of materials originally dispensed from the catering truck” and to provide “a litter receptacle which is clearly marked with a sign requesting its use by patrons.” Cities should further specify the precise distance from the truck for which operators are responsible.

LIABILITY INSURANCE: The Institute recommends that cities follow the example of Los Angeles, which does not require trucks to purchase liability insurance beyond the amount required of all vehicles under state law.

HOURS OF OPERATION: The Institute recommends that cities follow Los Angeles' approach and not restrict when food trucks may operate.

EMPLOYEE SANITATION:

Handwashing: The Institute for Justice recommends that cities follow the example of Los Angeles County and the California Retail Food Code, which requires trucks to have handwashing stations if they prepare food, but does not require them on trucks selling only prepackaged foods like frozen desserts.

Bathroom Access: The Institute recommends that cities emulate Las Vegas, Charlotte and Portland, Ore., by not requiring that food trucks enter into bathroom-access agreements with brick-and-mortar businesses.

COMMISSARY REQUIREMENTS: The Institute recommends that cities follow the example of Portland, Ore., which exempts food trucks that carry all the equipment they need to satisfy health and safety concerns from having to associate with a commissary. For trucks that do require commissaries, the Institute recommends that cities follow Los Angeles County's approach of allowing trucks to share commissary space. Cities, however, should not follow Los Angeles County's practice of forbidding shared commercial kitchens, and should emulate the models put forward by cities like Austin, Texas, and San Francisco.

LICENSING:

Application Process: Cities should follow the licensing approach of Los Angeles County, which has a simple and straightforward application process. In terms of guidance, cities should emulate Boston and Milwaukee, which have both published step-by-step instructions to guide entrepreneurs through the licensing process.

Cost: The Institute recommends that cities should impose a flat annual fee in the range of \$200-300, as both Cleveland and Kansas City, Mo. have done. To the extent that a city issues licenses on a calendar year basis, its fee should be prorated so a truck first getting on the road halfway through the year would pay only half the full-year amount.

Who the License Covers: The Institute recommends that cities follow the example of Los Angeles County by licensing the overall vending business rather than the individual vendor.

Limits on the Number of Permits Issued: The Institute for Justice recommends that cities follow the example of Los Angeles and not limit the number of food-truck permits.

The specific laws and regulatory materials upon which these recommendations are based are discussed thoroughly in the pages that follow. Cities should implement these recommendations, which will both protect public health and safety and allow food-truck entrepreneurs to create and run businesses that will create jobs, increase customer choice, and boost the local economy.

AN ONLINE COMPENDIUM CONTAINING THE FULL LANGUAGE OF THE LAWS CITED IN THIS REPORT CAN BE FOUND AT [HTTP://WWW.IJ.ORG/VENDING](http://www.ij.org/vending).

INTRODUCTION

The food truck revolution is sweeping the nation. In 2010, *The Economist* magazine predicted that “some of the best food Americans eat may come from a food truck.”¹ That prediction has become true. Gourmet trucks across the country are at the forefront of modern dining, serving affordable and delicious fare that rarely can be found at the neighborhood sandwich shop. In addition, food-truck “rallies” have become popular social events around the country, with events frequently drawing thousands of hungry customers.² These mobile kitchens are also powerful engines of economic growth. Together, food trucks directly employ thousands of people nationwide, and the trucks, equipment, and food they purchase generate millions in economic activity.

In its 2011 research report on street vending entitled *Streets of Dreams*, the Institute for Justice explained how street vendors, including food-truck owners, are creating jobs, satisfying customers and generally making their communities safer and more interesting places to live.³ Below are just some of the benefits that food trucks are providing as their numbers grow in cities across the country:

- Food trucks create jobs, buy products and services from local businesses, and contribute sales taxes and permit fees to cities.
- Food trucks attract foot traffic to commercial districts—which means increased sales and a more vibrant retail-business environment overall.
- Food trucks serve as “eyes on the street” and make the street a safer and more enjoyable place to visit. Their presence can help prevent crime and revitalize underused public spaces.
- Food trucks give entrepreneurs with big dreams, but only a little capital, a way to start their own food-service businesses. In many instances, trucks serve as a stepping stone toward opening a brick-and-mortar space. Food trucks also give existing restaurants a new way to reach their customers.

Given the rapid growth of the food-truck industry, it is little surprise that city officials across the country have started to look for answers about how to regulate this new culinary trend. The purpose of this report is to provide those answers.

In Part I of this report, the Institute for Justice outlines two important general principles for regulating food trucks, and then discusses how those principles have led to a thriving food-truck economy in the city of Los Angeles, which has the best overall legal framework for food trucks in the country. In Part II, the report discusses how Los Angeles and other cities have addressed specific regulatory issues based on an Institute survey of the food-truck laws in the 50 largest cities in the United States. Using these examples, as well as discussions with government officials, food-truck owners and other stakeholders, the report then offers recommendations as to what cities’ laws are models that other cities should follow.

TWO IMPORTANT PRINCIPLES FOR THE REGULATION OF FOOD TRUCKS

In this report, the Institute discusses a variety of specific vending issues. While the details of each city’s laws concerning these issues may vary, the Institute for Justice has found that the best laws typically follow the same pattern of 1) not protecting incumbent businesses from competition, and 2) providing clear, narrowly tailored and outcome-based rules that address actual health and safety issues.

Principle #1: No Protectionism

Cities should not pass laws meant to protect established businesses from competition from food trucks. Some of the anti-competitive laws the Institute for Justice first identified

¹ Jon Fasman, *Trucking Delicious*, *THE ECONOMIST*, November 22, 2010, <http://www.economist.com/node/17493279>.

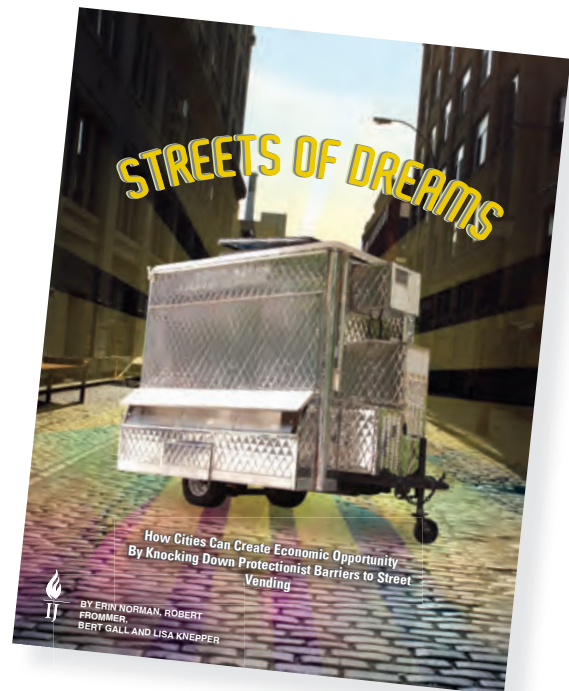
² See, e.g., Sarah Meehan, *Organizers hope to grow Baltimore, D.C. food truck competition*, *BALTIMORE BUSINESS JOURNAL*, June 25, 2012, <http://www.bizjournals.com/baltimore/news/2012/06/25/organizers-hope-to-grow-baltimore.html>.

³ Erin Norman, Robert Frommer, Bert Gall & Lisa Knepper, *STREETS OF DREAMS: HOW CITIES CAN CREATE ECONOMIC OPPORTUNITY BY KNOCKING DOWN PROTECTIONIST BARRIERS TO STREET VENDING* (2011), <http://www.ij.org/streets-of-dreams-2>.

in *Streets of Dreams* prevent trucks from operating in certain commercial areas, require trucks to move after an arbitrarily short time, and even stop trucks from operating within a certain distance of their brick-and-mortar competitors. These protectionist laws do not help protect public health or safety. Instead, they stifle entrepreneurship, destroy jobs and hurt consumers both by raising prices and giving them fewer choices.⁴

Many of these laws are the result of lobbying by a few politically connected and powerful brick-and-mortar restaurants, which argue that since food trucks don't have the same costs in terms of rent and property taxes, they amount to "unfair competition." Of course, this argument ignores the fact that restaurants have many advantages over food trucks. No food truck, for instance, can offer its patrons heating or air conditioning. Trucks generally can't offer customers anywhere to sit. And since space on a food truck is limited, once a truck is out of forks, knives and other supplies, it's just out; there's no stockroom in the back to turn to.

With all these inherent advantages, restaurants don't need the additional advantage of government intervention to "protect" them from food trucks. Furthermore, enacting rules to protect some businesses from competition isn't just wrong, it's unconstitutional. Both the U.S. Supreme Court and numerous federal courts have held that it is illegitimate for state and local governments to pass laws that burden one set of businesses in order to benefit another, more politically powerful, group.⁵



IJ's 2011 vending publication, *Streets of Dreams*.

Principle #2: Clear, Narrowly Tailored and Outcome-Based Laws

Cities should focus their efforts on enacting clear, narrowly tailored and outcome-based rules that address legitimate and demonstrable health and safety concerns. First, any laws that a city enacts should be drafted in a clear and easy-to-understand way. Clear laws are easier for food-truck operators to follow, since they need not guess at what the law requires or prohibits. They make it easier for new entrants to get permitted and on the road. And, lastly, clear laws are easier for a city to administer and create less risk that officials will apply vaguely worded restrictions in an unfair and anti-competitive manner.

Second, cities should enact narrowly tailored laws in order not to throw out the proverbial baby with the bathwater. In

⁴ GLENN HUBBARD & ANTHONY PATRICK O'BRIEN, *ECONOMICS* 462-63 (4th ed. 2013) (explaining welfare effects of government barriers to entry).

⁵ See, e.g., *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869 (1985); *Craigsmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002); *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008); *Cornwell v. Hamilton*, 80 F. Supp. 2d 1101, (S.D. Cal. 1999).

other words, putting rules in place that go no further than what is needed to solve the particular problem at hand. Overly broad and restrictive regulations don't better protect the public, but they can make running a business more difficult, if not impossible. One example comes up with regard to congestion. In New York City, the areas around theaters can often become quite crowded, particularly as theaters let out. New York's narrow solution is to prevent food trucks from operating at these specific locations during show time. By contrast, turning all of midtown Manhattan into a "no-vending zone" would be regulatory overkill and would appear to be born more out of protectionism than any legitimate concern for public health and safety.

Officials should also enact outcome-based regulations, rather than regulations that specify particular methods or processes.

Regulations that focus on results are simpler to follow and give food trucks an opportunity to figure out the best way to solve the problem. One example is how cities regulate trash. Although most cities require food trucks to pick up their refuse, a few cities painstakingly detail the kind of trash cans a truck should use and where they must be placed. This top-down approach stops trucks from coming up with creative solutions, and its one-size-fits-all nature means that some trucks will have to carry trash cans that are far larger and more unwieldy than what they actually need. Instead, cities should lay out their regulatory goal and then give the trucks flexibility in how they make that goal happen.

Ultimately, the prescription for food-truck success is simple: provide trucks with clear, narrowly tailored and outcome-based rules that address the public's legitimate health and safety concerns. And then step back and watch this new, dynamic industry, with its jobs, satisfied customers and revitalized public spaces, flourish. To see how these two principles have been applied in the real world, look no further than how the birthplace of the modern gourmet food-truck movement—the city of Los Angeles—regulates food trucks.



CASE STUDY: LOS ANGELES

Of all the cities in the United States, few are more closely identified with the food-truck revolution than the City of Angels. For decades, “loncheros” served tacos, burritos and tamales to construction crews and the occasional office worker.⁶ Then in late 2008, two entrepreneurs named Roy Choi and Mark Manguera came up with the idea for a Korean/Mexican fusion taco truck.⁷ Naming their creation “Kogi,” the two struggled at first, frequently setting up outside nightclubs in Hollywood.⁸ But soon Kogi went viral after Manguera and Choi started using Twitter to let people know where the truck would be at any given time.⁹ Since then, Kogi has been a wild success and now has four color-coded trucks on the road.¹⁰

Other entrepreneurs quickly realized the potential that gourmet food trucks had to offer. Within a few years, numerous entrepreneurs began to roll out their own kitchens on wheels. Now Angelenos have access to trucks selling everything from Vietnamese Banh Mi sandwiches to Hawaiian shave ice and home-style macaroni and cheese. The public reception for the trucks has been overwhelming, and the advent of food trucks has in no way diminished L.A.’s vibrant restaurant culture. Instead, Zagat.com reports that restaurant customers believe that the area’s restaurant scene has improved.¹¹

But a more-vibrant food scene is not the only gift the trucks have given Los Angeles. The growth in Los Angeles’ food-truck industry has created hundreds, if not thousands, of new jobs, both on the trucks themselves and also at the businesses that design the trucks, build them, and supply them with the equipment and ingredients that they need. Furthermore, having the food trucks out and about draws hungry customers outside as well, and as urban theorist Jane Jacobs pointed out, “a well-used street is apt to be a safe street.”¹² Lastly, food trucks are entrepreneurship incubators. Food trucks, with their lower capital costs, are a way for chefs to try out new cuisines and new ideas. Those owners who succeed often take their winning ideas one step further by expanding their businesses and sometimes opening brick-and-mortar spaces. As a result of his food-truck success, for instance, Kogi’s Roy Choi expanded his empire into brick-and-mortar locations, including his new restaurant named Chego.¹³

The food trucks’ success in the city of Los Angeles, along with the great benefits those trucks provide, show that L.A.’s regulatory framework is one that other cities would do well to emulate. What makes Los Angeles a success comes from its adherence to the two principles discussed above.

First, Los Angeles’ regulations are not designed to stifle food trucks for the purpose of protecting brick-and-mortar restaurants from competition. As discussed above, incumbent businesses often ask local governments to put roadblocks in the way of their new competitors. But Los Angeles’ code contains few if any anti-competitive restrictions. Unlike Chicago, San Antonio and New Orleans, for instance, Los Angeles does not say that food trucks cannot operate within a certain distance of their brick-and-mortar counterparts. This difference is partially due to an earlier ruling by a California court that such proximity restrictions are unconstitutional.¹⁴ Likewise, Los Angeles does not require that food trucks must be hailed before they stop and serve customers. And it does not artificially restrict when food trucks may operate.

Furthermore, California law has helped protect the public against attempts at protectionist legislation. In July 2006, the city of Los Angeles passed an ordinance that ordered food trucks to move every 30 or 60 minutes depending on whether they were in a residential or commercial area.¹⁵ The city began to stringently enforce the duration restriction in 2009, but it was soon rebuffed. On June 10, 2009, Judge Barry Kohn of the California Superior Court invalidated the ordinance because it expressly conflicted with the state vehicle code, which permits cities to regulate vehicle vendors only “for the public safety.”¹⁶ A similar duration restriction in the Los Angeles County code had earlier met the same fate.¹⁷

6 Jesús Hermosillo, *LOCHERAS: A LOOK AT THE STATIONARY FOOD TRUCKS OF LOS ANGELES*, Sept. 2010, <http://www.labor.ucla.edu/publications/reports/Locheras.pdf>

7 Jessica Gelt, *Kogi Korean BBQ, a taco truck brought to you by Twitter*, L.A. TIMES, Feb. 11, 2009, <http://www.latimes.com/features/la-fo-kogi11-2009feb11,0,4771256.story>

8 Merrill Shindler, *Riding Shotgun with Kogi*, ZAGAT.COM, Apr. 6, 2009, <http://www.zagat.com/buzz/riding-shotgun-with-kogi>

9 Jessica Gelt, *Kogi Korean BBQ, a taco truck brought to you by Twitter*, L.A. TIMES, Feb. 11, 2009, <http://www.latimes.com/features/la-fo-kogi11-2009feb11,0,4771256.story>

10 Kogi BBQ-To-Go, <http://kogibbq.com/>.

11 Zagat.com, *Zagat Celebrates 25 Years in Los Angeles; 2,027 Restaurants Surveyed By 21,166 Local Diners*, Sept. 11, 2011, <http://www.zagat.com/node/3695295>.

12 See JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 34 (1992).

13 Chego!, <http://eatchego.com/>.

14 *People v. Ala Carte Catering*, 159 Cal. Rptr. 479 (Cal. App. Dep’t Super. Ct. 1979).

15 L.A. City Code § 80.73(b)(2)(F).

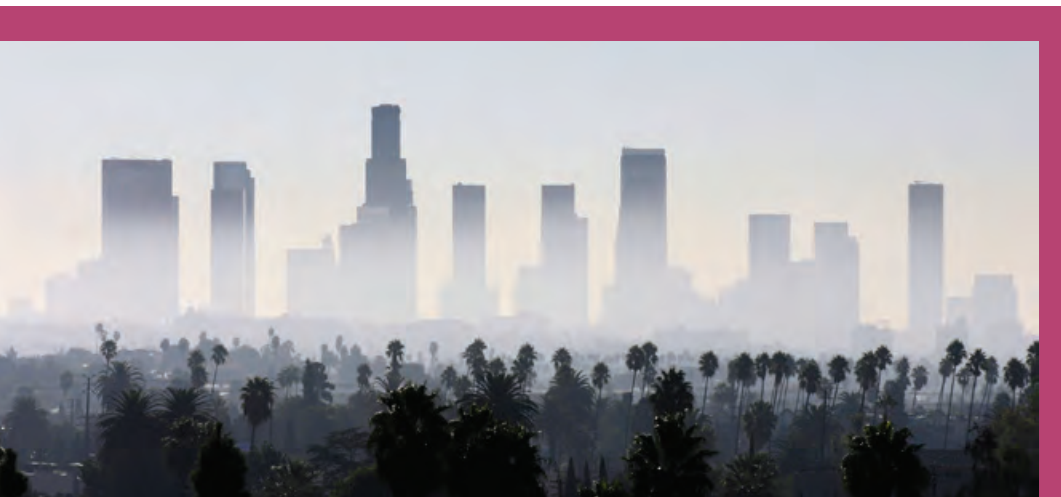
16 Cal. Vehicle Code § 22455(b); Press Release, UCLA School of Law, *UCLA School of Law Clinical Program wins case challenging validity of Los Angeles city ordinance implemented against food trucks*, June 10, 2009, <http://www.law.ucla.edu/news-media/Pages/News.aspx?NewsID=737>.

17 *People v. Garcia*, No. 8EA05884 at 5-6 (Cal. Sup. Ct. Aug. 27, 2008) (referring to Los Angeles County Code § 7.6A.070).

Second, the laws that the city of Los Angeles does have in place are generally narrowly tailored to deal with actual health and safety issues, straightforward, and focus on results rather than on methods and processes. Together, the state, county and city have established rules to govern, among other things, what facilities and equipment a truck must carry on board, how it prepares food and where it may operate. In Los Angeles, the law does not micromanage trucks; instead, it merely requires that they obey the traffic rules applicable to all vehicles,¹⁸ follow basic safety precautions¹⁹ and pick up after themselves.²⁰ That said, some provisions of Los Angeles' laws are overly burdensome. The city's requirement that trucks not park within 100 feet of an intersection,²¹ for instance, seems excessive, particularly since other communities allow for much more reasonable distances.²²

USING LOS ANGELES AS A STARTING POINT

Although they are not perfect, and have been the subject of fights both in council chambers and the courts, Los Angeles' food-truck regulations are generally a success. Los Angeles has avoided protectionist laws in favor of clear, narrowly tailored and outcome-based health and safety rules, and its approach should serve as a starting point for cities that are drafting their own food truck laws. On the next two pages, the Southern California Mobile Food Vendors' Association emphasizes the benefits of the approach. Then starting on page 14, the Institute for Justice will discuss various food-truck topics and explain where L.A. has done well, where it has gone awry, and where other cities might have a superior approach. The Institute will then go on to provide specific recommendations that cities can adopt to address the main public health and safety issues concerning food trucks.



¹⁸ L.A. City Code § 80.73(b)(2)(B).

¹⁹ L.A. City Code § 80.73(b)(2)(C) (requiring that truck operators only serve customers from the side of the truck abutting the sidewalk).

²⁰ L.A. City Code § 80.73(b)(2)(E).

²¹ L.A. City Code § 80.69(d).

²² See, e.g., El Paso City Code § 12.46.020(C) (requiring that trucks not operate within 20 feet of an intersection).

Los Angeles from the Trenches

by Matt Geller, CEO, and Jeffrey Dermer and Kevin Behrendt, Counsel, Southern California Mobile Food Vendors' Association

Southern California is the most mature mobile-vending market in the United States. The traditional taco trucks, or “loncheros,” have been a familiar sight in California for generations. As a result of this unique history, Southern California and Los Angeles are more comfortable with mobile vending than perhaps other parts of the United States. Furthermore, this experience has left Los Angeles with the most well-developed and mature set of regulations in the country.

But none of this came easily. Over the years, public-interest advocates have fought tirelessly in the courts, in the state legislature, and in local government halls for a more reasonable regulatory environment for mobile vending. Other states and cities would do well to avoid these battles and instead simply “cut to the chase” by repealing any protectionist laws on their books and passing narrow regulations that deal with actual health and safety issues. By emulating the best parts of Los Angeles’ regulatory landscape as described in this report, officials throughout the country can make sure that trucks comply with the law and that consumers and residents are satisfied.

Below, we briefly describe how Los Angeles’ unique regulatory landscape has evolved and the economic and social benefits that it has helped produce.

Mobile Vending in Los Angeles

Historically, mobile vending in Los Angeles was primarily a business for recent immigrants. Many of the taco trucks of the 1970s and 1980s were founded and run by Mexican immigrants. These trucks faced discriminatory enforcement of the laws and, in some cases, outright attempts by city officials to shut down mobile vending in many communities. Those pioneers fought back by pairing with civil-rights lawyers to push back on the most egregious of these laws, including one that prohibited food vending within 100 feet of a restaurant’s front door.²³ The current state of regulations is a testament to those advocates.

Another key to California’s vending landscape came in 1984, when the California Legislature passed a landmark provision telling cities that they may only regulate mobile vending “for the public safety.”²⁴ One year later, the Legislature went one step further by preventing cities from instituting outright bans on mobile vending for any reason.²⁵ This law has helped food trucks fight back against anti-competitive restrictions at the city and county levels.

The Southern California Mobile Food Vendors Association was founded in January 2010 in response to the confusing regulatory framework that confronted gourmet food-truck operators. Since then, the Association has worked with over 30 cities to repeal anti-competitive vending laws, fought back attempts at the California state legislature to weaken state protections for food trucks and brought suit against municipalities that, at the behest of brick-and-mortar businesses, enacted ordinances meant to ensure that no mobile vending occurred on their streets.

The late 2000s saw the rise of the modern gourmet food truck. In the past, food trucks had primarily served construction workers on job sites. This business model worked well during the boom times, but the real-estate collapse of 2007-08 meant that there were few construction sites to service. Faced with a massive excess capacity of catering vehicles, many entrepreneurs bought trucks and repurposed them. This was helped, in part, by the fact that Los Angeles is home to a family-business culture and a large

²³ *People v. Ala Carte Catering Co.*, 159 Cal. Rptr. 479 (Cal. App. Dep’t Super. Ct. 1979).

²⁴ Cal. Vehicle Code § 22455(b).

²⁵ More specifically, the 1985 amendment to section 22455 removed the final sentence of subsection (b), which previously read: “An ordinance or resolution adopted pursuant to this subdivision may prohibit vending from a vehicle upon a street.”

number of different ethnic groups, many of whom brought new food concepts to this emerging industry.

But the growth in this new industry ruffled some feathers, including corporate quick-serve restaurants and the commercial developers who rent to them. Unfortunately, but not surprisingly, these forces made a concerted effort to pass new protectionist laws in the city of Los Angeles and elsewhere. Although Los Angeles itself refrained from enacting any new anti-competitive restrictions, some other municipalities in the area passed restrictive vending laws and began to enforce anti-competitive laws that were already on the books.

It was against this backdrop that the food trucks in Southern California joined forces to create the Southern California Mobile Food Vendors Association. Only two years old, the Association has grown from 30 initial members to over 150 members. Through education, lobbying and litigation, the Association has sent a clear message to regulators that consumer choice and entrepreneurship should come first.

Thankfully, forward-looking officials in Los Angeles have heard this message, embraced it, and now see the benefits that come from giving food trucks the freedom to operate. This hands-off approach has spawned an entirely new food-truck industry, with many companies now building and customizing food trucks, supplying graphic wraps for new entrepreneurs and selling technology to help consumers both locate their favorite trucks and order from them. The number of trucks has grown, leading to hundreds of new jobs. And the increased competition has pushed everyone, both food trucks and brick-and-mortar restaurants, to cook and serve food that is better tasting and a better value.

Competition is what makes America great, and Los Angeles' regulatory model wisely embraces that competitive spirit and rejects the idea that the government should protect certain businesses at the expense of consumers. The city's approach to regulating food trucks has worked for Los Angeles, and it can work for your city as well.

HOW CITIES SHOULD ADDRESS PUBLIC HEALTH AND SAFETY ISSUES

In the following pages, the Institute for Justice discusses how cities should address some major topics surrounding food trucks, including these health and safety issues:

- **Food Safety**
- **Food-Safety Enforcement**
- **Parking**
- **Refuse**
- **Liability Insurance**
- **Hours of Operation**
- **Employee Sanitation**
- **Commissary Requirements**
- **Licensing**

For each issue, the Institute will describe the applicable law in Los Angeles and explain its advantages and drawbacks. It will then examine how other cities address the issue and explain why those other approaches are better or worse than what L.A. does. Finally, the Institute will recommend what law cities should adopt and give reasons for that recommendation. Throughout, the report will provide citations to the pertinent laws.

FOOD SAFETY

HOW LOS ANGELES REGULATES FOOD SAFETY:

The city of Los Angeles does not regulate the design of food trucks, how they store and cook food or what procedures they must follow in cleaning their equipment and utensils. Instead, this function is performed by the Los Angeles County Health Department, which administers the rules set forth in the California Retail Food Code.²⁶ That code prescribes how all food businesses, restaurants and food trucks included, must be designed and run.

While the Food Code has general rules that are applicable to all food sellers,²⁷ it also contains food-truck specific rules. The code, for instance, specifies the requisite amount of aisle space within the cooking portion of the truck²⁸ and mandates that utensils be secured so they are not thrown about while the truck is moving.²⁹ The code also imposes different requirements on trucks based on what the vehicle will be used for. If food will be prepared and cooked on board a food truck, for instance, the code requires that the vehicle be equipped with both warewashing and handwashing sinks³⁰ and that any deep fryers be sealed using a positive air pressure lid.³¹ Trucks that do not prepare and cook food need not meet these requirements.

HOW OTHER CITIES REGULATE FOOD SAFETY:

As in Los Angeles, in most cities the regulations concerning food safety aboard food trucks come from state or county retail-food codes. In Phoenix, for instance, the Maricopa County Environmental Health Code governs how food trucks are regulated.³² That code requires that trucks follow the general provisions that are

An online compendium containing the full language of the laws cited in this report can be found at <http://www.ij.org/vending>.

²⁶ Cal. Health and Safety Code §§ 113700 *et seq.*

²⁷ Cal. Health and Safety Code § 114294(a) (stating that “[a]ll mobile food facilities and mobile support units shall meet the applicable requirements in Chapters 1 to 8, inclusive, and Chapter 13, unless specifically exempted from any of these provisions”).

²⁸ Cal. Health and Safety Code § 114321.

²⁹ Cal. Health and Safety Code § 114323(b)(1).

³⁰ Cal. Health and Safety Code § 114311.

³¹ Cal. Health and Safety Code § 114323(b)(2).

³² Maricopa County Environmental Health Code, <http://www.maricopa.gov/EnvSvc/AboutUs/HealthCode.aspx>.

applicable to brick-and-mortar restaurants, but it also imposes some additional, food-truck specific regulations. Likewise, the regulations that govern food safety for food trucks in Indianapolis are governed by the retail food establishment sanitation requirements of the Indiana Administrative Code, which govern both mobile and fixed-location food providers.³³

Often the design and construction requirements for a food truck turn on what the truck will be used for. New York City, for instance, has two different sets of regulations for food trucks based on whether the food truck will be selling food that requires any cooking or processing in the vehicle (excluding the boiling of hot dogs). The two categories are subject to different requirements, which are a mix of state and local sanitary and health codes.³⁴ Likewise, the food-truck application for Portland, Ore., details four classes of vehicles and the specific requirements that apply to each class.³⁵

INSTITUTE FOR JUSTICE RECOMMENDATION:

The Institute for Justice notes that most municipalities follow the food-safety rules established in county or state food codes, which are typically based on industry best practices. To the extent the county or state food code does not deal with a specific issue, the Institute recommends that officials follow the requirements of Chapter 10 of the California Retail Food Code, which governs food trucks.³⁶

Furthermore, cities drafting their own regulations should, as the California Retail Food Code does, customize those requirements based on what the truck will serve. Safety or cooking equipment that is necessary for a truck where food is prepared may well be unnecessary for a truck that

sells only prepackaged food or ice cream. Regardless of what law a city follows, though, it should lay out what precise steps operators must take. Having officials rely on informal customs and standards that are unknowable to those on the outside unnecessarily increases both uncertainty and costs to would-be entrepreneurs.

BOTTOM LINE:

Cities without food-safety regulations for mobile vehicles should adopt Chapter 10 of the California Retail Food Code and tailor those regulations to the potential risk that the truck's food poses to public health and safety.

FOOD-SAFETY ENFORCEMENT

HOW FOOD SAFETY IS ENFORCED IN LOS ANGELES: Los Angeles County is the government body responsible for administering the state retail-food code and inspecting food trucks.³⁷ Its rules call on county officials to perform unannounced field inspections of trucks. In early 2011, the county started assigning letter grades to food trucks based on the results of their inspections, which mirrored what the county already did for brick-and-mortar restaurants.³⁸ Food trucks must display the grade they received on their vehicle.³⁹ Food truck owners have largely welcomed this change, which gives them the opportunity to show that they are just as clean and sanitary as their brick-and-mortar counterparts.⁴⁰

HOW OTHER CITIES ENFORCE FOOD SAFETY: Cities are split as to who inspects mobile food vendors. Approximately half of America's largest 50 cities inspect trucks themselves, while state or county health departments conduct inspections for the other 25 cities. The frequency of inspections similarly varies: While San Antonio conducts "routine, unannounced inspections" of food trucks,⁴¹ Albuquerque, N.M., inspects trucks at least twice a year based on the "past compliance record of a food establishment and the risk presented to consumers by the menu items provided by the specific food establishment."⁴² Inspections in most cities are

³³ Indiana State Department of Health, Retail Food Establishment Sanitation Requirements, http://www.in.gov/isdh/files/410_iac_7-24.pdf.

³⁴ See New York City Department of Health and Mental Hygiene Mobile Vending Permit Inspection Requirements, http://www.nyc.gov/html/doh/downloads/pdf/permit/mfv_cart_truck_inspection.pdf.

³⁵ See Mobile Food Unit Plan Review Packet, http://web.multco.us/sites/default/files/health/documents/mfu_plan-review.pdf.

³⁶ Cal. Health and Safety Code §§ 114294 *et seq.*

³⁷ L.A. County Code §§ 8.04.405, 8.04.752.

³⁸ Rong-Gong Lin II, *A drive to grade food trucks in L.A. County*, L.A. TIMES, Sept. 14, 2010, <http://articles.latimes.com/2010/sep/14/local/la-me-food-trucks-20100914>.

³⁹ L.A. County Code § 8.04.752.

⁴⁰ See Lisa Jennings, *L.A. food trucks to post letter grade inspection results*, NATION'S RESTAURANT NEWS, Oct. 20, 2010, <http://nrrn.com/article/la-food-trucks-post-letter-grade-inspection-results>.

⁴¹ San Antonio City Code § 13-62(k).

⁴² Albuquerque City Code § 9-6-1-6.

unannounced,⁴³ and most are conducted by the same officials who inspect brick-and-mortar restaurants.⁴⁴

INSTITUTE FOR JUSTICE RECOMMENDATION: Of the existing laws concerning food-safety enforcement, the Institute for Justice recommends that cities generally follow the approach of Los Angeles County.⁴⁵ In a forthcoming report, the Institute for Justice compares the inspection grades of restaurants and food trucks in Los Angeles and finds that the city's food trucks are just as clean and sanitary on average as its restaurants. Furthermore, cities should consider following Albuquerque's approach of taking a truck's inspection history and the food it serves into account when deciding how frequently to inspect it. The Southern California Mobile Food Vendors Association, in a similar vein, has suggested that trucks that get two "A" grades in a row should receive a "Certification of Excellence" that reduces their inspection rate to only once per year. This approach makes sense, since inspectors generally should spend less time on trucks that pass inspection with flying colors and instead focus on food trucks or restaurants that have a history of problems. Finally, inspectors should hold food trucks and brick-and-mortar restaurants to the same food-safety standards.

commercial areas; instead, it merely states that food trucks cannot operate within 200 feet of certain parks⁴⁶ or near the Pacific Ocean.⁴⁷

Distance to Intersections: Food trucks in Los Angeles must follow all traffic rules and any stopping, standing or parking prohibitions as provided by the State Vehicle Code.⁴⁸ They must also follow the traffic regulations in the Los Angeles Municipal Code that apply to all vehicles.⁴⁹ In addition to those state and municipal traffic laws, food trucks may not park within 100 feet of an intersection.⁵⁰ The 100-foot prohibition is far larger than what is needed to accommodate any congestion or visibility issues. For many smaller blocks, the restriction makes it difficult, if not impossible, for trucks to legally park and serve their fare. Indeed, it appears that Los Angeles recognizes the difficulty with this approach; according to the Southern California Mobile Food Vendors Association, the city of Los Angeles does not actively enforce its 100-foot restriction.

Use of Metered Parking Spaces: The city of Los Angeles permits food trucks to vend from metered public parking spots for the maximum amount of time listed on the meter.⁵¹

Duration Restrictions (How Frequently Food Trucks Must Move): The city of Los Angeles previously restricted how frequently food trucks had to move. Under its old law, food trucks could only stay in one spot for 30 minutes in a residential area, or 60 minutes in a commercial one.⁵² They then had to move one-half mile away and not return for 30 or 60 minutes, respectively.⁵³ A Los Angeles Superior Court judge invalidated this duration restriction in 2009 and it is no longer enforced.⁵⁴

BOTTOM LINE:

Cities should follow Los Angeles' approach by inspecting food trucks both when first permitting them and periodically thereafter. Trucks serving non-hazardous food or that have passed multiple inspections should, as in Albuquerque, N.M., be subject to less frequent inspections, which will give inspectors more time to inspect trucks and restaurants with a history of issues.

PARKING

HOW LOS ANGELES DEALS WITH PARKING:

Proximity Restrictions and Restricted Zones: The city of Los Angeles does not prohibit food trucks from operating within a certain distance of brick-and-mortar restaurants. Likewise, the city does not restrict food trucks from operating in popular

43 See, e.g., City of Kansas City, Food protection frequently asked questions, <http://www4.kcmo.org/health.nsf/web/foodfaqs#8>.

44 See, e.g., Las Vegas City Code § 6.02.020.

45 L.A. County Code §§ 8.04.405, 8.04.752.

46 L.A. City Code § 80.73(b)(2)(A)(4)(i).

47 L.A. City Code § 42.15(c).

48 L.A. City Code § 80.73(b)(2)(B).

49 *Id.*

50 L.A. City Code § 80.73(b)(2)(A)(3).

51 See L.A. City Code § 80.73(b)(2)(B).

52 L.A. City Code § 80.73(b)(2)(F).

53 *Id.*

54 Press Release, UCLA School of Law Clinical Program Wins Case Challenging Validity of Los Angeles City Ordinance Implemented Against Taco Trucks, (June 10, 2009), <http://www.law.ucla.edu/news-media/Pages/News.aspx?NewsID=737>.

Potential Sidewalk Congestion: The city of Los Angeles does not mandate that food trucks park and vend only at sidewalks of a certain minimum width; instead, it states that food trucks should not operate in a way that blocks the public right of way.⁵⁵

HOW OTHER CITIES DEAL WITH PARKING:

Proximity Restrictions and Restricted Zones:

In *Streets of Dreams*, the Institute looked at how many of the largest cities in the United States imposed restrictions on where food trucks could operate. In all, 20 of the 50 largest U.S. cities told food trucks to stay a certain distance away from their brick-and-mortar competitors, while 34 cordoned off parts of the city, often prime commercial areas, from vending.⁵⁶ Proximity restrictions exist solely to prevent one business from being able to compete with another, which simply is not a legitimate government interest. Indeed, virtually every court to consider one of these laws has held them to be unconstitutional and struck them down.⁵⁷

Although not as transparently protectionist as laws establishing proximity restrictions, laws that create restricted zones are often protectionist in effect due to their breadth. Typically, congestion issues are fairly localized at particular intersections or on particular streets. But rather than take a narrow approach, restricted zones prohibit all vending in large swaths of a city. Regulations that exceed their required scope look like less of an honest attempt to solve a real problem and more of an attempt to keep food trucks from competing.

Distance to Intersections: The 100-foot restriction that Los Angeles requires food trucks to follow is much larger than similar laws in other major cities. Many cities do

not specify any minimum distance a truck must be from an intersection, instead merely requiring that a truck not vend “in a congested area where the operation will impede pedestrian or vehicle traffic.”⁵⁸ And of those cities that do provide for a minimum, the required distance ranges from 20 to 50 feet.⁵⁹

Use of Metered Parking Spaces: Most cities in the United States allow food trucks to pay for and operate from metered parking spaces for the amount of time listed on the meter. One notable exception to this is Pittsburgh, which says that food trucks “shall not park any vehicles for the purpose of vending, or place any materials in on-street metered parking spaces.”⁶⁰ And in New York City, a controversy has erupted over whether food trucks may vend from metered spots. The city’s transportation regulations state that “[n]o peddler, vendor, hawker or huckster shall park a vehicle at a metered parking space for purposes of displaying, selling, storing or offering merchandise for sale from the vehicle.”⁶¹ A food truck sued, arguing that its food was not “merchandise” for purposes of the law. A New York trial court ruled for the city in May 2011,⁶² and that ruling was upheld the following year.⁶³

Duration Restrictions: As discussed in *Streets of Dreams*, 19 of the 50 largest U.S. cities mandate how frequently a vendor must move, regardless of whether he or she is vending from a metered space or what the time limit for the space, if any, might be.⁶⁴ Those laws require vendors to move once every 15 minutes to two hours;⁶⁵ in some instances, vendors who have moved are not allowed to return to their original location for a specified amount of time.⁶⁶ These laws are counterproductive, and should be scrapped. Forcing vendors to move regularly makes it difficult, if not impossible, to run a profitable business. Short time limits also pose a safety hazard, since it pressures cooking trucks into moving before their equipment has completely cooled. And by requiring trucks to constantly be on the road, laws like these make congestion worse, not better.

Potential Sidewalk Congestion: Most cities deal with potential sidewalk congestion issues as Los Angeles does, by simply requiring that food trucks not operate in a manner that blocks or inhibits use of the sidewalk by pedestrians. Fresno, Calif., for instance, states that “[n]o mobile vendor shall block or

⁵⁵ See L.A. City Code § 56.08(c).

⁵⁶ STREETS OF DREAMS 16, 20 (July 2011).

⁵⁷ See, e.g., *People v. Ala Carte Catering*, 159 Cal.Rptr. 479 (1979); *Duchain v. Lindsay*, 42 A.D.2d 100, 345 N.Y.S.2d 53 (1973), *aff’d*, *Duchain v. Lindsay*, 34 N.Y.2d 636 (1974); *Thunderbird Catering Co. v. City of Chicago*, Case No. 83-52921 (Oct.15, 1986).

⁵⁸ Las Vegas City Code § 6.55.070(A)(2).

⁵⁹ See, e.g., El Paso City Code § 12.46.020(C) (20 feet); Minneapolis City Code § 188.480(2) (30 feet); San Antonio City Code § 13-63(a)(5) (50 feet).

⁶⁰ Pittsburgh City Code § 719.05A(d).

⁶¹ New York City Department of Transportation Regulations § 4-08(h)(8).

⁶² Glenn Collins, *Food Trucks Shooed From Midtown*, N.Y. TIMES, June 28, 2011, http://www.nytimes.com/2011/06/29/dining/food-trucks-shooed-from-midtown.html?_r=2.

⁶³ *Monroy v. City of New York*, May 8, 2012, <http://caselaw.findlaw.com/ny-supreme-court-appellate-district/1600535.html>.

⁶⁴ STREETS OF DREAMS 23 (July 2011).

⁶⁵ See Columbus City Code § 2151.16 (15 minutes); Las Vegas City Code § 6.55.070(A)(2) (30 minutes); Chicago City Code § 7-38-115(b) (two hours).

⁶⁶ See, e.g., Sacramento City Code § 5.68.170 (stating that vending vehicle may not return to original location until the next day).

obstruct the free movement of pedestrians or vehicles on any sidewalk.”⁶⁷ Las Vegas, Nev., similarly says that no mobile food vendor shall “[v]end in a congested area where the operation will impede pedestrian or vehicle traffic.”⁶⁸ And Philadelphia states that food trucks should not “increase traffic congestion or delay, or constitute a hazard to traffic.”⁶⁹

INSTITUTE FOR JUSTICE RECOMMENDATION:

Proximity Restrictions and Restricted Zones: The Institute for Justice recommends that cities follow the example of Los Angeles by not prohibiting food trucks from operating within a certain distance of brick-and-mortar restaurants. The first lawsuit the Institute for Justice brought as part of its National Street Vending Initiative was against El Paso, Texas, which enacted a law that kept food trucks from operating within 1,000 feet of any fixed business that served food.⁷⁰ In response to the lawsuit, El Paso quickly backed down and dropped its anti-competitive restriction.

The Institute for Justice also recommends that cities follow the example of Los Angeles by not establishing broad zones where food trucks may not operate. As discussed at the beginning of this report, cities should strive to enact narrow laws that address the particular problem at hand but go no further. New York City, for instance, does not have any blanket prohibitions on where food trucks may go; instead, it proscribes vending only at certain specific times and locations based on demonstrable congestion concerns. The Institute for Justice recommends that other cities do the same.

Distance to Intersections: Of the laws dealing with traffic, parking, and congestion issues, the Institute for Justice recommends that cities follow the example of El Paso, Texas, which states that food trucks “shall be allowed to stop, stand or park on any public street or right-of-way, provided this area is not within twenty feet of an intersection, such vehicle does not obstruct a pedestrian crosswalk and the area is not prohibited to the stopping, standing or parking of such vehicles.”⁷¹ This rule is clear, definite, and easy for food trucks to follow. The Institute for Justice does not recommend that cities follow Los Angeles’ approach of prohibiting food trucks from parking within 100 feet of an intersection. Cities should not regulate more heavily than necessary, and Los Angeles’ 100-foot restriction is excessive compared to what other cities prescribe.

Use of Metered Parking Spaces: The Institute for Justice recommends that cities follow the example of Los Angeles and virtually every other major city by allowing food trucks to operate from metered locations provided that they pay the requisite fees and follow any time limitations associated with the location. Food trucks are miniature commerce centers, and letting them pay for and use parking spaces both enriches the city and helps consumers find the trucks that they want to patronize. Furthermore, there is no reason to single out food trucks from all other commercial vehicles and impose special burdens on them that the rest do not share.

Innovation: Food Truck Parking Passes

Some food trucks will want to use a metered parking space for longer than typically permitted. Food trucks that sell fried items, for instance, frequently struggle with shorter parking periods, as they often must take 30 minutes or more to heat up their oil while setting up or to cool it down while preparing to move. One way that cities can accommodate this desire is to sell special permits to food trucks that let them park at metered locations for an extended period of time. These permits may be issued on a periodic basis, such as monthly or quarterly, or the city can instead sell one-time passes. To use such a pass, truck operators would scratch off the current date and place it in their windshield; once on display, the pass would let the truck legally park at one or multiple spots over the course of the day. The price of these permits or passes could be set at a premium above standard meter rates. This would give more entrepreneurial food trucks more options while generating more revenue for the city.

⁶⁷ Fresno City Code § 9-1107(h).

⁶⁸ Las Vegas City Code § 6.55.070(A)(2).

⁶⁹ Philadelphia City Code § 9-203(7)(d).

⁷⁰ El Paso Vending, The Institute for Justice, <http://www.ij.org/el-paso-vending>.

⁷¹ El Paso City Code § 12.46.020(C).

Duration Restrictions: After reviewing laws that govern how long food trucks may stay at one location, the Institute for Justice recommends that cities follow the examples of Philadelphia and New York City. Neither city forces food trucks to move after an arbitrary amount of time; instead, they require only that food trucks obey the parking rules that apply to all vehicles. Although Los Angeles does not impose any duration restrictions, that is only because a court held them to be invalid; accordingly, the Institute does not recommend that cities adopt the language in Los Angeles' code.

Food trucks responding to an Institute survey pointed out that, for cooking trucks, it can often take up to a half hour to get set up and ready to cook and another half hour to close down the kitchen and get back on the road. As a result, owners universally expressed frustration with duration restrictions, which can make it practically impossible to vend from a modern gourmet food truck. Trucks also complained about the harm to their business's reputation when they have to turn away customers who have patiently waited in line. As one Washington, D.C., entrepreneur put it, "Expecting busy trucks to move with 30 people on line is a burden." For these reasons, the Institute for Justice recommends that food trucks be allowed to stay at one location for at least as long as any other vehicle.

Potential Sidewalk Congestion: The Institute for Justice recommends that cities follow the example of Los Angeles, which specifies only that food trucks not operate in a manner "which will interfere with or obstruct the free passage of pedestrians or vehicles along any such street, sidewalk or parkway."⁷² A set rule that requires a minimum sidewalk width in some instances can be regulatory overkill, such as in areas with little to no

pedestrian traffic, and might be insufficient in particularly crowded areas. Los Angeles' approach is superior because it gives trucks more flexibility while continuing to protect the public right of way. As noted below, the fear that trucks lead to congested sidewalks has little to no evidentiary support.

BOTTOM LINE:

Proximity Restrictions and Restricted Zones: Cities should follow the example of Los Angeles by not prohibiting food trucks from operating within a certain distance of brick-and-mortar restaurants or establishing large no-vending areas that are neither narrow nor based on real congestion concerns.

Distance to Intersections: Cities should adopt El Paso Code Section 12.46.020(c), which states that food trucks "shall be allowed to stop, stand or park on any public street or right-of-way, provided this area is not within twenty feet of an intersection, such vehicle does not obstruct a pedestrian crosswalk and the area is not prohibited to the stopping, standing or parking of such vehicles."

Use of Metered Parking Spaces: Cities should follow the example of Los Angeles and almost all other cities by letting food trucks operate from metered locations.

Duration Restrictions: Cities should follow the examples of Philadelphia and New York City, neither of which artificially restricts how long a food truck may stay at one spot.

Potential Sidewalk Congestion: Rather than prescribing the minimum width that a sidewalk must be for mobile vending, cities should follow Los Angeles' approach and simply require that food trucks not operate in a manner "which will interfere with or obstruct the free passage of pedestrians or vehicles along any such street, sidewalk or parkway."

⁷² See L.A. City Code § 56.08(c).

IJ Original Research on Food Trucks and Sidewalk Congestion

Some local businesses that do not want to compete against food trucks argue that letting trucks operate on the streets will increase sidewalk congestion. The argument is that this congestion makes it harder for pedestrians to navigate the right of way and, in some instances, could even lead to safety hazards. This concern is offered as a justification for laws that prohibit trucks from operating in certain areas of the city or from operating on public property at all.

Of course, legislators should only act on these concerns if they are in fact true. But while claims of food trucks creating sidewalk congestion abound, there was no actual evidence showing that to be the case. In fact, the effects of food trucks on congestion had never seriously been examined. So, to find out if trucks really do pose congestion concerns, the Institute for Justice undertook an original empirical research study.

On three days in December 2010, January 2011, and February 2011, a team of researchers from the Institute for Justice observed pedestrian traffic in two areas of Washington, D.C. known as Federal Center and Dupont Circle. Federal Center is an area in Southwest D.C. that is close to several government buildings and a handful of deli-style restaurants. Dupont Circle,

which is located in Northwest D.C., is one of the city's busiest areas, with many dining options, office buildings, and retail shops. Both Federal Center and Dupont Circle are near subway stations.

IJ researchers measured the amount of foot traffic on both sides of the street. They also calculated how long it took pedestrians to travel from one end of the block to the other. They counted pedestrians on both sides on days when food trucks were present and on days when they were not.

The Institute's research showed that the presence of a food truck did not significantly increase foot traffic. In the Federal Center area, the highest amount of foot traffic occurred on a day when no food trucks were present, indicating that other factors impact foot traffic. The data from Dupont Circle reiterated this finding. The presence of a food truck was associated with a minor increase of pedestrians, just 28, over a two-hour time period, which amounts to an increase of less than one percent of total foot traffic.

Foot Traffic With and Without Presence of Food Trucks

	Dec. 15, 2010 (With Truck)	Jan. 13, 2011 (Control – No Truck)	Feb. 10, 2011 (No Truck)
Federal Center	772	939	673
Truck Side	336	296	263
Non-Truck Side	436	643	410
	Feb. 15, 2011 (With Truck)	Feb. 23, 2011 (Control – No Truck)	
Dupont Circle	2921	2893	N/A
Truck Side	1043	951	N/A
Non-Truck Side	1878	1942	N/A

Nor did the presence of a food truck make it more difficult for pedestrians to traverse the sidewalk. Researchers observing Federal Center discovered that it took 42 seconds to travel a sidewalk block when a food truck was present, compared to 41 and 43 seconds when no truck was there. In Dupont Circle, it took pedestrians 74 seconds to cross a block where a food truck was parked, one second less than when no truck was present.

Average Time for Pedestrians to Travel the Block, in Seconds

	December 15, 2010 (With Truck)	January 13, 2011 (Control – No Truck)	February 10, 2011 (Control – No Truck)
Takorean (Federal Center)⁷³			
Truck Side	42	41	43
Non-Truck Side	47	47	46
CapMac (Dupont Circle)	February 15, 2011 (With Truck)	February 23, 2011 (Control – No Truck)	
Truck Side	74	75	N/A
Non-Truck Side	75	76	N/A

Lastly, researchers noted that food trucks and customers often work out ways to further minimize any disruptions. At one popular truck, where upwards of 30 people were waiting, researchers saw customers spontaneously forming a single-file line along the edge of the sidewalk, which ensured that there was ample room for other pedestrians to pass by. This example shows that, even if there are discrete situations where sidewalk congestion might be an issue, there are simple and effective solutions that do not require limiting the ability of vendors to earn a living or preventing customers from having access to the delicious food they want to buy.

REFUSE

HOW LOS ANGELES REGULATES REFUSE:

Los Angeles requires that food trucks “shall pick up, remove and dispose of all trash or refuse which consists of materials originally dispensed from the catering truck, including any packages or containers, or parts of either, used with or for dispensing the victuals.”⁷⁴ So that customers can assist in this effort, the city also mandates that food trucks provide “a litter receptacle which is clearly marked with a sign requesting its use by patrons.”⁷⁵

HOW OTHER CITIES REGULATE REFUSE: Most cities surveyed by the Institute for Justice require that food trucks clean up trash. In some cities like Seattle, for example, trucks must “maintain the vending site, merchandise display, and adjoining and abutting public place free of all refuse of any kind generated.”⁷⁶ Other cities instead require only that vendors take care of trash that they themselves create. Columbus, Ohio, for instance, makes vendors responsible for keeping the area within twenty-five (25) feet of their operation free and clear of any litter caused by such operation.⁷⁷

Like Los Angeles, some jurisdictions require that trucks put out trash receptacles. In Boston, for instance, food trucks must provide “a waste container for public use that the operator shall empty at his own expense.”⁷⁸ And Buffalo, N.Y., which recently liberalized its vending rules, likewise requires that food trucks be “equipped with trash receptacles of a sufficient capacity that shall be changed as necessary.”⁷⁹

⁷³ Due to construction, the sidewalk on the western side of the street was significantly shorter than the eastern side (201 feet compared to 303 feet). To account for this, times for the eastern side of the street have been multiplied by .6633. Adjusted times are shown.

⁷⁴ L.A. City Code § 80.73(b)(2)(E).

⁷⁵ L.A. City Code § 80.73(b)(2)(D).

⁷⁶ See Seattle City Code § 15.17.152(A).

⁷⁷ See Columbus City Code § 523.13(c)(11).

⁷⁸ Boston City Code § 17-10.8(a)(5).

⁷⁹ Buffalo City Code § 316-51(I).

INSTITUTE FOR JUSTICE RECOMMENDATION: Of the laws that deal with refuse issues, the Institute for Justice recommends that cities follow Los Angeles' approach, albeit with additional language that precisely lays out how far from the truck operators must search for any trash they created.⁸⁰ The following is an amalgam of language from Los Angeles and Columbus that cities may use in crafting their laws:

After dispensing victuals, at any location, a catering truck operator, prior to leaving the location, shall pick up, remove and dispose of all trash or refuse **within twenty-five feet of the catering truck** which consists of materials originally dispensed from the catering truck, including any packages or containers, or parts of either, used with or for dispensing the victuals.

It is reasonable for cities to make food trucks remove any trash they generate from the immediate area surrounding the truck, as is the requirement that trucks give customers some way to discard their refuse. Cities should be careful, however, not to go overboard with these regulations by mandating exactly what type of receptacles trucks must use or how large they have to be.⁸¹

BOTTOM LINE:

Cities should follow the example of Los Angeles and require trucks to be responsible for the trash they create, but they should also give trucks a specific distance they are responsible for, as Columbus, Ohio, does.

LIABILITY INSURANCE

INSURANCE REQUIREMENTS FOR FOOD TRUCKS IN LOS ANGELES:

Like all motor vehicles, food trucks in California must carry liability insurance in order to operate on the public right of way.⁸² Food trucks operating in Los Angeles need not purchase any additional liability insurance beyond that amount.

INSURANCE REQUIREMENTS FOR FOOD TRUCKS

IN OTHER CITIES: Most of the city laws surveyed by the Institute for Justice, like Los Angeles, do not impose separate liability insurance requirements on food trucks. Instead, those vehicles may get to work so long as they carry the state-mandated level of insurance to operate on the road. Some cities, however, also require that trucks carry a general liability insurance policy that lists the city as an additional insured. In Boston, for instance, a food-truck applicant must provide a "certificate of insurance providing general liability insurance listing the City as additionally insured."⁸³ And in Las Vegas, food trucks must maintain auto and general liability insurance of at least \$300,000.⁸⁴

INSTITUTE FOR JUSTICE RECOMMENDATION:

After reviewing liability insurance requirements for food trucks, the Institute for Justice recommends that cities follow the general approach of Los Angeles by not requiring that food trucks maintain insurance policies naming the city as an additional insured. Cities are no more liable for injuries caused by food trucks than they are for injuries caused by brick-and-mortar businesses. Additionally, having to name the city as an additional insured causes additional headaches for food trucks, as the practice is out of the ordinary and something many insurance companies are reluctant to do. Unless a city requires that all food service companies doing business within its boundaries carry a specific level of liability insurance, it should follow Los Angeles' approach and not foist additional requirements on food trucks that their brick-and-mortar counterparts do not share.

⁸⁰ L.A. City Code § 80.73(b)(2)(D)-(E).

⁸¹ An earlier revision of Buffalo's food-truck law, passed in January 2012, required that trucks carry and put out "two, 65-gallon garbage cans." After complaints from food-truck operators, who saw the law as unnecessary and unduly burdensome, the sponsor of the bill changed the language to what is reflected above. Aaron Besecker, *Revised food truck rules unveiled*, THE BUFFALO NEWS, at D5 (Jan. 12, 2012).

⁸² See Cal. Vehicle Code § 1656.2 (detailing minimum liability requirements that vehicle operators must carry).

⁸³ Boston City Code § 17-10.5(b)(7).

⁸⁴ Las Vegas City Code § 6.55.080.

BOTTOM LINE:

Unless a city requires all businesses in its jurisdiction to carry a specific amount of liability insurance, it should follow the approach of Los Angeles and not impose this requirement on food trucks. Cities should not require trucks to carry liability insurance that names the city as an additional insured.

restricting vending during certain hours only at specified locations.⁸⁶

Other cities' restrictions, however, are quite onerous. In Phoenix, food trucks may not operate in the public way after 7 p.m. or whenever it gets dark, whichever is later.⁸⁷ And in Sacramento, Calif., the city manager requires vendors to limit their hours of operation to between 8 a.m. and 6 p.m.⁸⁸ These restrictions do nothing to further public health and safety, but make it that much harder for trucks to succeed.

HOURS OF OPERATION

HOURS OF OPERATION IN LOS ANGELES: The city of Los Angeles does not place any artificial limitations on when vendors may operate, which allows food trucks to specialize. Some trucks like PerKup Coffee and Tea Co. may choose to serve breakfast fare, while other trucks may decide to cater to late-night customers, just as others serve bar patrons on Friday and Saturday nights. This kind of flexibility means that consumers will be able to get food on their way into work or on their way home after a late night. In the end, letting trucks choose when to operate leads to more successful trucks and more satisfied customers.

HOURS OF OPERATION IN OTHER CITIES: Of the 50 cities surveyed by the Institute for Justice for this report, approximately half prohibited food trucks from operating during at least part of the day. Some of these restrictions are quite minimal: In Austin, Texas, for instance, mobile food vendors are only required to cease operations between the hours of 3 a.m. and 6 a.m.⁸⁵ And New York City has no blanket restriction on hours of operation, instead

INSTITUTE FOR JUSTICE RECOMMENDATION: The Institute for Justice recommends that cities follow Los Angeles' approach and not restrict when food trucks may operate. Trucks should be free to vend at any time, or at the very least to be subject to the same rules as brick-and-mortar restaurants. To the extent that vending from a specific location at certain times poses actual public health and safety concerns, cities should address the specific problem and go no further. One example of such a narrow approach is Santa Monica, Calif. There, officials were concerned about the large crowds of people coming out of late-night bars on a stretch of Main Street. The worry was that the size of the trucks might create visibility problems for passing automobiles and lead to accidents involving inebriated bar patrons who venture out into the street. Rather than banning all food trucks in Santa Monica from operating at night, the city took a more focused approach by merely saying that on Friday and Saturday nights, trucks could not sell from 1 a.m. to 3 a.m. on the half-mile stretch of Main Street where the bars are located.⁸⁹ Food trucks were able to continue operating on nearby side streets where the city's traffic safety concerns were less.

BOTTOM LINE:

Cities should follow Los Angeles' example and not place restrictions on when food trucks may operate. If a demonstrable health and safety issue exists at a specific location, cities should take the narrowest approach that resolves the issue.

⁸⁵ See Austin City Code § 25-2-812(C)(4).

⁸⁶ See New York City Department of Health and Mental Hygiene Letter to Mobile Food Vendors 05/06/2011, available at <http://www.nyc.gov/html/doh/downloads/pdf/permit/mfv-restricted-streets.pdf>.

⁸⁷ Phoenix City Code § 31-24.1(C).

⁸⁸ Sacramento City Code § 5.88.110.

⁸⁹ Jason Islas, *Santa Monica Bans Late-Night Food Trucks on Main Street*, THE LOOKOUT NEWS (Nov. 10, 2011), http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2011/November-2011/11_10_11_Santa_Monica_Bans_Late_Night_Food_Trucks_on_Main_Street.html.

EMPLOYEE SANITATION

SANITATION LAWS IN LOS ANGELES:

Handwashing: One of the simplest ways to prevent disease and contamination is for food handlers to wash their hands. In Los Angeles, food trucks that prepare food on board must be equipped with a handwashing sink for employees' use. This sink must be connected to at least a three-gallon water tank, be capable of dispensing water in excess of 100 degrees Fahrenheit, and must function independently of the truck's engine.⁹⁰

Bathroom Access: Los Angeles requires food-truck operators that stay at a single location for more than an hour to have access to a building with toilet and handwashing facilities that is within 200 feet of where the truck is located.⁹¹ A recent change to the law extends that distance to up to 300 feet for food trucks that pre-arrange and enter into "a fully-executed agreement between the operator and the owner of the restroom facility." Alternatively, trucks may close for 15 minutes every hour to "reset" the one hour clock. During that period, the food truck's windows must be shut, its employees must leave, and the operator must leave a note saying when the truck closed and when it will reopen.

SANITATION LAWS IN OTHER CITIES:

Handwashing: Los Angeles' requirement that all trucks have handwashing sinks is by no means out of the ordinary. Almost all cities that regulate food trucks mandate handwashing sinks, with the specific requirements for those sinks differing based on the jurisdiction. For Mesa, Ariz., the handwashing sink must be at least 9" long, 9" wide, and 5" deep.⁹² And Arlington, Texas, specifies that all food trucks must contain a handwashing station that is equipped with both soap and sanitary towels.⁹³

Bathroom Access: Los Angeles is in the minority when it comes to its bathroom requirement. Most cities do not regulate bathroom access, instead trusting food truck entrepreneurs to manage their own bathroom needs. And those cities that do mandate bathroom access are less intrusive. In Austin, Texas, a food truck must enter into an agreement only if it will be in one location for more than two hours.⁹⁴ And in Boston, trucks need only show that they have access to flushable toilets and handwashing facilities within 500 feet of the truck if they're in one spot for more than an hour.⁹⁵

INSTITUTE FOR JUSTICE RECOMMENDATION:

Handwashing: The Institute for Justice recommends that cities follow the example of the California Retail Food Code, which requires trucks to have handwashing stations if they prepare food, but does not require them on trucks selling only prepackaged foods like frozen desserts.⁹⁶ Typically, the issue of handwashing sinks is governed by state health codes. To the extent that a state health code does not address the issue, the Institute recommends that a city require that "[m]obile food facilities from which nonprepackaged food is sold shall provide handwashing facilities."⁹⁷

Bathroom Access: The Institute for Justice recommends that cities follow the examples of Las Vegas, Charlotte, and Portland, Ore., none of which requires trucks to enter into agreements for bathroom usage. Food trucks, as a matter of common sense, already provide bathroom access for their employees; they need not be ordered to do so by the government. Furthermore, laws requiring written bathroom agreements discourage trucks from exploring new markets and sharing their innovative products with parts of the city that they do not normally frequent.

BOTTOM LINE:

Handwashing: Cities should follow California Retail Food Code Section 114311, which says that "[m]obile food facilities . . . from which nonprepackaged food is sold shall provide handwashing facilities," while exempting food trucks that sell only prepackaged foods like frozen desserts.

Bathroom Access: Cities should emulate Las Vegas, Charlotte, N.C., and Portland, Ore., by not requiring that food trucks enter into bathroom-access agreements with brick-and-mortar businesses.

⁹⁰ Cal. Health and Safety Code § 114325.

⁹¹ Cal. Health and Safety Code § 114315.

⁹² Maricopa County Environmental Services Department, Mobile Food Units 6, <http://www.maricopa.gov/EnvSvc/EnvHealth/pdf/Mobile%20Food%20Unit%20English.pdf>.

⁹³ City of Arlington, Texas, Requirements for Mobile Food Service Trucks, http://www.arlingtontx.gov/health/food_ordinances_mobile.html.

⁹⁴ See Austin City Code § 10-3-91(A)(8).

⁹⁵ See Boston City Code § 17-10.5(b)(6).

⁹⁶ Cal. Health and Safety Code § 114311 ("Mobile food facilities not under a valid permit as of January 1, 1997, from which nonprepackaged food is sold shall provide handwashing facilities.")

⁹⁷ See *id.*

COMMISSARY REQUIREMENTS

COMMISSARY REQUIREMENTS IN LOS ANGELES:

Most mobile-food vending operations in Los Angeles are based out of a commissary, which is a facility at which they can park and clean their truck, store their inventory and do the paperwork that is associated with running any business. The California Retail Food Code and Los Angeles County require that most food trucks be stored and serviced at an approved commissary.⁹⁸ The only exceptions to this requirement are for trucks that operate from a fixed position at community events, or trucks that engage only in limited food preparation (in which case they may instead be serviced by a mobile support unit).⁹⁹ With the exceptions noted above, food trucks must be cleaned every operating day and must report to the commissary at the end of each day's operations.¹⁰⁰

Although Los Angeles food trucks may clean their vehicles and do their paperwork at a shared commissary, they may not actually do any food preparation there. The reason is a Los Angeles County Health Department rule that says that only the permit holder for a commercial kitchen may use it to prepare food. Matt Geller, CEO of the Southern California Mobile Food Vendors Association, views that position as counterproductive and “a threat to public health because it does not give mobile vendors the option to operate legally in a rented kitchen. This can lead to mobile vendors prepping from home or unlicensed kitchen facilities.” He recommends that Los Angeles County create regulations that allow for use of an approved commissary or shared kitchen space.

COMMISSARY REQUIREMENTS IN OTHER CITIES: Most other cities require that food trucks generally associate with a commissary, but some cities' models give trucks more flexibility than Los Angeles does. Under Portland, Oregon's law, for example, a truck need not associate with a commissary if it sells only prepackaged food, in which case it need only be affiliated with a warehouse.¹⁰¹ Alternatively, trucks in Portland “may not be required to have a base of operation if the unit contains all the equipment and utensils necessary to assure” that the vehicle is clean and can safely store and prepare food.¹⁰² The state of Florida has similarly proposed regulations that would exempt self-sufficient mobile food vehicles from having to associate with a commissary.¹⁰³

Most other cities also let food trucks and other culinary entrepreneurs use shared kitchen spaces to prepare and cook food. One such city is San Francisco, where La Cocina, a nonprofit “kitchen incubator,” offers low-income entrepreneurs shared commercial kitchen space and workshops with such titles as “How to Start a Food Business in San Francisco.”¹⁰⁴ And in Austin, Texas, another city that lets food truck operators use shared commercial kitchen spaces, a company named Capital Kitchens gives Austin food truckers a choice: They can use the facility as just a commissary where they can clean their truck and store their food, or they can also register the facility as their base of operations, which allows them to prepare and cook food there as well.¹⁰⁵

INSTITUTE FOR JUSTICE RECOMMENDATION: The Institute for Justice recommends that cities follow Portland's example by exempting food trucks from being “required to have a base of operation if the unit contains all the equipment and utensils necessary to assure” that the truck can satisfy health and safety concerns. Some food trucks are self-contained mobile kitchens that protect against vermin and can refrigerate and freeze food 24 hours a day. Likewise, a truck selling only prepackaged items, like cupcakes, poses no real threat to public safety. Because signing up and working through a commissary can often be arduous, requiring trucks like these to associate with a commissary is both costly and unnecessary. For trucks that are not self-sufficient, the Institute recommends that cities follow the example of Los

⁹⁸ Cal. Health and Safety Code § 114295.

⁹⁹ See Cal. Health and Safety Code § 114295(b),(e).

¹⁰⁰ Cal. Health and Safety Code §§ 114295(c), 114297(a).

¹⁰¹ Or. Admin. R. 333-162-0040.

¹⁰² *Id.*; see also Oregon Health Authority Mobile Food Unit Operation Guide, <http://public.health.oregon.gov/Healthy-Environments/FoodSafety/Documents/muguide.pdf>.

¹⁰³ Florida Administrative Code § 61c-4.0161.

¹⁰⁴ La Cocina, <http://www.lacocinasf.org/>.

¹⁰⁵ Capital Kitchens, Mobile food vendor, <http://capital-kitchens.com/mobile-food-vendor.html>.

Angeles County, where trucks can operate out of their own commissary or a shared commissary.

Cities should also let food trucks band together and open their own shared kitchen spaces. Los Angeles County's prohibition against shared kitchens is counterproductive and puts a high roadblock in the way of fledgling entrepreneurs. Instead, the Institute recommends that cities follow the examples of San Francisco and Austin, Texas, which both let food trucks prepare and cook food in shared commercial kitchen spaces.

BOTTOM LINE:

Cities should follow Portland, Oregon's example by saying food trucks should not be "required to have a base of operation if the unit contains all the equipment and utensils necessary to assure" to satisfy health and safety concerns.

For trucks that are not self-sufficient, cities should follow the example of Los Angeles County, where trucks can operate out of their own commissary or a shared commissary. Lastly, cities should let food trucks join together and open their own shared kitchen spaces, as both San Francisco and Austin, Texas, do.

permit and get out on the road. Although the Southern California Mobile Food Vendors Association¹¹² has helped fill some of the void, Los Angeles should clarify what these fledgling entrepreneurs need to get started.

Cost: The annual fee for a Los Angeles County health permit for a food truck ranges from \$602 to \$787, depending on what types of items the truck sells.¹¹³ The city of Los Angeles does not charge for a business license.¹¹⁴

Who the Permit Covers: Los Angeles County requires only that the operator of a truck have a permit. The employees who help out on the truck need not apply and receive their own vending permit.

Limits on the Number of Permits Issued: Neither the city of Los Angeles nor Los Angeles County limit or in any other way restrict the number of food trucks that may apply for and receive a license or permit.

PERMITTING AND LICENSING

HOW LOS ANGELES PERMITS AND LICENSES FOOD TRUCKS:

The Application Process: Before a truck gets on the road, it needs to get both a health permit from the county of Los Angeles and a separate business license from the city of Los Angeles. The health permit requires operators to provide detailed plans for the layout of the vehicle.¹⁰⁶ It also requires operators to fill out written operational guidelines that lay out the truck's proposed menu, how it will be prepared, and how the truck will wash its equipment and utensils.¹⁰⁷ Lastly, at least one person on board the truck must be certified in food safety.¹⁰⁸

Although Los Angeles' application process is relatively less complex than the process in other jurisdictions, it is still often hard for would-be food-truck operators to navigate it. This is because, although food trucks in Los Angeles are regulated at the city,¹⁰⁹ county,¹¹⁰ and state¹¹¹ levels, none of those jurisdictions clearly explains how to get a vending

HOW OTHER CITIES LICENSE AND PERMIT FOOD TRUCKS:

Application Process: Many cities' actual permitting procedures are more complex than Los Angeles'. In Milwaukee, for instance, opening a food truck means getting a peddler's license that requires the health department to inspect the vehicle. But a would-be operator must also apply for a separate food-dealer license and occupancy permit for the business.¹¹⁵ And that, in turn, requires the operator to apply for and receive a Wisconsin state seller's permit.¹¹⁶ Altogether, an applicant in Milwaukee must get permission from at least three separate government agencies, each requiring multiple steps, before getting on the road.

¹⁰⁶ County of Los Angeles Department of Public Health, Plan Check Guidelines for Mobile Food Facilities and Mobile Support Unit, http://www.publichealth.lacounty.gov/eh/docs/vip/PLAN_CHECK_GUIDELINES_1.pdf.

¹⁰⁷ County of Los Angeles Department of Public Health, Written Operational Procedures, http://www.publichealth.lacounty.gov/eh/docs/vip/CalCode_Wrtn_Opt_Proc_2.pdf.

¹⁰⁸ County of Los Angeles Department of Public Health, Mobile Food Facility Information Packet Operational Guidelines, http://www.publichealth.lacounty.gov/eh/docs/vip/Rules_and_Regulations_4.pdf.

¹⁰⁹ See generally L.A. City Code § 80.73(b).

¹¹⁰ See generally L.A. County Code Chapter 8.04.

¹¹¹ Cal. Health and Safety Code § 114294 et seq.

¹¹² <http://socalmfva.com/>.

¹¹³ L.A. County Code § 8.04.720.

¹¹⁴ Southern California Mobile Food Vendors Association, FAQ, <http://socalmfva.com/faq/>.

¹¹⁵ City of Milwaukee, Food Peddler License Information, <http://city.milwaukee.gov/ImageLibrary/Groups/ccLicenses/FoodPeddlerApplication.pdf>.

¹¹⁶ Id.

Boston's law is similarly complicated. The city has a single application form for mobile vendors; once an applicant submits the form, the Public Works commissioner submits it to various city departments for their review and approval.¹¹⁷ But before an applicant submits their application, he or she must first obtain a health permit from the city Inspectional Services Department, a business certificate, a state-issued peddler's license and a GPS contract.¹¹⁸ Altogether, a would-be vendor in Boston must go to three different city departments, the commonwealth of Massachusetts and a private GPS company before receiving her license. Actually being able to sell from the truck on either public or private property requires entrepreneurs to take several additional steps.¹¹⁹

Although Milwaukee's and Boston's permitting procedures are much more complicated than Los Angeles', both cities provide helpful guidance to applicants. In modernizing its food-truck rules, Milwaukee created a web document that helps would-be food-truck entrepreneurs understand what they need to do to get licensed.¹²⁰ Boston provides similar information on its website.¹²¹

Cost: The licensing fees that food trucks pay vary greatly by jurisdiction. In Kansas City, Mo., food trucks have to pay \$292 annually for a permit. In Boston, the permit fee varies based on a complex valuation of the public way used by the truck.¹²² And in Cleveland, the annual fee for a food truck is \$263.44.¹²³

Who the Permit Covers: Lastly, most cities require only that a food truck apply for and receive a single vending permit, with the truck's employees working under that permit. But Washington, D.C., issues

vending permits to individuals, not businesses, and requires that someone with a valid permit be on board the truck whenever it is in operation.¹²⁴ If the food truck's owner cannot be on board himself, then an employee on the truck must have his own separate vending permit. This requirement imposes a significant burden on food-truck owners, who face a huge burden if they want someone else to occasionally run the truck. And Washington, D.C.'s rule limits the opportunities for job creation that mobile food vending can offer.

Limits on the Number of Permits Issued: Most cities in the United States do not impose a limit on how many food trucks may apply for and receive a permit. One exception is New Orleans, which states that "the number of [food-truck] permits issued . . . shall at no time exceed 100 for the entire city."¹²⁵ New York City limits the number of permits available to food vendors, including food trucks, to 3,100.¹²⁶ Although it sounds like a large number, this number of permits is insufficient and has led to the growth of an illegal black market in vending permits. The price on the black market to use someone's food vending permit for two years has reached as high as \$20,000 according to a Wall Street Journal investigative article.¹²⁷

INSTITUTE FOR JUSTICE RECOMMENDATION:

Application Process: The Institute recommends following Los Angeles County's approach to permitting, which is less complex than the process in other jurisdictions. Most truck operators in other parts of the country report having to deal with two or more different agencies to get their permits, and having it take weeks, if not months, to complete the process. This complexity compounds the confusion that often surrounds the permitting process. As a food-truck operator in Philadelphia, which is known to have a complicated permitting process, said, "The government operates in silos, no agency is coordinated, no one person can give a succinct overview of the entire process, it seems like no one truly understands it comprehensively." Requiring multiple permits from many different government agencies makes it both more complicated and more expensive to get a truck on the road.

In terms of clarity, however, the Institute applauds Milwaukee and Boston for clearly explaining how to apply for a permit, and the Institute recommends that other cities publish similar step-by-step instruction guides. Operators across the

¹¹⁷ Boston City Code § 17-10.5.

¹¹⁸ City of Boston, Food Truck Permit Application 2012, http://www.cityofboston.gov/Images_Documents/2012%20Food%20Truck%20Permit%20Application-4-12_tcm3-25641.pdf.

¹¹⁹ City of Boston, Mobile Food Truck: Choosing a Location For Your Food Truck, <http://www.cityofboston.gov/business/mobile/locations.asp>.

¹²⁰ See Pushcarts, Popcorn Trucks and Restaurants on Wheels: A Guide for Operators of Mobile Food Establishments from the City of Milwaukee Health Department, http://city.milwaukee.gov/ImageLibrary/Groups/health-Authors/CEH/PDFs/pushcarts_booklet_for_web_2010.pdf.

¹²¹ See City of Boston, Mobile Food Truck: Permit Overview, <http://www.cityofboston.gov/business/mobile/application.asp>.

¹²² Boston City Code § 17-10.9(b).

¹²³ Cleveland City Code § 241.05(d).

¹²⁴ D.C. Department of Consumer and Regulatory Affairs, Mobile Food Truck Licensing Information, <http://d.c.gov/DC/DCRA/for+business/apply+for+a+business+license/how+to+start+a+mobile+food+truck+business>. (stating that food-truck licenses "are issued to individuals not businesses and the truck must be operated by the individual who is issued the license").

¹²⁵ New Orleans City Code § 110-191(6).

¹²⁶ New York City Code § 17-307(b)(2)(a) to (b)(3)(a).

¹²⁷ Sumathi Reddy, *Prices for Food-Cart Permits Skyrocket*, WALL STREET JOURNAL, March 9, 2011, <http://online.wsj.com/article/SB10001424052748704758904576188523780657688.html>.

country repeatedly complain that the most frustrating aspect of the permitting process is not the specific requirements involved, but the lack of clear, consistent instructions on how to complete them. According to food-truck entrepreneurs with whom the Institute spoke, officials often don't seem to know all the rules, are unhelpful or give conflicting information.

Cost: The Institute, after reviewing the cost of applying for vending permits across the country, recommends that cities should impose a flat annual fee in the range of \$200-300, as both Cleveland and Kansas City have done. Businesses should not be viewed as a cash cow, and the Institute for Justice recommends that fees be no higher than necessary to cover the cost of inspecting and regulating the food trucks. Furthermore, those fees should be relatively stable and known to would-be truck operators before they enter the business. For this reason, the Institute for Justice recommends that cities not adopt Boston's convoluted fee structure.

Who the License Covers: The Institute for Justice recommends that cities follow the example of Los Angeles County by letting operators decide whether to have a license or permit issued to them personally or to their vending business. Cleveland, for instance, issues food-truck licenses to "vendors," which can be either an individual or the associated business.¹²⁸ Brick-and-mortar restaurants need not get a separate license for each shift manager; similarly, taking this simple step will let trucks avoid the time and expense of acquiring a vending permit for each manager who oversees truck operations.

Limits on the Number of Permits Issued: The Institute for Justice recommends that cities follow the example of Los Angeles and not limit the number of food-truck permits. Placing an arbitrary limit on how many licenses may be issued does not address any actual health and safety issues. Instead, it acts as a barrier to new food trucks while enriching those few who are lucky enough to have snared a permit. Furthermore, a limit hurts consumers by limiting their choices. Lastly, a cap is unnecessary, as consumer demand will guide how many food trucks will voluntarily choose to operate in a given city.

BOTTOM LINE:

Application Process: Cities should follow the licensing approach of Los Angeles County, which is not plagued by unnecessary complexity. In terms of guidance, cities should emulate Boston and Milwaukee, which both have published step-by-step instructions to guide entrepreneurs through the licensing process.

Cost: Cities should follow the approach of both Cleveland and Kansas City, Mo., by imposing a flat annual fee in the range of \$200-300.

Who the License Covers: Cities should follow the approach of Los Angeles by issuing vending licenses to an individual's vending businesses rather than the individual himself or herself.

Limits on the Number of Permits Issued: Cities should follow the approach of Los Angeles and not cap the number of food-truck permits, which hurts consumers and leads to an illicit black market for permits, as it has in New York City.

Innovation: Reciprocal Licensing Arrangements

One major hurdle for food-truck entrepreneurs is having to get a separate license for each town in which they want to operate their trucks. This requirement makes little sense, particularly given that inspectors in many states verify food trucks' safety using a common set of criteria that are developed at the state level. Cities should consider entering into reciprocal licensing arrangements with nearby communities. A compact or joint agreement between different cities would mean that a truck would need to get licensed only once; it then could operate in any city that was a party to that joint agreement. This approach would cut a vast amount of red tape and make the trucks more commercially viable while still ensuring that the trucks met each city's legitimate health and safety concerns.

¹²⁸ Cleveland City Code § 241.03(3).

CONCLUSION

A vibrant food-truck industry benefits everyone. It provides consumers with a wide variety of innovative, inexpensive cuisine that they might otherwise not get to enjoy. It gives would-be entrepreneurs who are long on ideas but short on financial capital a way to pursue their dream. And it can activate underused spaces, bring new life to communities and make them safer, more enjoyable places to live.

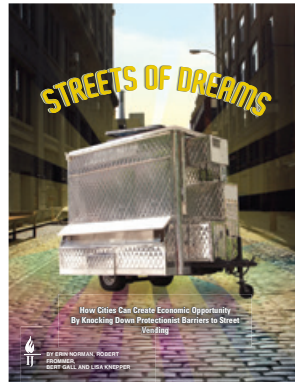
Public-minded officials who want to make their cities better would do well to encourage food-truck entrepreneurship. Thankfully, this commitment doesn't require paying for an expensive new program or hiring dozens of vending "experts." Instead, cities can look to other cities that have experience regulating food trucks, such as Los Angeles, and then adopt their best legislative practices by implementing the recommendations in this report. By avoiding protectionist restrictions and enacting clear, narrowly tailored and outcome-based laws to address legitimate health and safety issues, cities will enable their residents to enjoy all of the economic and cultural benefits of America's growing food truck revolution.

An online compendium containing the full language of the laws cited in this report can be found at <http://www.ij.org/vending>.





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THE INSTITUTE FOR JUSTICE

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