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Regulating the Food Truck Industry: An Illustration of Proximity and Sanitation Regulations

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REGULATING THE FOOD TRUCK INDUSTRY: AN ILLUSTRATION OF
PROXIMITY AND SANITATION REGULATIONS

*Nicholas Alvarez**

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I. INTRODUCTION

Manny Hernandez, a Chicago food truck owner, would wake up in the middle of the night and slowly travel by foot around downtown Chicago carrying a 200-foot rope.¹ The rope was used to measure the distance from the doors of brick-and-mortar restaurants to possible parking locations for

* The author thanks Dustin Buehler, Associate Professor of Law, University of Arkansas School of Law, and his Note & Comment Editor Seth White, J.D. 2015, University of Arkansas School of Law, for their advice and support throughout the drafting process.

1. *Why Food Trucks Are Bad Business*, CHICAGO SUN-TIMES (Sept. 24, 2013), <http://chicago.suntimes.com/news/7/71/848120/why-food-trucks-are-bad-business>.

his food truck.² A Chicago ordinance prohibited food trucks from operating within 200 feet of the front door of any brick-and-mortar restaurant.³ Furthermore, Manny could not just find one spot; he needed to find many spots because Chicago law also stated that food trucks were only allowed to park at one location for a time period of two hours or run the risk of being fined up to \$2,000.⁴

Within the last ten years, food trucks have become very popular alternatives to fast food or brick-and-mortar restaurants, offering unique dishes and drawing customers based on novelty. It is estimated that the food truck industry grosses in the billions.⁵

Despite their popularity, food truck vendors across the country face a number of different municipal regulations that they must meet in order to operate legally or else face steep fines.⁶ The most restrictive of these types of regulations are proximity regulations that prohibit food truck operation within certain distances of restaurants, and sometimes, schools.⁷ The justification behind proximity regulations is generally that the food trucks will take away business from restaurant owners by parking in front of their doors.⁸

Other cities limit the number of available permits required for operation.⁹ New York is a prime example of some of the possible side effects of such a regulation.¹⁰ The cost of a permit to operate a food truck in New York for two years is \$200.¹¹ However, the city only allows for 3,100 year-round permits, and more than 2,000 people are already on the waiting list.¹² As a result, an underground black market for permits has emerged where two-year permits sometimes go for over \$15,000.¹³

2. *Id.*

3. *Id.*

4. *Id.*

5. David Sax, *Blaring the Horn for Food Trucks*, N.Y. TIMES (May 27, 2014), http://www.nytimes.com/2014/05/28/dining/blaring-the-horn-for-food-trucks.html?_r=0.

6. See, e.g., *Why Food Trucks Are Bad Business*, *supra* note 1.

7. *Id.*

8. *Restaurant Owners and Food Trucks Battle as County Readies 'Zoning' Pilot*, ARLNOW.COM (June 19, 2015), <https://www.arlnow.com/2015/06/19/restaurant-owners-and-food-trucks-battle-as-county-readies-zoning-pilot/>.

9. Sumathi Reddy, *Prices for Food-Cart Permits Skyrocket*, WALL ST. J. (Mar. 9, 2011), <http://online.wsj.com/articles/SB10001424052748704758904576188523780657688>.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

Other regulations serve the purpose of providing for health and safety.¹⁴ Examples of these types of regulations are: proximity to toilet facilities for employees; water and wastewater requirements; proper ventilation; regulations prohibiting certain types of food preparation, such as cooking raw meats; and affiliating with a “commissary” or “service base” for daily cleaning and food preparation.¹⁵

Regulators should not use proximity requirements as a way of preventing competition between food trucks and restaurants. Reasonable regulations that enable the food truck industry to grow will result in cultural and economic benefits for cities as a whole, and it will fuel competition within the culinary industry based on the quality of the offerings. However, as a baseline of regulation, the food truck industry should be held to the same strict and thorough health and sanitation regulations as brick-and-mortar restaurants.

Part I will illustrate different proximity regulations enacted in various municipalities throughout the country, contrasting successful regulations with those that led to litigation. Part II will discuss other location regulations beyond proximity regulations that are applied in different cities. Part III will present policy arguments in favor of food trucks and recommend the types of regulations that should be adopted by municipalities.

II. PROXIMITY REGULATIONS: REASONABLY RESTRICTING FOOD TRUCKS FROM OPERATING WITHIN A CERTAIN DISTANCE OF BRICK-AND-MORTAR RESTAURANTS

Proximity regulation is the biggest area of contention when it comes to food truck regulations.¹⁶ The distance that food trucks are allowed to operate from brick-and-mortar restaurant establishments pits two different interest groups against one another.¹⁷ On one hand, you have small business owners who are operating these food trucks and a foodie culture that has embraced the industry.¹⁸ On the other, you have established brick-and-mortar

14. *Updated Regulations for Mobile Food Vendors*, NYC HEALTH 1 (Apr. 2014), <https://www1.nyc.gov/html/doh/downloads/pdf/rii/regulations-for-mobile-food-vendors.pdf>.

15. *Id.* at 1, 2.

16. Deborah L. Cohen, *Food Truck Vendors Dig in for a Piece of Street Turf Against Brick-and-Mortar Restaurants*, A.B.A. J. (Nov. 1, 2013), http://www.abajournal.com/magazine/article/food_truck_vendors_dig_in_for_a_piece_of_street_turf_against_brick-and-mort/.

17. *Id.*

18. *Id.*

restaurant owners who see the food truck industry as a threat to their bottom lines.¹⁹

This section will illustrate how three cities have addressed these concerns. Salt Lake City, Utah, took a modest approach, balancing both interest groups, and has thus far been met with popular reception.²⁰ Austin, Texas, a city well known for its food culture, has embraced the industry and set in place regulations that enable and encourage food trucks,²¹ arguably becoming the food truck capital of the nation. El Paso, Texas, took a hardline approach at first, but retreated when litigation ensued.²² These three cities offer a closer look at the implementation and results of proximity regulations for food trucks. They are appropriately titled the good, the great, and the ugly.

A. The Good: Salt Lake City, Utah: Regulations in Response to Food Truck Popularity

Salt Lake City is a good place to start when analyzing how cities have adapted to accommodate the food truck trend. It is a medium-sized city, with a population of 190,884,²³ and it was recently recognized as one of the top cities as far as livability.²⁴ Salt Lake City enacted a number of fairly common regulations that apply to food trucks, particularly in regard to where food trucks are allowed to operate.²⁵ The city code states that “mobile food truck vehicles” shall not operate within 100 feet from or on the same block as a

19. *Id.*

20. Caroline Connolly, *Food Truck Frenzy: Mobile Restaurants Become Increasingly Popular in Utah*, FOX 13 NEWS (May 20, 2015), <http://fox13now.com/2015/05/20/food-truck-frenzy-mobile-restaurants-become-increasingly-popular-in-utah/>.

21. *Austin's Love with Food Trailers*, AUSTIN RELOCATION GUIDE, <http://www.austinrelocationguide.com/2013/Austin-Food-Trailers/> (last visited Feb. 7, 2016).

22. *Mean Streets: El Paso Mobile Food Vendors Challenge City's Effort to Run Them Out of Town*, INST. OF JUST., <http://www.clinic.ij.org/el-paso-vending-background> (last visited Feb. 7, 2016).

23. *QuickFacts: Salt Lake City, Utah*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/4967000,00> (last visited Feb. 7, 2016).

24. *Top 100 Best Places to Live*, LIVABILITY.COM, <http://livability.com/best-places/top-100/2015?page=1> (last visited Feb. 7, 2016) (Livability.com ranks each city using a composite of more than 40 data points, which focus on amenities, demographics, economy, education, healthcare, housing, social and civic capital, and transportation. Salt Lake City, Utah, is ranked 18th.).

25. SALT LAKE CITY, UTAH, MUN. CODE § 5.69.090 (2012), http://www.sterlingcodifiers.com/codebook/index.php?book_id=672.

restaurant.²⁶ However, the food truck may operate within that area if it receives written consent from the proprietor of the restaurant.²⁷ If there is not a restaurant on the block, food trucks may park in the public way of a street with a speed limit of less than forty-five miles per hour in parallel parking spaces, as long as the vending window is facing the sidewalk and there are no other food trucks on that block.²⁸ The time period a food truck may stay at one of these parking spaces is limited to the maximum amount of time designated on the city parking meter.²⁹ If the food truck is parked on private property with the permission of the owner, the food truck may stay at that location for up to twelve hours within a twenty-four hour period.³⁰

These rules were implemented in 2012 after a growing number of food trucks were met with popular reception.³¹ Salt Lake City's planning manager, Joel Paterson, stated that "[t]he current regulations we [had]. . . didn't anticipate the kind of mobile food vending carts we're seeing explode around the country and in the Salt Lake Valley, as well."³² In recognition of these deficiencies, Salt Lake City responded to food truck popularity with regulations that encouraged and enabled the industry.³³ The food truck industry in Salt Lake has experienced a boom with these less stringent rules.³⁴ Some food truck owners have been so successful that they are looking into permanent brick-and-mortar spots.³⁵ The 100-foot proximity regulation, coupled with the ability of food truck vendors to obtain permission from restaurant owners to operate closer to their establishments, provides reasonable regulation with both sides in mind. Furthermore, restaurant owners, who at first were skeptical that food trucks would drive away customers, noted that it actually has increased traffic around their restaurants.³⁶ "[The food trucks] bring people down here that normally

26. *Id.* § 5.69.090(E).

27. *Id.*

28. *Id.* § 5.69.080.

29. *Id.* § 12.56.190.

30. SALT LAKE CITY, UTAH, MUN. CODE § 5.69.070 (2012), http://www.sterlingcodifiers.com/codebook/index.php?book_id=672.

31. Rosemary Winters, *Salt Lake City Weights New Rules for Food Trucks*, SALT LAKE TRIBUNE (Apr. 11, 2011), <http://www.sltrib.com/sltrib/news/53890494-78/trucks-lake-salt-mobile.html.csp>.

32. *Id.*

33. *Id.*

34. *9 New Food Trucks Roll into Salt Lake*, SALT LAKE TRIBUNE (June 19, 2013), <http://www.sltrib.com/sltrib/entertainment2/56410687-223/com-facebook-follow-lake.html.csp>.

35. *Id.*

36. Linda Williams, *Are Food Trucks Taking a Bite Out of Salt Lake Restaurants?*, KSL.COM (June 6, 2013) <http://www.ksl.com/?nid=148&sid=25491455>.

wouldn't be down here to actually see that we are here," Steven Doyle, a Salt Lake City restaurant owner, said.³⁷

B. *The Great: Austin, Texas: Liberal Proximity Regulations*

Austin, Texas, is home to one of the most vibrant food scenes within the national culinary sphere and has earned a reputation as one of the country's best food cities.³⁸ Part of this reputation is attributable to its food truck offerings.³⁹ Austin is considered one of the best cities for food trucks and offers some of the most liberal regulations in the country, providing food truck operators with many more locations in which they may park and be in compliance with regulations.⁴⁰ First, food trucks are permitted to operate only twenty feet away from any restaurant.⁴¹ The food trucks are permitted to operate in all commercial and industrial zoning districts, with the exception of neighborhood office, limited office, and general office zoning districts.⁴²

However, Austin does provide the option for neighborhood associations to request more restrictive regulations that extend proximity requirements from residential zoned areas up to 300 feet.⁴³ Austin is among the more liberal of food truck regulations in terms of proximity to restaurants, and as a result, the food truck industry has flourished.⁴⁴ Within the last three years, the county in which Austin is located has seen more than 1,400 food trucks register for licenses.⁴⁵ Austin has embraced the food truck

37. *Id.*

38. See Jessica Dupuy, *Austin Culinary Tours*, USA TODAY (Sept. 11, 2013), <http://experience.usatoday.com/food-and-wine/story/austin/best-food-wine-tours/2013/08/19/austin-culinary-tours/2672727/>; see also Matthew Odam, *Where to Eat and Drink in Austin, Texas*, BON APPÉTIT (Oct. 15, 2013), <http://www.bonappetit.com/restaurants-travel/city-guides/slideshow/where-to-eat-in-austin-texas/?slide=1>.

39. Dupuy, *supra* note 38.

40. Spencer Spellman, *The Best American Food Truck Cities*, VIATOR TRAVEL BLOG (May 21, 2012), <http://travelblog.viator.com/best-america-cities-for-food-trucks/>.

41. AUSTIN, TEX., MUN. CODE § 25-2-812(C)(5) (2006), https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT25_LADE_CH25-2ZO_SUBCHAPTER_CUSDERE_ART4ADRECEUS_DIV2COUS_S25-2-812MOFOES.

42. *Id.* § 25-2-812(C)(2).

43. *Id.* § 25-2-812(N).

44. *Austin's Love with Food Trailers*, *supra* note 21.

45. *Id.*

culture and provided loose regulations, allowing for the industry to boom in the city, gaining popularity and credibility within the foodie culture.⁴⁶

*C. The Ugly: El Paso, Texas: Proximity
Regulations that Resulted in Litigation*

In August 2011, El Paso passed Ordinance No. 17162, which made operating a food truck within 1,000 feet of any restaurant, grocer, or convenience store illegal.⁴⁷ Furthermore, the ordinance prohibited food trucks from parking and waiting for customers, only allowing them to pull over and stop when a customer flagged them down.⁴⁸ These restrictions carried fines of up to \$2,000.⁴⁹

A lawsuit was filed by a group of food truck operators represented by the Institute of Justice, a non-profit civil liberties firm, alleging that these regulations: (1) violated their substantive due process rights under the Fourteenth Amendment; (2) violated their privileges and immunities under the Fourteenth Amendment; (3) violated their state due process rights under the Texas Constitution Article I, Section 19; and (4) violated their Texas state privileges and immunities.⁵⁰ The plaintiffs alleged that the regulations were “arbitrary and excessive” and that the regulations “made it practically impossible for mobile vendors to operate legally within the city limits.”⁵¹ Furthermore, the plaintiffs claimed that “[n]o health or safety concerns [were] addressed by these restrictions—they exist[ed] simply to protect non-mobile businesses from their mobile competitors.”⁵²

The city of El Paso retreated before the lawsuit was decided and changed its city ordinance to be more accommodating to food truck vendors.⁵³ Now food truck vendors are allowed to operate in public parking spaces along the curb, so long as they are twenty feet from an intersection.⁵⁴

46. Megan Hill, *Austin for Foodies*, VIATOR TRAVEL BLOG (Aug. 16, 2013), <http://travelblog.viator.com/austin-for-foodies/>.

47. *Mean Streets: El Paso Mobile Food Vendors Challenge City's Effort to Run Them Out of Town*, *supra* note 22.

48. *Id.*

49. *Id.*

50. Complaint for Declaratory and Injunctive Relief at 8-11, *Castaneda et al. v. City of El Paso, Texas*, No. 3:11-cv-00035 (W.D. Tex. Jan. 26, 2011).

51. *Id.* at 1.

52. *Id.*

53. *El Paso Vending: El Paso Mobile Food Vendors Challenge City's Efforts to Run Them Out of Town*, INST. OF JUST., <http://ij.org/case/el-paso-vending/> (last visited Feb. 7, 2016).

54. EL PASO, TEX., MUN. CODE § 12.46.020 (2011),

Food trucks are prohibited from operating within two blocks of schools and from operating in the “downtown area” without a special privilege granted by city council, however.⁵⁵

III. LOCATION REGULATIONS: LIMITING FOOD TRUCK OPERATION TO CERTAIN AREAS WITHIN THE CITY

Location regulations are distinct from proximity regulations in that they generally limit food truck operation to certain areas within the city, like a park or downtown commercial area, instead of addressing their relative distance to restaurants.⁵⁶ Knoxville presents a good example of how this type of regulation model can work well as an alternative to distance regulations.

A. Knoxville, Tennessee: Permit Regulations Where Food Trucks are Limited to Specific Areas

Knoxville recently proposed food truck regulations that would limit food trucks to several different “zones” throughout the downtown area, where food trucks with a Mobile Food Unit Permit would be allowed to park in public rights-of-way.⁵⁷ The proposed regulations would allow food trucks to operate on private property in commercial districts, industrial districts, office districts, open space districts, and form based districts.⁵⁸ Additionally, food truck vendors would be allowed to operate in residential zones during special events sponsored by neighborhood associations, homeowners’ associations, the city of Knoxville, or other governmental entities.⁵⁹ Vendors may submit an application for a Mobile Food Unit Permit to Knoxville’s Office of Business Support.⁶⁰ The permit fee is currently \$400 for a Right

https://library.municode.com/HTML/16180/level2/TIT12VETR_CH12.46MOFOVE.html.

55. *Id.*

56. *The Legal Side of Owning a Food Truck*, ENTREPRENEUR, <http://www.entrepreneur.com/article/233386> (last visited Feb. 7, 2016).

57. Knoxville, Tenn., Proposed Mobile Food Unit Ordinance (Feb. 15, 2016), *available at* http://www.knoxvilletn.gov/UserFiles/Servers/Server_109478/File/BusinessSupport/FoodTruckOrdinance.pdf.

58. *Id.*

59. *Id.*

60. *Id.*

of Way Permit and \$200 for a Private Property Permit.⁶¹ The proposed regulations would cap the permit fee at \$200, with a \$50 annual renewal fee.⁶² The annual fee proved to be a topic of much discussion among food truck owners and was reduced from an original proposed fee of \$500.⁶³

The zones are located at various areas surrounding downtown Knoxville that neighbor parks, music venues, the federal courthouse, the city transit center, and the visitor center.⁶⁴ The use of these zones is based upon availability, and permit holders must register their location with Knoxville's Office of Business Support.⁶⁵

As of March 2016, there is still some contention regarding a residential setback contained in the ordinance restricting food truck operation within 100 feet from the boundary of any residentially zoned property.⁶⁶ Some food truck owners oppose the setback, noting that it would prevent operation in many popular areas, including on the premises of some popular brew houses in Knoxville.⁶⁷ The City Council is set to conduct a workshop to address final concerns with the ordinance in late March.⁶⁸

For some cities like Knoxville, limiting food trucks to specific areas like parks and downtown areas can be very popular because it is palatable to the brick-and-mortar interest group, while providing citizens with the novelty of food trucks. Food truck vendors may profit or suffer due to this type of regulation. On one hand, food trucks could thrive if they are limited to a popular and busy area. However, trouble with obtaining and renewing proper permits of operation or registration in specified areas could provide a barrier and a source of instability for food truck businesses.

61. *Mobile Food Vendor Program*, KNOXVILLETN.GOV, http://www.knoxvilletn.gov/government/city_departments_offices/business_support/mobile_food_vendor_program/ (last visited Feb. 20, 2016).

62. Knoxville, Tenn., Proposed Mobile Food Unit Ordinance (Feb. 15, 2016), available at http://www.knoxvilletn.gov/UserFiles/Servers/Server_109478/File/BusinessSupport/FoodTruckOrdinance.pdf.

63. Alan Sims, *The Art of Food (Trucks)*, INSIDE OF KNOXVILLE (Mar. 13, 2014), <http://insideofknoxville.com/tag/food-truck-regulations/>.

64. *Id.*

65. Knoxville, Tenn., Proposed Mobile Food Unit Ordinance (Feb. 15, 2016), available at http://www.knoxvilletn.gov/UserFiles/Servers/Server_109478/File/BusinessSupport/FoodTruckOrdinance.pdf.

66. Clay Duda, *City Attempts to Strike a Careful Balance with New Food Truck Regulations*, KNOXVILLE MERCURY. (February 24, 2016), <http://www.knoxmercury.com/2016/02/24/city-attempts-to-strike-a-careful-balance-with-new-food-truck-regulations/>

67. *Id.*

68. *Id.*

B. *Private Lots: Truck-Lot Model*

Another popular location regulation for food trucks is known as the “truck-lot model.”⁶⁹ In this model, private landowners allow vendors to operate on a stationary or rotating basis on private lots.⁷⁰ Some commentators have contended that “the truck-lot model likely represents the future of the industry. . . . Municipalities . . . [could] satisfy any anti-vendor sentiment in their community because lots move vending off the street and onto private property.”⁷¹ This is the same idea as limiting food truck vendors to a specified area, except that the food trucks permitted to operate in these areas would be controlled by private landowners, instead of municipalities.⁷²

Problems could arise in this model as well. “As more and more people learn that a street or sidewalk is the place to go to find food vendors, the more valuable that particular sidewalk becomes. Potential hold out problems that would accompany private ownership of the sidewalk food market could be avoided by publicly providing that space.”⁷³

IV. HEALTH AND SANITATION CONCERNS: KEEPING FOOD TRUCKS SANITARY WITH THE USE OF SERVICE BASES

Health and sanitation concerns are among those most crucial in the food truck industry.⁷⁴ These regulations ensure that food truck vendors are preparing and storing food in a sanitary manner, as well as disposing of waste materials properly.⁷⁵ Wastewater disposal has been a particular area of contention with municipalities and operators, as some food truck owners have been known to dump wastewater down storm drains.⁷⁶ Other concerns

69. Baylen J. Linnekin et al., *The New Food Truck Advocacy: Social Media, Mobile Food Vending Associations, Truck Lots, & Litigation in California & Beyond*, 17 NEXUS: CHAP. J. L. & POL'Y 35, 55 (2011-2012).

70. *Id.*

71. *Id.* at 56.

72. *Id.* at 55.

73. Alfonso Morales & Gregg Kettles, *Healthy Food Outside: Farmers' Markets, Taco Trucks, and Sidewalk Fruit Vendors*, 26 J. CONTEMP. HEALTH L. & POL'Y 20, 26 (2009). See generally Gregg W. Kettles, *Regulating Vending in the Sidewalk Commons*, 77 TEMP. L. REV. 1, 26 (2004).

74. Lydia Zuraw, *Food Safety on Food Trucks Called 'A Little More of a Challenge'*, FOOD SAFETY NEWS (May 27, 2015), <http://www.foodsafetynews.com/2015/05/food-safety-on-food-trucks-a-little-more-of-a-challenge/#.VspMVfkrLIU>.

75. *Id.*

76. Jeff Horseman, *Riverside County: Free the Food Trucks, Advocates Say*, PRESS-ENTERPRISE (Jan. 18, 2013), <http://www.pe.com/articles/food-659892-trucks-truck.html>; Sax, *supra* note 5.

involve the proper use of equipment.⁷⁷ As seen in 2014, improper use of equipment on food trucks can even turn deadly.⁷⁸ A Philadelphia food truck exploded and two were killed after propane tanks within the truck began leaking and ignited from a spark from the grill.⁷⁹ This section will illustrate how a thorough attention to health and sanitation, like in Madison, helps to set a baseline for food truck regulations.

*A. Madison, Wisconsin: Emphasis on
Health and Sanitation Requirements*

Madison, Wisconsin, provides thorough health and safety regulations for the purpose of keeping food truck vendors on par with restaurants.⁸⁰ The city is different in that its industry is made up of mostly food carts and food trailers, as opposed to actual mobile food trucks.⁸¹ Food trucks are limited to operating on private property with permission or in city parks, whereas food carts and trailers are allowed to vend seasonally in popular locations, such as the Capital Square and Library Mall in downtown Madison.⁸² Although the city is more stringent in regard to the location of food trucks, it provides a great model for health and safety regulations for the food trucks it does allow to operate.

The city website provides prospective food truck vendors with several materials that thoroughly set out the health and sanitation requirements.⁸³ First, a food truck vendor is required to have a “service base” that it must return to not less than once in each twenty-four hours.⁸⁴ At this service base, a vendor can prep and store food, fill fresh water tanks, dump wastewater,

77. David Chang & Vince Lattanzio, *Mom, Daughter in Feltonville Food Truck Explosion Die from Injuries*, NBC10.COM (July 24, 2014), <http://www.nbcphiladelphia.com/news/local/Mom-Daughter-in-Food-Truck-Explosion-Die-From-Injuries-268376372.html>.

78. *Id.*

79. *Id.*

80. *Mobile Food Establishment Plan Review Guide*, PUB. HEALTH: MADISON & DANE CNTY. 11 (July 28, 2011), <http://www.publichealthmdc.com/environmental/food/documents/PlanReviewGuide.pdf>.

81. *Id.* at 6.

82. *Id.* at 8, 10.

83. *Mobile Food Cart: Prospective Operator Packet*, PUB. HEALTH: MADISON & DANE CNTY., <http://www.publichealthmdc.com/environmental/food/mobileFood.cfm> (last visited Feb. 20, 2016).

84. WIS. ADMIN. CODE DHS § 9-104.11 (2015), https://docs.legis.wisconsin.gov/code/admin_code/dhs/110/196_.pdf.

and perform general cleaning functions for the food truck.⁸⁵ Emphasis is placed upon the proper disposal of liquid at the service bases.⁸⁶

Within the actual truck, operators are required to have handwashing and dishwashing facilities.⁸⁷ Further, the food truck is required to have an additional sink if it handles produce and thaws meats, instead of just heating pre-prepped food.⁸⁸ The city code requires that fresh water storage tanks have a capacity of at least forty gallons.⁸⁹ It further requires that wastewater storage tanks be sized fifteen percent larger than the fresh water tanks.⁹⁰

Also, Madison requires that all equipment on the food truck be commercial grade and certified to meet applicable sanitation standards by an American National Standards Institute-accredited certification program.⁹¹ Furthermore, all equipment must be able to operate simultaneously without the vendor having to turn off one piece of equipment to operate another.⁹² Lastly, the food truck operator must arrange for the use of public or private toilet facilities for its employees during all hours that the food truck is operating.⁹³

Overall, Madison provides an organized and thorough model for cities to follow in order to maintain a high standard of health and sanitation for its food truck industries. Further, the requirement of service bases provides accountability for the food truck vendors to maintain proper health and sanitation.

V. POLICY ARGUMENTS AND RECOMMENDATIONS

Food trucks have become a very popular industry in a number of cities across the nation.⁹⁴ Much of their popularity can be attributed to the rise in “American ‘foodie’ culture” and the trend by the food industry to provide new and innovative dining options.⁹⁵ They provide a different avenue for

85. *Id.* § 1-201.10(B).

86. *Id.* § 9-303.11 (providing that service bases must have an approved sanitary septic system for sanitary disposal of liquid waste and that liquid waste shall be discharged by hose).

87. *Id.* §§ 2-301.15, 4-204.113.

88. *Id.* § 4-301.16.

89. WIS. ADMIN. CODE DHS § 9-202.11(B)(3) (2015), https://docs.legis.wisconsin.gov/code/admin_code/dhs/110/196_.pdf.

90. *Id.* § 5-401.11(A).

91. *Id.* § 4-205.11.

92. *Mobile Food Establishment Plan Review Guide*, *supra* note 77, at 13.

93. WIS. ADMIN. CODE DHS § 9-502.11 (2015), https://docs.legis.wisconsin.gov/code/admin_code/dhs/110/196_.pdf.

94. Linnekin et al., *supra* note 66, at 39.

95. *Id.*

chefs and entrepreneurs to enter the industry.⁹⁶ Furthermore, they also offer growth opportunities for established restaurants to increase name recognition and reach additional customers.⁹⁷

As a means of retailing goods and services, sidewalk vending suffers from a number of inherent limitations. These limitations put it at a competitive disadvantage with respect to storefront merchants. Because of this disadvantage, it cannot be said as a general matter that vendors' competition with storefront merchants is unfair. Rather, sidewalk vending and storefront merchandising should be viewed as two options among many for the delivery of goods and services, each with its own advantages and disadvantages.⁹⁸

First, city officials must carefully consider the question of regulation of the food truck industry with health and safety concerns as a baseline for consideration. Madison, Wisconsin, provides a good model for emulation in that respect.⁹⁹ Madison provides an extensive set of regulations in regard to the specifications of food trucks with health and sanitation in mind, addressing storage and disposal of wastewater, equipment requirements, and access to toilet facilities.¹⁰⁰ In addition, the requirement of a service base that the trucks must visit each twenty-four hour period provides accountability for food truck sanitation.

Second, city officials must address the proximity that food trucks are allowed to operate in respect to brick-and-mortar restaurants. Proximity regulations can become contentious, and the possibility of litigation looms if municipalities significantly limit food truck operation.¹⁰¹ Proximity regulations are generally accepted so long as they are reasonable.¹⁰² El

96. *Id.*

97. Crystal T. Williams, *A Hungry Industry on Rolling Regulations: A Look at Food Truck Regulations in Cities Across the United States*, 65 ME. L. REV. 705, 717 (2012).

98. Kettles, *supra* note 73, at 30.

99. *See Mobile Food Cart: Prospective Operator Packet*, *supra* note 83 (providing vendors with information regarding health, safety, and environmental concerns in one place).

100. *Mobile Food Establishment Plan Review Guide*, *supra* note 80, at 12-14.

101. *See El Paso Vending: El Paso Mobile Food Vendors Challenge City's Efforts to Run Them Out of Town*, *supra* note 53.

102. *Id.*

Paso's regulations prohibiting food truck vendors from operating within 1,000 feet of any restaurant, grocer, or convenience store, as well as requiring that a mobile food vendor only pull over and stop when a customer flags them down, proved to be too constrictive and resulted in a lawsuit.¹⁰³

As a policy matter, it would be in a city's best interest to encourage the food truck industry and refrain from enacting regulations that protect brick-and-mortar restaurant merchants, particularly through proximity regulations. Consumers would benefit from less regulation, allowing for more food truck vendors in that there will be more choices and variety, as well as relatively cheaper prices.¹⁰⁴ Surveys in the Los Angeles area found that street vendors avoided "head-to-head" competition between vendors and merchants selling similar items, particularly food.¹⁰⁵ It was noted that food vendors typically did not set up in front of restaurants, nor did they sell the same kinds of food offered by the restaurants located nearby.¹⁰⁶ Furthermore, food trucks allow for more social invitation on sidewalks and streets, providing both economic and cultural value.¹⁰⁷ In Seattle, food trucks have developed a symbiotic relationship with craft breweries in particular.¹⁰⁸ The taproom owners allow food trucks to park in their parking lots, offering convenient food options for the beer enthusiasts at the taprooms.¹⁰⁹ "It's a great relationship that works for both sides. They don't have to serve food. People order our food, stay longer, and drink more beer," Jonny Silverberg, a Seattle food truck owner, said.¹¹⁰

As mentioned before, food trucks offer distinct advantages over brick-and-mortar restaurants, while simultaneously suffering from disadvantages to those same restaurants.¹¹¹ Restaurants offer seating and protection from the elements, whereas patrons seeking food truck offerings must stand in line and are not offered an eating area, as in restaurants.¹¹² "In economic terms,

103. Complaint for Declaratory and Injunctive Relief, *supra* note 50, at 8-11.

104. Complaint for Declaratory and Injunctive Relief at 7, *SoCal Mobile Food Vendors Ass'n v. City of Monrovia*, No. BC458142 (Cal. Super. Ct. Mar. 25, 2011).

105. *Studies: Street Vendors Do Not Compete with Brick-and-Mortar Merchants*, STREET VENDOR PROJECT, <http://www.scribd.com/doc/58478966/Vendors-Do-Not-Compete-With-Brick-And-mortars> (last visited Feb. 20, 2016).

106. *Id.*

107. Ernesto Hernandez-Lopez, *LA's Taco Truck War: How Law Cooks Food Culture Contests*, 43 U. MIAMI INTER-AM. L. REV. 233, 265 (2011).

108. Angela Garbes, *The Symbiotic Relationship Between Seattle's Taprooms and Food Trucks*, THE STRANGER (Jan. 21, 2015), <http://www.thestranger.com/seattle/the-symbiotic-relationship-between-seattles-taprooms-and-food-trucks/Content?oid=21511519>.

109. *Id.*

110. *Id.*

111. See Kettles, *supra* note 73, at 4.

112. Hernandez-Lopez, *supra* note 107, at 259.

if the free-hand of consumer demand did not like food trucks they would not support them. . . . Restaurant chains, corporate retailers, and coffee shops are permitted to operate close to each other . . . without claims of either being unfair.”¹¹³ Food trucks offer similar competition to restaurants as do to-go food sales, food deliveries, supermarket or deli-prepared meals, or even restaurants with less physical comforts, none of which are regulated based on proximity to brick-and-mortar restaurants.¹¹⁴

Austin provides a good model for loose proximity regulations that allow for growth within the food truck industry, permitting food trucks to operate twenty feet away from restaurants, while restricting their presence in residential zoning districts.¹¹⁵ As noted above, Austin’s food truck industry has flourished as a result of these regulations.¹¹⁶

VI. CONCLUSION

Food truck vendors should not be prevented from competing with brick-and-mortar restaurants by proximity requirements and strict location regulations. Cities should provide regulations that enable the industry to grow within their cities. However, at the same time, health and safety concerns should be a baseline of regulation within the industry. Competition within the food industry should not be decided by location; it should be decided by the quality of the offerings. Food trucks provide a unique alternative to brick-and-mortar restaurants, while at the same time providing chefs and entrepreneurs with a more feasible starting point to break into the food industry. Accommodating regulations for food truck vendors will help to facilitate cultural and economic benefits in cities across the nation.

113. *Id.* at 259-60.

114. *Id.* at 260.

115. *See generally* AUSTIN, TEX., MUN. CODE § 25-2-812 (2006), https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT25_LADE_CH25-2ZO_SUBCHAPTER_CUSDERE_ART4ADRECEUS_DIV2COUS_S25-2-812MOFOES.

116. *See Austin’s Love with Food Trailers, supra* note 21.