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ON THE GO: INSIGHTS INTO FOOD TRUCK REGULATION

*Paper Series: Regulatory Reform for the 21st-Century City, an
Initiative of the Ash Center for Democratic Governance and
Innovation*

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Abstract

Mobile food vending dates back to as early as 1866 with the creation of the “chuckwagon” to feed roaming cattlemen in Texas. Since the late 2000s, however, food truck popularity has exploded capturing the attention of not only consumers and entrepreneurs but also regulators and city officials. A number of hypotheses exist for the dramatic rise of food truck vendors. Some cite the recession’s impact on brick and mortar establishments while others point to the use of social media which enable vendors to reach followers in real-time. Whatever the cause, it is clear that food truck vendors aren’t planning on going away any time soon.

Cities across the country are recognizing that existing regulations do not adequately address the challenges of operating food trucks. According to a 2012 forecast by Intuit Inc., the food truck industry is projected to account for approximately \$2.7 billion in food revenue by 2017, making it a substantial player in the food service industry.¹ This case study presents a review of the current state of the mobile food vending industry, the challenges facing cities in regulating this industry, and examples of how four cities – Austin, Washington D.C., Boston, and Portland - have attempted to balance entrepreneurship with the preservation of public health and safety as they implement regulatory reforms.

The Problem

Prior to 2008, mobile food vendors could most commonly be found scattered around construction sites and a select number of street corners. The recession’s halting effect on the economy, however, changed the landscape of mobile food vendors as construction stalled and many entrepreneurs began to rethink the mobile food industry.

First garnering national attention in large urban centers like Los Angeles and New York City, food trucks have since spread to cities large and small. Offering an alternative for

¹ Food on Wheels: Mobile Vending Goes Mainstream, September 2013.
www.nlc.org/Documents/Find%20City%20Solutions/Research%20Innovation/Economic%20Development/FoodTruckReport2013_Final_9-26.pdf

both business owners and consumers leading increasingly on-the-go lifestyles, food truck vendors benefit from their ability to more easily reach new customer bases while customers benefit from increased variety.

As food trucks have grown in popularity, many city officials wrestle with how to update regulations to mitigate any negative externalities. For many cities, existing regulations applied to mobile food vendors were originally narrowly defined for ice cream and hot dog vendors. Municipalities are being forced to revisit these regulations as issues arise over competitiveness, parking, sanitation, property and sales taxes, and proximity to brick and mortar businesses. Feeling the impact of competition, many restaurant associations are also weighing in to ensure this new industry is subject to the same health and safety regulations as other food service providers. All of this has provided much fodder for the public debate on whether food trucks should be allowed to operate, and if so, how they should be regulated.

Understanding the Problem

To fully grasp the mobile food movement debate, it is necessary to recognize the challenges of varied state and local approaches to regulation. Other major issues include how cities can best provide enforcement mechanisms, ensure fair competition, and protect public health and safety.

Varied Regulatory Approach

One of the major hurdles with the rapid growth of food trucks is that each locality has a different approach to regulating, making it difficult to implement standardized regulations. Regulatory debates are shaped by the different perspectives of local stakeholders, including food truck vendors, local restaurant owners, restaurant associations, consumers, and city officials. These regulations – or lack thereof - often reflect the priorities and values of these stakeholders. Portland, for example has actively promoted food trucks as a means to spur economic activity. Other cities have faced strong resistance to food-truck friendly regulations largely due to vocal opposition from restaurant associations.

In some cases, there is tension between state and local regulations. For example, when the City of Los Angeles attempted to impose stricter local rules on mobile food vending, courts overturned these attempts. This is due in part to the fact that catering trucks are regulated by state law, which allows local governments only the authority to impose additional regulations to protect public safety or health. In 1993, the state of California declared in *Barajas v. City of Anaheim* that the use of streets for commercial purposes is a matter of public concern and subject to regulation imposed by the state, and not the city. A 2006 ordinance prohibiting food trucks from parking in the same spot in a residential neighborhood for more than a half-hour or in a commercial area for more

than an hour was overturned based on the fact that it did not directly affect public health or safety of citizens.²

Enforcement

In addition establishing regulations, many cities are challenged with implementing effective enforcement. In densely populated cities like New York City where the demand for mobile vending permits often exceeds supply, the bureaucratic processes and waitlists for obtaining a permit present stiff barriers to entry for new vendors.³ As a result, there are many reports of unlicensed vendors. In Los Angeles, an estimate from the Los Angeles County Health Department speculated that around 11,000 illegal vendors operate every day within the county – of which an increasing number are illegal food vendors.⁴ According to the U.S. Food and Drug Administration, over 2,000 different state and local agencies in the United States are responsible for inspecting food trucks across the country.⁵ Once identified, such illegal vendors can face fines, jail time and have their property confiscated if they are caught selling food illegally. Many cities, however, simply lack the manpower for effective enforcement.

Ensuring Fair Competition

Another major concern with the dramatic rise in food trucks is whether there is fair competition between mobile food vendors and brick and mortar restaurants. Restaurants want to ensure food trucks are subject to many of the same operating regulations while food truck operators would like regulators to think critically about which regulations are appropriate for this new industry.

Some restaurant owners argue that mobile food vendors are not subject to the same taxes as brick and mortar restaurants, such as property taxes. Mobile food vendors contend that they are still required to pay taxes on their mobile truck and equipment, gas, and all required municipal sales taxes, which can vary if vendors cross city or county borders.

With respect to state and local taxes, some states have taken steps to enact new sales tax legislation that has positively benefitted mobile food vending. Recently, California's State Board of Equalization adopted a regulation that saves food truck operators the

² UCLA Law Students Help Taco Truck Operators Overturn LA Ordinance, June 2009.
<http://latimesblogs.latimes.com/lanow/2009/06/ucla-law-students-help-taco-truck-operators-overturn-la-ordinance.html>

³ The Food Truck Business Stinks, May 2013.
www.nytimes.com/2013/05/12/magazine/the-food-truck-business-stinks.html?pagewanted=all&r=0

⁴ 40 Percent of LA Food Trucks and Carts Unchecked by Health Inspectors, April 2014.
www.scpr.org/programs/airtalk/2014/04/08/36839/forty-percent-of-la-food-trucks-and-carts-unchecked/

⁵ Food Truck Secrets: 10 Things Food Trucks Don't Want You to Know, September 2012.
www.huffingtonpost.com/2012/07/23/food-truck-secrets-10-things_n_1694775.html

hassle of charging their customers a different sales tax rate as they drive from city to city. Effective July 1, 2014, the regulation presumes sales tax is included in the price of taxable items if the retailer has not added it separately.⁶

Debates of fair competition also include the issue of use of public and private space. Mobile food vending is most popular in cities with lots of foot traffic. In already densely packed downtown areas, public and private parking for food trucks can be limited. To regulate these spaces, cities have used various approaches including creating food truck hubs or pods as in Austin and Portland or establishing designated food truck parking zones with lottery assignments like Washington D.C. and Boston. Other cities regulate the geographic boundaries between food trucks and brick and mortar restaurants.

Ensuring Public Health and Safety

The food truck regulatory reform debate invariably leads to questions about public health and safety. Many cities and states require food trucks to use a commissary. Commissaries are established commercial kitchens where food service providers can go to prepare and store food. In cities with regulations prohibiting mobile food vendors from preparing, storing, or cooking food on the food truck, commissaries are critical. Commissaries also provide cleaning and sanitation areas and facilities to safely dispose of grease, used water, and solid waste.⁷

Some cities are exploring regulatory reforms that work around existing health codes in a way that still protects public health. In 2011, Go Box, a local Portland business, introduced a business model that allows consumers to use re-usable containers despite health code Section 3-304.17 which prevents customers from bringing their own containers for takeout. Go Box's model allows customers access to reusable containers that can be deposited at a number of drop-off sites to be professionally cleaned and returned to participating food truck operators.

In other sustainability efforts, the City Council in Austin passed a measure in May 2014 that makes it easier for food truck vendors to recycle and compost. Under the previous health code, it was difficult to offer composting or recycling services. This ordinance would allow mobile food establishments to provide solid waste, recycling, compost, or used oil receptacles on the same property and detached from the mobile food establishment.⁸

⁶ Board of Equalization Serves Up Simpler Sales Tax Regulation for Food Trucks, June 2014. <http://www.boe.ca.gov/news/2014/92-14-G.pdf>

⁷ How to Start a Food Truck: Learn About Commissaries, February 2014. <http://foodtruckr.com/2014/02/start-food-truck-learn-commissaries/>

⁸ Austin City Council, May 2014. <http://www.austintexas.gov/edims/document.cfm?id=209384>

Regulatory Reform Policy Areas

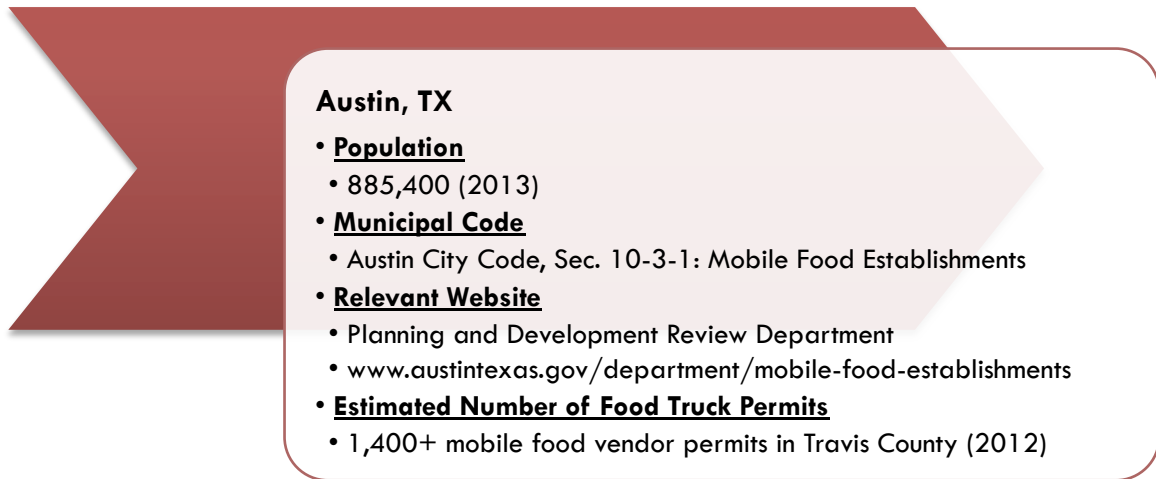
In September 2013, the National League of Cities produced *Food on Wheels: Mobile Vending Goes Mainstream*, a report exploring regulatory reform areas for cities to consider when regulating the mobile food vending industry. After analyzing 13 cities of varying size, the report identified four main policy areas of focus for regulators:

- 1) **Economic Activity** – aspects of food truck regulation that could potentially enhance economic development (e.g., streamlining permitting processes and permitting costs)
- 2) **Public Health** – aspects related to sanitation and food safety
- 3) **Public Safety** – aspects related to the utilization of private property, vending proximity to schools, and pedestrian safety
- 4) **Public Space** – aspects of food truck regulation that deal with the use of the utilization of public property to conduct business (e.g., time constraints, proximity rules, and geographic limitations related to density)

These policy areas are among the most debated in the mobile food vending regulatory reform process and will be the basis of our analysis. The following case studies will highlight four cities and provide an overview of their attempts to enact regulatory reforms in these areas.

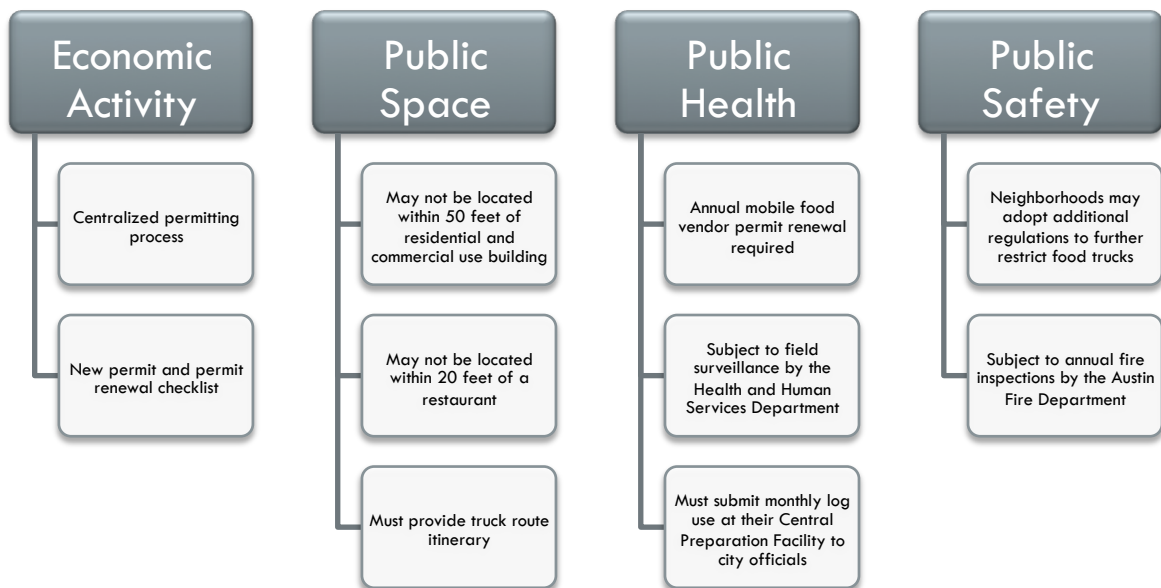
Case Studies

Economic Activity – Austin, TX

A large red arrow-shaped graphic pointing to the right, containing a white rounded rectangle with a red border. Inside the rectangle, the text provides details about Austin, TX, including population, municipal code, relevant website, and estimated number of food truck permits.

Austin, TX

- **Population**
 - 885,400 (2013)
- **Municipal Code**
 - Austin City Code, Sec. 10-3-1: Mobile Food Establishments
- **Relevant Website**
 - Planning and Development Review Department
 - www.austintexas.gov/department/mobile-food-establishments
- **Estimated Number of Food Truck Permits**
 - 1,400+ mobile food vendor permits in Travis County (2012)



Local Context

Known for their food-trailer parks – or hubs of stationary food trucks – Austin’s mobile food vending scene has developed almost as rapidly as the city’s economy since 2007. During the recession, food trucks became a popular venture with over 900 registered food vendors in Travis County by the end of 2008. By 2012, the City of Austin’s Health

and Human Services Department reported over 1,400 registered mobile food vendors in the county.⁹

During this same period, Austin's economy and population were also growing rapidly. According to the 2013 Census Bureau estimates, Austin had the greatest population growth among all U.S. cities with fewer than 1 million residents.¹⁰ By 2013, Austin's economy was thriving, leading the nation's cities in gross metro product growth at 4.6 percent.¹¹

While the rapid growth was good for Austin's economy, it impacted the mobile food industry by making it more difficult to find open land suitable for food-trailer parks. Food-trailer parks gained popularity from vendors because they could share resources and often attract a stable following. The food-trailer park model also benefits landowners who collect rent from vendors after obtaining the permits and installation necessary to provide electricity and other resources. Despite the challenges of finding open land, many vendors are enjoying Austin's economic boom and the demand for food trucks by Austin residents have helped put the food truck scene on the map.

Regulatory Reform Highlight: Economic Activity

Since 2008, the City of Austin has taken significant steps to encourage the growth of mobile food vendors while ensuring the protection of neighborhood interests. To facilitate growth, the City of Austin streamlined the permitting process for mobile food vendors which previously required vendors to deal with multiple departments for all the appropriate permits. With a centralized permitting process, applicants are presented with a checklist of all the forms required in order to receive a mobile food vendor permit. Mobile food vendors in Austin are subject to annual health and fire safety inspections and vendors are also required by law to disclose a central preparation facility, or CPF, where they store, clean and dispose of their products.¹² Enforcement of these regulations lie within the jurisdiction of the City of Austin Code Department, the City of Austin Zoning and Right of Way Departments, and the City of Austin Health and Human Services Department who work together to regulate food truck activity.

While encouraging economic growth, the City of Austin has still remained responsive to the community's interests. The city currently allows for neighborhoods to adopt more

⁹ Food Truck Industry at Crossroads, March 2013. <http://impactnews.com/austin-metro/central-austin/food-truck-industry-at-crossroads/>

¹⁰ Everything's Bigger, and Still Getting Bigger, in Texas, May 2014. <http://www.usnews.com/news/articles/2014/05/22/texas-cities-among-nations-fastest-growing-us-census-bureau-says>

¹¹ Austin's Strong Metro Economy Will Stay Ahead of the Pack for Years, Report Says, June 2014. <http://www.bizjournals.com/austin/news/2014/06/20/austins-strong-metro-economy-will-stay-ahead-of.html?page=all>

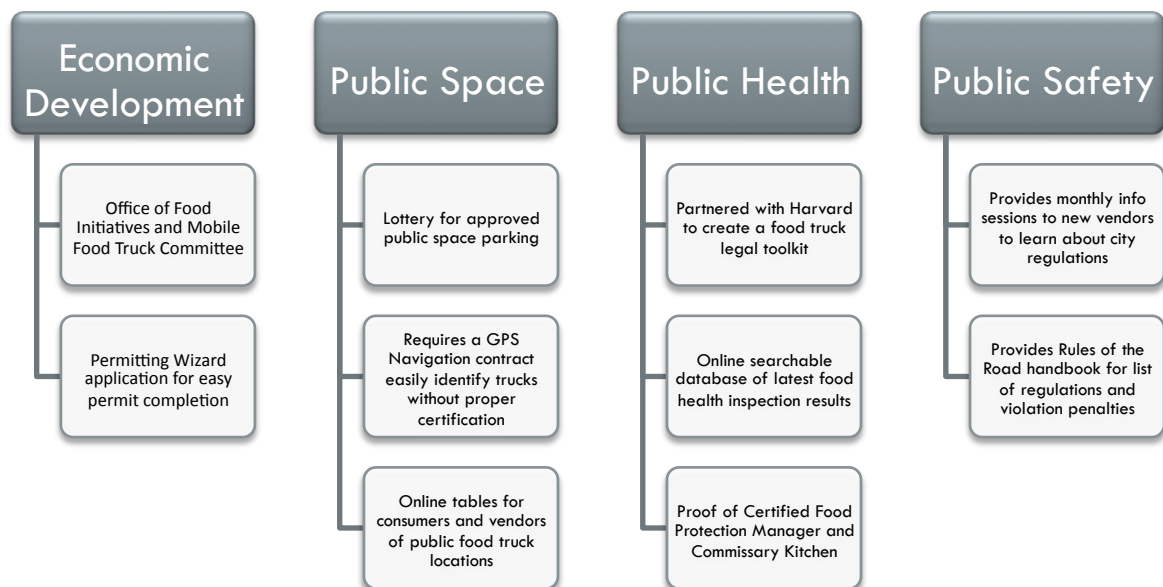
¹² Food Trailers and the Health Department. <http://foodtrailersaustin.wordpress.com/food-trailer-health-inspections/>

restrictive regulations for mobile food establishments with respect to operating times and locations, subject to City Council approval. The Planning and Development Review Department provides a map indicating zones with additional restrictions on its website – making it easy for the public and vendors alike to be aware of current regulations.

Public Health – Boston, MA

Boston, MA

- **Population**
 - 645,966 (2013)
- **Municipal Code**
 - Mobile Food Truck Ordinance
 - www.cityofboston.gov/foodtrucks/regulations/ordinance.asp
- **Mobile Food Vendor Regulation Website**
 - www.cityofboston.gov/foodtrucks/
- **Estimated Number of Food Truck Permits**
 - 80+ food trucks (2014)



Local Context

With less than a hundred food trucks, Boston’s food truck scene may be small in numbers but it certainly has not been overlooked by city officials. Since food trucks became popular in Boston’s dining scene in 2011, the City has been active in promoting the industry’s growth while focusing on ensuring a healthy and sustainable industry.

Boston's approach to mobile food vending largely focuses on transparency and collaboration. In 2010, the City of Boston established the [Office of Food Initiatives](#). As part of this effort, the City later established the Boston [Food Truck initiative](#) which brought healthy food trucks hosted by the city to downtown Boston and into residential neighborhoods.

To help food truck vendors navigate the process of starting up a food truck business, the city has an Office of Food Initiatives as well as a Mobile Food Truck Committee. As required by [ordinance](#), the Mobile Food Truck Committee includes representatives from the Department of Public Works, the Transportation Department, the Inspectional Services Department, the Police Department, the Fire Department, the Director of Food Initiatives, and the Assessing Department who collaboratively review and approve food truck applications.

Since 2012, the City of Boston has implemented a [Live Lottery](#) to provide new and existing mobile food vendors with equal access to all city-approved public sites. This year vendors entered into a lottery to select from over 500 shifts available for the upcoming vending year, which begins April 1, 2015.

Regulatory Reform Highlight: Public Health

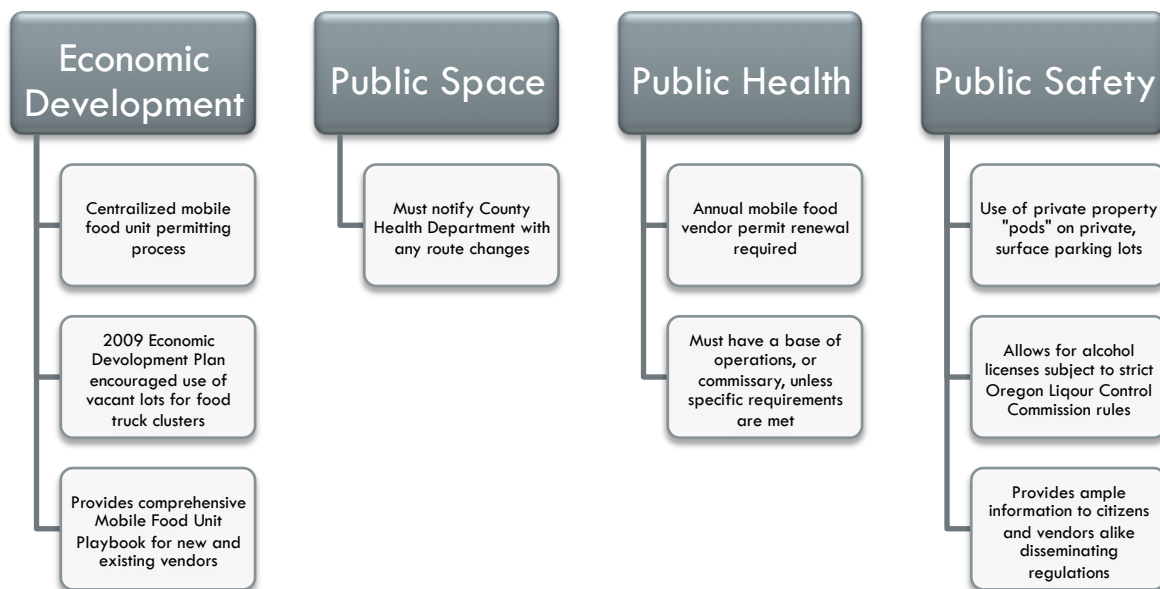
Often recognized as one of the most innovative cities, the City of Boston has long been using data and technology to advance public good. As part of the city's food truck permit application process, all mobile food vendors are required to register with a [GPS navigation contract](#). Data is shared with the city to update the Office of Food Initiative's food truck website. This data is open to the public and allows customers and city officials to [see which food trucks are vending only during vending hours](#). This also helps the city ensure that registered food trucks are vending in the appropriate locations at the appropriate times, thus allowing the city to better identify illegal vendors operating without proper certification.

While many cities have established health and safety codes for mobile food vendors, the City of Boston allows residents to access data in a user-friendly format. In accordance with the Massachusetts State Sanitary Code, food service establishments are inspected at least once per year. New restaurants cannot open without an inspection and approval from the Health division. The City of Boston, in addition to listing all food truck locations on the Office of Food Initiative's food truck website, provides data for all food health inspections via [The Mayor's Food Court – Establishment Search](#), an online searchable database with the latest available inspection ratings by the Health Division of the Boston Inspectional Services Department. The site provides a list of previous inspections, ratings, as well as links to specific violations with comments. The city also provides an online, [interactive food truck permitting guide](#) to help ensure vendors are advised of the appropriate regulations.

Public Safety – Portland, OR

Portland, OR

- **Population**
 - 609,456 (2013)
- **Municipal Code**
 - Oregon Admin. Rules, Sec. 333-162-0020: Mobile Food Units
- **Relevant Website**
 - Bureau of Planning and Sustainability
 - www.portlandoregon.gov/bps/52798
- **Estimated Number of Food Truck Permits**
 - 800+ licensed mobile food units (2014)



Local Context

With the rise in food trucks in Portland beginning in the 1990s, the city has long been referred to as the country's food truck capital. In 1997, a working group was established to create guidelines for the mobile food vendors. In 2009, the city developed an Economic Development Plan which specifically incorporated the mobile food industry. In the plan, the city outlined steps to encourage the use of vacant lots for food truck clusters to deter blight and promote economic development. As of 2014, the city

estimates over 800 licensed food vendors are operating in Portland and the surrounding Multnomah County.¹³

Regulatory Reform Highlight: Public Safety

A major challenge for mobile food vendors is how to integrate into a community while preserving public safety of citizens in public spaces. One solution is to create better utilization and regulation of private property where food trucks can reside without competing for limited public space. A second solution is to ensure both food truck owners and citizens are well informed about food truck operations and regulations. Well-disseminated information about regulations is a key to ensuring public safety.

Portland's food truck scene has led the way for developing regulations that would allow for the creative use of private property to create "pods". By transforming vacant lots into food truck hubs, Portland generated more foot traffic into areas that may have been subject to blight and crime. With over 20 pods in the city, vendors are able to share resources and build community. These regulations have helped food truck vendors not only establish themselves in the community but also play a role in revitalizing these vacant lots. Current regulations provide that as long as stationary mobile carts have functional wheels, an axle for towing, and are located in a commercial zone, they are considered vehicles and are not required to conform to zoning or building codes on private property. Portland also recently became the first city to pass regulations that allow food truck vendors to obtain alcohol licenses. In 2014, nearly a third of the city's food car pods served beer, wine or cocktails, under strict compliance with the Oregon Liquor Control Commission.¹⁴

Portland has also been looked to as a model of a city that allows the mobile food industry to thrive while ensuring regulations are well-disseminated. Citizens and food truck owners alike can find ample information online about food trucks via sites like Food Carts Portland which offers tips for helping new vendors and maps of the food truck pods as well as links to a number of previous studies on the impact of food trucks on the Bureau of Planning and Sustainability's website.

Beyond the mobile food vendor application itself, the city also provides easy access to information about how to operate vending carts on private property and a detailed Mobile Food Unit Playbook with examples of different types of vendors and flowcharts to aid new vendors through the application process. The latest food safety news can be found on the Chefs Connection – Multnomah County Food Safety Blog which helps vendors stay up to date on regulations and provide tips for safer food handling.

¹³ Portland's Food Carts Thrive, While SF's Languish, September 2014.

<http://missionlocal.org/2014/09/portlands-food-carts-thrive-while-sfs-languish/>

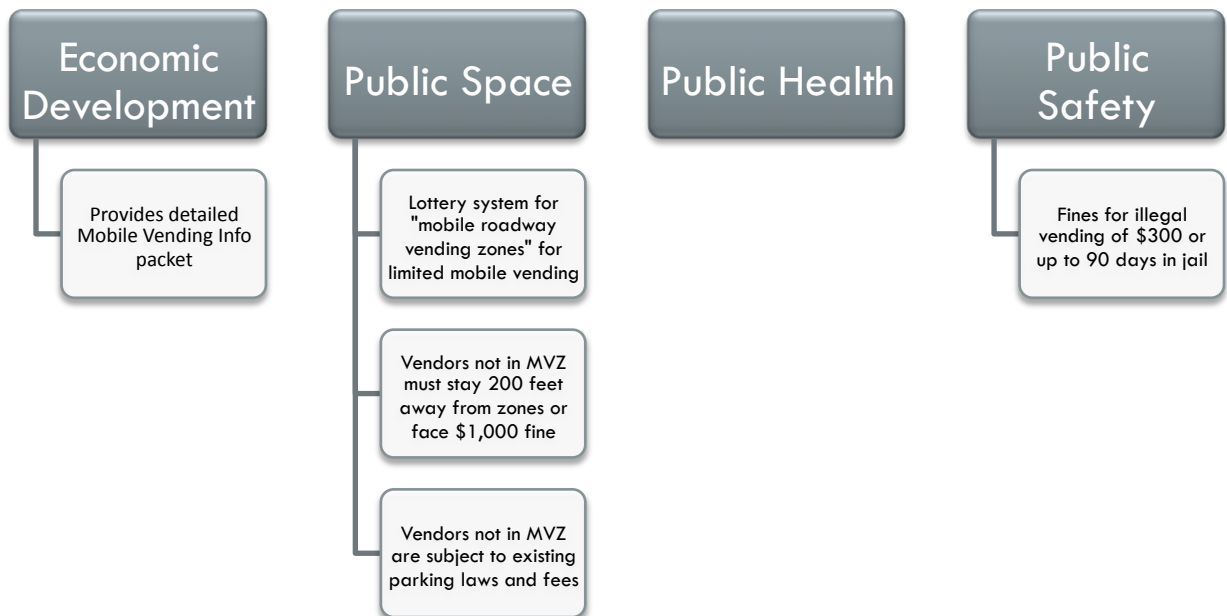
¹⁴ Food Cart Culture Digs In, Grows Up, Has a Few Drinks, May 2014.

<http://www.pamplinmedia.com/pt/9-news/218877-78013-food-cart-culture-digs-in-grows-up-has-a-few-drinks->

Public Space – Washington, DC

Washington, D.C.

- **Population**
 - 646,449 (2013)
- **Municipal Code**
 - DCMR Vending Regulations - Title 24, Ch.5
- **Relevant Website**
 - Department of Consumer and Regulatory Affairs: <http://dcra.dc.gov/service/mobile-food-truck-licensing-information>
- **Estimated Number of Food Truck Permits**
 - 200+ registered mobile food vendors (2013)



Local Context

For the past four years, the debate over the regulation of mobile vending in Washington D.C. has been closely monitored by its many stakeholders. In 2013, after multiple proposals and amendments, new regulations were passed affecting over 200 registered mobile food vendors. These new regulations included health and safety provisions as well as the much discussed "Mobile Roadway Vending Lottery."

Prior to these new regulations, the Department of Consumer and Regulatory Affairs allowed food trucks to operate under regulations for ice cream trucks as they worked on new regulations. In December 2010, the city council engaged in a lengthy debate over the future of mobile vending operations. The regulations passed in 2013 were a major step towards re-evaluating the current regulatory structure of mobile food vending.

Regulatory Reform Highlight: Public Space

The new city regulations have helped provide guidelines on one of the primary concerns of the local mobile food industry – use of public space. Under the Mobile Roadway Vending Lottery system, the city allows a limited number of vending vehicles, chosen through a rotation-based lottery system, to sell food (or other goods).¹⁵ The lottery occurs monthly and allows vendors to rank their location preference for each day of the week. There are 95 spots in eight different zones that vendors are able to apply for between the hours of 10:30am and 2:30pm. Vendors pay \$25 each month to enter the lottery and \$150 if they accept an assignment.

When vendors are selected by the lottery, they are assigned to their highest preferred location which has an available space. If no spaces are available when selected, they will be assigned as “off”. No vendor will be assigned an “off” day unless the number of lottery entrants exceeds the number of available spaces (i.e. greater than 95 lottery entrants). Based on this rotation lottery system, no vendor will be assigned a second “off” day until every entrant has had a first “off” day, thus ensuring equal access. Vendors who do not receive a spot via the rotation-based lottery system on a particular day must stay at least 200 feet away from the zones or face a \$1,000 fine. The three agencies that oversee regulations of food trucks include the Department of Consumer and Regulatory Affairs, the Department of Transportation, and the Department of Health.

While the effects of these regulations have yet to be seen, Washington D.C. is making steps to tackle the issue of regulating public space. This case is also an example of the growing mobilization of food truck owners’ participation in regulatory debates. With associations like the DMV (D.C., Maryland, Virginia) Food Truck Association and other trade associations being established nationwide – often as a result of lengthy debates with city councils and local restaurant associations - there is a growing trend of food truck owners coming together to strategically represent the collective interests of all mobile food vendors.

¹⁵ D.C.’s Food Trucks Try to Adjust to the City’s New Regulations, December 2013.
<http://www.washingtoncitypaper.com/blogs/youngandhungry/2013/12/11/d-c-s-food-trucks-try-to-adjust-to-the-citys-new-regulations/>

Results

As the mobile food industry has grown, it has forced cities across the country to consider the economic and social impact of this industry on all citizens. Every city faces a unique set of challenges – the cases presented here looking at Austin, Boston, Portland, and Washington D.C. - demonstrate the different approaches to regulating the industry based on the input of stakeholders and the status of the local economy. As the examples show, cities are increasingly looking at food trucks not only as an alternative to traditional dining but also as a player in larger economic and community development plans.

The disruption of food trucks has forced cities to think critically about what and how they choose to regulate. Whether it is by leveraging data and technology to support traditional enforcement or by redefining existing regulations, regulatory reform efforts in the food truck industry have resulted in a wide range of approaches that at the end of the day are aimed at helping you answer the age-old question of “What’s for lunch?”.

ABOUT THE AUTHOR

Jessica Huey is a MPP candidate at the Harvard Kennedy School of Government. Prior to attending the Kennedy School, Jessica spent five years working for the City & County of San Francisco focusing on workforce development initiatives and labor negotiations. Jessica got her start with the City & County of San Francisco as a member of the inaugural class of City Hall Fellows, a year-long fellowship program in local government. Jessica received a BA from Brown University with a double major in Public Policy and Hispanic Studies.

ABOUT THIS PROJECT

The Regulatory Reform for the 21st-Century City project, funded by the Smith Richardson Foundation, is exploring, identifying, and developing a best practice framework and accompanying resources for cities seeking to learn more about regulatory reform. This work addresses the fine balance between public health and safety and economic development in regulation at the local level. As part of this project, this paper series is a resource for those US and international cities looking to learn more about regulatory reform, as well as those interested in replicating and adapting best practices to streamline regulatory development, licensing and permitting, and compliance in their own cities.

ABOUT THE SERIES EDITOR

Stephen Goldsmith is the Daniel Paul Professor of the Practice of Government and the Director of the Innovations in American Government Program at Harvard's Kennedy School of Government. He currently directs [Data-Smart City Solutions](#), a project to highlight local government efforts to use new technologies that connect breakthroughs in the use of big data analytics with community input to reshape the relationship between government and citizen. He previously served as Deputy Mayor of New York and Mayor of Indianapolis, where he earned a reputation as one of the country's leaders in public-private partnerships, competition, and privatization. Stephen was also the chief domestic policy advisor to the George W. Bush campaign in 2000, the Chair of the Corporation for National and Community Service, and the district attorney for Marion County, Indiana from 1979 to 1990. He has written *The Power of Social Innovation*; *Governing by Network: the New Shape of the Public Sector*; *Putting Faith in Neighborhoods: Making Cities Work through Grassroots Citizenship* and *The Twenty-First Century City: Resurrecting Urban America*; and *The Responsive City: Engaging Communities Through Data-Smart Governance*.