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New York City, New Haven, and the New Mobile Food Trends: An Analysis of Local Law and Culture in Response to the Reawakening of Mobile Food Note

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Note

New York City, New Haven, and the New Mobile Food Trends: An Analysis of Local Law and Culture in Response to the Reawakening of Mobile Food

ELENI KOUTROUMANIS

In recent years, mobile food vending has become increasingly popular in part due to a developing “foodie” culture and the lingering effects of the 2007 economic recession. While the mobile food business model provides clear benefits for entrepreneurs and consumers alike, communities throughout the nation are divided into pro- and anti-vendor groups in response to issues involving licensing, health regulation, zoning, unfair competition, and the ways in which the presence of mobile food vendors affect brick-and-mortar restaurants. This Note focuses specifically on these existing tensions in New York City and New Haven, Connecticut. First, this Note examines the policies and laws governing mobile food vendors in starting and maintaining a mobile food business and then compares them to laws governing the maintenance of brick-and-mortar restaurants. This Note then analyzes the actual effects of the current regulations, prior to presenting recommendations for each city that aim to promote fair competition and opportunities for both business models to prosper.

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New York City, New Haven, and the New Mobile Food Trends: An Analysis of Local Law and Culture in Response to the Reawakening of Mobile Food

ELENI KOUTROUMANIS*

I. THE REAWAKENING

New York City and New Haven, CT—though vastly different in population,¹ size,² and culture—have both played indispensable roles in American food culture. It is no secret that New York is home to some of the world’s most iconic restaurants, delis, and bakeries, which draw tourists from around the world.³ New Haven, just eighty miles outside of New York, has been home to its own unique and evolving food history: the “Elm City” is the home of the first hamburger sandwich⁴ and the country’s most famous pizza battle.⁵ It is only fitting that these two cities are also at

* University of Connecticut School of Law, J.D. Candidate 2016. I would like to thank the editors of Volume 48 of the *Connecticut Law Review* for their thoughtful feedback and editing and my Notes and Comments Editor, Dave Woods, for his excitement for and encouragement of this Note. I would also like to thank all of my family and friends for their unwavering support in all of my endeavors. Most importantly, I would like to say a very special thank you to my father, George Koutroumanis, for inspiring me with this topic and always reminding me to ask questions and create solutions.

¹ As of July 2014, the population of New York City was 8,491,079 according to the U.S. Census Bureau. *Current Population Estimates*, NYC PLANNING, <http://www.nyc.gov/html/dcp/html/census/popour.shtml> [<http://perma.cc/AFT6-7AJU>] (last visited Aug. 19, 2015). By contrast, New Haven’s population in 2013 was 130,660, and all of Connecticut’s was 3,599,341. *State & County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/09/0952000.html> [<http://perma.cc/KJT6-E7P3>] (last visited Aug. 19, 2015).

² The City of New Haven is a mere 18.9 square miles, NEW HAVEN CITY PLAN COMM’N, COMPREHENSIVE PLAN UPDATE 1.2 (2013), <http://www.cityofnewhaven.com/cityplan/pdfs/Draft%20Databook%20Narrative/Full%20Document.pdf> [<http://perma.cc/Q2TR-2Y65>], while New York is 301 square miles, *NYC Statistics*, NYC GO.COM, <http://www.nycgo.com/articles/nyc-statistics-page> [<http://perma.cc/B3PG-4ARL>] (last visited Sept. 18, 2015).

³ In 2013, 54.3 million domestic and international tourists visited New York. *NYC Statistics*, NYC GO.COM, <http://www.nycgo.com/articles/nyc-statistics-page> [<http://perma.cc/B3PG-4ARL>] (last visited Aug. 19, 2015).

⁴ According to legend, in 1900, Louis Lassen was behind the counter in his New Haven restaurant when a man rushed in asking for something to eat on the run. *History*, LOUIS’ LUNCH, <http://www.louislunch.com/history.php> [<http://perma.cc/U9HQ-3FUR>] (last visited Aug. 19, 2015). Louis put a blend of ground beef trimmings between two pieces of white toast, inventing the hamburger sandwich. *Id.*

⁵ Both Frank Pepe Pizzeria Napoletana and Sally’s Apizza, located in New Haven’s Wooster Square, have made the thin crust of the “New Haven-style pie” famous. See Annie B. Copps, *New Haven, CT: Pizza Wars*, YANKEE MAG. (May 2009), <http://www.yankeemagazine.com/article/features/personal-new-england-2/new-haven-ct-pizza> [<http://perma.cc/56YM-VRUV>] (discussing the ongoing

the forefront of the new food truck and food cart movement.

Neither city, but particularly New York, is stranger to mobile food vending.⁶ Street vending has long been a fixture in American city life as it provided, and continues to provide, entrepreneurial opportunities for those who cannot afford to open “brick-and-mortar” restaurants.⁷ However, today’s mobile food vending has evolved from pushcarts serving hot dogs and chili to sophisticated “gourmet food trucks” from which vendors can prepare and serve the same feasts as a chef in any restaurant.⁸

The mobile food movement has taken off in part because of the current “foodie” culture, which “revels in using the palate as a tool to explore both objectively authentic cuisine . . . and bold new fusion cuisine.”⁹ Also, with the increasing popularity of the “foodie” movement, more people are excited and passionate about trying new foods.¹⁰ Yet a more practical reason as to why people, both vendors and consumers, have turned to mobile food is affordability.¹¹ Many brick-and-mortar restaurant owners have had to shut their doors and turn to alternatives such as mobile vending, while some entrepreneurs intent on breaking into the food industry have steered clear of restaurants altogether and gone directly into this less expensive option.¹² Any mobile food operation’s start-up and

feud between patrons over which restaurant serves New Haven’s best pizza).

⁶ Mobile food vending refers to the sale of food and beverage from food carts and food trucks. Foodcarts are a “smaller, non-motorized variant of a food truck. Like food trucks, they are mobile. But they are often towed or otherwise driven to a foodservice location to remain for a longer period of time.” Baylen J. Linnekin et al., *The New Food Truck Advocacy: Social Media, Mobile Food Vending Associations, Truck Lots, & Litigation in California & Beyond*, 17 NEXUS 35, 38 n.15 (2012). Food trucks are motorized vehicles that contain small commercial kitchens, from which the operator can prepare, cook, and sell food to consumers. *Id.* at 37.

⁷ 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, 707 (2013). Historically, this group has consisted largely of immigrants. *Id.*

⁸ See, e.g., Zach Brooks, *The 10 Hottest Food Trucks in the U.S.*, ZAGAT (May 7, 2014), <http://www.zagat.com/b/the-10-hottest-food-trucks-in-the-u.s?gclid=CIaA077t68ECFXEQ7Aod9jEAXg#10> [<https://perma.cc/NK9E-SZKX>] (featuring food trucks that offer customers fine cuts of beef and hand-cut fries, barbeque ribs, pulled pork, steak and fish tacos, and deluxe donuts).

⁹ Linnekin et al., *supra* note 6, at 39.

¹⁰ *Id.*; see also Williams, *supra* note 7, at 707 (attributing some of the increased interest in popular food culture to the increasing presence of cooking and restaurant-related television shows and movies that “have highlighted the thriving businesses”).

¹¹ Linnekin et al., *supra* note 6, at 39.

¹² See *id.* (describing the role of the ongoing economic recession in the increased popularity of mobile food vending as a career and business model alternative). But see Richard Myrick, *Why Do Food Truck Businesses Fail?*, MOBILE-CUISINE.COM, <http://mobile-cuisine.com/business/why-do-food-truck-businesses-fail/> [<http://perma.cc/WJ87-Q4J2>] (last visited Aug. 19, 2015) (listing the top ten reasons food truck businesses fail other than local legislation); Rachel Tepper, *Food Truck Failures Reveal Dark Side, But Hope Shines Through*, HUFFINGTON POST (Jan. 18, 2013, 11:19 AM), http://www.huffingtonpost.com/2013/01/22/food-truck-failures_n_2499463.html [<http://perma.cc/JVT3-4GTG>] (describing a Rochester, NY food truck failure and the difficulties of breaking into a new market).

maintenance costs are just a fraction of what it takes to get a brick-and-mortar restaurant off the ground and running.¹³ These savings translate into a more affordable alternative for people dining outside the home.¹⁴ Established restaurants have even entered the world of mobile food vending as a way to “market new menu items, fundraise for organizations, or bring convenient lunches to consumers.”¹⁵

While the mobile food business model provides clear benefits for entrepreneurs and consumers alike, communities are divided into pro- and anti-vendor groups in response to issues involving licensing, health regulation, zoning, unfair competition, and the ways in which mobile food vendors change the dynamics of the restaurant communities in New York and New Haven. Brick-and-mortar restaurants argue that it is unfair that mobile food vendors can move around a city with no accountability,¹⁶ while mobile food vendors argue that they miss out on the goodwill that an established location provides.¹⁷ Citizens and zoning officials of both cities argue that they must deal with the general disruptions that mobile food vendors introduce to communities,¹⁸ while vendors argue that they are severely disadvantaged by outdated or confusing regulations.¹⁹

In an effort to overcome parking and zoning regulations that force mobile food vendors to relocate,²⁰ vendors have made use of another new trend, social media, to let people know when and from where they will be

¹³ Linnekin et al., *supra* note 6, at 39. Brick-and-mortar restaurants must consider rent, other overhead, applicable taxes, licensing and inventory. *Id.* Although mobile-food purveyors may have to consider these expenses to some extent, the costs are significantly less. *The Cost of Starting a Food Truck*, FORBES (Sept. 27, 2012, 2:43 PM), <http://www.forbes.com/sites/investopedia/2012/09/27/the-cost-of-starting-a-food-truck/> [<http://perma.cc/HPK6-7CQF>]. For example, street kiosks, or food carts, can cost as little as \$3,000 with an additional \$1,500 to get the business going. *Id.* A food truck can cost anywhere between \$50,000 to \$200,000, but “[a] very reasonable range for getting a food truck off the ground is likely between \$70,000 and \$80,000.” *Id.*

¹⁴ Linnekin et al., *supra* note 6, at 39; *see also* Ernesto Hernández-López, *LA’s Taco Truck War: How Law Cooks Food Culture Contests*, 43 U. MIAMI INTER-AM. L. REV. 233, 239 (2011) (“Trucks provide economical food options in locations where restaurants are lacking or are not affordable to potential customers. Their lower operating costs support economic prices for customers willing to wait and eat in public as opposed to paying for a restaurant to provide eating and service areas.” (footnote omitted)).

¹⁵ Williams, *supra* note 7, at 707. Several chain restaurants have created food trucks to travel to certain cities to advertise and give free samples of new products or raise awareness of different charitable causes. *Id.* at 707 n.6. For example, Taco Bell used food trucks to market its Doritos Locos Tacos and Dairy Queen sent its Blizzardmobile to twenty-five cities to raise money for the Children’s Miracle Network. *Id.*

¹⁶ *See* Hernández-López, *supra* note 14, at 238 (describing the argument of food truck opponents that the trucks compete unfairly with fixed restaurants).

¹⁷ *Id.* at 240.

¹⁸ *See, e.g., id.* at 238 (providing congestion, unsafe and unsanitary conditions, and litter as examples of anti-vendor concerns).

¹⁹ Williams, *supra* note 7, at 708.

²⁰ *See infra* Part III.B (discussing the challenges of running a mobile business as opposed to having a fixed location).

vending that day.²¹ Social media has also helped mitigate the effects of burdensome regulations; however, it has not necessarily eliminated them.²² Another step mobile food vendors have pursued is the creation of both nationwide²³ and city-wide²⁴ associations that represent their business interests before regulatory and legislative bodies.²⁵ In a survey, New York's association stated that its main service is providing "advocacy to change vending regulation."²⁶ Meanwhile, brick-and-mortar restaurants use state restaurant associations as advocates for fair competition in communities.²⁷

The solution to the escalating tensions between the two business models requires not just cooperation among all food-related entrepreneurs in these cities, but thoughtful and specific local regulations that promote public safety and fair competition. With the rise of food truck associations and their advocacy for fair regulations, and due to the local nature of mobile food vending²⁸ and the dearth of regulations governing it,²⁹ New

²¹ See Hernández-López, *supra* note 14, at 243 (describing how gourmet, nouveau, or fusion food trucks use web pages, blogs, and social networking tools to tell customers their daily locations and create an online brand to attract a following). In New Haven, twelve Yale students taking a course in Public Humanities launched newhavenfoodroutes.com in 2014. Jim Shelton, *Yale Students Unveil Digital Guide to New Haven Food Trucks*, NEW HAVEN REG. (Dec. 7, 2013), <http://www.nhregister.com/general-news/20131207/yale-students-unveil-digital-guide-to-new-haven-food-trucks> [<http://perma.cc/2QSV-FWL4>]. The website "tells the stories of local food trucks and helps users locate them around the city." *Id.*

²² Linnekin et al., *supra* note 6, at 36.

²³ See Richard Myrick, *Finally: The National Food Truck Association Is Born*, MOBILE-CUISINE.COM, <http://mobile-cuisine.com/features/finally-national-food-truck-association-born/> [<http://perma.cc/GHK8-3K34>] (last visited Aug. 19, 2015) (describing the organization, board, and future plans of the National Food Truck Association).

²⁴ Information for the New York City Food Truck Association is available at <http://www.nycfoodtrucks.org/> [<http://perma.cc/UY4G-UCWJ>]. According to its website, the NYCFTA has thirty-two members. *Members*, NYCFTA, <http://www.nycfoodtrucks.org/members> [<http://perma.cc/XM3K-4RV4>] (last visited Oct. 22, 2015). It also has at least fifteen organizations and institutions it considers "Friends of Food Trucks" who support the NYCFTA's mission. *Friends of Food Trucks*, NYCFTA, <http://www.nycfoodtrucks.org/friends> [<http://perma.cc/8TAQ-FGC9>]. As of the time of the publication of this Note, New Haven has not created a food truck association.

²⁵ Linnekin et al., *supra* note 6, at 36–37.

²⁶ *Id.* at 53.

²⁷ See *id.* at 51–58 (describing survey responses of food truck associations in which the associations listed brick-and-mortar restaurants and state restaurant associations as two of their biggest obstacles).

²⁸ See *id.* at 41 (stating that mobile food vending is governed primarily by local regulations).

²⁹ See Michael R. Lasserre, Comment, *Location, Location, Location—The Food Truck's Battle for Common Ground*, 44 CUMB. L. REV. 283, 288 (2014) (referring to the "relatively barren landscape of challenges to street vending and food truck regulations"). Furthermore, any chances of food truck operators' bringing a successful Equal Protection claim, see U.S. CONST. amend. XIV, § 1, is unlikely because "the Court upholds most local regulations affecting business and employment concerns under a version of the rational basis test." *Id.* Since 1937—post "*Lochner* era"—the U.S. Supreme Court has not viewed the right to contract as fundamental, thereby "lowering the level of judicial scrutiny applied in business contexts." *Id.*

York and New Haven are in a position to reevaluate existing city policies and establish new rules. In doing so, the goals of these cities—though they must be tailored to the size and culture of each urban setting—are not immediately obvious and must be established through careful investigation and public debate.

This Note argues that city policies should support the pillars of the community—established brick-and-mortar restaurants—while still providing growth and opportunity for immigrants and lower-income entrepreneurs through mobile food vending. At first blush, the local regulations governing mobile food vendors and restaurants appear to favor restaurants; but, upon closer examination, they in fact promote unfair competition and, in some situations, unintentionally disadvantage brick-and-mortar restaurants, mobile-food vendors, or the cities as a whole. To demonstrate this, Part II evaluates the process of starting a mobile food business and inquires as to whether the process is appropriate taking into consideration the financial resources and overall sophistication of the individuals engaging in it. Part III examines the tensions, inequalities, and potential discrimination created by local regulations. Part IV then argues—through an analysis of the actual effects of the current regulations—that although both cities’ policies require some tweaking, New York’s regulations are more effective in promoting fair competition between brick-and-mortar restaurants and mobile food vendors, while New Haven’s policies provide more opportunity for mobile food vendors to prosper, sometimes at the expense of brick-and-mortar restaurants.

II. BREAKING INTO THE BUSINESS

As noted above, a benefit, both presently and historically, of mobile food vending is that it provides an opportunity for lower-income and immigrant entrepreneurs to enter the restaurant business without having to make the sizeable investment needed to open a brick-and-mortar restaurant.³⁰ This is especially true in New York and New Haven because of their large immigrant populations.³¹ It would make sense, then, that the process to start a mobile food business would be tailored toward these individuals. However, this process is needlessly confusing, especially to someone who may have recently arrived in the country. At the same time, as the term “gourmet” implies, many of today’s mobile food vendors are

³⁰ See Williams, *supra* note 7, at 707 (“[E]ven today, 95% of New York City street vendors are immigrants, each supporting an average of four or five people domestically or in their homelands.”).

³¹ See *Food Roots: A Short History of Food in New Haven*, FOOD ROUTES, <http://www.newhavenfoodroutes.com/food-roots.html> [<http://perma.cc/9TXK-KAQ9>] (last visited Aug. 20, 2015) (“Aided by more recent waves of immigration from countries like Mexico and the Dominican Republic, [New Haven’s] culinary palate has become and will continue to morph into something more varied, more nuanced, more diverse—something truly special and unique to New Haven.”).

not the typical “working class” vendors that historically operated and frequented food trucks and carts.³² Instead, many of these “nouveau food trucks” target the “privileged middle-class”³³ and are run by already established entrepreneurs who are taking advantage of the mobile food trend to expand their existing businesses rather than simply to survive.³⁴ Taking both potential business owners into consideration, the process of starting a mobile food business should not require one to jump through too many legal hoops. Based on this perspective, New Haven provides the better start-up model for enabling mobile food businesses to succeed.

In both cities, the first steps toward opening a mobile food business are obtaining a license to do business in the city and passing health inspections.³⁵ In New Haven, the process is relatively simple and inexpensive. An entrepreneur must first obtain a vending license from the Building Department’s Permit and License Center by filing an application and paying a \$200 fee.³⁶ Once the application has been submitted, the police department “investigate[s] the applicant’s business . . . to ensure that the proposed vending will not have a negative impact upon the public health, safety or welfare.”³⁷ Upon payment and the completion of the investigation “a license shall be issued to vend in the city streets.”³⁸ In order to receive a license from the health department to sell food, the vendor must complete another application, pay a \$280 fee, and have the mobile food unit inspected by the health department.³⁹ Upon receipt of this license, the mobile food vendor may begin selling food with the understanding that he must renew both licenses by paying a \$200 fee to each department annually,⁴⁰ as well as be prepared for periodic inspection by the health department.⁴¹

³² Hernández-López, *supra* note 14, at 247 n.62.

³³ *Id.*

³⁴ *See supra* note 15 (providing examples of established businesses that have used food trucks).

³⁵ *See infra* Part III (discussing health inspections in each city).

³⁶ NEW HAVEN, CONN., GEN. ORDINANCE §§ 17-11.2(a), 11.6(a), 201 (2015); *see also id.* § 17-11.3 (listing the information the applicant must supply about the business and mobile vending unit in order to receive a license). The application is available at [http://www.cityofnewhaven.com/Business/pdfs/\(BUSINESS%20LICENSE\)%20Vendor%20Yearly.pdf](http://www.cityofnewhaven.com/Business/pdfs/(BUSINESS%20LICENSE)%20Vendor%20Yearly.pdf) [<http://perma.cc/3G8J-T7KR>].

³⁷ *Id.* § 17-11.5.

³⁸ *Id.* § 17-11.6(a).

³⁹ *Id.* §§ 14-13, 14-14; CITY OF NEW HAVEN, ITINERANT VENDOR PACKET (2014) [hereinafter ITINERANT VENDOR PACKET], <http://www.cityofnewhaven.com/Health/pdfs/ItinerantVendorPacketWeb.pdf> [<http://perma.cc/6UVS-URQ9>]. The New Haven Department of Health also requires inspection from the Fire Marshal if the vendor can stand inside the cart or truck. *Id.* Furthermore, the vendor must obtain a Qualified Food Operator certificate if the mobile vendor plans to prepare “[a]ny cooked foods other than boiled hot dogs” *Id.*; *see also infra* Part III.A.1 (discussing classes and certifications for mobile food vendors and restaurant owners in Connecticut).

⁴⁰ *See* NEW HAVEN, CONN., GEN. ORDINANCE § 17-1.13(a) (stating that the term of each license is one year unless otherwise indicated).

⁴¹ *Id.* § 14-15.

In New York, obtaining permits and licenses is a bit more complicated, and these documents play a larger role in the ongoing business of the mobile food unit. The first step a vendor must take is to apply for and obtain a full-term Mobile Food Vendor License (MFVL) from the Department of Health and Mental Hygiene (DHMH).⁴² An MFLV costs a vendor \$50 for the initial two-year term,⁴³ to be renewed every two years thereafter.⁴⁴ Just obtaining an MFVL alone can take two to three months.⁴⁵ Upon receipt of the MFVL, a vendor must then go through the onerous process of obtaining a Mobile Food Vending Permit (MFVP), which authorizes the mobile food unit to park and vend in New York's streets.⁴⁶

DHMH is also responsible for issuing MFVPs to applicants, albeit with limitations. New York law provides that DHMH is not permitted to issue any new permits for city-wide vending until the number of permits in effect is less than 3000.⁴⁷ Currently, there is a waiting list for city-wide MFVPs.⁴⁸ However, "[a]s permit vacancies become available—when current permittees do not renew timely or meet their inspection requirement—[DHMH] sends notification letters to those individuals on [the] existing waiting list[] that they may now apply."⁴⁹ According to vendors, "[o]btaining a food cart or truck permit in one's own name can take a decade or more."⁵⁰ Therefore, in an effort to expedite this process,

⁴² See N.Y.C. ADMIN. CODE § 17-307(a)(1) (2014) ("It shall be unlawful for any individual to act as a food vendor without having first obtained a license therefore from the commissioner . . ."); see also *Mobile Food Vending License*, NYC.GOV [hereinafter *NYC License Instructions*], <https://www1.nyc.gov/nycbusiness/description/mobile-food-vending-license/apply> [<https://perma.cc/9S5M-BVPJ>] (last visited Aug. 20, 2015) (providing instructions on obtaining an MFVL from DHMH). Even before this step, applicants must request and obtain a NYS Certificate of Authority to Collect Sales Tax, which can take about twenty days to receive. *Id.* Also before applying for the license, the applicant must pass an eight-hour Food Protection Course for Mobile Vendors with a registration fee of \$53. *Id.*

⁴³ NYC HEALTH, MOBILE FOOD VENDING LICENSE/PERMIT FEES (2013), http://www.nyc.gov/html/doh/downloads/pdf/permit/mfv_application_forms_package.pdf [<http://perma.cc/ZC7X-KHXZ>].

⁴⁴ N.Y.C. ADMIN. CODE § 17-307(e).

⁴⁵ See Joyce Iam, *What's It Take to Become a Food Vendor in NYC?*, UNTAPPED CITIES (July 11, 2013, 9:00 AM), <http://untappedcities.com/2013/07/11/whats-it-takes-to-become-a-food-truck-vendor-in-nyc/> [<http://perma.cc/WH3U-GTHS>] (referencing this lapse in time as one of the challenges aspiring operators face in obtaining a license).

⁴⁶ *Id.*

⁴⁷ N.Y.C. ADMIN. CODE § 17-307(b)(2)(a). Of the 3000 full-term permits allowed, 200 shall be allotted to each of the following boroughs: Bronx, Brooklyn, Queens, and Staten Island. *Id.* §§ 17-307(2)(b)(i)(A)(A)–(D).

⁴⁸ N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, NEW MOBILE FOOD VENDOR PERMIT CHECKLIST (2011) [hereinafter *NYC PERMIT CHECKLIST*], http://www.nyc.gov/html/doh/downloads/pdf/permit/mfv_permit_appl.pdf [<http://perma.cc/H52Y-L8MS>].

⁴⁹ *Id.*

⁵⁰ Sumathi Reddy, *Prices for Food-Cart Permits Skyrocket*, WALL ST. J. (Mar. 9, 2011, 12:01 AM), <http://www.wsj.com/articles/SB10001424052748704758904576188523780657688> [<http://per>

two alternatives have evolved.

The first alternative is to apply for a “restricted area” permit with DHMH. This permit authorizes a mobile food vendor to conduct business on “private property in a commercially-zoned area or on property under the jurisdiction of the New York City Department of Parks & Recreation,” rather than on New York public streets.⁵¹ A mobile food vendor must establish a contract or lease with the New York City Department of Parks and Recreation or the owner or building manager of some other private property in order to vend from that location.⁵² Once an agreement is reached, the mobile food vendor can present the agreement and apply for a restricted MFVP without delay.⁵³ However, even this option is not readily available because it can be difficult to actually secure an agreement. For example, the Parks and Recreation Department issues only about 200 total permits for its property, and those 200 permits are awarded “through a competitive solicitation process.”⁵⁴

Another closely related alternative that DHMH condones but does not necessarily promote is “apply[ing] for an [MFVL] and work[ing] someone else’s permitted cart or truck.”⁵⁵ While this alternative is legal, pursuing it can lead a desperate mobile food vendor to illegal actions. The reality is that “[t]he city’s competitive street food culture has created a thriving black market” for MFVPs.⁵⁶ In this black market, individuals who have MFVPs will transfer or rent out the non-transferable⁵⁷ permits to other vendors for up to \$20,000.⁵⁸

There is, however, a major caveat to both of these alternatives. DHMH charges only \$200 for the initial permit and for renewal every two years after that.⁵⁹ However, besides the expensive black market option, the price

ma.cc/Z2KT-GYWY]. As of 2011, there were 2,080 people on the waiting list for a citywide MFVP. *Id.*

⁵¹ NYC PERMIT CHECKLIST, *supra* note 48.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Reddy, *supra* note 50.

⁵⁵ NYC PERMIT CHECKLIST, *supra* note 48; *see also, e.g.*, Corey Kilgannon, *2 Carts Roll In, Shattering a Dirty-Water Détente*, N.Y. TIMES, Sept. 29, 2011, at A25 (featuring an example of the licensee-permittee partnership). Throughout the city there are partnerships in which one individual has access to an MFVP and is responsible for “handling the licensing and administrative issues,” including any parking citations and summonses. *Id.* The other individual will have the MFVL (i.e., the individual who applied and took the class) and be responsible for the food sales. *Id.* Despite this arrangement, the permittee and the permit itself must remain with the unit during hours of operation. *Id.*

⁵⁶ Reddy, *supra* note 50.

⁵⁷ *See* N.Y.C. ADMIN. CODE § 17-314.1(a) (2014) (“No license, permit or plate issued under this subchapter shall be assignable or transferable.”).

⁵⁸ *Iam, supra* note 45.

⁵⁹ *See* NYC PERMIT CHECKLIST, *supra* note 48 (providing that the full-term, two-year permit costs \$200) and N.Y.C. ADMIN. CODE § 17-307(e) (“All licenses and permits issued pursuant to this subchapter shall be valid for two years unless sooner suspended or revoked.”).

of partnering up or leasing a restricted area MFVP can become quite costly. For example, some mobile food vendors pay the Parks and Recreation Department upwards of \$100,000 per year to operate at the most coveted tourist locations in the city.⁶⁰ Similarly, the partnership system often blurs into an illegal transaction in which the permittee may begin negotiating with and ultimately strong-arm the licensed partner into paying exorbitant rates for use of the MFVP.⁶¹

That being said, once an applicant determines his permit approach and is eligible to apply for the MVFP—restricted or not—he must submit the fee, application, and evidence of the previously received MFVL.⁶² Upon notification of receipt of the application, the applicant must arrange an inspection of the mobile vending unit by DHMH.⁶³ Once the MFVP is obtained, the mobile food vendor may begin vending in the locations at which he is authorized to do so.

Overall, both cities follow similar procedures, and the costs for the actual application and renewal process are comparable. However, while it makes sense that New York’s system would be more complex due to the population of mobile food vendors and the crowding in the city as compared to New Haven, the process does not make it easy for newcomers and immigrants to break into the business. In fact, the licensing process practically encourages unconventional—and even illegal—alternatives that can have long-lasting effects on a vendor’s business.

III. THE LAWS OF THE LANDS

Anti-vendor sentiment is based primarily on two grounds: (1) public health and safety and (2) unfair competition with brick-and-mortar restaurants. This Part addresses specific concerns presented by the pro-vendor and anti-vendor advocates and evaluates whether the existing regulations in New York and New Haven discriminate between mobile food vendors and fixed restaurants or instead attempt to level the playing field.

A. *Public Health and Safety*

The public health and safety concerns that mobile food vendors present are congested streets, sidewalks, and public areas; unsanitary environments

⁶⁰ See Reddy, *supra* note 50 (“In fiscal year 2010 the highest amount paid for a permit was about \$144,000 for a cart at the south entrance to the Central Park Zoo.”); Kilgannon, *supra* note 55 (stating that some carts pay the city about \$100,000 per year to operate outside the Metropolitan Museum of Art).

⁶¹ See, e.g., Reddy, *supra* note 50 (describing a situation in which a partnership turned into a renting relationship when another operator was willing to pay \$15,000 a year for the permit).

⁶² NYC PERMIT CHECKLIST, *supra* note 48.

⁶³ N.Y.C. ADMIN. CODE § 17-307(b)(2)(d).

as a result of litter and food debris; and, in general, noise and disruption to the community.⁶⁴ The most serious accusations leveled against mobile food vendors are of unsafe and unsanitary food preparation as a result of trucks' lacking "the same cooking, disposal, and storing services that fixed restaurants do."⁶⁵ In response to these arguments, vendors point out that they are subject to an equal number of regulations if not more when compared to brick-and-mortar restaurants.⁶⁶ However, while mobile food vendors are indeed subject to many of the same training standards as brick-and-mortar restaurants, restaurants are subject to a disproportionately high standard for maintaining the area in which food is prepared and served.⁶⁷

1. *New Haven*

Under the New Haven Code of Ordinances, mobile food vendors are subject to two sets of rules. Chapter 14 focuses on "Food-Service and Restaurant Establishments," which include both brick-and-mortar restaurants and mobile food vendors.⁶⁸ Yet, there is also Article XI of Chapter 17, which focuses on "Vendors" as a general class.⁶⁹ Furthermore, Chapter 14 adopts the sections dealing with "Itinerant food vending"⁷⁰ and "Sanitation of places dispensing foods or beverage"⁷¹ from Chapter II of the Public Health Code of the State of Connecticut (CT Health Code).⁷²

In looking at the CT Health Code, it is clear that mobile food vendors are indeed held to as high a standard as restaurant owners in several respects. The CT Health Code provides definitions of four classes of itinerant food vending establishments and food service establishments.⁷³

⁶⁴ Hernández-López, *supra* note 14, at 238.

⁶⁵ *Id.*

⁶⁶ *See id.* at 239–40 (stating that food trucks must comply with relevant vehicle and health codes and that food truck owners may incur incidental costs that restaurants do not).

⁶⁷ This Note proceeds under the notion that a mobile food vendor does not also own a restaurant at which the vendor prepares the food served to customers. For that reason, the discussion on public health focuses on the sanitation required from food trucks rather than food carts.

⁶⁸ *See* NEW HAVEN, CONN., GEN. ORDINANCE § 14.1-1(a) (2015) (defining "[f]ood-service or restaurant establishment" as, inter alia, "[a]ny premises or areas where food or beverages, or both, are prepared and sold or otherwise distributed to the public for consumption on, about or off such premises" and "[a] truck, automobile, pushcart or other vehicle from which food or beverages are dispensed, which vehicle has no fixed location and has not [sic] permanent connection to water supply and sewage disposal systems").

⁶⁹ *See id.* § 17-11.1 (defining "[v]endor" as "[a]ny person who engages in selling or bartering, or carrying for sale or barter, or exposing therefor, any goods, wares or merchandise, either on foot or from any animal or vehicle").

⁷⁰ CONN. AGENCIES REGS. § 19-13-B48 (2013).

⁷¹ *Id.* § 19-13-B42.

⁷² NEW HAVEN, CONN., GEN. ORDINANCE § 14.1.

⁷³ *See* CONN. AGENCIES REGS. §§ 19-13-B48(j)(2), 19-13-B42(s)(3) (defining classes I–IV). For the remainder of this Note, the reader shall assume that the discussion is limited to Class III ("[An] establishment having on the premises exposed potentially hazardous foods that are prepared by hot processes and consumed by the public within four (4) hours of preparation.") and Class IV ("[An]

For both business models, the classes are defined the same way.⁷⁴ Also, a necessary inconvenience that all Connecticut restaurant owners and mobile food vendors alike must obtain is a “Qualified Food Operator” certification.⁷⁵ Usually the owner of the business will obtain this certificate by attending a class on food safety and passing a test.⁷⁶ Thus, the owners of both brick-and-mortar restaurants and mobile food vendors are held to the same standard in terms of training.

As far as inspections are concerned, the scheduling of inspections for each class are also the same for both brick-and-mortar restaurants and mobile food vendors.⁷⁷ Further, the score needed to pass—80 out of 100—is also the same.⁷⁸ However, despite these largely identical regulations, restaurants are required to comply with a host of additional requirements. On one hand, this is intuitive because a food truck—and certainly a food cart—is smaller than a brick-and-mortar restaurant and does not provide the same services. On the other hand, in both business models and in both venues, food is prepared, stored, and served to consumers. In this sense, the expectations should not vary greatly—yet they do. This tension is particularly evident in the areas of garbage disposal and running water.

The CT Health Code requires that restaurants keep all garbage and rubbish containing food waste in a “leak-proof, nonabsorbent container which shall be kept covered with tight fitting lids All other rubbish shall be stored in containers, rooms or areas in a manner approved by the director of health.”⁷⁹ Moreover, these containers and locations must “be adequate for the storage of all the food waste and rubbish accumulating on the premises[,] . . . and each container, room or area shall be thoroughly cleaned after emptying or removal of garbage and rubbish.”⁸⁰ It would seem that mobile food vendors, especially food truck vendors, who also store and prepare food in their vehicles, should be held to the same standard. However, there is no provision in the CT Health Code regarding garbage storage or disposal for itinerant food vendors. The only regulation regarding refuse for mobile food vendors can be found in the New Haven

establishment having on the premises exposed potentially hazardous foods that are prepared by hot processes and held for more than four (4) hours prior to consumption by the public.”) itinerant food vendors and restaurants. *Id.* § 19-13-B48(j)(2)(B).

⁷⁴ See *id.* for definitions of the classes.

⁷⁵ *Id.* §§ 19-13-B48(j)(3), 19-13-B42(s)(4). This is assuming that both the restaurant and the mobile food conveyance are classified as Class III or Class IV establishments pursuant to sections 19-13-B48(j)(2) and 19-13-B42(s)(3).

⁷⁶ *Id.*

⁷⁷ See *id.* §§ 19-13-B48(l), 19-13-B42(t) (stating that Class III establishments shall be inspected within every 120 days and that Class IV establishments shall be inspected within every ninety days).

⁷⁸ Compare *id.* § 19-13-B48(m) (showing the requirements and inspection rubric used), with *id.* § 19-13-B42(u) (showing the same requirements and inspection rubric).

⁷⁹ *Id.* § 19-13-B42(l).

⁸⁰ *Id.*

Code, which states that “[e]ach conveyance used for street vending shall be equipped with a trash container affixed to it for disposing of trash, litter, garbage, refuse and other waste connected with the vending operation,” and that the vendor must “pick[] up and remov[e] all trash and refuse remaining from his sales.”⁸¹

Issues associated with running water in food establishments (e.g., toilets, hand washing, and dishwashing) also impose a heavier burden on brick-and-mortar restaurant owners than mobile food vendors. Again, brick-and-mortar restaurants are in a position to offer customers amenities that a mobile food unit cannot—for example, restrooms. Therefore, restaurants must be required to conform to the health department’s requirements for maintaining restrooms used by customers.⁸² While brick-and-mortar restaurants are not required to provide restrooms to the public, they must provide an “adequate, conveniently located” restroom for their employees with toilet paper and “[e]asily cleanable receptacles.”⁸³ Further, they must provide conveniently located hand-washing facilities with cleansing soap and disposable towels for after use of the restroom⁸⁴ and in conjunction with food preparation and dispensation.⁸⁵ Restaurants then must verify that its water supply is from an approved water source,⁸⁶ and hot and cold water must be supplied, at specific temperatures, in areas where food is prepared or dishwashing occurs.⁸⁷

In comparison, mobile food vendors are not held to any of the standards mentioned above despite the fact that they have employees—sometimes more than one—manning a truck or cart, and that these employees prepare and dispense food from the unit. Also, nowhere in the CT Health Code are mobile food vendors required to provide running water or park a certain distance from a public restroom; yet it does require that employees—like employees of any food service establishment—“thoroughly” wash their hands at “an approved handwashing facility” after using the restroom and before returning to work.⁸⁸ While working from a mobile vending unit does provide limitations, New Haven’s regulations should fill in the blanks to hold all food preparers and servers to the same

⁸¹ NEW HAVEN, CONN., GEN. ORDINANCE § 17-11.8(a)–(b) (2015).

⁸² See CONN. AGENCIES REGS. §§ 19-13-B105–B113 (2013) (providing requirements for toilet and handwashing facilities available to the public).

⁸³ *Id.* § 19-13-B42(f).

⁸⁴ *Id.* § 19-13-B42(f), (g).

⁸⁵ *Id.* § 19-13-B42(h).

⁸⁶ *Id.* § 19-13-B42(g).

⁸⁷ See *id.* (“Hot water . . . shall be maintained at a temperature of [110] degrees F. through a mixing valve or combination faucet.”). Furthermore, “[i]ce used for any purpose shall be made from water which comes from an approved source; and shall be used only if it has been manufactured, stored, transported, and handled in a sanitary manner.” *Id.*

⁸⁸ *Id.* § 19-13-B48(f); see also *infra* Part IV (discussing mobile food vendors’ use of brick-and-mortar restaurant restrooms and running water).

standards, and encourage mobile food vendors to be self-sufficient as New York's regulations do.

2. New York City

New York, meanwhile, presents almost the reverse controversy between brick-and-mortar restaurants and mobile food vendors. For the most part, New York's laws and regulations do a better job than New Haven's of leveling the playing field between mobile food vendors and restaurants vis-à-vis sanitation and public health requirements. Again, while there will always be some difference in the regulation of both business models—mostly as a result of the limited working space and resources available to mobile food vendors—a significant point of contention is whether New York food carts and trucks should be evaluated under New York's well-known ABC health inspection grading system.

In response to the reawakening and reinvigoration of the mobile food industry, in 2008 the New York City Board of Health repealed and recodified the article of the New York City Health Code (NYC Health Code) regulating mobile food vendors.⁸⁹ This article became effective in 2010 as Chapter 6 of Title 24 of the Rules of the City of New York (RCNY).⁹⁰ The RCNY also provides the rules for “food service establishments” in Chapter 23 of Title 24 and explicitly excludes mobile food vending units.⁹¹ However, unlike the CT Health Code, the food preparation regulations for mobile food vendors and brick-and-mortar restaurants are not separated into two different sections of the code. Rather, they are both discussed in Article 81 of the NYC Health Code and are thus held to identical standards.⁹² Additionally, Article 89 of the NYC Health Code provides additional public health requirements and tailors Article 81's requirements to mobile food units. Through Article 89, it is evident that New York holds mobile food vendors to a higher standard in terms of sanitation and water supply than New Haven does.

First, as in New Haven, New York mobile food vendors must collect and store “garbage, refuse and other solid and liquid wastes” at the mobile

⁸⁹ See N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, NOTICE OF ADOPTION OF THE REPEAL AND REISSUANCE OF CHAPTER 6 OF TITLE 24 OF THE RULES OF THE CITY OF NEW YORK (2013), <http://www.nyc.gov/html/doh/downloads/pdf/notice/2013/noa-chapter6.pdf> [<http://perma.cc/R5KU-YDE2>] (providing background of Article 89 of the NYC Health Code). In response to the recodification of Article 89 of the NYC Health Code, 24 R.C.N.Y. ch. 6 was repealed and replaced with an amended Chapter 6 in accordance with Article 89. *Id.*

⁹⁰ *Id.*

⁹¹ 24 R.C.N.Y. § 23-01 (2015).

⁹² For example, in New Haven, kitchens must comply with requirements concerning the composition and cleanliness of floors, ceilings, and wall surfaces. CONN. AGENCIES REGS. §§ 19-13-B42(b)–(d). Yet section 19-13-B48 of the Code does not state that food trucks in which food is stored and prepared must comply by these same regulations.

vending unit.⁹³ The RCNY then specifically provides that the waste may not be disposed of in a public litter basket or on the streets, but rather at some facility authorized by DHMH.⁹⁴ New York attempts to make mobile food units self-sufficient and more comparable to a brick-and-mortar restaurant by requiring that any mobile food vending unit that processes food within it must have a potable water supply tank of at least ten gallons and a wastewater tank with a greater storage capacity than the potable water tank.⁹⁵ In conjunction with this rule, the RCNY requires that these units also have sinks that supply hot and cold water and are “large enough to accommodate the largest piece of equipment to be cleaned therein.”⁹⁶

Another public health precaution—and controversial cost—for mobile food vendors in New York is the requirement of servicing the mobile vending units at one of the city’s approved “commissaries” on a daily basis.⁹⁷ A commissary is a facility at which mobile food vendors receive any of the following services:

- (1) Storage of the unit when the unit is not being used for vending;
- (2) Cleaning and sanitizing of the unit;
- (3) Cleaning and sanitizing of the equipment and utensils used on a unit;
- (4) Disposing of liquid and solid wastes and refuse generated by the operation of a unit; or
- (5) Supplying of potable water and food, whether pre-packaged by the manufacturer, or prepared at the commissary, and furnishing of non-food supplies.⁹⁸

New York is able to enforce daily visits to the commissaries by requiring permittees to provide “proof satisfactory to [DHMH] that the mobile food vending unit is supplied and serviced at a mobile food commissary permitted by the Commissioner, or other facility approved by [DHMH]” in order to obtain or renew permits.⁹⁹ Commissaries must also maintain records of the mobile food units it services, should DHMH need to conduct an investigation regarding a particular mobile food unit or vendor.¹⁰⁰

While the commissary requirement can be considered a benefit to mobile food vendors who do not have the resources to properly care for

⁹³ 24 R.C.N.Y. § 6-08(a).

⁹⁴ *Id.*

⁹⁵ *Id.* § 6-01(k).

⁹⁶ *Id.*

⁹⁷ See N.Y.C. HEALTH CODE § 89.19(1) (2015) (“All mobile food vending units shall be cleaned and serviced at least daily at a mobile food commissary or other facility approved by the Department.”).

⁹⁸ *Id.* § 89.03(f).

⁹⁹ *Id.* § 89.05(a)(2).

¹⁰⁰ *Id.* § 89.27(b).

their mobile food units themselves, some consider the requirement unduly burdensome for the mobile food vendors who wish to service and store their mobile food units on their own property.¹⁰¹ The latter view prevails in the food truck industry.¹⁰² The belief is that commissaries have created an oligopoly as a result of the “city-mandated stream of business.”¹⁰³ This belief is further supported by the reality that some “commissary owners make a bit extra by acting as informal brokers, facilitating the not-quite-legal trade of [non-transferable] permits.”¹⁰⁴

Mobile food vendors may be unfairly burdened by the requirement that they service their vehicles at commissaries, but they do receive quite favorable treatment as compared to brick-and-mortar restaurants when it comes to health inspections. Similar to the CT Health Code, the NYC Health Code requires that owners or managers of brick-and-mortar restaurants as well as mobile food units pass a food protection course.¹⁰⁵ However, this is where the similarities end. In 2010, DHMH began a new ABC grading health inspection regime for New York’s over 24,000 restaurants.¹⁰⁶ Under the new system, each annual health inspection results in a grade of A, B, or C based on the restaurant’s compliance with or violations of food handling, food temperature, personal hygiene, and vermin control regulations.¹⁰⁷ Once the restaurant owner receives the grade, he or she must post the grade card (printed and distributed by DHMH) in a “conspicuous place where it is visible to passersby.”¹⁰⁸

¹⁰¹ A solution may be for a mobile food vendor to open a commissary. Commissaries must provide any of the above listed services to at least one mobile food unit. *Id.* § 89.03(f). They must also be:

[M]aintained and operated in accordance with this article, Article 81 of th[e] Code . . . and Chapter 23 of Title 24 of the [RCNY], and shall not create or maintain a nuisance with respect to the health or safety of any consumer or the public because of the condition of the mobile food vending unit, its equipment, utensils, personnel, mode of operations, vending location, water supply, liquid and solid waste and sewage disposal, food and appurtenances.

Id. § 89.27(a).

¹⁰² See, e.g., Adam Davidson, *The Food-Truck Business Stinks*, N.Y. TIMES MAG. (May 7, 2013), http://www.nytimes.com/2013/05/12/magazine/the-food-truck-business-stinks.html?pagewanted=all&_r=0 [<http://perma.cc/5VYP-VVLY>] (referring to the commissary business as the result of NYC’s “illogical and arbitrar[y]” enforcement of rules creating “the wrong set of incentives.”).

¹⁰³ *Id.*

¹⁰⁴ See *id.* (suggesting that the profit can reach up to \$15 million a year); see also *supra* Part II (describing the MFVP black market that has developed).

¹⁰⁵ N.Y.C. HEALTH CODE §§ 81.15, 89.07(b).

¹⁰⁶ N.Y.C. DEP’T OF HEALTH & MENTAL HYGIENE, HOW WE SCORE (2012), <http://www.nyc.gov/html/doh/downloads/pdf/rii/how-we-score-grade.pdf> [<http://perma.cc/2LSD-RKEV>].

¹⁰⁷ *Restaurant Inspection Results (Letter Grades)*, NYC HEALTH, <http://www.nyc.gov/html/doh/html/services/restaurant-inspection.shtml> [<http://perma.cc/TR9H-M9MN>] (last visited Aug. 21, 2015).

¹⁰⁸ 24 R.C.N.Y. § 23-07(f).

Initially, in addition to the requirement that grades be posted publicly, restaurants—even those that received A’s—were assessed fines for any violation of the NYC Health Code.¹⁰⁹ Then, in 2011, Mayor Michael Bloomberg announced a new policy to further incentivize restaurants to do well on inspections. Upon receiving an A (either in the initial inspection or in a re-inspection), the city eliminated all fines.¹¹⁰ Currently, the fines for violations discovered during an inspection (including a re-inspection where an A is not achieved) will cost a restaurant anywhere between \$200 and \$1000 per violation.¹¹¹

While brick-and-mortar restaurants are scrutinized under this potentially costly system,¹¹² food trucks and carts are not.¹¹³ In the case of food carts, the public can see the handling of food just as well as they could a grade card. However, the same does not apply to food trucks in which the food preparation and cooking area is at least partially concealed from view of customers. Despite this, food trucks and carts are inspected only prior to obtaining a permit¹¹⁴ and re-inspected after undergoing any “repair or alteration at any time after a pre-permit inspection.”¹¹⁵ Nevertheless, like brick-and-mortar restaurants, mobile food vendors are fined for violations of the NYC Health Code, the state sanitary code, the RCNY, and the city’s Administrative Code.¹¹⁶ Although both brick-and-mortar restaurants and mobile food units are both inspected and fined for violations in some manner, the inspection process for brick-and-mortar restaurants is disproportionately burdensome when compared to that of mobile food units—especially when considering that food trucks present the same cooking-space concerns and serve customers with the same foods

¹⁰⁹ N.Y.C. DEP’T OF HEALTH & MENTAL HYGIENE, RESTAURANTS THAT ACHIEVE A GRADES AT THE TIME OF INSPECTION ARE NO LONGER SUBJECT TO FINES FOR SANITARY VIOLATIONS (2012), <http://www.nyc.gov/html/doh/downloads/pdf/rii/restaurant-grading-penalty-relief-faq.pdf> [<http://perma.cc/WA5X-P2TL>].

¹¹⁰ *Id.*

¹¹¹ 24 R.C.N.Y. ch. 23 app’x, <http://www.nyc.gov/html/doh/downloads/pdf/rii/ri-violation-penalty.pdf> [<http://perma.cc/UPS9-UBXP>]. In addition to these “scored violations,” restaurant owners may also be hit with “unscored violations” that can exceed \$1,000 per violation. *Id.* These “unscored violations” are mostly violations of the City’s Administrative Code and involve issues such as smoking in food service establishments, sale of alcohol to minors, and employing underage individuals. *Id.*

¹¹² See *infra* Part IV (discussing inconsistencies of and litigation arising from the ABC grading system).

¹¹³ Some states and cities do require that food trucks post their most recent inspection grade, e.g., North Carolina and Los Angeles County. Karen Cicero, *Are Food Trucks Safe?*, HEALTH (Mar. 1, 2013), <http://www.health.com/health/article/0,,20680532,00.html> [<http://perma.cc/VL4L-QG9N>].

¹¹⁴ See 24 R.C.N.Y. § 6-01(c)(1) (2015) (“No mobile food unit permit . . . shall be issued without a pre-permit inspection of the unit by the Department and its determination that the unit is of sanitary construction and design, equipped with adequate and sufficient facilities to properly handle and store the foods being vended . . .”).

¹¹⁵ *Id.* § 6-01(c)(2).

¹¹⁶ *Id.* § 6-05(b).

as brick-and-mortar restaurants.¹¹⁷

B. *Unfair Competition*

Brick-and-mortar restaurants and other mobile vendor opponents argue that mobile food vendors have an unfair advantage because they “do not have to pay rent or own a locale, do not hire staff to serve and attend to customers and eating areas, and have the ability to re-locate operations when consumers move.”¹¹⁸ Furthermore, many brick-and-mortar restaurants feel that mobile vendors violate communal rules about how to conduct business—something that is, in part, evident from the “ethical problem of trucks [and carts] parking near them.”¹¹⁹

To counter this perspective, mobile vendor advocates argue that this stance ignores the fact that consumers should, in a free market, have the opportunity to choose, and assumes that if consumers were not spending their money at a food truck they would be spending it at a restaurant.¹²⁰ Additionally, mobile food vendors contest charges of unfair competition because they believe they are a “distinct supply market” and offer consumers convenience and, frequently, better prices.¹²¹ Generally speaking, there is a sentiment among restaurant owners that mobile food vendors “violate local business culture.”¹²² However, mobile food vendors counter that this view is a result of restaurants’ not being able to accept different business models as valid competitors.¹²³ Thus, it may simply be that “[r]estaurant complaints [about mobile food vendors] invariably reflect their own economic frustrations, consequent to overhead and finicky eater demands.”¹²⁴ Mobile food vendors also refer to their own unique disadvantages when responding to charges of unfair competition.¹²⁵ First, working from mobile units on streets and sidewalks exposes food truck or

¹¹⁷ See *infra* Part IV (discussing implications of mobile food unit inspections and fines). In 2011, the City Council, with the support of Mayor Bloomberg, had a bill in committee that would subject carts and trucks to the same inspection process as restaurants. Sumathi Reddy, *Bloomberg: Food Trucks, Carts Should Get Grades Too*, WALL ST. J. (Aug. 1, 2011, 2:58 PM), <http://blogs.wsj.com/metropolis/2011/08/01/bloomberg-food-trucks-carts-should-get-grades-too/> [http://perma.cc/CD9C-NLWC]. Ultimately this bill did not pass and, despite continuing public debate over the matter, there have not been any changes to the mobile food inspection process. DHMH holds the position that it is considering alternatives, but “[t]o do a letter-grading system for carts [and trucks] is more complicated than it is for restaurants because they’re not always out [in the street and in the same location].” *Id.* However, DHMH believes that the systems are “very, very similar.” *Id.*

¹¹⁸ Hernández-López, *supra* note 14, at 238.

¹¹⁹ *Id.* at 259.

¹²⁰ *Id.* at 259–60.

¹²¹ *Id.* at 260.

¹²² *Id.* at 259.

¹²³ See *id.* at 259–60 (“Restaurant chains, corporate retailers, and coffee shops are permitted to operate close to each other . . . without claims of either being unfair.”).

¹²⁴ *Id.* at 260.

¹²⁵ *Id.* at 239.

cart owners and their employees to street elements (e.g., inclement weather, crime, harassment)¹²⁶ that they would not face in a brick-and-mortar restaurant.

Other potential liabilities that mobile food vendors face result from being transient. For one, because food trucks and carts may travel between jurisdictions, they may have to comply with varying legal requirements. As a business that moves, mobile food vending may require licenses in multiple local jurisdictions¹²⁷ and suffer discriminatory tax consequences.¹²⁸

Another challenge of mobility is the necessity of responding to and considering the different consumers mobile vendors serve. A mobile food vendor may be limited in its advertising and the products it offers if it travels between public and private property. In *Wandering Dago, Inc. v. New York State Office of General Services*,¹²⁹ the defendant denied a food truck owner's application to participate as a vendor in the 2013 Empire State Plaza Summer Outdoor Lunch Program in Albany because the food truck's name—Wandering Dago—was of a “perceived offensive nature.”¹³⁰ The owners of Wandering Dago, Inc. claimed that the denial violated both state and federal rights to free speech and equal protection.¹³¹ The district court held that the business name was a form of expressive speech that would be protected under the First Amendment.¹³² Speech receives its strongest protection in the “traditional public fora,” and any restrictions on speech would be subject to strict scrutiny.¹³³ However, mobile food vendors must be aware that there are other categories of public fora—the “designated public forum” and the “limited public forum”—in which any freedom of speech claim may not be evaluated

¹²⁶ *Id.*; see also, e.g., *Diggs v. Conway*, No. 09 Civ. 08219 (NRB), 2010 WL 3069641, at *1 (S.D.N.Y. July 30, 2010) (describing the robbery of a food cart operator on Park Avenue in Manhattan at 3:30 p.m. in which more than \$1,000 cash was stolen).

¹²⁷ Hernández-López, *supra* note 14, at 261.

¹²⁸ Mobile food vendors are often accused of not paying taxes as a result of the current tax system in states like California. Linnekin et al, *supra* note 6, at 46. In southern California, mobile vendors will pay taxes to counties who then apportion those taxes back to cities based on a pro-rata formula. *Id.* In turn, the transitory nature of mobile vendors makes it difficult to measure the taxes paid by mobile vendors and giving off the impression that mobile food businesses pay different tax rates. *Id.* The Southern California Mobile Food Vending Association is currently developing a Mobile Vendor's Bill of Rights to, in part, “establish a baseline for fair treatment of . . . mobile vendors across the country.” *Id.* at 56. One of its model regulations is to shift taxation from the indirect (county) model to the direct (city) model. *Id.* This would “eliminate the hidden revenue element.” *Id.* at 57.

¹²⁹ 992 F. Supp. 2d 102 (N.D.N.Y. 2014).

¹³⁰ *Id.* at 107.

¹³¹ *Id.* at 112. The Equal Protection claim was made under a selective enforcement theory. *Id.* at 127.

¹³² *Id.* at 116.

¹³³ *Id.*

under strict scrutiny.¹³⁴ Practically speaking, the location to which a vendor brings his food truck may have an effect on the business's name, logo, or marketing strategy.

Finally, the issue that seems to create the most trouble for mobile food—and which results in the most significant source of tension between mobile food and restaurants—is finding an appropriate location to set up the vending unit. Vendors must take multiple factors into consideration when selecting its business location, including protectionist laws, parking and safety regulation, and foot traffic of potential customers.

1. *New Haven*

In New Haven, all mobile food vendors are permitted to vend throughout the city, except in residential districts,¹³⁵ between the hours of 7:00 a.m. and 10:00 p.m. unless otherwise stipulated in a vending agreement for specially designated areas of the city.¹³⁶ Of course, both food carts and trucks must also abide by the city's traffic laws and not block driveways, crosswalks, or entry or exit-ways,¹³⁷ and must park at least twenty feet from a fire hydrant¹³⁸ or emergency call box.¹³⁹

Also applicable to both food carts and food trucks are the city's "protectionist" laws. To protect brick-and-mortar restaurants, there is a requirement that "no street vendor shall stop, stand, park, place or allow his [mobile vending unit] to be closer than fifty (50) feet from any business selling similar items."¹⁴⁰ When combined with the difficulties in finding street parking, these laws could be viewed as intentionally anti-mobile vendor. However, in comparison to other cities, New Haven's fifty-foot rule is not particularly harsh. For example, in Chicago, it is illegal to operate within 200 feet of the entrance of any brick-and-mortar restaurant except between the hours of 12:00 a.m. and 2:00 p.m.¹⁴¹ Furthermore, New

¹³⁴ *Id.* at 116–17. The court did not answer the underlying issue of equal protection because it was unable to establish whether the forum in question was the Empire State Plaza or the 2013 Empire State Plaza Outdoor Summer Lunch Program. *Id.* at 123.

¹³⁵ NEW HAVEN, CONN., GEN. ORDINANCE § 17-11.8(h) (2015).

¹³⁶ *Id.* § 17-11.8(g). Furthermore, "[n]o street vendor shall leave any [cart] unattended during hours engaged in sales, nor shall any [cart] be left on the sidewalk overnight." *Id.*

¹³⁷ *See id.* § 17-11.8(d) ("Street vending or sidewalk sales shall not be conducted in front of the entrance or exit to any building or driveway, in front of any mailbox or traffic signal, or within any bus stop or loading zone.").

¹³⁸ *Id.* § 17-11.8(e).

¹³⁹ *Id.* § 17-11.8(d).

¹⁴⁰ *Id.* § 17-11.8(j). There is no evidence of a debate as to what constitutes a "similar item."

¹⁴¹ CHI., ILL. MUN. CODE § 7-38-115(f) (2015). "The fines for violating the 200 foot rule are up to \$2,000—ten times higher than for parking in front of a fire hydrant. And to enforce the 200 foot rule, the city is making food trucks install GPS tracking devices that broadcast their every move." *Chicago Food Truck Entrepreneurs File Lawsuit Against City, Join National Street Vending Initiative*, 22 TLC MAG. No. 2 (2013), http://www.tlc-mag.com/archive_issues/food_trucks_feb13.html [<http://perma.cc/6GL5-HJDG>].

Haven's protectionist laws protect mobile food vendors' business as well; mobile food vendors must also stay at least fifty feet from other mobile vendors.¹⁴² On the one hand, it can be argued that mobile food vendors should not receive an equal benefit from the protectionist laws because they have the exclusive benefit of relocating upon the arrival of competition or other changes to the conditions of their location that may potentially affect business (e.g., changes in traffic patterns, local construction). Restaurants, on the other hand, arguably merit more protection from competition with mobile food units because they cannot relocate easily if competition or other conditions negatively affect their business.

This argument, however, is not intended to minimize the difficulties that mobile food units face in finding a location to vend. After making sure that they are not within fifty feet of any restaurants or other mobile food vendors, food carts must make sure that they are "fully within the boundaries of the paved sidewalk surface" and that they are not interfering with pedestrian or vehicular traffic.¹⁴³ Furthermore, they must be "positioned to allow an unobstructed pedestrian walkway at least four feet in width;" otherwise, vending is prohibited in that location.¹⁴⁴ Meanwhile, food trucks in downtown New Haven must fight for one or two-hour metered parking spots on the street.¹⁴⁵ In addition to squeezing into small parking spots, food trucks must keep change in the meter while at the same time risking parking tickets if they attempt to exceed the two-hour limit.¹⁴⁶

2. *New York City*

New York has fewer regulations concerning when and where mobile food vendors who have received city-wide MFVPs may conduct business; instead, the business is regulated largely by the competition amongst mobile food vendors. Unlike New Haven, there are no limitations on hours of operation, and the only requirement is that they close at least once every twenty-four hours to visit a commissary for service.¹⁴⁷ Safety and traffic laws mandate that mobile food vendors cannot vend within areas such as bus stops and taxi stands and cannot be within ten feet of driveways,

¹⁴² NEW HAVEN, CONN., GEN. ORDINANCE § 17-11.8(f).

¹⁴³ *Id.* § 17-11.8(i).

¹⁴⁴ *Id.* For reference, the size of the food cart that the vendor is trying to accommodate on the sidewalks cannot exceed 4'9" in height, 5'8" in length, and 3'6" in width. *Id.* § 17-11.3(b)(3).

¹⁴⁵ Amanda Buckingham & Patrick Casey, *City Attracts Food Trucks*, YALE DAILY NEWS (Sept. 27, 2013), <http://yaledailynews.com/blog/2013/09/27/web-yheadline-here-65/> [<http://perma.cc/N9Z9-GL5N>].

¹⁴⁶ *Id.*

¹⁴⁷ N.Y.C. HEALTH CODE § 89.19(l) (2015); N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, FAQs ABOUT MOBILE FOOD VENDING UNITS 3 [hereinafter MOBILE FOOD VENDING FAQ], <http://cbsix.org/wp-content/uploads/2014/10/FAQ-about-MFVs-6-14.pdf> [<http://perma.cc/528G-KLJW>] (last visited Nov. 11, 2015).

subway entrances, or crosswalks.¹⁴⁸ New York City law also takes into consideration how crowded the sidewalks get and requires that a food cart must allow at least a “twelve foot clear pedestrian path.”¹⁴⁹

New York City law does very little to protect brick-and-mortar restaurants from the competition that mobile food vendors present. Food carts cannot lean against or touch any building or structure¹⁵⁰ and must be located at least twenty feet from “any entranceway to any building, store, theatre, movie house, sports arena or other public place of assembly.”¹⁵¹ However, these requirements appear to be aimed at safety rather than protection of restaurant business. Additionally, New York City law does very little to protect mobile food vendors from the competition they present to each other. For example, there is no limit on the number of food carts that may be on a city block, and the carts may be adjacent to each other.¹⁵²

IV. THE LAWS: QUESTIONABLE IN THEORY AND EXECUTION

Thus far, this Note has focused on the food vending laws themselves, but when analyzed on a practical level, it becomes evident that many of the existing laws tend to have adverse effects and further strain the relationship between mobile food vendors and restaurant owners.

In reviewing the themes discussed in Part III, there is a concern that mobile food vendors are “piggy-backing” off the location and resources of nearby businesses, including brick-and-mortar restaurants. For example, New Haven restaurant owners often complain that while they are required to provide running water at specific temperatures¹⁵³ in handwashing facilities,¹⁵⁴ mobile food vendors are not.¹⁵⁵ Yet, mobile food vendors will park barely fifty feet from a restaurant’s front door, use the restaurant’s restroom, and wash their hands in the restaurant’s “approved hand-washing facilit[ies].”¹⁵⁶ Another common complaint against mobile food vendors in New Haven is the fact that many of them dump trash into public litter

¹⁴⁸ N.Y.C. ADMIN. CODE § 17-315(e) (2014); *see also id.* § 17-315(f) (stating that mobile food vendors must obey all traffic and parking laws and not interfere with the passageways for vehicles).

¹⁴⁹ *Id.* § 17-315(a). For reference, a NYC food cart’s measurements cannot exceed five feet in width and ten feet in length. MOBILE FOOD VENDING FAQ, *supra* note 147, at 2.

¹⁵⁰ N.Y.C. ADMIN. CODE § 17-315(b).

¹⁵¹ *Id.* § 17-315(d).

¹⁵² MOBILE FOOD VENDING FAQ, *supra* note 147, at 1.

¹⁵³ CONN. AGENCIES REGS. § 19-13-B42(g) (2013).

¹⁵⁴ *Id.* §§ 19-13-B42(f), (h).

¹⁵⁵ Interview with George Koutroumanis, Owner and Proprietor, Yorkside Pizza & Restaurant, in New Haven, Conn. (Dec. 20, 2014). Koutroumanis has owned Yorkside Pizza, in the heart of downtown New Haven and Yale University’s campus, since 1969. Information on Yorkside Pizza is available at <http://yorksidepizza.com/> [<http://perma.cc/52AD-ARLJ>].

¹⁵⁶ *Id.*; CONN. AGENCIES REGS. § 19-13-B48(f) (2015).

baskets in front of these same restaurants.¹⁵⁷ While this is frustrating for restaurant owners, New Haven is a small community and restaurant owners are hesitant to complain or accuse other entrepreneurs in the area of not meeting the standards set forth by the City.¹⁵⁸

New York, on the other hand, resolves these tensions in several ways. First, the fact that New York is a significantly larger city alleviates the “small community” concerns of New Haven restaurateurs. The requirements that mobile food units have their own source of water¹⁵⁹ and that they must dispose of garbage at a commissary or other approved location¹⁶⁰ further reduce these tensions. Other cities and states have likewise tried to prevent discord between brick-and-mortar restaurants and mobile food vendors through different types of legislation. For example, in Dallas, food truck vendors who operate their units on private property must have “written authorization from the owner for specific times of operation, as well as an agreement to use the toilet facilities or garbage receptacles located within 600 feet of the mobile food vehicle.”¹⁶¹ Through such laws, mobile food vendors have some form of accountability to both customers and nearby businesses.

However, New York’s rules and regulations do not present a perfect model of equality between brick-and-mortar restaurants and mobile vending units, as is evident from the City’s health inspection policies.¹⁶² Many New Yorkers are not happy about the fact that mobile vending units do not have to post their grades,¹⁶³ especially those that have complained of food-borne illness after eating at food carts and trucks.¹⁶⁴ Further, while DHMH has issued steep fines to food carts in heavily populated tourist areas,¹⁶⁵ it claims it has difficulty enforcing the fines and following up with

¹⁵⁷ Interview with George Koutroumanis, *supra* note 155.

¹⁵⁸ *Id.*

¹⁵⁹ 24 R.C.N.Y. § 6-01(k) (2015).

¹⁶⁰ N.Y.C. HEALTH CODE § 89.25 (2015).

¹⁶¹ Williams, *supra* note 7, at 710 (citing DALL., TEX., CITY CODE § 17-8.2(h)(2)(A) (2012)).

¹⁶² See *supra* Part III.A.2 (discussing New York’s grade-based restaurant inspection system).

¹⁶³ See Joel Waldman, *NYC Food Carts’ Health Violations*, MYFOXPHILLY (Feb. 18, 2013, 10:10 PM), <https://web.archive.org/web/20150221231712/http://www.myfoxphilly.com/story/21235295/nyc-food-carts-health-violations> (quoting NYC Councilman Daniel Gorodnick as stating, “[a]ny fines, penalties or health issues, that information should be readily available . . . right there on the cart.”).

¹⁶⁴ See Nolan Hicks & Larry McShane, *Food Poisoning, “Hopeless” Lack of Regulation Cited at NYC’s Street Carts*, N.Y. DAILY NEWS (Nov. 17, 2014, 2:30 AM), <http://www.nydailynews.com/new-york/food-poisoning-lack-regulation-cited-street-carts-article-1.2013238> [<http://perma.cc/UC7Z-R2ZS>] (discussing some of the 359 complaints that New York’s 311 number received about mobile food units’ cleanliness between June 2011 and June 2014). Some examples of complaints about mobile food units include tainted chicken, stray hairs in food, and cockroaches on carts. *Id.*

¹⁶⁵ See Waldman, *supra* note 163 (describing fines for NYC food carts in 2012). In 2012, the NYC Department of Health recorded about 7,000 violations, totaling approximately \$16 million in fines. *Id.* Many of these carts were slapped with multiple violations. *Id.* For example, a food cart parked

inspections because mobile food units may relocate after complaints or a bad inspection.¹⁶⁶ Meanwhile, the Board of Health Public Review Committee—a group comprised largely of restaurant owners—so strongly believed that brick-and-mortar restaurants are subjected to “excessive fines and unfair enforcement of the city’s inspection regime” by DHMH that it was prompted to sue the City.¹⁶⁷ The fact that inconsistency and lack of enforcement is an issue regardless of the business model is further evidence that both mobile food vendors and brick-and-mortar restaurants should be held to the same health inspection standards. In fact, even many mobile food vendors believe that they should be held to the same standards with the hope that it will promote the integrity and legitimacy of mobile food vending as a business.¹⁶⁸ If mobile food vendors are held to a higher standard and penalized in a manner at least comparable to restaurants for violating this standard, they will have a greater incentive to keep the mobile food units sanitary.¹⁶⁹ Having a grade visible to customers may also increase business for mobile food vendors because customers will have more confidence in the meal they are about to (hopefully) enjoy.¹⁷⁰

The zoning issues discussed in Part III also create unanticipated and unintended issues in execution. As a result of lax enforcement in New York, the “unspoken law of the streets” prevails.¹⁷¹ The general understanding is that “‘newbies’ may not operate in a location already

in front of the Apple Store on West 67th and Broadway received “[twenty-two] violations over five consecutive inspections in 2012.” *Id.*

¹⁶⁶ *See id.* (“One reason that collecting fines from food trucks is next to impossible is because they are mobile [and] . . . many of the carts on our list were no longer located at the address of their last inspection.”).

¹⁶⁷ *See* Andrew Keshner, *Judge Tosses Lawsuit Challenging City Restaurant Inspections*, 252 N.Y.L.J. 1,1 (2014) (reporting on the judgment of Bd. of Health Pub. Review Comm. v. N.Y.C., No. 100847/2013, 2014 N.Y. Misc. LEXIS 3970 (N.Y. Sup. Ct. Sept. 4, 2014)). In their complaint, the Plaintiffs claimed that “[inspection] fines were improperly levied to generate revenue and inspections were conducted inconsistently” and sought a declaration that DHMH had acted unconstitutionally and \$150 million in punitive and compensatory damages. *Id.* In her holding, Justice Donna Mills dismissed the complaint, stating that, “the system of fines and fees, and their collection and deposit, present no circumstances that the court finds untoward, unconstitutional, or, indeed, unusual.” *Bd. of Health Pub. Review Comm.*, 2014 N.Y. Misc. LEXIS 3970, at *26.

¹⁶⁸ *See* Michael J. Feeney, *Uptown Food Truck Vendors and Customers Welcome Grades*, N.Y. DAILY NEWS (Dec. 8, 2011, 6:00 AM), <http://www.nydailynews.com/new-york/uptown/uptown-diner-food-truck-vendors-customers-grades-article-1.988332> [<http://perma.cc/N5YS-FF5N>] (quoting NYC mobile food vendors who believe they would do well if graded and that grading would be “a good thing”).

¹⁶⁹ *See* Waldman, *supra* note 163 (discussing how consistent health inspections encourage “vendors who keep their carts clean and serv[e] food safely” to continue doing so).

¹⁷⁰ Feeney, *supra* note 168.

¹⁷¹ Gary S. Young, *So You Want to Start a New York Food Truck Business?*, BUSINESSLAWNEWS (Sept. 2, 2013), <http://www.businesslawnews.com/so-you-want-to-start-a-new-york-food-truck-business/> [<http://perma.cc/MKQ8-STSH>].

occupied by someone else.”¹⁷² This opens the door for potential “extra-legal difficulties”—such as confrontation on the street—if a vendor fails to show up one day and his spot is then taken.¹⁷³ This same social norm is present in New Haven where there is an “understanding among those in the [vending] business about whose spot is whose.”¹⁷⁴ In fact, there is a whole system in place. Each vendor picks his or her preferred location on the block with respect to who has been at the location longest.¹⁷⁵ If someone misses a day or leaves temporarily, that spot is then up for grabs until that worker returns.¹⁷⁶ However, if a vendor is gone “for more than three months without warning, . . . he or she falls to the end of the line.”¹⁷⁷ Therefore, as much as mobile food vendors can say they welcome competition,¹⁷⁸ their livelihood does indeed depend on their location. With such high stakes, it is possible that trouble can arise when too many mobile food vendors are too close to each other.¹⁷⁹

The increase in congestion caused by the presence of vendors is an issue that has forced both cities to explore different solutions. Other than managing crowding with limitations on MFVPs, New York has not taken many steps to minimize food cart overcrowding. It has, however, considered different options to manage the unsafe crowding that food trucks create. The City entertained some debate on new parking legislation for food trucks,¹⁸⁰ but its big move was to start “shooing” food trucks from the streets of Midtown.¹⁸¹

Originally, throughout Midtown, food trucks congregated in groups

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Emily Foxhall, *A Food Cart Named Desire*, YALE DAILY NEWS (Sept. 3, 2010), yaledailynews.com/blog/2010/09/03/a-food-cart-named-desire [<http://perma.cc/LZ3J-UNT5>].

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See Buckingham & Casey, *supra* note 145 (quoting food truck owners who “love competition” and want to park near mobile food competitors to attract more groups of people).

¹⁷⁹ See, e.g., Melissa Bailey, *Feuding Vendors Back in Business*, NEW HAVEN INDEP. (Apr. 30, 2010, 4:25 PM), http://www.newhavenindependent.org/index.php/archives/entry/long_wharf_vendors_back_in_business/ [<http://perma.cc/6ZVA-2XRD>] (describing an altercation between two food truck vendors caused by fighting over “turf”).

¹⁸⁰ See, e.g., Rich Schapiro & Erin Durkin, *City Council Bill Would Provide 450 Parking Spots for Food Trucks*, N.Y. DAILY NEWS (Apr. 10, 2013, 2:00 AM), <http://www.nydailynews.com/new-york/bill-provide-450-parking-spots-food-trucks-article-1.1312229> [<http://perma.cc/XCS4-M834>] (describing proposed legislation for food truck parking). Food truck parking in NYC is comparable to the “Wild West” with its lack of regulation. *Id.* In 2013, the City Council considered a bill that would create “food truck zones” throughout the city where about 450 food trucks could park. *Id.* However, the 300–400 food trucks currently in New York would be banned from continuing to park in the street and would instead be required to park in these zones. *Id.*

¹⁸¹ Glen 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> [<http://perma.cc/JSZ2-US98>].

referred to as “urban food courts.”¹⁸² Food trucks could park in any spot for commercial vehicles, and the only regulation was that vendors needed to keep the three-hour parking meters fed.¹⁸³ However, in response to overcrowding in 2011, police officers ordered food trucks out of Midtown.¹⁸⁴ Part of the reason for this sudden enforcement was a result of the holding in *Monroy v. City of New York*.¹⁸⁵ Prior to *Monroy*, there was a question as to whether a provision in the RCNY stating that “vendors” cannot sell from a metered parking space applied to “food vendors” or not.¹⁸⁶ This question arose from § 20-452 of the City’s Administrative Code, which makes a distinction between “general vendors” and “food vendors”; food vendors interpreted this distinction to mean that they were permitted to vend from metered parking spots.¹⁸⁷ However, *Monroy* clarified these questions in its holding that through the RCNY, the Department of Transportation had the authority to prohibit food truck vending from metered parking spaces in the city.¹⁸⁸ Police immediately began enforcing the law as “interpreted by the court,” resulting in an increase in warnings and summonses.¹⁸⁹

New Haven’s hand was forced to take action not by court order, but by the encouragement of its most powerful resident, Yale University.¹⁹⁰ There are three areas in the city that become crowded to the point that it creates safety concerns, one of which is the area right outside Yale-New Haven Hospital.¹⁹¹ In 2010, New Haven began capping the number of mobile food vendors allowed to vend in these locations in an effort to prevent the already crowded sidewalks and streets from becoming too chaotic during the hectic lunch rush.¹⁹² Recently, New Haven building officials have taken

¹⁸² *At Lunch Now: Cops Shut Down All the Food Trucks on 47th & Park*, MIDTOWN LUNCH (Sept. 13, 2013, 1:49 PM), <http://midtownlunch.com/2013/09/13/at-lunch-now-cops-shut-down-all-the-food-trucks-on-47th-madison/> [<http://perma.cc/R3BM-2G5G>].

¹⁸³ *Id.*

¹⁸⁴ Collins, *supra* note 181.

¹⁸⁵ 943 N.Y.S.2d 510, 510 (N.Y. App. Div. 2012).

¹⁸⁶ *Id.*; see also 34 RCNY § 4-08(h)(8) (2015) (“No 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.”).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Collins, *supra* note 181. However, police do claim that they have been trying to avoid ticketing and towing, and that they have been working with food truck vendors to find new locations to conduct business. *Id.*

¹⁹⁰ Foxhall, *supra* note 174.

¹⁹¹ Jan Ellen Spiegel, *From Common Food Carts, Exotic Tastes*, N.Y. TIMES (Apr. 23, 2010), http://www.nytimes.com/2010/04/25/nyregion/25dinet.html?_r=0. The other two areas are the street right outside Yale’s hockey rink (Ingalls Rink) and the area alongside New Haven Harbor and I-95 (Long Wharf). Foxhall, *supra* note 174.

¹⁹² Foxhall, *supra* note 174. On Monday through Friday, twenty-eight vendors are permitted to vend outside Yale-New Haven Hospital, fifteen outside of Ingalls Rink, and fourteen at Long Wharf. *Id.*

steps similar to those taken in New York and conducted a serious crackdown on mobile food vendors operating outside of approved zones.¹⁹³ City officials are taking a hard stance in enforcing rules that have never been enforced in the city.¹⁹⁴ Inconsistent enforcement and instances such as this further support the need for updated regulation and the creation of a mobile food vending association or city forum to keep mobile food vendors informed of the evolving law.

V. CONCLUSION

If the good news of the new mobile food trend is that both New York and New Haven are the beneficiaries of a greater number of jobs and ever increasing food options, the bad news is that neither city has found the right balance in its regulations to deal with the increased presence of mobile food units. In New York, the existing process for starting a mobile food vending business has essentially excluded many individuals through the difficulties and costs associated with starting a business. In an effort to break this mold and control the growing black market for MFVPs, DHMH should continue to even the playing field between mobile food vendors and brick-and-mortar restaurants. This can be achieved by holding mobile food vendors to higher standards, subjecting them to the ABC grading health inspection regime, and verifying at each MFVP renewal that the permit is being used legally, rather than to perpetuate any of the unethical or illegal practices that currently exist.

New Haven is a relative newcomer to the mobile food scene, and though there are a fair amount of immigrants in the business, many of mobile food vendors in downtown New Haven are a part of the gourmet mobile food movement and even own brick-and-mortar restaurants themselves. Because the majority of these vendors are essentially conducting business as restaurants on wheels, New Haven's priority should be to level the playing field by requiring mobile food vendors to become self-sufficient businesses and to be held accountable for the maintenance and cleanliness of their surroundings. This should be done by imposing more public health requirements for mobile food vendors and by promoting fair competition with brick-and-mortar restaurants. Despite issues of overcrowding and changes to the neighborhoods, mobile food vending is—and will continue to be—a beneficial asset to both cities. Therefore, in updating the rules and regulations, and in enforcing existing ones, city officials need to work towards creating an amicable environment

¹⁹³ Aliyya Swaby, *City Boots Food Carts from York Street*, NEW HAVEN INDEP. (Oct. 15, 2015), http://www.newhavenindependent.org/index.php/archives/entry/city_boots_food_carts_from_york/ [http://perma.cc/29AZ-8P6B].

¹⁹⁴ *Id.*

in which mobile food vendors and brick-and-mortar restaurant owners alike can prosper.

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Comment

The Open Our Democracy Act: A Proposal for Effective Election Reform

NIEL FRANZESE

Commentators on opposite ends of the American political spectrum do not often agree on much, but one common source of frustration in recent years has been the perceived shortcomings of the Congressional election system. In 2014, Representative John Delaney of Maryland introduced a bill in the House of Representatives that seeks to remedy some of these issues, calling it the Open Our Democracy Act.

The Act has three aims: to require elections for the House of Representatives to take the form of a single open primary regardless of party preference; to make Election Day a federal holiday for purposes of employment; and to begin the process of redistricting reform to remedy the harmful effects of partisan gerrymandering. This Comment examines each of these three areas of election law individually by discussing the current state of affairs as it relates to each, and the theoretical and empirical justifications for the proposed reforms. Finally, it argues that the three proposed reforms can be most effective at increasing voter participation when used in conjunction, as the Act suggests.

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