

Food Trucks, Incremental Innovation, and Regulatory Ruts

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INTRODUCTION

In this Essay, I will detail an innovation that gave new relevance and economic success to old, battered food trucks. I will describe the regulatory context that made the innovation viable and then describe the various regulatory contexts around the country that challenged the spread of the innovation. Finally, I will analyze the particular problems faced by food-truck operators when trying to push the law to adapt to their incremental innovations. In recounting this history, I hope to demonstrate how intensive regulation that codifies an industry's past can pose a significant barrier to incremental innovators who are trying to improve on entrenched, traditional businesses.

I. THE INNOVATION

The story of Roy Choi is undeniably the origin story of the modern food-truck movement—or, put less grandiosely, the modern food-truck *moment*. Like many a good legend, it includes a domineering mother, vice, loss, inspiration, teamwork, and, eventually, triumph based on all the lessons learned during the previous trials.¹

Choi is the son of Korean immigrants. He grew up helping his mother sell stinky kimchi out of the trunk of their car to survive in Los Angeles. He was ashamed of his mother, their poverty, and the smells emanating from the family car when he was a child. Starting at age thirteen, he followed a trail of addictions,

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¹ Like many a good legend, this story is also oversimplified. The idea and execution of the business model that made Choi a legend were the product of a team of people who brought various talents and experiences to the project. See Jessica Gelt, *Kogi Korean BBQ, A Street Sensation Is Born*, LA Times F1 (Feb 11, 2009). While this is a classic start-up story, that recounting does not resonate as an origin story in quite the same way as that of the solitary, inspired founder.

from marijuana to alcohol to gambling. Gambling was the worst, but it funded his introduction to fine restaurants and artful cuisine. He attended the Culinary Institute of America, graduated as valedictorian of his class, and went on to work as a chef. But eventually he found himself unemployed and running out of money. With little to lose, he accepted a friend's dare to fill a taco with Korean barbecued beef and sell it to late-night partiers outside clubs in Los Angeles. He circled back to his mother's business model and sold the tacos out of an old taco truck, which he called Kogi. Quickly, he was heralded by *Food & Wine* as a Best New Chef and started an empire.² He also inspired a nationwide trend.

The innovation behind Kogi was not related to the truck itself. Taco trucks, or *loncheras*, have long been fixtures of Los Angeles's economy and culture. Nor was Kogi's food the grass-roots innovation that changed the industry; as outstanding and creative as it was, other chefs had offered Korean tacos before,³ and other food trucks had attracted the admiration of foodies and gourmards. The innovation of Kogi was the use of Twitter (just two years old at the time) to communicate with customers.⁴ It was an incremental innovation that did not create an industry but rather changed and expanded it.

Before Kogi, food trucks had three options to build a stable business: (1) establish a stable location to build a reputation with a limited, hyperlocal customer base; (2) sell predictable food from a generic menu to attract people wanting fast, cheap, ordinary food, regardless of the individual truck's reputation; or (3) sell from locations of such convenience that they were customers' only viable option, like the trucks that parked outside construction sites to feed the workers. But Twitter allowed Kogi to build a customer base across Los Angeles. The unpredictable appearances of Kogi in any given location made its arrival a special event. Followers stalked Kogi on Twitter, rushing out of office buildings and bars and dorms so that they could experience the phenomenon. Twitter had replicated and amplified the old

² See generally Roy Choi, Natasha Phan, and Tien Nguyen, *L.A. Son: My Life, My City, My Food* (Ecco 2013).

³ See, for example, S. Irene Virbia, *New Kids on the Block*, LA Times Magazine 29 (Sept 1, 1996).

⁴ See Ben Bergman, *Tweeting Food Truck Draws LA's Hungry Crowds* (NPR Mar 23, 2009), online at <http://www.npr.org/templates/story/story.php?storyId=101881984> (visited Jan 9, 2015); Gelt, *A Street Sensation Is Born* (cited in note 1); Andrew Romano, *Now 4 Restaurant 2.0*, Newsweek 55 (Feb 27, 2009).

ice-cream truck's siren call: instead of playing "Pop Goes the Weasel" to draw people within hearing distance on a given block, Twitter simply flashed a message of "here we are" to alert thousands of people in walking, biking, or driving distance. Along with other technological innovations, like GPS tracking and Square,⁵ Twitter made mobile food truly mobile, appealing to the upwardly mobile.⁶

The innovation attributed to Kogi was not radical; it did not create a new industry, but it was an inspired incremental innovation that *changed* an industry. Food trucks' use of social media allowed them to be more efficient and reach more and different customers.

II. THE INNOVATION INCUBATOR

Los Angeles provided fertile soil for the Kogi innovation to take root and spread, because some of the regulatory weeds had already been cleared away. For decades before Kogi matched Mexican taco shells with Korean barbecue and taco trucks with a high-tech marketing strategy, food trucks had been fighting regulatory restrictions in Los Angeles County. The tension was still high at the time that Kogi launched, but consistent precedents protecting food trucks' economic rights to operate in Los Angeles had already been set. A fleet of working food trucks was already in circulation, and the infrastructure required to clean and stock them was already in place.

Los Angeles has a history of permitting and patronizing food trucks. Many are operated by Latinos and serve traditional Mexican dishes—hence the shorthand "taco trucks" or *loncheras*. Food trucks contribute significantly to the economy of the city, as well as to its food culture and widespread access to affordable food.⁷ From at least the 1970s, food-truck operators invested in constructing trucks that served as kitchens on wheels, and they paid fees to commissaries where the trucks were cleaned, stocked, and stored.⁸

⁵ Square is a payment service that allows credit cards to be processed with a mobile phone.

⁶ See Jonathan Gold, *Moveable Feasts: Tracing America's Food Truck Revolution Back to Its L.A. Roots*, *Smithsonian Magazine* 18–19 (Mar 2012).

⁷ See Jesús Hermosillo, *Loncheras: A Look at the Stationary Food Trucks of Los Angeles* *6 (UCLA School of Urban Planning Sept 2012), online at <http://www.sscnet.ucla.edu/labor/publications/reports/Locheras.pdf> (visited Dec 22, 2014) (estimating that licensed food trucks in Los Angeles spent over \$75 million in 2009).

⁸ See *id.* at *6, 18.

Los Angeles also has a history of attempting to regulate food trucks out of business—attempts that have often been challenged and thwarted in court. In 1979, a California appellate court struck down a law that prohibited food trucks from parking within one hundred feet of the street entrance to a restaurant, reasoning that the law did not make sense as a way to prevent traffic congestion or ensure access to food when restaurants are not available.⁹ The court concluded that the law was instead a naked restraint of trade and therefore held that the restriction violated the Fourteenth Amendment.¹⁰

In *Barajas v City of Anaheim*,¹¹ another judge held that the California Vehicle Code preempted a city ordinance that banned sales from vehicles on the street.¹² The Vehicle Code had provided that local ordinances could prohibit vending from a vehicle on a street when it was enacted in 1984, but that provision was eliminated by amendment in 1985.¹³ The court held that the amendment withdrew municipalities' authority to prohibit vending altogether, leaving only the authority to regulate vending for purposes of public safety.¹⁴ In 2008, just in time for Kogi, the Vehicle Code was amended again, specifying that municipalities may pass "requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon any street."¹⁵

The City of Los Angeles and Los Angeles County were cracking down on taco trucks in 2008 and 2009, around the time that Kogi launched. Both governments passed laws requiring trucks to move every thirty minutes when in a residential area and every sixty minutes when in a commercial area, as well as wait three hours before returning to a given spot.¹⁶ The county's law was passed in response to complaints of brick-and-mortar restaurants in unincorporated East Los Angeles, which blamed their financial troubles in part on taco trucks.¹⁷ Both laws were an attack on the business model of traditional taco trucks, which

⁹ See *People v Ala Carte Catering Co*, 98 Cal App 3d Supp 1, 9 (1979).

¹⁰ Id at 8–9.

¹¹ 15 Cal App 4th 1808 (1993).

¹² Id at 1818.

¹³ Id at 1815.

¹⁴ Id at 1814–18 (discussing Cal Veh Code § 22455(b)).

¹⁵ Cal Veh Code § 22455(b).

¹⁶ See Ernesto Hernández-López, *LA's Taco Truck War: How Law Cooks Food Culture Contests*, 43 U Miami Int-Am L Rev 233, 249 (2011).

¹⁷ See Garrett Therolf, *Taco Trucks Can Stay Parked*, LA Times B1 (Aug 28, 2008).

typically remain in one spot all day.¹⁸ The laws' time limits made it virtually impossible to set up a cooking operation, prepare and serve food, cool down, and secure the kitchen for motion. These laws were viewed as an ambush on the area's fourteen thousand licensed food trucks, many of which were owned by Latinos in East Los Angeles.¹⁹ Food-truck fans and operators organized to challenge the laws. Customers signed an online petition at Saveourtacotrucks.org, and truck owners sued.²⁰

In two cases, the Superior Court of the State of California for the County of Los Angeles struck down city and county time limits affecting food trucks.²¹ The provisions in the County Code were held to be so vague that citizens would not be able to understand or confidently follow them.²² The thirty- and sixty-minute time limits were deemed arbitrary as related to public safety—the only purpose allowed for vending regulations—and wholly lacking a rational basis as required by the Fourteenth Amendment's Due Process Clause.²³ In the case challenging the city code, the University of California at Los Angeles Criminal Defense Clinic represented a food-truck operator who was being ticketed and fined up to one thousand dollars a day.²⁴ The Superior Court held that the local authority could not place time limits on vendors because the limits, again, had no rational relation to public safety.²⁵

Due to the history of loncheras in Los Angeles, it was possible for other local entrepreneurs to build quickly on Kogi's innovation and start their own trucks, serving delicious, creative dishes to foodies all over the city. Health laws were in place and inspectors knew what to do. There were approved trucks and commissaries available for use; in fact, plenty of trucks were

¹⁸ See Hermosillo, *Loncheras* at *11 (cited in note 7); Gold, *Moveable Feasts* at 19 (cited in note 6).

¹⁹ See Rebecca Winters Keegan, *The Great Taco Truck War*, Time (Apr 25, 2008), online at <http://content.time.com/time/nation/article/0,8599,1735104,00.html> (visited Jan 9, 2015); Hermosillo, *Loncheras* at *6 (cited in note 6).

²⁰ See generally Therolf, *Taco Trucks Can Stay Parked* (cited in note 17); Keegan, *The Great Taco Truck War* (cited in note 19).

²¹ Order Following Demurrer Hearing, *People v Garcia*, Case No 8EA05884, *7 (Cal Sup filed Aug 27, 2008) ("Garcia Order").

²² Id at *2–3.

²³ Id at *2–5.

²⁴ See Hernández-López, *LA's Taco Truck War* at 253–54, citing Complaint, *Gonzalez v City of Los Angeles Department of Transportation*, No 09K08485 (LA Sup filed June 8, 2009) (cited in note 16).

²⁵ See id.

available due to the timing of the innovation. The recession had hit, causing construction to slow dramatically. Trucks that had previously catered to construction workers were abundantly available to be repurposed into gourmet trucks, the owners of which could use Twitter to reach disparate customers.²⁶ The California Vehicle Code and an engaged judiciary dampened attempts by cities to prohibit or disable food trucks. The trend grew fast.²⁷

Innovative food-truck operators faced early challenges. In spite of court rulings, laws on the books in some municipalities still prohibited or severely restricted food-truck activity.²⁸ Even where adverse laws had been removed, the police could respond to restaurants' complaints and effectively ban trucks from certain streets through intensive enforcement of the facially neutral parking laws or even baseless orders to leave.²⁹ But Twitter made the new food trucks resilient to such challenges in a way that the loncheras had not been. If the police order a new truck to move, it can inform potential customers of its new location, and the customers can even suggest new available locations.³⁰ In spite of some resistance, Los Angeles became the locus of a grassroots industry change begun by an innovation that reimaged food trucks.

²⁶ See Baylen Linnekin, Jeffrey Dermer, and Matthew Geller, *The New Food Truck Advocacy: Social Media, Mobile Food Vending Associations, Truck Lots, & Litigation in California & Beyond*, 17 *Nexus: Chapman J L & Pol* 35, 43–44 (2012). The timing of the innovation is also relevant because it occurred during the Great Recession. It is clear that the recession caused some people to lose their jobs and lose faith in big employers, and these people were drawn to the new food trucks' promise of the American dream. The prospect of financing an experimental brick-and-mortar restaurant was also out of reach for many.

²⁷ See Sharon Bernstein, *Made in California; The Folks Who Build the Fancy Food Trucks*, *LA Times* B1 (May 8, 2011).

²⁸ See Linnekin, Dermer, and Geller, 17 *Nexus: Chapman J L & Pol* at 44 (cited in note 26).

²⁹ See Ann M. Simmons, *Mobile Food Vendors Told to Leave Miracle Mile*, *LA Times* A7 (Aug 24, 2009).

³⁰ See Gelt, *A Street Sensation is Born* (cited in note 1) (noting that, when “[someone asks] the Kogi truck to park elsewhere . . . legions of Kogi-lytes rally to find a desirable new location”).

III. HOSTILE LEGAL ENVIRONMENTS FOR INCREMENTAL INNOVATORS

The new generation of food trucks was not an entirely new business category, completely unanticipated by or absent from local regulations. They were not delivering food by drones.³¹ Rather, the entrepreneurs who sought to model new businesses on the trendy and successful Los Angeles food trucks encountered a wide variety of preexisting legal regimes governing mobile food. As incremental innovators, they had to either comply with or change the laws on the books, which had been written for food trucks following a different business model. To change the law, these innovators had to counter resistance from both governments and established, entrenched businesses.

When the reimagined business model for food trucks started to spread, many cities and towns already had laws covering food trucks as they were conceptualized at the time that the laws were written. Though some of those laws were fairly flexible (Austin, Texas),³² other laws were rigid, designed specifically for ice-cream trucks (Santa Cruz, California)³³ or trucks selling pre-packaged food (Chicago, Illinois).³⁴ Cities like Charlotte, North Carolina, expected and thus required vendors to stay in one place each day, not even allowing them to be on the public street or close to a residential area.³⁵ New York City capped mobile-food licenses in 1985, meaning that an inspired entrepreneur would be placed on a long wait-list or forced to buy a permit on the black market.³⁶

A highly specified regulatory scheme designed exclusively for traditional food trucks can impede or completely shut out the new trucks. For example, the mobile-food laws in Santa Cruz, California, have not been updated since 2005. They allow trucks

³¹ For examples of this technology, see Alison Spiegel, *These Are All the Foods You Can Get Delivered by Drones* (The Huffington Post June 9, 2014), online at http://www.huffingtonpost.com/2014/06/09/food-delivery-drone_n_5461689.html (visited Jan 9, 2015).

³² Austin Code §§ 10-3-1, 10-3-91, 10-3-95.

³³ Santa Cruz Muni Code § 5.22.110(a).

³⁴ See generally Kate MacArthur, *Meals on Wheels, for Real*, 34 Crain's Chicago Bus 21 (May 2011); Mike Sula, *Food Truck Roadblock* (Chicago Reader Apr 29, 2010), online at <http://www.chicagoreader.com/chicago/chicago-street-food-trucks-philip-foss-troy-marcus-johnson-matt-maroni/Content?oid=1733152> (visited Jan 31, 2015).

³⁵ Charlotte Muni Code § 12.510.

³⁶ NYC Admin Code § 17-307.

to sell prepared food only, and in residential and industrial areas only. The trucks must move at least one block every fifteen minutes.³⁷ (Note that these laws persist even as courts in other counties have invalidated similar regulations on state law and constitutional grounds.)³⁸ The Santa Cruz laws work for ice-cream trucks making quick stops to sell ready-to-eat ice-cream bars on each block of a residential neighborhood, but they are problematic for new gourmet trucks aiming to prepare and serve fresh lunches to office workers. A truck like Low N Slow in Santa Cruz can operate only two and a half hours a day, three days a week, on private property, and its ability to succeed is therefore severely limited.³⁹

The food trucks' regulatory plight illustrates a much broader pattern: incremental innovators often face great regulatory risk. They are thinking outside the box and dealing with laws codifying that box. When the government has created stringent, obligatory standards for a product or service as it exists at time one, the unexpected innovation at time two may push the new product or service out of compliance, even if it improves on standard practice. The innovators face delay and possible denial when seeking approval from authorities regulating the improved product.⁴⁰ Under these circumstances, the innovators may not bother making the improvement at all. (We can never know what innovations were cast aside or never pursued because getting them approved by check-the-box regulators was too difficult.)⁴¹

Incremental innovation in service industries is particularly burdened because service businesses are heavily regulated by local governments, and this regulation has increased significantly in recent decades.⁴² Service-industry innovators,

³⁷ Santa Cruz Muni Code § 5.22.110(a). See also J.M. Brown, *Food Truck Freedom: Santa Cruz to Revise Mobile Vending Rules*, Santa Cruz Sentinel News (July 12, 2014), online at <http://www.santacruzsentinel.com/general-news/20140712/food-truck-freedom-santa-cruz-to-revise-mobile-vending-rules> (visited Jan 9, 2015).

³⁸ See notes 21–25 and accompanying text.

³⁹ See J.M. Brown, *Food Truck Freedom* (cited in note 37).

⁴⁰ See Richard B. Stewart, *Regulation, Innovation, and Administrative Law: A Conceptual Framework*, 69 Cal Law Rev 1256, 1294 (1981).

⁴¹ See *id.*

⁴² See generally Dick M. Carpenter II, et al, *License to Work: A National Study of Burdens from Occupational Licensing* (The Institute for Justice May 2012), online at https://www.ij.org/images/pdf_folder/economic_liberty/occupational_licensing/licensetowork.pdf (visited Jan 9, 2015); Morris M. Kleiner and Alan B. Krueger, *Analyzing the*

especially those wanting to launch a national business, face myriad inconsistent and overly specific regulations that resemble the heads of Hydra.

Contemporary examples of incremental innovators that face ill-suited or hostile regulations abound, as entrepreneurs use the Internet to innovate in traditional service industries. Uber and Airbnb are prominent examples. But the problem is not limited to Internet start-ups. For an analog analogue, consider Verlin Stoll. He had simplified the business model for his funeral home so that he could offer services at 10 percent of the average fee. He wanted to open a second location without spending thirty thousand dollars on a second embalming room, but Minnesota law required any business licensed as a funeral home to have its own embalming room.⁴³ Like the California courts confronting food-truck time limits and requirements that trucks remain a specific distance from restaurants, a court struck down the law as an irrational deprivation of due process.⁴⁴ But there are many more entrepreneurs and many more outdated, unnecessary laws than judgments striking economic regulations down.⁴⁵

The more detailed and specified regulations are, the greater the challenge for any incremental innovators. If laws codify every detail of the business model that is prevalent when they are written, they set future innovators up for noncompliance. For example, in the heavily regulated funeral industry, some states require every service traditionally offered by funeral homes to be provided by licensed traditional funeral homes,

Extent and Influence of Occupational Licensing on the Labor Market, 31 J Labor Econ S173 (2013).

⁴³ *Stoll v Minnesota Department of Health*, 2013 WL 7204912, *3, 9 (Ramsey County D Minn).

⁴⁴ *Id.* at *18.

⁴⁵ Economic regulations are almost impossible to challenge on constitutional grounds because courts apply the rational-basis test. If the court can imagine a governmental purpose for the law, and the law bears any weak connection to that imagined purpose, then the court may let the law stand. See *Williamson v Lee Optical Co*, 348 US 483, 487–88 (1955). The plaintiff challenging an economic regulation must prove a negative: that there is no conceivable relation between the law and a legitimate purpose. Occasionally, engaged judges look closely at economic regulations and strike down laws that appear to be pursuing illegitimate purposes, like naked restraints of trade. See generally, for example, *St. Joseph Abbey v Castille*, 712 F3d 215 (5th Cir 2013); *Craig Miles v Giles*, 312 F3d 220 (6th Cir 2002). However, victories are rare for plaintiffs in rational-basis cases. See Michael J. Phillips, *The Slow Return of Economic Substantive Due Process*, 49 Syracuse L Rev 917, 941–42 (1999); Robert C. Farrell, *Successful Rational Basis Claims in the Supreme Court from the 1971 Term through Romer v Evans*, 32 Ind L Rev 357, 357 (1999).

under the supervision of a licensed funeral director who has learned the skills of embalming, counseling, and more. These laws make it illegal for a business to sell discount caskets online or out of a monastery's woodshop.⁴⁶ Similarly, laws that lay out every detail for operating a cosmetology school—down to specifying mandatory curriculum covering hair coloring, facials, and manicures, as well as mandatory equipment such as shampoo bowls, facial chairs, and manicure tables—make it illegal for a business to specialize in teaching makeup application or teach online.⁴⁷

In the food-truck context, cities and towns like Santa Cruz that passed laws pre-Kogi, specifying exactly where, when, and how food trucks may operate, made entry and growth very difficult for the new trucks using social media. In contrast, cities and towns that had minimal regulations in place requiring safe food handling and traffic-safety compliance were poised to welcome food trucks and experience the job growth and cultural richness that come with them.⁴⁸

IV. OVERCOMING RESISTANCE TO REGULATORY ADAPTATION

In order to thrive like they have in Los Angeles, new-wave food trucks need to push for amendment of the outdated and excessively restrictive laws that they face. They need to knock down short time limits on parking, proximity restrictions that ban them from commercial districts or business strips, and constraints on the food that they serve. Some may succeed, as the loncheras did, by bringing lawsuits challenging the validity of local regulations.⁴⁹ However, litigation is slow and costly. Most

⁴⁶ See, for example, Okla Stat § 59-396.3a; Va Code § 54.1-2800 et seq. Compare *Craigsmiles*, 312 F3d at 222; *St. Joseph Abbey*, 712 F3d at 227 (holding that the regulation had no rational relationship to any legitimate purpose and thus violated the Fourteenth Amendment), with *Powers v Harris*, 379 F3d 1208, 1225 (10th Cir 2004) (holding that protectionism is a legitimate purpose for imposing restrictions on casket sales).

⁴⁷ See, for example, Nev Rev Stat §§ 644.020–.510.

⁴⁸ See 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, 711–12 (2013) (describing how the light regulation of food trucks in Indianapolis made the small city a top growth spot in the industry).

⁴⁹ Chicago food trucks have sued the city, challenging the constitutionality of the rules prohibiting them from parking within two hundred feet of a restaurant and requiring that they have GPS constantly broadcasting their locations on the Internet. See generally Complaint, *Burke v Chicago*, No 12-CH-41235 (Cook County Cir filed Nov 14, 2012) (available on Westlaw at 2012 WL 5513206).

food-truck operators must try to convince lawmakers in city and town halls to ease the restrictions that make it hard for food trucks to succeed.

In spite of the popularity of food trucks, which are now featured as American dream vignettes in a reality show and popular movies, reform efforts are challenging indeed. In Chicago, for example, the first wave of so-called gourmet food trucks faced extremely restrictive regulations. They were not allowed to prepare food on board, stop for more than two hours at a time, serve during the early morning or late night when restaurants were closed, or park within two hundred feet of a restaurant.⁵⁰ The parking restrictions were not heavily enforced at first, but they were on the books. And violations that were obvious or suggested during the inspection process meant that a truck would not get licensed at all.⁵¹

Led by one of the first of the new truck owners, Matt Maroni, Chicago food-truck operators advocated for years to change these laws. They circulated petitions and started online campaigns. They met with sympathetic aldermen and the staff of the Department of Business Affairs and Consumer Protection.⁵²

The mayor's office proposed new food-truck laws in 2012, stating that the city was welcoming the new wave of food trucks and catching up with other cities, while also protecting restaurants.⁵³ The proposed laws created a new license for food trucks that cook on board, maintained the two-hundred-foot buffer zone around restaurants and the two-hour time limit on parking,

⁵⁰ See generally Sula, *Food Truck Roadblock* (cited in note 34).

⁵¹ Big Star, a popular restaurant, failed the inspection to license its food truck because it had a cutting board built into the truck. See Monica Eng, *Big Star Food Truck Ready to Roll Despite Breaking City Rules* (Chicago Tribune Oct 6, 2011), online at http://articles.chicagotribune.com/2011-10-06/news/chi-food-trucks-big-star-truck-ready-to-roll-20111006_1_matt-maroni-taco-truck-taqueros (visited Jan 9, 2015); David Tamarkin, *Big Star's Food Truck Failed Inspection. Will It Go Rogue?* (Time Out Chicago Oct 6, 2011), online at <http://www.timeout.com/chicago/food-drink/big-stars-food-truck-failed-inspection-will-it-go-rogue> (visited Jan 9, 2015).

⁵² See Monica Eng, *Food Trucks, Other Outfits Savor New Morsels of Hope*, Chicago Tribune 6 (Sept 28, 2011). See also Nick Kindelsperger, *Food Truck Crossroads: What's Next after Matt Moroni's Gaztro-Wago Goes on Hiatus* (Serious Eats Jan 5, 2012), online at <http://chicago.serious eats.com/2012/01/food-truck-bummer-gaztro-wagon-on-hiatus.html> (visited Jan 9, 2015).

⁵³ See City of Chicago, Press Release, *Mayor Emanuel to Legalize Cook-on-Site Food Truck Industry across Chicago* (June 26, 2012), online at http://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2012/june_2012/mayor_emanuel_tolegalizecook-on-sitefoodtruckindustryacrosschica.html (visited Jan 30, 2015).

committed to demarcating parking spots for food trucks in neighborhoods with lots of restaurants, quadrupled the fines for violations of parking rules (compared to violations of health or sanitation rules), and required trucks to install extremely accurate GPS devices that broadcast their locations to the public whenever the trucks were turned on. The public hearing about the proposal began with testimony from the local restaurant association, which had consulted on the new law and agreed with most of it. By the time that food-truck owners testified passionately in opposition to the proposed law, much of the committee had left the room. A runner had to bring people back to make quorum at the end of the hearing, when the committee voted in favor of the proposal without amendments.⁵⁴

In Chicago, the regulations were adapted, but they were not made more general or capable of accommodating future innovations. The time and place regulations were tightened, with stricter fines and requirements for technological monitoring. The voices of food-truck owners were drowned out by the voices of restaurateurs.

In Washington, DC, regulatory adaptation followed a different arc. The city's initial response in 2010 to the upsurge in food trucks was to propose a moratorium. However, it withdrew that proposal when the DC Food Truck Association sparked a social media campaign that generated over two thousand comments in favor of food trucks when the moratorium was posted for public comment.⁵⁵ The laws that eventually passed in 2013 were favorable to food trucks, though imperfect. The president of the DC Food Truck Association remarked that they were some of the best laws in the country "because they preserve the industry's central tenet—roaming."⁵⁶ Twitter gave Kogi the freedom to be truly mobile, and modern food trucks succeed if their owners convince legislators to let them sell throughout a city.

⁵⁴ I participated in these events as an advocate for the food trucks and freedom of entrepreneurship, so these facts are recounted from memory. See also *Chicago Food Truck Ordinance Approved by City Council Committee* (Huffington Post July 20, 2012), online at http://www.huffingtonpost.com/2012/07/20/chicago-food-truck-ordina_n_1688963.html (visited Jan 9, 2015).

⁵⁵ See Linnekin, Dermer, and Geller, 17 *Nexus*: Chapman J L & Pol at 47 (cited in note 26). See also Vicky Gan, *Cities Can't Ignore That Food Trucks Have Grown Up* (Next City Equity Factor Aug 25, 2014), online at <http://nextcity.org/daily/entry/food-trucks-laws-zoning-regulations-dc-philadelphia-new-york-los-angeles> (visited Jan 9, 2015).

⁵⁶ Gan, *Cities Can't Ignore That Food Trucks Have Grown Up* (cited in note 55).

Yet food trucks face serious challenges in campaigning for favorable regulatory adaptation. Not only are their owners trying to change the policies made by zoning, streets and sanitation, health, and business departments in local governments of various sizes and levels of professionalism, but they are also trying to overcome the voices of restaurateurs and restaurant associations—classic examples of powerful, entrenched interests. Licensing laws are often determined by the size, strength, and budget of trade associations rather than the public's need for protection.⁵⁷ Restaurants have established connections to local lawmakers, and their concerns about destructive competition from food trucks resonate.⁵⁸ When existing restaurants claim to fear that they will have to close down or lay off workers, politicians must decide whether to pass a law that would destroy something that already exists in order to open the door for something that might come in the future. That is a politically difficult vote.⁵⁹

The political challenges that food trucks face are almost predictable for incremental innovators. Just as incremental innovators face acute regulatory barriers to entry, they also face acute political barriers to entry. Whenever an incremental innovator is shut out or handicapped by a law that has governed the conventional businesses in the industry, its efforts to change that law will likely meet resistance from the established businesses. Perhaps the established businesses invested resources in complying with those regulations and they do not think that it would be fair to excuse new entrants. Perhaps the conventional businesses were involved in writing the laws that codify the way that they conduct business. Perhaps they do not want competition from innovators once the innovators' improvements are

⁵⁷ See, for example, Lee Benham and Alexandra Benham, *Regulating through the Professions: A Perspective on Information Control*, 18 J L & Econ 421, 428–29 (1975). But see generally Marc T. Law and Sukkoo Kim, *Specialization and Regulation: The Rise of Professionals and the Emergence of Occupational Licensing Regulation* (National Bureau of Economic Research Working Paper No 10467, May 2004), online at <http://www.nber.org/papers/w10467.pdf> (visited Jan 9, 2015).

⁵⁸ See Stewart, 69 Cal L Rev at 1285–86 (cited in note 40) (“Government policies explicitly aimed at achieving a regulatory version of Schumpeterian ‘creative destruction’ will generate politically powerful opposition from affected firms, consumers, and employees.”).

⁵⁹ See *id.* at 1270 (“[I]mposing stringent controls on existing processes and products may disrupt the expectation interests of firms and consumers. . . . Imposing stringent controls on existing plants may lead to plant closings and job losses, which are far more politically controversial than a failure to build a new plant because of controls.”).

permitted. Regardless, the allied business owners can devote resources to lobbying that overwhelm the voice of a single innovator. The customers who stand to benefit from a future innovation if it is licensed rarely participate in the debate.

Again, Uber and Airbnb are exemplary. The taxicab industry resists laws that license ridesharing businesses, claiming that the long-established regulatory scheme that the conventional taxi companies follow has cost them money and made them safe for riders.⁶⁰ Hotels resist Airbnb with similar arguments.⁶¹ There are also examples in the analog world. Cosmetology associations lobby hard against proposed laws that would exempt natural braiding from cosmetology licensing requirements—including hundreds of hours of unrelated schooling—claiming that unlicensed braiders would constitute unfair competition and pose a risk to the public.⁶²

The new generation of food trucks has had some success in overcoming the political challenges inherent in incremental innovation. Even faced with heavy restrictions, they can build a following among their customers. Because they use social media to connect with those customers, they can rally the public to participate in political debates, upending the usual public-choice paradigm. They have done so successfully in DC and other cities.⁶³ A call to action with a tweet gives a supportive customer a means of getting somewhat politically involved immediately, either by retweeting or signing a petition that automatically sends e-mails to legislators. Food trucks have a distinct advantage in this respect over their analog counterparts. Traditional sidewalk vendors, like loncheras, cannot mobilize their loyal customers so quickly and effortlessly. Campaigns to legalize sidewalk vendors in Los Angeles and Chicago have continued for years.⁶⁴

⁶⁰ See, for example, Odette Yousef, *Cab, Livery Companies Sue City over Rideshare Companies* WBEZ 91.5 (Chicago Public Media Feb 6, 2014), online at <http://www.wbez.org/news/cab-livery-companies-sue-city-over-rideshare-companies-109655> (visited Jan 9, 2015).

⁶¹ See, for example, Lisa Fickenscher, *Hotels Girding for a Fight against Airbnb* (Crains New York Business Aug 19, 2013), online at http://www.crainsnewyork.com/article/20130819/HOSPITALITY_TOURISM/130819909/hotels-girding-for-a-fight-against-airbnb (visited Jan 9, 2015).

⁶² See generally Jacob Goldstein, *So You Think You Can Be a Hair Braider?*, NY Times Magazine 20 (June 12, 2012).

⁶³ See Linnekin, Dermer, and Geller, 17 Nexus: Chapman J L & Pol at 46–47 (cited in note 26).

⁶⁴ The campaign to legalize the occupation rather than loosen restrictions is a complex one. The infrastructure does not exist for sidewalk vendors to comply with standard

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In spite of the advantages of social media, food trucks face restrictive regulations in cities across the country. City and town councils have not adapted their regulations enough to realize the full economic benefits of Kogi's innovation. Like many incremental innovators, food-truck operators struggle to overcome the political forces of entrenched business interests that have little interest in opening the industry to creative new competitors. Only by marshaling popular support can small start-ups like food trucks hope to achieve the necessary regulatory reform.

CONCLUSION

Food trucks are a rapidly growing sector of the restaurant industry, thanks to the grassroots innovation that began with Kogi. As the reimaged business model has spread around the country, it has become possible to observe how entrepreneurs have fared in various regulatory regimes. In these hyperlocal laboratories of democracy, regulatory experiments play out. Where laws are limited to protecting health and safety, as in Los Angeles (by force of the courts), there is space for incremental innovators to improve on existing business models. Where laws are extremely specific to the established business models or protectionist of them, innovation is thwarted. To rescue innovation in a hostile legal environment, entrepreneurs must bring their customers into the debate. With numbers on their side, incremental innovators may occasionally solve the acute public-choice problem that they face.

health regulations. Sidewalk vendors would need accessible, affordable community kitchens where they could rent space for short periods of time. Their campaigns may therefore need to reform the laws governing shared kitchens as well as sidewalk vending.