

The Cost of Creativity: An Economic Analysis of Mobile Vending Regulations

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INTRODUCTION

Grassroots movements across the United States are calling upon local governments to deregulate mobile food vending. In New York, the Street Vendor Project has campaigned since 2014 for the City Council to issue more vending permits and revise regulations that specify where vendors can work in the city.¹ The vendors' campaign culminated in a march outside City Hall, where their lawyer asked through a megaphone, "Where's the bill, City Council?"² Weeks after the march in New York, conflict flared again over vending regulations in New Haven, Connecticut.³ The New Haven Building Department evicted food trucks from their parking spots for violating ordinances, such as a prohibition against selling on a residential street.⁴ The vendors were astonished that the city had received complaints about their operations, and expressed worry about being able to retain their employees after relocating.⁵ In Los Angeles, the City Council passed an even more controversial ordinance this year, restricting food vending and other commercial activities in parks.⁶ Los Angeles vendors publicly rallied against the ordinance and demanded to meet with the mayor, citing concerns over fines and confiscation of their

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¹ Daniel Krieger, *Fighting for the Right to Sell a Smoothie on New York Streets*, N.Y. TIMES (Oct. 2, 2015), http://www.nytimes.com/2015/10/04/nyregion/fighting-for-the-right-to-sell-a-smoothie-on-new-york-streets.html?_r=0 [https://perma.cc/39TK-UASL].

² *Id.*

³ Jiahui Hu & Michelle Liu, *Food Trucks Removed from Campus*, YALE DAILY NEWS (Oct. 15, 2015), <http://yaledailynews.com/blog/2015/10/15/food-trucks-removed-from-campus/> [https://perma.cc/Q8G8-59FA].

⁴ *Id.*

⁵ *Id.*

⁶ Katherine Davis-Young, *Los Angeles Street Vendors Call on Mayor for Legalization Process*, REUTERS (Sept. 10, 2015), <http://news.yahoo.com/los-angeles-street-vendors-call-mayor-legalization-process-032059710.html> [https://perma.cc/A2P2-QJ2Z].

property.⁷

Legal commentators have also advocated for deregulation. Commentators object to the comprehensive scope of local regulations because it creates cultural assumptions about how food should be sold or consumed.⁸ They also object to the amount of detail within regulations, arguing that it precludes nonconforming innovations.⁹ On the other hand, there is a lack of legal scholarship that articulates why oversight of mobile food vending is a compelling regulatory objective, and how it benefits the public at large. While critics decry the costs that governments impose on vendors and their creative enterprises, they have devoted little analysis to the costs that flow in the other direction. Without examining the costs on both sides, the debate over mobile vending remains imbalanced and unlikely to produce lasting solutions.

This Essay argues that regulation of mobile food vending sustains critical functions of the local government: provision of public services, protection of vulnerable populations, and effective inspections of compliance. By primarily examining cases and regulations in New York, this Essay identifies key issues, such as road traffic safety and environmental protection, which have contributed to the scope of existing regulations. These issues suggest that local governments can tailor the scope of their regulations by working with vendors to reduce costs and reformulate a bargaining agenda. Part I discusses obstacles to deregulation of mobile food vendors in New York and other jurisdictions. Part II provides strategies for mobile food vendors and local governments to collectively overcome some of the obstacles in Part I.

I. OBSTACLES TO DEREGULATION

Some scholars of local regulation have dismissed it as a form of protectionism for brick-and-mortar restaurants,¹⁰ or as prejudice against immigrants and racial minorities.¹¹ In doing so, they gave short shrift to many valuable reasons for the regulations. A robust system of regulation

⁷ *Id.*

⁸ Ernesto Hernández-López, *LA's Taco Truck War: How Law Cooks Food Culture Contests*, 43 U. MIAMI INTER-AM. L. REV. 233, 261–62 (2011).

⁹ Beth Kregor, *Food Trucks, Incremental Innovation, and Regulatory Ruts*, 82 U. CHI. L. REV. DIALOGUE 1, 9 (2015), https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/Dialogue/Kregor_Dialogue.pdf [https://perma.cc/Z3BV-FCCG].

¹⁰ *See id.* at 13.

¹¹ Hernández-López, *supra* note 8, at 239 n. 26.

not only eases demand for public resources, but also protects consumers and streamlines the inspection process.¹²

A. *Comprehensive Regulations Control Social Costs*

A fundamental obstacle to deregulation is that the social costs of mobile food vending likely exceed the industry's ability to pay. Most food trucks are microenterprises that earn less than \$11,000 annually.¹³ Even if looser regulations could increase that number, the increase would be constrained by other limitations that permeate the industry. Many food vendors have limited experience in preparing food and running a business.¹⁴ Moreover, they have limited capital if they own and operate their businesses independently, unlike the chain restaurants that also sell fast food at low prices.¹⁵ Operating out of a single vehicle, they can each only fulfill so many orders per day, especially when they are confined to the layout of a public street or park.¹⁶ Their earnings are further restricted by limits to what customers are willing to pay for fast food that is sold without the amenities of a restaurant, such as indoor seating and climate control.

Although income from a food truck decreases the vendor's reliance on government social spending, the food truck's operations increase demand for other public services. Among other needs, food trucks require services to mitigate their pollution, congestion in public areas, and use of parking space. These burdens are numerous and explicitly identified by decisions in cases involving mobile vendors, as well as in academic sources.¹⁷ Of

¹² JESSICA HUEY, ON THE GO: INSIGHTS INTO FOOD TRUCK REGULATION 10, 12 (2015), http://datasmart.ash.harvard.edu/assets/content/On_the_Go.pdf [https://perma.cc/W4Y7-HVWU].

¹³ JESÚS HERMOSILLO, LONCHERAS: A LOOK AT THE STATIONARY FOOD TRUCKS OF LOS ANGELES 25 (2010), <http://ccacla-laborcenter.electricmembers.net/wp-content/uploads/downloads/2014/04/Loncheras.pdf> [https://perma.cc/S6HK-NMDG] (characterizing food trucks as microenterprises); *St. Vendor Project v. City of New York*, 811 N.Y.S.2d 555, 558 (N.Y. Sup. Ct. 2005) (discussing the annual earnings of mobile food vendors).

¹⁴ Though some vendors have restaurant experience, others were housecleaners and factory workers before starting their businesses. See HERMOSILLO, *supra* note 13, at 25.

¹⁵ See *id.* at 6 (characterizing food trucks as predominantly owned and operated by individual families).

¹⁶ See *id.* (describing the tendency for mobile food vendors to own only one vehicle).

¹⁷ See, e.g., *Short Stop Indus. Catering Corp. v. City of New York*, 485 N.Y.S.2d 921, 924–25 (N.Y. Sup. Ct. 1985) (increasingly “clogging [the city’s] streets”); *Huggins v. City of New York*, 484 N.Y.S.2d 748, 750 (N.Y. Sup. Ct. 1984) (dangerously “preventing the regular flow of pedestrian and vehicular traffic, [and] forcing pedestrians off the sidewalk”); *Barr v. City of Syracuse*, 411 N.Y.S.2d 814, 819 (N.Y. Sup. Ct. 1978) (impeding general

course, food trucks are not alone in imposing social costs through their operations. All businesses generate their own set of externalities, both positive and negative. In the case of food trucks, however, their particular negative externalities may be too heavy for many cities to bear without implementing limits.

For example, a local government may decide to restrict food trucks from parking in busy areas of the city where they would otherwise cause a parking shortage.¹⁸ A parking shortage might seem to be a trivial reason to impose a regulation because the drivers who were displaced by food trucks could look for parking elsewhere. However, allowing food trucks to displace ordinary drivers would transfer hidden costs onto other individuals and businesses.¹⁹ The displaced drivers may overburden the parking spaces in other parts of the city, and the parking shortage near the food trucks would prevent drivers from stopping to make purchases in nearby stores.²⁰ Thus, local regulations that appear to protect only a few brick-and-mortar restaurants may in fact be protecting whole neighborhoods.²¹

Collectively, mobile food vending regulations form a balance between the industry's earning ability and the government's ability to either absorb the industry's social costs in excess of its earnings, or transfer them onto third parties.²² As discussed above, many vendors' earnings are constrained by the physical and financial parameters of their business models. These constraints likely prevent the industry from being able to afford the full cost of the social services that it consumes, ranging from pollution mitigation to parking expansion. As long as the government has a limited ability to pay

access to parking spaces); Hernández-López, *supra* note 8, at 244 (queuing customers "for 90 plus minutes"); HERMOSILLO, *supra* note 13, at 58–59 (contributing to noise and air pollution, and relying on public restrooms and waste receptacles).

¹⁸ Such a restriction could be accompanied with an expansion of outdoor markets to provide additional space for food trucks. *See, e.g.*, Benjamin Fried, *Shedding Light on Markets*, PROJECT FOR PUB. SPACES (Nov. 2003), <http://www.pps.org/reference/nov2003feature/> [<https://perma.cc/68RW-Z9RZ>] (advocating for public markets as an economic development objective in cities); *Become a Vendor*, QUEENS NIGHT MKT. LLC, <http://queensnightmarket.com/become-a-vendor/> [<https://perma.cc/R87X-F3ZQ>] (seeking applications from food vendors to participate in the Queens International Night Market in New York City).

¹⁹ *See* Kregor, *supra* note 9, at 11–12.

²⁰ *Id.*

²¹ *Id.*

²² In a contrasting theory, neither the government nor third parties would absorb excess social costs. Under that theory, the optimal level of regulation requires private entities, such as mobile food vendors, to bear the full extent of their external costs. *See* Robert F. Weber, *Structural Regulation as Antidote to Complexity Capture*, 49 AM. BUS. L.J. 643, 650 (2012).

for the remainder, it can be expected to regulate the industry's activities closely.²³

B. Detailed Regulations Protect Consumers and Enable Affordable Governance

Mobile food vending is a highly attractive resource for vulnerable populations. Because food trucks provide rapid service at low prices, they are accessible to indigent people who have little time and money.²⁴ Moreover, because of their ability to travel to their customers, food trucks naturally cater to people with low mobility. Laborers eat at food trucks in between jobs.²⁵ Elderly and disabled people use food trucks in their neighborhood as a supplement or alternative to meal deliveries.²⁶ These populations are unlikely to have many other options, so they may be less comfortable pressing vendors for information. They are also likely to face communication barriers due to issues such as memory loss or hearing impairments. Such circumstances make them susceptible to vendors who engage in fraudulent practices.²⁷ Thus, the volume of detail in mobile vending regulations may be at least partially driven by demographics. Industries that serve vulnerable populations also tend to be industries that are highly regulated.²⁸

Another driving force behind detailed regulations is the need for affordable governance. To promulgate a tailored regulation, the agency must invest in studying how to improve the existing regulation, providing notice to affected parties, and holding hearings.²⁹ Although the tailored regulations could enable innovations that bring more revenue to the industry, these rewards are uncertain and would only materialize in the

²³ Kregor, *supra* note 9, at 11–12.

²⁴ See HERMOSILLO, *supra* note 13, at 11; Kregor, *supra* note 9, at 3.

²⁵ HERMOSILLO, *supra* note 13, at 16.

²⁶ *Id.* at 48.

²⁷ See *Good Humor Corp. v. City of New York*, 49 N.E.2d 153, 156 (N.Y. 1943) (noting the problem of vendors who are “unfair and abusive in the manner in which they conduct their business”).

²⁸ See, e.g., Maurice L. Shevin, *Consumer Finance—The Fuel That Drives the Economy*, 58 ALA. LAW. 230, 231–32 (1997) (describing the consumer finance industry as “one of the most heavily regulated” in the United States, and noting that it serves “marginal consumers” from older and less educated populations).

²⁹ See William A. Birdthistle & M. Todd Henderson, *Becoming a Fifth Branch*, 99 CORNELL L. REV. 1, 58 (2013) (recognizing a limit to the government’s ability to tailor regulations because of “the costs of creating and deploying governmental decision making”). For notice and hearing requirements for New York City’s mobile food vending regulations, see N.Y.C. Admin. Code § 20-465.1(b).

future. Moreover, any reward would be shared between the vendors who earn the revenue and the government that taxes it, even though the investment is made by the government alone. The decision to invest becomes more feasible if the government can build cost savings into the regulations by including some details that make enforcement easier.

Detailed regulations can improve cost savings by streamlining the inspection process and directing the inspector to consider only the facts that the regulations specify.³⁰ General regulations, on the other hand, encumber the process because the inspector needs to make an initial decision about which facts are relevant before using those facts to draw a conclusion about compliance.³¹ For example, some local governments impose specific restrictions on how long a vendor can occupy a parking spot. Under these restrictions, some vendors find themselves running out of time when cooking on the spot.³² If the specific restrictions were replaced with a general standard, inspectors could allocate parking time based on each vendor's need.³³ However, this would require an initial assessment of what kind of food the vendor is serving that day, how much preparation has already been done, and how much time is required to complete the rest. The specific restrictions are more straightforward: the inspector only needs to observe when a food truck began occupying a parking spot in order to determine when it must leave. Because inspections are an ongoing endeavor throughout an entire jurisdiction, the government will need to focus its efforts by limiting the set of relevant facts.

Without the guidance of detail in regulations, inspectors would be cast adrift in a sea of variation among vendors. Among food trucks, the trucks alone "vary widely" in size and type, ranging from "the same model of truck as a UPS or FedEx delivery vehicle" to vehicles that "are no larger than the smallest automobile."³⁴ These variations multiply across a large scale. Even in New York City, where mobile food vending vehicle licenses

³⁰ See Kathleen M. Sullivan, *Foreword: The Justices of Rules and Standards*, 106 HARV. L. REV. 22, 63 (1992) ("[R]ules promote economies for the legal decisionmaker by minimizing the elaborate, time-consuming, and repetitive application of background principles to facts.").

³¹ See *id.*

³² See Kregor, *supra* note 9, at 5.

³³ For an explanation of why local governments have an interest in regulating vendors' usage of parking space, see Section I.A.

³⁴ 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 (2012).

are capped, there are thousands of mobile food vendors.³⁵ Because regulations constrain the inspector's discretion to choose which variations are acceptable, they ensure that all vendors are evaluated impartially.

II. STRATEGIES FOR COLLABORATION

Although its services come with social costs, mobile food vending should still be nurtured. It undoubtedly occupies an important economic niche for its employees and customers.³⁶ It has also inspired tourism while bolstering the city's reputation for creativity. These benefits justify collaborative efforts by local governments and mobile vendors to solve the industry's regulatory problems.

For vendors and their customers, food trucks can be essential to their daily lives. Vending has been instrumental to financial recovery for people struggling with poverty and unemployment.³⁷ Food trucks not only provided them with a personal livelihood, but also enabled them to support their families.³⁸ Food trucks offer financial benefits to their customers as well. Many underserved people, including elderly and disabled populations, rely on food trucks for meals that are both convenient and affordable.³⁹ The low cost of these meals is, at least in part, a result of savings obtained because the vendors purchase leftover ingredients that restaurants passed over.⁴⁰ By putting these ingredients to use, mobile vendors reduce food waste while providing options for customers who cannot afford the cost of delivered meals. Consequently, any increase in access to mobile food vending will be valuable because it reinforces food security and financial stability for many vulnerable populations.

For the public at large, mobile food vending improves their overall

³⁵ *Hossain v. City of New York*, No. 406889/07, 2008 NY Misc LEXIS 9356, at *4 (N.Y. Sup. Ct. Aug. 27, 2008) (“Defendants do not dispute plaintiffs’ claims that as of 2003 there were approximately 9200 mobile food vendors.”).

³⁶ See generally Kregor, *supra* note 9, at 3 (praising food trucks for contributions to their city’s economy, food culture, and access to affordable food).

³⁷ See, e.g., *id.* at 1–2.

³⁸ 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, 707 (2013) (“95% of New York City street vendors are immigrants, each supporting an average of four or five people domestically and in their homelands.”).

³⁹ See Section I.B. Their reliance could be a reason for local regulations that prohibit food trucks from parking near other food trucks or brick-and-mortar restaurants. The resulting dispersal of food trucks removes the glut of food retail options at prime locations and increases the likelihood that marginalized communities will be served. For a different view of these parking restrictions, see Linnekin, *supra* note 34, at 42–43.

⁴⁰ *Smith v. Morgan*, 1 N.Y.S.2d 958, 965–66 (N.Y. App. Div. 1938).

experience of the city. When mobile food vendors introduce new creations, they spark dining trends that stimulate local spending. Not all of the spending would be on food alone; other industries also stand to gain when mobile food vending generates tourism.⁴¹ And even after the tours are over and the trends have changed, vendors leave a lasting legacy. They bolster the city's general reputation for creativity, and this can have a halo effect that extends beyond the innovators. The halo effect is a psychological phenomenon in which the presence of a favorable attribute independently leads to inferences that are commonly associated with that attribute.⁴² In the context of marketing, it explains why an advertisement can generate impressions without explicitly stating them in words.⁴³ In the context of culture, it suggests that trends can shape a local identity without being formalized in any government policy. Mobile food vending offers residents and tourists a creative dining experience, which encourages them to associate the city with creativity. Thus, while regulatory problems in vending might seem mundane, their solutions have potential to secure the city's status as a leader and trend-setter.

A. *Focusing on Priorities*

Before negotiating over particular regulations, mobile food vendors and local governments should assess each other's needs and reconsider their own priorities. Because local governments have limited resources to spend on revising regulations, they need to understand which revisions matter most to the mobile food vending industry. Vendors, on the other hand, need to understand the existing and proposed regulations that apply to their businesses.

If vendors learn more about their local regulations, they have at least two opportunities to improve them. First, they can share their opinions on proposed regulations. In New York City, mobile food vending is regulated by the City Street Vendor Review Panel.⁴⁴ In order for the Panel to adopt a rule, it must announce its intention to do so.⁴⁵ The Panel is required to publish the proposed rule for comment and hold a public hearing, in

⁴¹ In Los Angeles, food vendors have garnered such fame that their businesses are designated stops on food tours. See Linnekin, *supra* note 34, at 39.

⁴² Richard Craswell, *Interpreting Deceptive Advertising*, 65 B.U. L. REV. 657, 675–76 (1985).

⁴³ *Id.* at 675–76.

⁴⁴ N.Y.C. Admin. Code § 20-465.1(a).

⁴⁵ *Id.* § 20-465.1(b).

conformity with the City Administrative Procedure Act.⁴⁶ Vendors in New York should avail themselves of these procedural protections so the Panel can benefit from hearing their insights. By providing targeted feedback, they can prevent unnecessary delays that are incurred when regulators search for the relevant information and correct errors that resulted from missing information.⁴⁷ Second, vendors can challenge the government's enforcement of a misguided regulation. Rather than appearing in court to respond to the case against them, many vendors simply default and accept the fine as a business expense.⁴⁸ In doing so, they allow potential inefficiencies to accumulate in their local regulations.

In addition to understanding the substance of regulations, vendors should consider the advantages offered by different forms of regulation. Although details impose some burdens on innovators, they also provide the benefit of guidance on how to comply or ask for changes.⁴⁹ Before their businesses are inspected, vendors can read the text of the regulation to know what they need to do in order to comply. If an inspector finds them in violation of a regulation, they know which parts of the regulation support the finding. Moreover, so long as a detailed regulation is clear, it is the industry's roadmap for negotiating with the government. It lets vendors know exactly what to ask the government to change, and it provides them with evidence of how the government is currently assessing compliance. In any event, because detailed regulations lower the cost of inspections by structuring the inspection process, vendors may wish to accept detailed regulations when possible.⁵⁰ By conserving the government's resources, vendors enable the government to invest in promulgating and enforcing a less specific regulation when it is indispensable to the industry. Therefore, if vendors find that their innovations are precluded by an existing regulation, the better course may be to press the government to modify just the preclusive details in the regulation, rather than abandon the entire

⁴⁶ *Id.* For a more detailed explanation of the City Street Vendor Review Panel's procedure for adopting a rule, see *Big Apple Food Vendors' Ass'n v. St. Vendor Review Panel*, 683 N.E.2d 752, 752–53 (N.Y. 1997).

⁴⁷ See Birdthistle, *supra* note 29, at 57 (discussing how expertise in regulation delivers more efficient regulation).

⁴⁸ *St. Vendor Project*, 811 N.Y.S.2d at 560. For an example of the mobile food vending industry's rate of default, see *Short Stop Indus. Catering Corp.*, 485 N.Y.S.2d at 924.

⁴⁹ See Sullivan, *supra* note 25, at 62–66 (identifying certainty and predictability as benefits of legal rules); Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175, 1179 (1989) (same).

⁵⁰ For a discussion of inspection costs, see Section I.B.

regulation.

Likewise, the local government can learn more about vendors' needs and adjust its own priorities. Commentators have urged local governments to revise their regulations in many areas, ranging from the motor vehicle code and the health code to land use and business laws.⁵¹ To prioritize among these areas, local governments can study mobile vending businesses that relocated for regulatory reasons. In other words, local governments can measure regulatory flight by mobile vendors.⁵² A local government could interview mobile food vendors who left its jurisdiction, ask why they relocated their businesses, and use their answers to shape a regulatory agenda.⁵³ For example, if the government can only afford to overhaul one of the areas that legal commentators have identified for reform, the natural choice would be the one most frequently cited by vendors for leaving. By studying which revisions matter most to the mobile vending industry, local governments can maximize the impact of their regulatory budget.

B. *Negotiating over Costs*

Negotiations between mobile food vendors and local governments have been frayed by distrust. While some advocates of mobile vending view the government as biased towards restaurants,⁵⁴ others view the government as apathetic.⁵⁵ From these perspectives, negotiations could well be over before they start. From another perspective, negotiations can be productive for vendors and governments because there are many areas where they both stand to gain. Vendors can leverage those areas by showing the government that their businesses have advanced local policies, or that future benefits of their proposals will materialize.

As long as it makes sense for their businesses, vendors can align their operations with policies that the local government has already established. In New York City, this could take the form of supporting local companies that develop digital technology.⁵⁶ Companies such as Foursquare and

⁵¹ Hernández-López, *supra* note 8, at 267–68; Kregor, *supra* note 9, at 10.

⁵² See Kerry Lynn Macintosh, *How to Encourage Global Electronic Commerce: The Case for Private Currencies on the Internet*, 11 HARV. J.L. & TECH. 733, 776 n.150 (1998) (describing the phenomenon of regulatory flight, in which companies relocate their operations to avoid onerous laws and regulations).

⁵³ For examples of a student's interviews of mobile food vendors, see HERMOSILLO, *supra* note 13, at 31–40.

⁵⁴ Kregor, *supra* note 9, at 13.

⁵⁵ Krieger, *supra* note 1 (reporting claims that a local government failed to return the Street Vendor Project's phone calls).

⁵⁶ See *About Made in NY*, MADE IN NY (2013), <http://wearemadeinny.com/about/>

Tumblr developed social media technologies in New York City and still maintain headquarters there.⁵⁷ Vendors could support these companies by incorporating their platforms into a social media marketing strategy.⁵⁸ Because mobile food vendors operate as small businesses, they are relatively nimble. They can outmaneuver large franchises by quickly adopting new technologies. If they choose to adopt local technologies, they would not only solidify their reputation for innovation, but also may bargain for tailored regulations because they contribute to the advancement of local policies.

Vendors can also bargain for regulations based on the strength of their connection to the local economy. For example, in Los Angeles County, one study estimated that “vendors generate \$517 million in economic stimulus, four-fifths of it in the local economy.”⁵⁹ Another study estimated that their overhead costs exceed \$170 million, and that most of this spending is “funneled directly into other businesses and likely supports the employment of tens of thousands locally.”⁶⁰ Vendors can make these figures more concrete by describing the sources of their local spending. If they purchase ingredients from a local grocery store, they can specify whether the produce was also locally grown. If they purchase equipment from a local retailer, they can note whether the store is locally owned, as

[<https://web.archive.org/web/20160205132530/http://wearemadeinny.com/about>] (conferring a mark of distinction to certain digital companies that operate in New York); *About Digital.NYC: Official Hub for NYC Startups and Tech*, DIGITAL.NYC (2015), <http://www.digitalnyc/about> [<http://perma.cc/BXQ5-BZLK>] (stating the mayor’s commitment “to making New York City the most technology-friendly and innovation-driven city in the world”).

⁵⁷ Erin Griffith, *New York: Lessons from Tumblr and Foursquare’s Mistakes*, BBC FUTURE (Oct. 9, 2013), <http://www.bbc.com/future/story/20131009-big-apple-tech-scene-bites-back> [<https://perma.cc/3VM9-5ETL>] (describing Foursquare and Tumblr’s development in New York); *Foursquare HQ*, FOURSQUARE, <https://foursquare.com/v/foursquare-hq/4ef0e7cf7beb5932d5bdeb4e> [<https://perma.cc/JP9U-F23V>] (last visited Dec. 20, 2016) (listing a New York address for headquarters); *About Tumblr*, TUMBLR, <https://www.tumblr.com/about> [<https://perma.cc/D6JQ-BZ7G>] (last visited Dec. 20, 2016) (same).

⁵⁸ Mobile food vendors have favored Twitter as their social media platform of choice, earning them the moniker of “Twitter truck.” HERMOSILLO, *supra* note 13, at 7; Kregor, *supra* note 9, at 6. By expanding their online presence on other platforms, vendors can convey their message through new channels, reach additional audiences, and avoid being typecast through one method of communication.

⁵⁹ YVONNE YEN LIU ET AL., SIDEWALK STIMULUS: ECONOMIC AND GEOGRAPHIC IMPACT OF LOS ANGELES STREET VENDORS 5 (Econ. Roundtable 2015), https://gallery.mailchimp.com/e8a55692f500ce884e3bf7e6e/files/LA_Street_Vendor_Report_final_6_15_2015.pdf [<https://perma.cc/65YH-4CS5>].

⁶⁰ HERMOSILLO, *supra* note 13, at 11.

opposed to a national chain. Based on their history of dealing with their suppliers, this information may be already within vendors' knowledge. They can use it to increase their bargaining power with the local government by showing that their regulatory interests are aligned with those of their suppliers. They can also bargain to mitigate the cost of a tailored regulation by committing to use other local goods and services in the future. Governments may be more willing to undertake the cost of drafting and enforcing a tailored regulation if they can recoup it through economic growth from local spending by vendors.

Not only could vendors bargain over their government's regulations, but they could also seek to engage in some form of self-regulation.⁶¹ Mobile food vendors have proven that they are capable of acting collectively. They mobilize customers to retweet messages and sign petitions.⁶² They participate in trade associations that represent their interests.⁶³ These shared experiences provide a social framework for vendors to deliberate over future standards for their industry. They are incentivized to create ambitious standards because customers who have a positive experience with one vendor are more likely to patronize the next. Moreover, because mobile vendors are microenterprises, it would be difficult for any one vendor to subvert the governance process for anticompetitive purposes.⁶⁴

Although local spending and self-governance can help alleviate social costs, this alone may still be insufficient to fund the promulgation and enforcement of tailored regulations over the long term. To close the funding gap, a local government can integrate its regulation of mobile food vending with some of its other prerogatives, such as historical preservation or education.⁶⁵ Because mobile vending is a "common and traditional use of the streets," ensuring the industry's survival can be considered a form of

⁶¹ Even if vendors exercise informal self-governance in jurisdictions where they are governed by an official body, their informal governance could still make an impact if it carries authority within the industry and is based on expertise.

⁶² Kregor, *supra* note 9, at 14.

⁶³ See generally *Big Apple Food Vendors' Ass'n*, 683 N.E.2d 752; Krieger, *supra* note 1.

⁶⁴ See Birdthistle, *supra* note 29, at 10 (noting that in industries with a mix of large and small firms, there is greater risk that self-governance will enable the large firms to exert anticompetitive influence over the small firms).

⁶⁵ In contrast, a direct way of closing the funding gap is to assess a fee on mobile food vendors. See Williams, *supra* note 38, at 712 (describing an annual fee to reimburse the local government for the loss of parking meter revenue and the expense of additional regulation).

historical preservation.⁶⁶ If the local government enforces a regulation by requiring violators to receive training, the training could be delivered in the form of business education.⁶⁷ Thus, local governments and mobile food vendors have a range of complementary interests that extend from preserving the tradition of vending to educating the entrepreneurs of tomorrow. All of these interests are reasons to believe that local governments and vendors can work together to tailor regulations.

CONCLUSION

With too many local regulations, new mobile vending businesses may struggle to get off the ground. With too few local regulations, however, the social costs of these businesses can outpace the local government's ability to provide the requisite public services and oversight. Such is the paradox of mobile vending: it fulfills the entrepreneur's creative vision for a new business, but it also creates additional demand for public resources. The challenge is to nurture the former to the greatest extent that the latter can support. As legal commentators and local activists have suggested, local governments can revise their regulations to provide mobile vendors with more flexibility. This Essay has argued that such revisions are more likely to occur if governments and vendors collectively invest in the process of studying the industry and enforcing regulations.

⁶⁶ Good Humor Corp. v. City of New York, 49 N.E.2d 153, 155 (N.Y. 1943).

⁶⁷ The City of New York has provided education to entrepreneurs who are financially underprivileged, as many mobile food vendors are. See, e.g., *NYCHA Food Business Pathways*, NEW YORK CITY ECON. DEV. CORP., <http://www.nycedc.com/program/nycha-food-business-pathways> [<https://perma.cc/UAU6-8AC2>] (last visited Dec. 20, 2016) (providing training to public housing residents to start their own food service businesses).