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# LA's Taco Truck War: How Law Cooks Food Culture Contests

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## LA's Taco Truck War: How Law Cooks Food Culture Contests

Ernesto Hernández-López\*

In 2008, a Taco Truck War broke out in Los Angeles (“LA”), California between local authorities, food trucks and loyal customers.<sup>1</sup> National and local media picked at the story after the Los Angeles County Board of Supervisors passed new regulations, which promised to severely restrict food trucks, referred to as “*loncheros*” or “taco trucks,” in East Los Angeles.<sup>2</sup> The authorities and business interests supporting the restrictions argued that the food trucks were a cumbersome and unsightly form of vending. On the opposite side, *loncheros*, foodies, and those looking for cheap meals viewed the restrictions as a full-frontal attack on local Los Angeles, the food scene, and Mexican food cultures.<sup>3</sup> Culinary resistance and enforcement of the new restrictions resulted in taco truck litigation. This Article argues that these policy and legal debates have significant cultural and food practice subtexts. While food truck litigation may focus on jurisdiction, statutes, and policymakers pondering over competition and “quality of life” issues, these debates are motivated by negotiations on food’s contribution to communal identity, perceived socio-economic status, and public space.

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\* Professor of Law, Chapman University School of Law. The author thanks Matthew Geller of the SoCal MVFA and Erin Glenn of the Asociación de Loncheros L.A. Familia Unida de California for sharing their experiences; Professors Steven Bender, Dennis Binder, Ingrid Eagly, Cesar Cuauhtémoc García Hernández, Kevin Johnson, Alfonso Morales, and Ken Stahl, attorney Angelica Ochoa for their suggestions; Asal Nadjarzadehshiraz for her research assistance; co-panelists and audience members of the LatCrit SNX2010 “*The Global Politics of Food: Sustainability and Subordination*”; the staff at Rinker Law library; and Chapman University School of Law for travel and research support.

1. Rebecca Winters Keegan, *The Great Taco Truck War*, TIME, Apr. 25, 2008, available at <http://www.time.com/time/nation/article/0,8599,1735104,00.html>.

2. See Jennifer Steinhauer, *In Taco Truck Battle, Mild Angelinos Turn Hot*, N.Y. TIMES, May 3, 2008, available at <http://www.nytimes.com/2008/05/03/us/03taco.html>; Ben Bergman, *Taco Truck Battle Heats Up in Los Angeles*, NPR (May 5, 2008), <http://www.npr.org/templates/story/story.php?storyId=90149577>; Denise Petski, *Effort against LA-area taco trucks loses its bite*, USA TODAY, Oct. 4, 2008, available at [http://www.usatoday.com/news/nation/2008-10-03-2917838081\\_x.htm](http://www.usatoday.com/news/nation/2008-10-03-2917838081_x.htm); John Rogers, *LA County judge tosses out taco truck restrictions*, USA TODAY, Aug. 28, 2008, available at [http://www.usatoday.com/news/nation/2008-08-28-2917838081\\_x.htm](http://www.usatoday.com/news/nation/2008-08-28-2917838081_x.htm).

3. See discussion, *infra* note 27 (providing pro-regulation arguments) and 29 (providing pro-truck arguments).

This article is comprised of three sections. Section I reports on how popular discourse describes food trucks,<sup>4</sup> regulation of them and resistance by them, in the City of Los Angeles (“LA”) and Los Angeles County (“LA County”) during the 2008-09 period. Referring to global media, local press, community bloggers, online food sources, and government press releases, food trucks emerge as a contested, impassioned, and emblematic site of communal disdain and culinary promise. From this, two developments stand out: a “Taco Truck War,”<sup>5</sup> as labeled by Time magazine, and a new wave of food trucks was recognized, symbolized in Kogi BBQ’s Korean tacos. Section II presents law’s impact on food truck culture. It describes two court cases and the relevant doctrine concerning local regulations specific to food truck vending: *People v. Margarita Garcia*<sup>6</sup> (2008) in LA County, and *Francisco Gonzalez v. City of Los Angeles Department of Transportation*<sup>7</sup> (2009). Both courts

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4. This Article uses the terms “food trucks” or “truck vendors” to refer to food vendors who operate from mobile vehicles, even though technically they don’t need to be in trucks and can be in other vehicles. California codes and local ordinances use other terms such as “catering trucks” or “peddlers.” “Taco Trucks” is the common term given to many such vendors who sell Mexican food, including but not limited to tacos. The local Spanish terminology for such trucks is “*loncheros*” or “*taqueros*.” For sake of simplicity and consistency, the Article mostly uses the terms “food trucks,” “truck vendors,” “*loncheros*,” and “taco trucks,” even though they may not be completely accurate. This Article focuses on vendors in mobile vehicles and not on other street vending formats, such as stands or carts, even though many of the same cultural issues and legal doctrine apply. It primarily examines food truck litigation in the Los Angeles area during the 2008-09 period and attempts to place these legal issues in larger policy and culture debates. Focused mostly on this period and because food truck regulation continually develops, in Los Angeles and in other locations, its analysis is by no means exhaustive. Similarly, “on the ground” developments in food trucks may date some of the events described.

5. Rebecca Winters Keegan, *The Great Taco Truck War*, TIME, Apr. 25, 2008, available at <http://www.time.com/time/nation/article/0,8599,1735104,00.html>.

6. See *People v. Garcia*, No. 8EA05884 (L.A. Super. Ct. Aug. 27, 2008) (order following demurrer hearing); Garrett Therolf, *Taco trucks can stay parked*, L.A. TIMES, Aug. 28, 2008, available at <http://articles.latimes.com/2008/aug/28/local/me-tacos28>; John Rogers, *LA County judge tosses out taco truck restrictions*, USA TODAY, Aug. 28, 2008, available at [http://www.usatoday.com/news/nation/2008-08-28-2917838081\\_x.htm](http://www.usatoday.com/news/nation/2008-08-28-2917838081_x.htm); Lindsay William-Ross, *Taco Trucks Get the Green Light to Put On the Parking Brake*, LAIST (Aug. 28, 2008), [http://laist.com/2008/08/28/taco\\_trucks\\_get\\_the\\_green\\_light.php](http://laist.com/2008/08/28/taco_trucks_get_the_green_light.php).

7. See *Gonzalez v. City of Los Angeles Dept. of Transportation*, No. 09K08485 (L.A. Super. Ct. June 8, 2009) (order reversing administrative decision); Phil Willon, *L.A. taco trucks can stay parked for business*, L.A. TIMES, June 11, 2009, available at <http://articles.latimes.com/2009/jun/11/local/me-tacotrucks11>; Elina Shatkin, *Carne asada is not a crime - - once again [Updated]*, L.A. TIMES: Daily Dish, June 11, 2009, available at <http://latimesblogs.latimes.com/dailydish/2009/06/carne-asada-is-not-a-crime-once-again.html>; *UCLA School of Law Clinical Program Wins Case Challenging Validity of Los Angeles City Ordinance Implemented Against Taco*

decided in favor of vendors, finding local regulations too vague to enforce and pre-empted by the state vehicle code.<sup>8</sup>

Section III predicts that future efforts to regulate mobile food vendors, inside and outside Los Angeles, will face similar heated contests for two reasons. First, food practices offer enormous cultural and commercial value. Food truck operators, fixed restaurants, and local communities proffer popular and dueling visions of neighborhood economics, food culture, and public space. Clouding these issues are outcries of health and safety risks, traffic congestion, and unfair competition through political channels. This Article argues that these debates have significant cultural and food practice subtexts.<sup>9</sup> Second, law and policy shape our gastronomic options and commercial tastes. Governmental regulation—in vehicle, health, parking, land use, and business laws—and their consequential penalties, all influence options for food trucks and their patrons.

#### I. CULTURE CONTESTS IN A TACO TRUCK WAR: VENDOR REGULATION AND GOURMET TRUCKS

Before reporting on food truck vendor contests, this Article describes how cultural values are heavily embedded in food practices. Understanding the cultural discourses of food helps explain why legal and policy contests are so heated and perhaps inevitable. In this hodgepodge of competing values, law and policy intersect, and limit or support food choices. Cultural values are

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*Trucks*, UCLA SCHOOL OF LAW: NEWS AND MEDIA, (June 10, 2009), <http://www.law.ucla.edu/news-media/Pages/News.aspx?NewsID=737>; *Carne Asada is not a Crime: Loncheros Update*, SAVE OUR TACO TRUCKS (June 10, 2009), <http://saveourtacotrucks.org/2009/06/10/loncheros-update/>; Cynthia Lee, *Law students champion cause of taco truck vendors*, UCLA TODAY (July 14, 2009) <http://www.today.ucla.edu/portal/ut/law-students-champion-cause-of-96061.aspx>.

8. See *People v. Garcia*, No. 8EA05884 at 2-3, 5 (finding the LA County food truck and parking ordinance too ambiguous to enforce and unconstitutional as it is pre-empted by California state law and a prohibition of mobile vending); *Gonzalez v. City of Los Angeles Dept. of Transportation*, No. 09K08485 at 2 (finding LA city code regulating food trucks with parking regulations expressly in conflict with the California Vehicle Code).

9. This Article presents an introductory analysis of how food truck litigation has developed in LA and LA County for the 2009-09 period. Its primary objectives are to describe food trucks as a culinary and cultural phenomena, report on the policy and doctrine used to regulate them, and relate these issues to analysis of food as culture, communal identity, and social stratification. This ideally opens more scholarly, policy, and activist questions than it answers. Its methodology focuses on examining scholarly food studies sources, internet articles, food and news reports, and relevant jurisprudence, doctrine, and policy. This Article does not pretend to present a full analysis of all regulatory, criminal, and policy challenges faced by food trucks.

reflected in food practices, i.e. how food is eaten, sold, prepared, cultivated, and produced. The “food studies” discipline describes this important link between food and culture. In a collection of essays, James Watson and Melissa Caldwell explain that “[f]ood practices are implicated in a complex field of relationships, expectations, and choices that are contested, negotiated, and often unequal.”<sup>10</sup> Economic, historical, and political determinations shape these discourses, with cultural ramifications beyond everyday consumption, sales, and production.<sup>11</sup> In a variety of examples, Watson and Caldwell show “[f]ood everywhere is not just about eating, . . . and eating (at least among humans) is never simply a biological process.”<sup>12</sup> Decisions on how to eat and what should be eaten signify food’s substantial cultural currency.

Food practices rest on communal or shared values, i.e. culture.<sup>13</sup> The everyday activity of eating is embedded with specific associations, with deeply shared value for consumers and producers. Arising from the simple nutritive act of eating or drinking, associations include national identity, religion, ideology, or class.<sup>14</sup> Food implies religious identity (e.g. kosher, halal, or “fish on Fridays”), health concerns (e.g. no trans-fat, low cholesterol), the treatment of animals (e.g. free-range or vegan), and natural and chemical-free lifestyles (e.g. organic or no-additive). These simple associations show some of the ways that food is not just a matter of biology and personal taste, but how food is a part of and represents communal identities.

Food practices are intimately related to cultural identity and how it’s negotiated, whether the identity is national, local, communal, gendered, racial, or socio-economic. In *Distinction*, Pierre

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10. THE CULTURAL POLITICS OF FOOD AND EATING: A READER 1 (James L. Watson & Melissa L. Caldwell eds., 2005).

11. *See generally id.*

12. *Id.* at 1.

13. For a working definition of ‘culture,’ this Article uses William Roseberry’s focus on culture and politics, economics, and history. His approach looks at cultural meaning and inequalities. Roseberry examines culture as developing from “social and political actors” having their actions formed “in part by preexisting understandings of the world, of other people, of the self” and this is influenced by “social and political inequalities” and “historical formation.” Accordingly, history and political economics affect “actors’ differential understandings of the world, other people, and themselves.” WILLIAM ROSEBERRY, ANTHROPOLOGIES AND HISTORIES: ESSAYS IN CULTURE, HISTORY, AND POLITICAL ECONOMY 13-14 (Rutgers Univ. Press 1989).

14. *See* discussion *infra* notes 15-20; *Cf.* ALAN BEARDSWORTH & TERESA KEIL, SOCIOLOGY ON THE MENU: AN INVITATION TO THE STUDY OF FOOD AND SOCIETY (Routledge 1997) (describing how sociology should increasingly focus on food production and consumption).

Bourdieu argues that “taste,” including but not limited to food, is defined by those in power and by using concepts like “taste” and “culture,” socio-economic distinctions are reinforced.<sup>15</sup> Jeffrey Pilcher shows how Mexican history serves a series of “tortilla discourses” contributing to national identity, wherein modern and “scientific” influences attempt to exclude the indigenous or domestic elements of Mexican food, i.e. maize, chiles, and beans.<sup>16</sup> I have argued that the NAFTA did the same by eliminating Mexican tariffs for maize in 2008 (and exposing Mexican food security to volatile global ethanol markets).<sup>17</sup> Abril Saldaña shows how food, where and what one eats, is vital to distinctions based on gender, class, and race, and between domestic workers and employers in Mexican households.<sup>18</sup> Yanira Reyes Gil presents the significance Puerto Rican food has in contributing to national identity in this U.S. territorial possession.<sup>19</sup> U.S. culinary history and the immigrants in this history have found food practices essential to negotiating national identity and migrant identities.<sup>20</sup>

Along these lines, for food truck vendors in Los Angeles and across the nation,<sup>21</sup> debates about their legality or proposed illegality reflect larger cultural contests about local and neighborhood identity, local economics, and public space.<sup>22</sup> In policy terms,

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15. See generally PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF JUDGMENT AND TASTE* (Richard Nice trans., Harvard Univ. Press 1985); See, e.g., PSYCHE A. WILLIAMS-FORSON, *BUILDING HOUSES OUT OF CHICKEN LEGS: BLACK WOMEN, FOOD, AND POWER* (The Univ. of N. C. Press 2006) (with the example of chickens, describing how self-identification, stereotypes, gender, and notions of class characterize food in African American cultures).

16. See generally JEFFREY M. PILCHER, ¡QUE VIVAN LOS TAMALES!: *FOOD AND THE MAKING OF MEXICAN IDENTITY* 85 (1998).

17. See generally Ernesto Hernandez-Lopez, *Law, Food, and Culture: Mexican Corn's National Identity Cooked in "Tortilla Discourses" Post-TLC/NAFTA*, 20 ST. THOMAS LAW REV. 670, 670, 672 (2008).

18. See Abril Saldaña, *Paid Domestic Workers in Mexico and Food Relations at Work; Looking at the Complexities and Potentialities of Intersectionality*, (Feb. 26, 2010) (on file with author).

19. See Yanira Reyes Gil, *Food and National Identities in Puerto Rico*, (May 6-8, 2010) (unpublished paper presented at LatCrit-SNX 2010 symposium “The Global Politics of Food: Sustainability and Subordination,” Universidad Ibero-Americana, Mexico DF, Mexico).

20. See generally HASIA R. DINER, *HUNGERING FOR AMERICA: ITALIAN, IRISH & JEWISH FOODWAYS IN THE AGE OF MIGRATION* 113-114 (2001); DONNA R. GABACCIA, *WE ARE WHAT WE EAT: ETHNIC FOOD AND THE MAKING OF AMERICANS* (1998).

21. See Jeff Gottlieb, *Taco Trucks are feeling the crunch across the U.S.*, L.A. TIMES, May 20, 2009, available at <http://articles.latimes.com/2009/may/20/local/metacotrucks20> (reporting efforts to restrict taco trucks in Hughson, CA., Palos Verdes Estates, CA., Houston, TX., Des Moines, IA., Charlotte, N.C. and Hillsboro, OR).

22. See *Id.*

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the debates are expressed from pro and anti-vendor perspectives. Anti-vendor views argue that food trucks congest streets and sidewalks, with public areas subject to selling, consumption and litter stemming from the trucks.<sup>23</sup> This view further maintains that truck vendors are unsafe and unsanitary, since trucks do not offer the same cooking, disposal, and storing services that fixed restaurants do.<sup>24</sup> Finally, opponents of food trucks contend that they compete unfairly with fixed restaurants, 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.<sup>25</sup> These arguments focus on how neighborhoods view themselves and the image they project, whether it's in perceived property values, excluding businesses or outside customers, or prejudices concerning the working class and

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23. Cf., *New LA County law cracking down on taco catering trucks*, DAILY BREEZE, Apr. 17, 2008, available at [http://iiprxy.library.miami.edu:2053/iwsearch/we/InfoWeb?p\\_product=AWNB&p\\_theme=aggregated5&p\\_action=doc&p\\_docid=1201CA5B275778E0&p\\_docnum=2&p\\_queryname=1](http://iiprxy.library.miami.edu:2053/iwsearch/we/InfoWeb?p_product=AWNB&p_theme=aggregated5&p_action=doc&p_docid=1201CA5B275778E0&p_docnum=2&p_queryname=1) (quoting complaints of truck prices from Louis Herrera, Pres. Greater East Los Angeles Chamber of Commerce); Jean-Paul Renaud, *East L.A. taco truck owners say they'll stay put*, L.A. TIMES, Apr. 16, 2008, available at <http://articles.latimes.com/2008/apr/16/local/me-taco16> (referring to reports that restaurant owners complain about truck proximity and competition and that "many restaurants are forced to close . . .," LA County Supervisor Gloria Molina's description of a "little war" between trucks and restaurants, and Tony DeMarco, Vice Pres. of Whittier Boulevard Merchants Assn., (stating putting trucks out of business is a "big victory" and will "clean up the area."); Winters Keegan, *supra* note 1 (quoting Supervisor Molina justifying the regulations as "trying to create a better and more livable community"); Jennifer Steinhauer, *In Taco Truck Battle, Mild Angelinos Turn Hot*, N.Y. TIMES, May 3, 2008, available at <http://www.nytimes.com/2008/05/03/us/03taco.html> (referring to East LA resident and County complaints that trucks are "eyesores" who price-chop, and a "blight," and Gerry Hertzberg, Policy Director for County Supervisor Molina, presenting trucks as a "big quality of life issue" with complaints of litter, noise, public urinations and parking space use, and Lourdes Caracoza, Pres. of the Maravilla Business Assoc., referring to food trucks as not part of and not giving to the community and in Mexico trucks do not sell tacos); Ben Bergman, *Taco Truck Battle Heats Up in Los Angeles*, NPR, (May 5, 2008), <http://www.npr.org/templates/story/story.php?storyId=90149577> (quoting claims that trucks charge low prices because they have zero overhead and they don't pay taxes or follow county health regulations); Denise Petski, *Effort against LA-area taco trucks loses its bite*, Oct. 4, 2008 available at [http://www.usatoday.com/news/nation/2008-10-03-2917838081\\_x.htm](http://www.usatoday.com/news/nation/2008-10-03-2917838081_x.htm) (quoting Supervisor Molina's spokesman justifying the regulations as "to ensure fairness to our residents."); Francisco Castro, *Pelea entre 'loncheras' y restaurantes*, HOY LOS ANGELES, Aug. 28, 2009 available at <http://www.readoz.com/publication/read?i=1017641&pg=8#page8> (describing enforcement of regulations against food trucks as motivated by restaurant antagonism with food truck competition).

24. *Id.*

25. *Id.*

immigrants.<sup>26</sup>

Pro-vendor forces argue that trucks are neither unsafe nor unsanitary since they comply with relevant vehicle and health codes.<sup>27</sup> Trucks provide economical food options in locations where restaurants are lacking or are not affordable to potential customers.<sup>28</sup> 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.<sup>29</sup> Trucks provide creative avenues to sell and buy new culinary options.

To counter the charge of unfair competitive advantage, food truck vendor advocates point to their unique disadvantages. Working from mobile units on the streets can expose truck owners and employees to crime and harassment<sup>30</sup> that fixed restaurants

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26. Gottlieb, *supra* note 21 (describing nationwide taco truck restrictions as tied to property prices, “quality of life” issues, and anti-immigrant and racist sentiment).

27. See Ernesto Hernández-López, Op-Ed., *Don't Discourage Food Trucks*, ORANGE COUNTY REGIS., Sept. 22, 2010, available at <http://www.ocregister.com/opinion/food-267713-trucks-california.html> (arguing food trucks “must comply with many health, vehicle and business regulations”). Trucks are required to park overnight at government-approved commissaries, where they are cleaned, gas grills serviced, and food stored. See generally Gustavo Arellano, *Bribery, Threats, Broken-Down Vehicles, Lawsuits, Pioneers, Good Food: Tales from OC's Taco Trucks*, OC WEEKLY, July 23, 2009, available at <http://www.ocweekly.com/2009-07-23/food/taco-trucks/>.

28. See Jonathan Gold, *Keep On (Taco) Trucking: Notes from the Taquero Resistance*, LA WEEKLY, Apr. 24, 2008, available at <http://www.laweekly.com/2008-04-24/eat-drink/keep-on-trucking/> (reporting that successful trucks operate where few restaurants exist and consumers value what the trucks offer).

29. See, *cf.*, Hernández-López, *supra* note 27 (arguing food trucks are Southern California’s “culinary apex” accessible to millions, local regulations are illegal and uncompetitive, and loncheros have won hard fought legal battles); Op-ed, *Long live taco trucks: they provide a service, a snack and a slice of L.A. life, If you agree place your order here*. Los Angeles Times, May 2, 2008 (arguing that taco trucks are a “rich part of the region’s heritage” despite the County Supervisors claims they are a “nuisance” and that if restaurants can’t compete with higher prices and employing more persons “they may not deserve to survive.”); Jonathan Gold, *supra* note 28 (responding to unfair competition by reporting successful trucks operate where few restaurants operate and truck consumers value what trucks sale therefore they wait long periods and inline outside to eat so), Denis Binder, *Taco (Trucks) To Go*, denis binder.blogspot.com, May 14, 2008 (arguing “Taco trucks are a piece of our culture” and relating taco trucks with Southern California’s historic fast food enterprises like MacDonald’s, Jack in the Box, Carl’s, Jr., Fatburgers and In and Out Burgers); See Hernández-López, *supra* note 27 (arguing that “customers who are willing to stand in line and eat outside who are not the same customers who are prepared to pay for comforts like tables, parking, and servers”); Op-ed, *Tasty Meals on Wheels*, LA TIMES, May 2, 2008, available at <http://articles.latimes.com/2008/may/02/opinion/ed-tacos2> (arguing that if restaurants can’t compete, “they may not deserve to survive”).

30. See Paula Díaz, *En Diez Años es la Primera Vez que nos Asaltan*, HOY LOS ANGELES, July 17, 2009, available at <http://www.vivelohoy.com/noticias/localidades/losangeles/vv12-loncherosjul17,0,7434830.story>; Ruben Vives, *Tagger Crew Accused in at least 22 Armed Robberies of Taco Trucks*, L.A.NOWBLOG (Aug. 6, 2009, 2:02 PM),



may not be subject to. Also, trucks may find themselves disadvantaged by missing out on the goodwill accumulated at a fixed location. Along with vendor and vehicle licenses and compliance with storage and cleaning regulations for food trucks,<sup>31</sup> the actual vehicle or its lease<sup>32</sup> and its incidental costs are expenses that food trucks must incur and which restaurants do not. Los Angeles food trucks comply with regulations concerning businesses licenses, often in multiple jurisdictions, Los Angeles County Public Health Code, California Vehicle Code, health department inspections on the street and at their commissaries, and the county Housing and Community Development Agency truck size requirements.<sup>33</sup> Observers note recessionary push for economic food and social and environmental consciousness explain some of food trucks recent appeal.<sup>34</sup> Perhaps most important, many observers, consumers, and vendors argue that taco trucks and food trucks are part of Los Angeles culture.<sup>35</sup>

Motivated by anti-vendor positions, Los Angeles County and

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available at <http://latimesblogs.latimes.com/lanow/2009/08/tagger-crew-accused-in-at-least-22-armed-robberies-of-taco-trucks.html>; Rob Hayes, *Taco Truck owners Allege LAPD Harassment*, KABCLOSANGELES (July 15, 2009), available at [http://abclocal.go.com/kabc/story?section=news/local/los\\_angeles&id=6915527](http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=6915527) (providing a video news report describing the Loncheros Association's formal complaint filed with the LAPD and the LAPD describing its intention to work with the association and how this concerns police officers and not LAPD policy).

31. Trucks are required to park overnight at government approved commissaries, where they are cleaned, gas grills serviced, and food stored. See Arellano, *supra* note 27.

32. New food trucks cost between \$100,000 and \$140,000. See Elina Shatkin, *The Food Trucks Just Keep Rolling*, LA TIMES, July 22, 2009, available at <http://articles.latimes.com/2009/jul/22/food/fo-foodtrucks22>. Many food truck operators lease the trucks from Road Stoves in Los Angeles. See *id.*; Erica Zora Wrightson, *Truckin' with Road Stoves: LA's Street Food Redefined*, LA TIMES BLOG (Sept. 25, 2009, 6:13 PM), available at <http://blogs.laweekly.com/squidink/food-trucks/road-stoves-food-trucks/>. Road Stoves presents itself as a "one stop shop" for opening a food truck and, its services include vehicles, permits, insurance, storage, parking, and maintenance. ROADSTOVES, <http://www.roadstoves.com/services.html>.

33. See Matthew Geller, Op-Ed., *Putting the Brake on Food Trucks?*, LA BUS. J., Aug. 2, 2010, available at <http://www.labusinessjournal.com/news/2010/aug/02/putting-brakes-food-trucks/>.

34. See Erica Zora Wrightson, *Truckin' with Road Stoves: LA's Street Food Redefined*, LA Times Blog, Sept. 25, 2009.

35. See Renaud, *supra* note 23 (describing trucks as "part of the cultural fabric of East L.A." and suggesting that they meet important market demands); Winters Keegan, *supra* note 1 (presenting taco trucks as an Los Angeles institution which inspires "passionate debate and chest-thumping;" perhaps only the Lakers basketball team draw as much local pride); *Long Live Taco Trucks*, *supra* note 29 (arguing taco trucks are a "rich part of our region's heritage"); Denis Binder, *Taco (Trucks) To Go*, BINDER'S BLOG (May 14, 2008), <http://denisbinder.blogspot.com/2008/05/taco-trucks-to-go.html> (arguing "trucks are a piece of our culture" and relating taco trucks with

the City of Los Angeles began enforcing parking regulations with the purpose of curtailing, if not ending, food trucks.<sup>36</sup> Courts addressed these regulations as matters concerning the pre-emption of state law and the unfairness of vague statutes.<sup>37</sup> This Article argues that cultural concerns for neighborhood identity motivated food truck regulations and their litigation.<sup>38</sup> The County and the City's increased enforcement occurs in urban areas close to recent gentrification (i.e., East Los Angeles and the Boyle Heights area of Los Angeles), where vendors operated without these restrictions or restrictions were not enforced in the past.

Boyle Heights and East Los Angeles border each other, both being east of downtown.<sup>39</sup> Recent real estate speculation in Los Angeles (i.e., the housing bubble), and increasing popularity of housing options close to downtown made these areas appealing to new investor and business interests. Many local residents may look forward to an increase in real estate prices if they own property or new commercial opportunities if they meet existing com-

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Southern California's historic fast food enterprises like MacDonald's, Jack in the Box, Carl's, Jr., Fatburgers, and In and Out Burgers).

36. The Los Angeles County Ordinance was proposed by Supervisor Gloria Molina and approved unanimously. The organization "Save Our Taco Trucks" wrote a letter to Supervisor Molina describing the cultural and economic importance of taco trucks and how the Supervisor should perhaps propose increased enforcement of health codes versus forcing trucks to move. Supervisor Molina responded by indicating that the ordinance only applies in unincorporated areas of Los Angeles County where sidewalk vending is illegal, and the ordinance will "protect the health and welfare of our residents and respect the needs of our business community." See *York Blvd., Open Letter to Supervisor Gloria Molina*, YORK BLVD. (Apr. 20, 2008), available at <http://yorkblvd.com/2008/04/20/open-letter-to-supervisor-gloria-molina/>.

37. See *infra* Part II (presenting Los Angeles city and Los Angeles County litigation and their relevant doctrines).

38. See, *cf.*, Gloria Molina, Los Angeles County Supervisor, Statement by Gloria Molina on Yesterday's Catering Truck Ruling by Judge Dennis A. Aichroth (Aug. 28, 2008), <http://molina.lacounty.gov/pages/Press/2008%20Press/08%2028%202008%20Gloria%20Molina%20Statement%20on%20Catering%20Truck%20Case.pdf> (reporting that truck regulations are a quality of life matter); Dan Walters, *L.A.'s Misguided crackdown on Taco Trucks*, SACRAMENTO BEE, May 9, 2008, available at <http://www.scrippsnews.com/node/33053> (presenting County Supervisor's claims that it is a "big quality-of-life issue" and relating the regulations as "ill-disguised shakedowns" against small businesses owned by immigrants and/or ethnic minorities such as with restricting lawn services, sidewalk pushcarts, and hair braiding).

39. For descriptions of how East Los Angeles and Boyle Heights have been excluded from downtown and the more affluent Westside Los Angeles because of geography, racism, and government and economic policies, see Steven W. Bender, *Knocked Down Again: An East L.A. Story on the Geography of Color and Colors*, 12 HARV. LATINO L. REV. 1009 (2009); RODOLFO F. ACUNA, ANYTHING BUT MEXICAN: CHICANOS IN CONTEMPORARY LOS ANGELES 8-10 (1996); RICARDO ROMO, EAST LOST ANGELES: HISTORY OF A BARRIO 85 (1983).

munity demands. For these urban communities, it was argued that food truck vendors would not appeal to new residents with higher incomes or new businesses, particularly large corporate retailers and restaurants.<sup>40</sup> Food sales from a vehicle parked on the street and persons congregated on sidewalks would not fit in with the sale demographics of more expensive stores and restaurants, or condominium and home prices. These arguments reflect stereotypes based on what is perceived as the lower socio-economic status of immigrants.<sup>41</sup>

The opening up of the metro train gold-line extension, linking East LA and Boyle Heights with downtown Los Angeles and the MTA subway network heightened public, investor, and local interests.<sup>42</sup> With MTA trains bypassing vehicle congestion travelling to and from downtown and beyond, it was predicted that the gold-line would open up the area to new residents and businesses, which the area lacked.<sup>43</sup> This needed form of public transport did not start operations until January 2009. The Los Angeles County Supervisors created and implemented its food truck ordinance in 2008, while the City of Los Angeles increased enforcing similar regulations in 2009. Before the gold-line began operating, questions arose concerning what new businesses would find space in the area served by the trains and what existing businesses would remain or pose a challenge to changing local economies. Street commerce, food stands, and food trucks became issues of public contention.<sup>44</sup> This changing cultural atmosphere for both food practices and local politics, along with county and city enforce-

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40. See generally Hector Becerra, *The Fast Track to Change: The Gold Line's Extension to the Eastside is Seen as a Mixed Blessing by some Residents*, LA TIMES, Nov. 30, 2008, available at <http://articles.latimes.com/2008/nov/30/local/me-goldline30> (describing how the train extension heightens enthusiasm and anxiety over gentrification, gentrification and resident resentment experiences in Silver Lake and Echo Park, and the relevant tensions between Mexican-American residents and Mexican immigrants over "affordable housing, street vending, and even taco trucks").

41. See *infra* Part III for discussion about the cultural stereotypes influencing anti-food truck policies.

42. See generally Becerra, *supra* note 40.

43. *Id.*

44. For descriptions of street vending, including food trucks as one example, and their role in debates about public space, see Alfonso Morales and Gregg Kettles, *Zoning for Public Markets and Street Vendors*, AM. PLANNING ASS'N Kettles, *Healthy Food Outside: Farmers' Markets, Taco Trucks, and Sidewalk Fruit Vendors*, 26 J. CONTEMP. HEALTH L. & POLICY. 20 (2009); JOHN C. CROSS & MARINA KARIDES, *STREET ENTREPRENEURS: PEOPLE, PLACE AND POLITICS IN LOCAL AND GLOBAL PERSPECTIVES* 19 (John Cross & Alfonso Morales eds., Routeledge 2007).

ment of vehicle parking regulations all set the stage for taco truck war litigation.

Meanwhile, often west of downtown Los Angeles, a new wave of food trucks gained culinary and public attention. Labeled gourmet, nouveau, or fusion food trucks, these vendors use the similar vehicle format.<sup>45</sup> But they differ in at least three important ways. First, what they sell is different than the tacos, tostadas, burritos, gorditas, ceviche, seafood cocktails, and tortas usually associated with “taco trucks” or *loncheros*. Some focus on fusion or specialized items. They fuse Mexican food with Korean, Chinese, Vietnamese, and other cuisines. Some trucks identify with Greek, Argentine, Indian, dim sum, Brazilian or other international cuisines. Other trucks specialize in regional barbecue or Southern food, gourmet hot dogs or hamburgers, vegetarian, vegan, desserts such as cupcakes, crepes, banana pudding, or artistic culinary presentation. Second, these trucks report their location to customers as they move around the LA area using their own web pages, blogs, and social networking tools like Facebook and Twitter.<sup>46</sup> Additionally, iPhone and iPad applications have been created to provide truck information such as GPS location, “near me” details, and menus.<sup>47</sup> This online-brand creation also includes food truck videos on YouTube, blog entries and web pages with reviews, photo galleries, interviews, and vendor-organized DJ parties. Trucks are decorated with bright colors, graphic designs, and recognizable labels easily spotted by onlookers walking, driving by,

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45. For an expansive list of these eateries, see *Food Trucks & Other Mobile Eateries that Twitter*, LAIST, [http://laist.com/2009/06/17/the\\_list\\_food\\_trucks\\_that\\_twitter.php](http://laist.com/2009/06/17/the_list_food_trucks_that_twitter.php) (last visited March 25, 2011).

46. See David Sarno, *In Los Angeles, it's the Attack of the Twittering Food Trucks !*, LATIMESBLOG, (Nov. 13, 2009, 6:16 PM), available at <http://latimesblogs.latimes.com/technology/2009/11/in-los-angeles-its-the-attack-of-the-twittering-food-trucks.html>.

47. See Elina Shatkin, *New Food Truck App: Road Stoves GPS + First Wave oOf Food Truck Closures*, Apr. 12, 2010, LA WEEKLY BLOG (Apr. 12, 2010, 5:00 AM), available at <http://blogs.laweekly.com/squidink/food-trucks/road-stoves-gps-iphone-app-lau/>. These applications include: Road Stoves GPS by RoadStoves, available at <http://itunes.apple.com/us/app/road-stoves-gps/id366118028>; Los Angeles Street Food by Sutro Media, available at <http://itunes.apple.com/us/app/los-angeles-street-food/id355192239>. Webpages tracking food trucks include: LA Food Trucks Map, LA TRUX MAP, available at <http://la.truxmap.com/>; *Clustertruck, Los Angeles A Food Truck Map*, CLUSTER TRUCK, available at <http://www.clustertruck.org/>; FIND LA FOOD TRUCKS, available at <http://www.findlafoodtrucks.com/>; *Los Angeles Food Trucks – List of Los Angeles Food Trucks & Street Food Directory*, MOBILECRAVINGS,.com, Los Angeles Food Trucks – List of Los Angeles Food Trucks & Street Food Directory, available at <http://www.mobilecravings.com/foodtruckfinder/los-angeles/> (also providing food truck information for cities across the U.S. and in Canada); ROAMING HUNGER, available at <http://www.roaminghunger.com/la>.

or searching for a truck. Third, many trucks operate in front of nightclubs or bars, close to universities, or in trendy young adult neighborhoods mostly west of the traditionally Latino and immigrant East LA, such as Silver Lake, Hollywood, Venice Beach, Santa Monica, or mid-Wilshire.

Starting operations in 2008, Kogi BBQ is the most recognizable vendor representing gourmet food trucks. It has received substantial notoriety for its culinary style, high-tech and online branding, and mobile operations.<sup>48</sup> Kogi BBQ sells fusion Korean-Mexican food, with dishes such as spicy pork tacos, kimchi quesadillas and short rib sliders.<sup>49</sup> Kogi describes its objective as to “sate the hungry mouths of Angelenos who crave excellent food on a dime budget” and its food style as “quality Korean barbecue meets traditional, homemade tortillas and fresh veggies” for tastes that “carr[y] the rhythms of LA street culture and exudes the warmth of all that California sun.”<sup>50</sup> Kogi BBQ began its operations in areas with high late-night traffic due to clubs, bars, theatres, and many nightlife options. It received much media attention leading to articles in the *New York Times*, *Time*, NPR, *Bon Appétit* and other magazines. This buzz spawned customers willing to stand in line for 90 plus minutes in front of one of its four trucks. Its Twitter followers total over 80,000.<sup>51</sup> In 2010, *Food & Wine* magazine named Roy Choi, Kogi BBQ’s head chef who trained at the Culinary Institute of Arts, to its list of “Best New Chefs,” an honor limited to expensive and high-end restaurants.<sup>52</sup> Kogi BBQ is emblematic of how food trucks have been embraced and praised in sectors of LA society, the media, regions of the city, and by foodies.<sup>53</sup> This sizzling buzz remains palpable in the trendy areas the nouveau trucks serve.

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48. See Jessica Gelt, *Kogi Korean BBQ: A Taco Truck Brought to you by Twitter*, L.A. TIMES (Feb. 11, 2009), <http://articles.latimes.com/2009/feb/11/food/fo-kogi11>; Jennifer Steinhauer, *For a New Generation, Kimchi Goes with Tacos*, N.Y. TIMES (Dec. 5, 2009), <http://www.nytimes.com/2009/02/25/style/25iht-25taco.20427983.html>.

49. See generally KOGI BBQ: KOREAN BBQ-TO-GO, available at <http://kogibbq.com/category/menu/>.

50. KOGI, *supra* note 49, at *id.* <http://kogibbq.com/about/>.

51. See *KogiBbq*, TWITTER, <http://twitter.com/#!/kogibbq> (last visited Jan. 6, 2012).

52. Betty Hallock, *Food & Wine Announces Best New Chefs; Kogi’s Roy Choi (Big Surprise) Gets Award, Daily Dish*, LA TIMES BLOG (Apr. 6, 2010, 3:34 PM), <http://latimesblogs.latimes.com/dailydish/2010/04/food-wine-announces-best-new-chef-awards-.html>.

53. Roy Choi continues running the food trucks, but has also added new business endeavors such as designing automobiles for Scion and a new fixed location restaurant. See generally Katy McGlaughlin, *The King of the Streets Moves Indoors: His Korean Taco Trucks Took L.A. by Storm. Now Roy Choi is Tackling the*

Meanwhile in 2008 and 2009, food trucks in Boyle Heights and East LA, serving mostly Mexican food to predominately Latino consumers, became the subject of new or increased regulation.<sup>54</sup> Law school Dean Kevin Johnson describes taco truck regulation controversies as encompassing contests between recent immigrants and longer-term residents (e.g., Mexican-American citizens and restaurants owners), but more importantly, the tensions are part of nationwide anti-immigrant sentiments and cultural conflicts.<sup>55</sup> Invariably, anti-immigrant policies, local or national, serve as political proxies to voice anti-Latino sentiments.<sup>56</sup> Similar state and local measures that appear facially neutral but are nevertheless anti-Latino include policies on driver's licenses and gas-powered leaf blowers.<sup>57</sup> Professor Ingrid Eagly, who supervised UCLA Law School students in clinical advocacy for food trucks, explains that *loncheros* and law students believed that LA food truck regulations had race-based and anti-immigrant motivations targeting *loncheros*.<sup>58</sup> LA's first street vending regulations, in the 1870s and 1880s, contributed to Chi-

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*Restaurant Business*, WALL ST. J., Jan. 15, 2010, at W5, available at [http://online.wsj.com/article/NA\\_WSJ\\_PUB:SB10001424052748704842604574642420732091490.html](http://online.wsj.com/article/NA_WSJ_PUB:SB10001424052748704842604574642420732091490.html).

54. See *supra* notes 1-2.

55. See Gottlieb, *supra* note 21.

56. See generally Kevin Johnson, *A Case Study of Color-Blindness: The Racially Disparate Impacts of Arizona's SB 1070 and the Failure of Comprehensive Immigration Reform*, ARIZ. ST. L.J. SOC. JUST. (forthcoming) (manuscript at 9 n.29), available at <http://ssrn.com/abstract=1695236> (describing how local regulation, including those for food trucks, are part of larger anti-immigrant policies); Kevin Johnson, *It's the Economy, Stupid: The Hijacking of the Debate Over Immigration Reform by Monsters, Ghosts, and Goblins (or the War on Drugs, War on Terror, Narcoterrorists, Etc.)*, 13 CHAP. L. REV. 583 (2010); Kevin Johnson, *Immigration and Civil Rights After September 11: The Impact on California - An Introduction*, 38 U.C. DAVIS L. REV. 599 (2005); Kevin Johnson, *Race, The Immigration Laws, and Domestic Race Relations: A "Magic Mirror" Into the Heart of Darkness*, 73 IND. L. J. 1111 (1998); Michael A. Olivas, *Immigration-Related State and Local Ordinances: Preemption, Prejudice, and the Proper Role for Enforcement*, 2007 U. CHI. LEGAL F. 27 (2007); Michael J. Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 N.Y.U. L. REV. 493 (2001); Ruben J. Garcia, Comment, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 138 (1995).

57. See Kevin R. Johnson, *Driver's Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213 (2004); and Christopher David Ruiz Cameron, *The Rakes of Wrath: Agricultural Workers and the Struggle Against Los Angeles' Ban on Gas-Powered Leaf Blowers*, 33 U.C. DAVIS L. REV. 1087 (2000).

58. Ingrid Eagly, *Street Vending, Resistance, and Immigrants Rights*, paper presented at the UCI Law Review Symposium 'Persistent Puzzles in Immigration Law,' Feb. 18, 2011 (manuscript on file with author), (describing student and *loncheros* sentiments, and including their similarity with claims by similarities to Chinese-owned laundries in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)).

nese exclusion policies by trying to force Chinese and Chinese-American vegetable vendors out of the area.<sup>59</sup> Race-based reasoning may not be the most apparent justification for taco truck restrictions, since politicians and area residents and businesses represent Latino communities but *loncheros* maintain that the restrictions and harassment they are subject to is the product of anti-immigrant and socio-economic prejudices.<sup>60</sup> In other parts of

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59. See Renia Ehrenfeucht and Anastasia Loukaitou-Sideris, *Constructing the Sidewalks: Municipal Government and the Production of Public Space in Los Angeles, California, 1880-1920*, 33 J. HIST. GEOG. 104, 117 (2007).

60. See Thomas Rogers, *Behind the Food Truck Divide*, SALON (Jan. 7, 2010, 11:06 ET), [http://www.salon.com/food/feature/2010/01/07/food\\_truck\\_lot](http://www.salon.com/food/feature/2010/01/07/food_truck_lot) (describing Erin Glenn of the Asociación de Loncheros L.A. Familia Unidad de California, describing the socio-economic bias, anti-immigrant sentiment, and mischaracterization of food trucks not complying with business regulations). This Article does not attempt to make claims about the racial or ethnic aspects of why food trucks are regulated, since on first glance it does appear that Latinos represent truck consumers, county and city residents and voters, and politicians. But a more detailed sociological or cultural analysis should take these issues into account for many reasons. First, the areas in question are heavily populated by multi-generations of Latino U.S. citizens and Latino immigrants, all of multi-generations including recent immigrants and communities present in LA for centuries, while non-Latinos from and outside these neighborhoods do eat at these trucks and restaurants. See ROMO *supra* note 39 (describing Mexicans living in the LA area since the late 18th century); see Bender, *supra* note 39, at n. 113 (reporting the U.S. Census Bureau, Census 2000, states East L.A. has the highest population of Latinos for any place in the U.S. with more than 100,000 residents); cf. Steinhauer, *supra* note 2; *East Los Angeles*, 2 THE OXFORD ENCYCLOPEDIA OF LATINOS AND LATINAS IN THE UNITED STATES 4, (Suzanne Oboler and Deena J. González eds., 2005) (reporting East LA is “home to the largest concentration of Mexican outside of Mexico City”). East LA and many parts of downtown LA are associated as with Latino, Hispanic, Mexican, Salvadoran, Guatemalan, or other cultures. These geographic distinctions and racial exclusions are the product of laws, policies, and histories appearing to be race-neutral, generally that generally appear to be race neutral. See Bender, *supra* note 39, at 118-19 (describing East LA’s unemployment and poverty rate); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1852 (1994) (describing how neighborhoods are the product of political and economic discrimination). Second, often the food sold and eaten question is Mexican, be that representing cuisines from Mexico’s many regions or food typically labeled as Mexican in Southern California. Central American food is sold in these areas, as well. These factors plus the attention from regional and national news sources suggest a substantial likelihood for outsider/insider dynamics in these local policies and food practices. For instance, pro-truck food bloggers report that LA County employees individuals, maybe even county employees, who use race-based reasoning to justify truck regulations and to discount pro-truck views. See Lesley Balla, *LA Eater, Whitewashing the Taco Truck Controversy*, LA EATER (Sept. 16, 2008), [http://la.eater.com/archives/2008/09/16/whitewashing\\_the\\_taco\\_truck\\_controversy.phpla.eater.com/tags/taco-truck-wars;](http://la.eater.com/archives/2008/09/16/whitewashing_the_taco_truck_controversy.phpla.eater.com/tags/taco-truck-wars;) *Who’s That Behind Wikipedia?*, SAVEOURTACOTRUCKS.org (Sept. 14, 2008), available at <http://saveourtacotrucks.org/2008/09/14/whos-that-behind-wikipedia/>; Veronique de Turenne, *County of L.A. Computer used for Testy Taco Posts?*, LA TIMES BLOGS: L.A. (Sept. 15, 2009, 5:15 PM), <http://latimesblogs.latimes.com/lanow/2008/09/la->

the country, where Latino political power may not be as established as in LA and LA county or where Latino immigrants have recently arrived in the last fifteen years, vendors argue that local regulations are racially-influenced and violate their civil rights.<sup>61</sup>

While these demarcations and locations are not binary or concrete, two food practices involving truck vendors have become part of public discourse in the LA area since 2008. It's fair to say that while some food trucks in Boyle Heights and East LA were subject to local government restrictions, fines, and jail time consequent to illegality, another style of food truck was receiving notoriety as gastronomically innovative and a growing popular culture trend.<sup>62</sup> Local parking regulations were either created or received increased enforcement in response to trucks selling Mexican food in Boyle Heights and East LA.<sup>63</sup> Since the taco truck wars in 2008 and 2009, LA and LA County have enacted new food truck permits and health inspection grading schemes.<sup>64</sup>

Undoubtedly both kinds of trucks have been subject to legal

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county-compu.html. Furthermore, in neighboring Orange County, the anti-immigrant mayor of Costa Mesa describes his initial motivation to enter politics was a "taco truck blaring 'La Cucaracha'" and changing his peaceful neighborhood. See Mike Reicher, *The Man Named Mansoor*, DAILY PILOT (Aug. 14, 2010), available at [http://articles.dailypilot.com/2010-08-14/news/tn-dpt-0815-mansoor-20100814\\_1\\_illegal-immigration-immigration-status-allan-mansoor](http://articles.dailypilot.com/2010-08-14/news/tn-dpt-0815-mansoor-20100814_1_illegal-immigration-immigration-status-allan-mansoor).

61. See, e.g., Miguel Bustillo, *Hold the Tacos, New Orleans Says*, LA TIMES (July 14, 2007), available at <http://articles.latimes.com/2007/jul/14/nation/na-tacotrucks14>; James Pinkerton and Cynthia Garza, *Taco Trucks Owners Sue Over Stricter Rules*, HOUSTON CHRON. (Sept. 12, 2007), available at <http://www.chron.com/dispatch/story.mpl/metro/metro/5127585.html>. However, civil rights claims brought by truck owners rarely succeed in federal court. Cf., *Cortes v. City of Houston*, 536 F. Supp. 2d 783 (S.D. Tex., 2008) (holding that the differential treatment between "mobile food units" and free standing restaurants did not violate equal protection and the ordinance was not unconstitutionally vague); *Rossi v. City of New York*, 246 F. Supp. 2d 212 (S.D.N.Y. 2002) (granting summary judgment for lack of equal protection violation and proof that the requirements were enforced in retaliation for his political activities); *Hispanic Taco Vendors of Washington v. City of Pasco*, 790 F. Supp. 1023 (E.D. Wash. 1991) (holding that the vendors failed to show that the city intentionally and purposefully discriminated against persons of Mexican or Hispanic origin).

62. Observers note how nouveau food trucks tend to target the "privileged, middle-class," while taco trucks are for "very working class— - janitors, secretaries, people on public transit . . .," Shatkin, *supra* note 32 (quoting Jaime Rojas, co-chairman of Latino Urban Forum).

63. See discussion *infra* Part II.

64. See Los Angeles, Cal., Ordinance 181,431 (Jan. 16, 2011) (adopting the County letter-grade health regulations to food trucks and amending Section 31.00, Chapter III of the Los Angeles Municipal Code), available at [http://clkrep.lacity.org/onlinedocs/2009/09-2357\\_ord\\_181431.pdf](http://clkrep.lacity.org/onlinedocs/2009/09-2357_ord_181431.pdf); Jovana Lara, *LA County Food Trucks Receive Letter Grades*, ABC (Feb. 4, 2011), available at [http://abclocal.go.com/kabc/story?section=news/local/los\\_angeles&id=7939017](http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=7939017).



regulations, affecting vendors and consumers.<sup>65</sup> Many taco and Mexican food trucks are also praised as selling gourmet-quality dishes and regional specialties. Angelinos passionately debate which taco truck is the best, just as New Yorkers debate about pizza.<sup>66</sup> Vendors for both kinds of food trucks subsequently organized. *Loncheros* formed “La Asociación de Loncheros L.A. Familia Unida de California” (translating to Truck Vendors Association: The United Family of California), an association that presents food trucks as part of LA culture<sup>67</sup> while the “SOUTHERN CALIFORNIA MOBILE FOOD VENDORS ASSOCIATION” (SoCAL MFVA) represents mostly new wave food trucks.<sup>68</sup> The organizations set up web pages describing their objectives, presenting picture galleries and press links, to counter anti-vendor policy positions. Both groups received local media attention about the crackdowns, their mass popularity, and culinary notoriety. In addition, online food bloggers presented the vendor and consumer perspectives regarding the impacts of local regulation.<sup>69</sup> An online petition and webpage was dedicated to resist the regulations and inform consumers and vendors.<sup>70</sup> With catchy phrases like “Save Our Taco Trucks” (the name of the organization), “The revolution will be served on a paper plate,” and “Carne Asada is Not a Crime,” these efforts made great strides in publicizing the struggle to both English and Spanish language audiences and illustrating the cultural currency food trucks have for LA.<sup>71</sup>

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65. See Ryan, *LAPD Officially Tasked With Throwing All Manner of Fines Under the Sun At Your Favorite Food Truck*, (Aug. 19, 2009), <http://www.losangealous.com/2009/08/19/developing-lapd-officially-tasked-with-throwing-all-manner-of-fines-under-the-sun-at-your-favorite-food-truck/>.

66. See *cf.* THE GREAT TACO HUNT, <http://www.greattacobhunt.com/> (last visited Jan. 6, 2012); *TACO: Celebrating the Taco Lifestyle in Los Angeles, California, USA*, LA TACO, <http://www.lataco.com/> (last visited Jan. 6, 2012).

67. See generally LA ASOCIACIÓN DE LONCHEROS L.A. FAMILIA UNIDA DE CALIFORNIA, <http://www.loncheros.com/> (last visted Jan. 6, 2012).

68. See generally SOUTHERN CALIFORNIA MOBILE FOOD VENDORS ASSOCIATION, <http://socalmfva.com/> (last visted Jan. 6, 2012).

69. See *e.g.*, *Taco Truck Wars*, LA EATER, <http://la.eater.com/tags/taco-truck-wars>; El Random Hero, *One Small Step For Man One Giant Step for Lunch Trucks*, LA EASTSIDE (June 12, 2009), <http://laeastside.com/2009/06/one-small-step-for-a-man-one-giant-leap-for-lunch-trucks/>; El Random Hero, *A Community United by Tacos*, LA EASTSIDE (Nov. 14, 2008), <http://laeastside.com/2008/11/a-community-united-by-tacos/>; *Carne Asada is not a Crime—Once Again, Daily Dish*, LA TIMES BLOG (June 11, 2009, 4:58 PM).

70. See generally <http://saveourtacotrucks.org>.

71. *Id.*

## II. CALIFORNIA'S PRE-EMPTION DOCTRINE TRUMPS LOCAL VENDOR PARKING REGULATIONS

Amidst dueling visions of neighborhood identity and popular food practices, in 2008 and 2009 the County and LA used municipal parking ordinances to regulate taco trucks operations in East LA and Boyle Heights, respectively.<sup>72</sup> These regulations led to two cases: *People v. Garcia* and *Gonzalez v. City of Los Angeles Dept. Transportation*. While in both cases courts sided with the vendors, finding local parking regulations specific to mobile food vendors inconsistent with California's vehicle code, police continued enforcement of these regulations to make sure truck vendors operated "legally." More rigid enforcement of these regulations was applied to various vendors in many situations beyond these cases.<sup>73</sup> It would be a mistake to assume that these two cases reflect the whole picture of food trucks challenged by the law and local police. Similarly, other laws and regulations may still curtail (if not harass) food truck operators. Focusing on this context of local government disturbing neighborhood economies (i.e., food vendor supply and consumer demand markets), this section describes the legal doctrine that the courts used to invalidate local truck vendor regulations. This doctrinal picture provides a reference for how cultural arguments become the subject of legal contests.

The relevant LA and County codes both attempted to regulate the time a vendor could legally sell food by making it illegal to remain parked at one spot for more than 30 or 60 minutes, with less time permitted in residential versus commercial areas. The ordinances effectively made it impossible for vehicles to operate, since the 30/60 minute periods are too short to function. With such short periods, trucks do not have enough time to set up at a location or sell to all customers before having to relocate. Similarly, consumers cannot find trucks to purchase food if trucks have to move and set up within repeated 30/60 minute intervals.

Implemented in 2006 but not heavily enforced until 2009, L.A.'s Ordinance 17760 amended LA Municipal Code Section 80.73(b)2F, making it illegal for a "catering truck"<sup>74</sup> to remain

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72. LOS ANGELES, CAL. COUNTY CODE § 7.62.070, "Title 8: Consumer Protection and Business Regulations" available at <http://search.municode.com/html/16274/maintoc.index.htm>.

73. See Hayes, *supra* note 30.

74. LOS ANGELES, CAL. MUNICIPAL CODE § 80.73(b)(1), available at [http://amlegal.com/nxt/gateway.dll/California/lamc/municipalcode/chapterviiiittraffic?f=Templates\\$](http://amlegal.com/nxt/gateway.dll/California/lamc/municipalcode/chapterviiiittraffic?f=Templates$)

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parked while “dispensing victuals”<sup>75</sup> within a half mile radius of any residential location for a period exceeding 30 minutes.<sup>76</sup> In commercial locations, trucks could remain parked for 60 minutes.<sup>77</sup> Trucks could not return to the location for another 30 or 60 minutes, respectively, “from the time of departure or relocation.”<sup>78</sup> Section 80.73(b)(2)(F) effectively required trucks to move a half a mile, measured in a straight line, every 30 minutes in residential areas or every 60 minutes in commercial areas.<sup>79</sup>

Becoming effective in 2008, LA County Code Section 7.62.070 attempted to limit “peddlers” in “commercial vehicles” from parking and operating in residential and non-residential areas for 30 and 60 minutes, respectively.<sup>80</sup> This Section is entitled “[p]eddlers of edible products from commercial vehicles—Moving location required when.”<sup>81</sup> It contained the specific requirement that within a “three-hour period” the “peddler” “shall not return to any location within a one-half mile of each prior location.”<sup>82</sup> This effectively required a truck to move a half-mile away from all prior locations it had been parked during the three hours. This three hour period commenced “upon the Peddler’s departure from the last location where peddling occurred.”<sup>83</sup> This regulation added the

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fn=Document-frame.htm\$3.0#JD\_80.73 (defining “catering truck” as “any motorized vehicle designed primarily for dispensing victuals” including “any trailer designed primarily for dispensing victuals” if “attached at all times during which victuals are being dispensed.”).

75. *See id.* (defining “victuals” as “fruit, meat, vegetables, beverages or food of any kind, nutritious or otherwise, dispensed in prepared, packaged or other form suitable for immediate ingestion or consumption by human beings”).

76. *See* LOS ANGELES, CAL. MUNICIPAL CODE §80.73(b)2F, *available at* [http://www.amlegal.com/los\\_angeles\\_ca/](http://www.amlegal.com/los_angeles_ca/) (Last modified Aug. 19, 2010). This Code section was amended by Final Ordinance No. 177620 on July 23, 2006, *available at* [http://clkrep.lacity.org/onlinedocs/2005/05-2220\\_ord\\_177620.pdf](http://clkrep.lacity.org/onlinedocs/2005/05-2220_ord_177620.pdf). *See generally* LA City Clerk, LA City Clerk Connect: Council File Management System, Council File 05-220, *available at* <http://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=05-2220>.

77. *See id.*

78. *See id.*

79. *See id.*

80. LOS ANGELES, CAL. COUNTY CODE § 7.62.070.

81. *Id.* The Code Section 7.62.001 defines a “peddler” as a person “engaged in the business of itinerant peddling, selling, hawking, vending, delivery or soliciting for sale . . . any merchandise, including but not limited to liquids or edibles for human consumption . . . from packs, baskets, temporary stands or facilities, handcarts, or vehicles as defined in Section 8.36.010 of this code, at any place other than a fixed place of business in the unincorporated territory of the county.” Code Section 7.62.002 refers to the definition of “commercial vehicle” in the California Vehicle Code section 260.

82. § 7.62.070, *supra* note 81.

83. *See id.*

requirement that vendors maintain the location “in a neat and orderly condition, pick up and dispose in a sanitary manner all debris, garbage, papers, litter and other things which detract from the sanitation, safety and appearance . . .” and comply with the California Health and Safety Code.<sup>84</sup> Penalties for citation included \$1,000 and six months in jail if convicted.<sup>85</sup>

When the Board of Supervisors for the County passed the Ordinance in April of 2008, local and national media quickly commented on the public and gastronomic controversy of effectively banning taco trucks in East LA, an area identified with Mexican culture and taco trucks.<sup>86</sup> In the debates which took place in the months between the passage of the regulations and their subsequent enforcement, the public dubbed the conflict the “Taco Truck War.”<sup>87</sup> Shortly after the regulations went into effect, the California Superior Court for the County of Los Angeles, per Judge Dennis A. Aichroth, found against the County regarding enforcement of County Code Section 7.62.070 (“Ordinance”). Decided on August 27, 2008, in *People v. Margarita Garcia*, Judge Aichroth found the Ordinance unconstitutional, focusing primarily on California law.<sup>88</sup> He articulated three holdings: that the ordinance was 1) too ambiguous to enforce and thus unconstitutional,<sup>89</sup> 2) Pre-empted by California state law as it conflicted with California Vehicle Code Section 22455, which only permits local regulations for public safety,<sup>90</sup> and 3) unconstitutional because the California Legislature has limited local governments to enact ordinances that “regulate” versus “prohibit” sales from vehicles.<sup>91</sup>

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84. *Id.* The County District Attorney did file a motion to reconsider the decision, along with additional evidence from the police. On September 19, 2008, Judge Aichroth did not grant the motion and kept the August 27 decision intact. See *Update on Taco Truck Legislation*, SAVEOURTACOTRUCKS (Sept. 24th, 2008), available at <http://saveourtacotrucks.org/2008/09/24/update-on-taco-truck-legislation/>. The District Attorney decided not to appeal the decision further, see *DA Drops Case Against Taqueros*, SAVEOURTACOTRUCKS (Oct. 3, 2008), available at <http://saveourtacotrucks.org/2008/10/03/da-drops-case-against-taqueros/>.

85. Los Angeles (KABC), *First taco trucks cited under new law*, ABC (May 25, 2008), available at <http://abclocal.go.com/kabc/story?section=news/local&id=6164250>.

86. The first truck to be cited in East LA was “La Flor de Sahuayo,” whose owners have been in the business for over twenty-five years. They own both a truck and restaurant to meet segmented consumer demand. See Lindsay William-Ross, *Taco Truck Law-Breakers: Someone Had to Be First*, LAIST, (May 24, 2008, 9:30 AM), available at [http://laist.com/2008/05/24/taco\\_truck\\_lawb.php](http://laist.com/2008/05/24/taco_truck_lawb.php).

87. See Keegan, *supra* note 1.

88. *People v. Garcia*, No. 8EA05884 at 2-3.

89. *Id.*

90. *Id.* at 5.

91. *Id.* at 6-7.

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Regarding the first holding, the court found it “unclear as to whether the ‘three-hour period’ is measured from when the vendor ‘arrived at the initial location’ or from when the vendor ‘departed from the last location.’”<sup>92</sup> The court concluded that this internal ambiguity rendered the ordinance unenforceable as written stating, “ordinary people would have to guess as to its meaning.”<sup>93</sup> Concluding that such vagueness and guessing is a violation of due process,<sup>94</sup> the court noted that this “uncertain[ty]” leads to “discriminatory enforcement.”<sup>95</sup>

For its second holding, the court found the County Ordinance to be in conflict with California Vehicle Code’s Section 22455: “Vending from Vehicles.”<sup>96</sup> This section of the Vehicle Code permits vehicles to sell products<sup>97</sup> and it only allows local and municipal governments to regulate mobile food vendors by “adopt[ing] additional requirements for the public safety regulating the type of vending and the time, place, and manner of vending from vehicles upon any street.”<sup>98</sup> The County Ordinance prohibits vendors from returning to locations to vend, which effectively prohibits displaying and selling products for two hours during any three-hour period.<sup>99</sup> The court explains that there seems to be no “rational basis” linking the prohibition to public safety.<sup>100</sup> Moreover, the court concluded that the California Vehicle Code Section 22455 preempted County Ordinance 7.62.070 and the latter “must be declared unconstitutional.”<sup>101</sup> Furthermore, the court determined that the choice of 30 minutes and 60 minutes “appears to be arbitrary and not based upon any rational, intrinsic or natural basis” and is similarly unconstitutional.<sup>102</sup> Because California state law pre-empts local regulation and the County ordinance operates as a “naked restraint of trade,” the County Ordinance “must be declared invalid.”<sup>103</sup> Finally, Judge Aichroth anchored his findings and conclusions in California legal precedent which found

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92. *Id.* at 3-4.

93. *Id.* at 3.

94. *Id.*

95. *Id.* at 4.

96. *Id.* at 5.

97. See CAL. VEH. CODE § 22455(a), available at <http://www.dmv.ca.gov/pubs/vctop/d11/vc22455.htm>.

98. *Id.* at § 22455(b).

99. *People v. Garcia*, No. 8EA05884 at 5-6 (referring to Los Angeles County Code § 7.62.070).

100. *Id.* at 5-6.

101. *Id.* at 5.

102. *Id.* at 5-6.

103. *Id.*

such regulation “unconstitutionally discriminate[d] in favor of restaurants having a fixed location.”<sup>104</sup>

For the third holding, the court emphasized that the Ordinance was unconstitutional because the state legislature had explicitly barred local prohibition of food trucks.<sup>105</sup> It stated that California only permits localities to regulate sales from vehicles rather than “prohibiting” sales from vehicles. It previously explained how the Ordinance effectively prohibited sales within the ambiguous three-hour period. The court highlighted the legislature’s clear intent to disallow local prohibitions of vending from vehicles pointing to the January 1, 1986 repeal of prior language authorizing local prohibitions of vending.<sup>106</sup>

Regarding LA City’s ordinance, on June 10, 2009, the California Superior Court for the County of Los Angeles reversed a decision upholding a parking ticket issued by the LA police department against a truck vendor. In *Gonzalez v. City of Los Angeles Department of Transportation*, the court, per Judge Barry D. Kohn, found for the vendor, repealed the ticket, and returned fines charged to the vendor. The court explained that the LA Municipal Code Section 80.73(b)(2)(F) was “not rationally related to the public safety.”<sup>107</sup> It reported the Section required mobile catering vendors to move from and not return to locations for 30 or 60 minute periods, depending on if the location is residential or commercial.<sup>108</sup> Because the Code does not relate to public safety it “expressly conflicts” with California Vehicle Code Sections 21 and 22455(b). The objective of the Vehicle Code is the “applicable and uniform” application of vehicular regulation throughout California. Section 21 of the Vehicle Code, the “Uniformity of code” subtitle, prohibits counties and municipalities from “enact[ing] or enforc[ing] any ordinance on the matter” of vehicular regulation.<sup>109</sup> As described above, regarding *Garcia* and the County ordinance, section 22455(b) only permits local vehicle vendor regulations in the narrow situation where they are “for the public safety.”<sup>110</sup> The court also stated that state law preempts the City ordinance. The

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104. *Id.* at 6 (referring to *People v. Ala Carte Catering Co.*, (1979) 98 Cal. App. 3d. Supp 1, 7, 159 Cal. Rptr. 479, 483).

105. *Id.* at 6-7.

106. *Id.* at 7 (citing *Barajas v. City of Anaheim*, (1993) 15 Cal.App.4th 1808, 1815-1820, 19 Cal. Rptr. 2d 764, 767-771 (referring to CAL. VEH. CODE § 22455(b)).

107. *Gonzalez v. City of Los Angeles Dept. Trans.*, No. 09K08485 at 2.

108. *Id.* at 1.

109. *Id.* at 21.

110. CAL. VEH. CODE § 22455(b).

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UCLA Law School Criminal Defense clinic represented vendor/appellant Francisco Gonzalez before the city's Department of Transportation and then appealed the ticket and fines to the California Superior Court.<sup>111</sup> Mr. Gonzalez had been receiving up to two tickets a day and \$1000 in fines.<sup>112</sup>

These two decisions reflect California law on food vending from vehicles. This doctrine is firmly settled with over two decades of appellate court jurisprudence. This body of law includes field pre-emption doctrine, confirming the State of California's priority over local vehicular regulation, revised state codes, and expressed legislative intent. Preemption doctrine in these matters is established in California law<sup>113</sup> and other jurisdictions generally.<sup>114</sup>

What LA and LA County, their respective Supervisors, Council members, and police departments attempted to do in 2008 and 2009 was illegal, violating the law governing California and its residents. The political, media, and foodie attention of the Taco Truck War, not to mention the sacrifices from Margarita Garcia and Francisco Gonzalez, will hopefully inform future policy makers and executive agents. If anything, this attention ideally translates into observation by voters, be they *lonchero* operators, consumers, businesses, or residents.

For decades California courts have found for food truck vendors, citing California's vehicle code—in particular sections 22455 and 21<sup>115</sup>—on the grounds that those code provisions pre-empt local efforts to regulate. The most established case in this regard is *Barajas v. Anaheim*, decided by the Court of Appeals for the Fourth District in 1993.<sup>116</sup> Enjoining enforcement of local regulations, this court provided an exhaustive analysis of the pre-emption doctrine's importance to the vehicle code,<sup>117</sup> the legislature's

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111. See generally Lee, *supra* note 7.

112. *Id.* Mr. Gonzalez was on the verge of bankruptcy when the UCLA law clinic began representing him. See Eagly *supra* note 58, at 10.

113. See 8 CAL. JUR. 3d AUTOMOBILES § 8 (2011) (reporting local authority is subordinate to the legislature and is subject to laws of California); 37 CAL. JUR. 3d HIGHWAYS AND STREETS § 62 (2011) (reporting the state has preempted the entire field of traffic control and a city has no authority unless the legislature expressly provides for it).

114. 5 McQUILLIN MUN. CORP § 15:18 (3d ed.); Osbornecar M. Reynolds Jr., LOCAL GOV'T LAW § 43 (3d ed.) (describing the preemption doctrine's importance)

115. See *Barajas*, 15 Cal. App. 4th 1808 (App. 4th Dist. 1993).

116. *Id.* at 1818 (citing § 21 and emphasizing the fact that courts and the legislature find the matter a statewide concern).

117. *Id.* at 1813-14.

expressed intent in 1985 to exclude municipal prohibitions of vending from vehicles,<sup>118</sup> and how theories on local regulation of “commercial businesses” are invalid.<sup>119</sup> The court explained that the California Supreme Court “has consistently acknowledged” that state authority over vehicles is “plenary,”<sup>120</sup> and how section 21 provides for the state’s “preemption of the entire field of traffic control” unless the Legislature expressly provides for regulation by a local authority.<sup>121</sup> Emphasizing the doctrine’s history, the court states that the Supreme Court’s decisions regarding preemption have been around almost “as long as the horseless carriage.”<sup>122</sup> Both *People v. Garcia*<sup>123</sup> and *Gonzalez v. City of Los Angeles Department of Transportation*<sup>124</sup> rely heavily on *Barajas*’s legal analysis. *Barajas* is a hallmark of state pre-emption doctrine for the vehicle code, cited in numerous secondary sources on California’s constitutional law<sup>125</sup> and the regulation of roads and highways.<sup>126</sup>

The California Vehicle Code’s sections on vehicle vending and code uniformity provide the clearest description of why local regulation of commercial vending vehicles is limited to the narrowest situations. Section 22455(a) states such vehicles may vend as long as they are at a complete stop and lawfully parked.<sup>127</sup> Section (b)

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118. *Id.* at 1814-17(distinguishing when the Code permits local governments to prohibit, regulate, and/or restrict).

119. *Id.* at 1818-19 (finding cases referred to by the city as inapplicable and finding that in “general terms” the Vehicle code “authorizes street vending from vehicles . . .”).

120. *Id.* at 1818 (citing *Rumford v. City of Berkeley* (1982) 31 Cal.3d, 545 550; *see also* *County of Los Angeles v. City of Alhambra* (1980), 27 Cal.3d 184, 189). It also rejects any distinction between local traffic regulation and parking regulation limits the Vehicle code. *See id.*, at fn. 8.

121. *Id.*

122. *Id.* at 1818, fn. 8. For examples of how state preemption is established doctrine for Vehicle and traffic matters, see *California Biber Elec. Co. v. City of San Carlos*, 181 Cal. App. 2d 342, 5 Cal. Rptr. 261 (1st Dist. Ct. App. 1960); *James v. Myers*, 68 Cal. App. 2d 23, 156 P.2d 69 (2d Dist. Ct. App. 1945).

123. *See generally Garcia*, No. 8EA05884.

124. *See generally Gonzalez v. City of Los Angeles Dept. of Transportation*, No. 09K08485 (L.A. Super. Ct. June 8, 2009).

125. 8 WITKIN, SUMMARY OF CALIFORNIA LAW § 992 (10th ed. 2008) (presenting *Barajas* as illustrative of preemption and void local regulations on vending from vehicles).

126. 2 CAL. REAL EST. DIGEST 3d HIGHWAYS, STREETS, AND BRIDGES § 38 (2010) (presenting *Barajas* as affirming the Legislature must expressly approve local authority when the Vehicle Code is concerned and that the Legislature expressly disapproved local bans on vehicle vending).

127. CAL. VEH. CODE §§ 22348 to 23599, available at <http://www.dmv.ca.gov/pubs/vctop/d11/vc22455.htm>.



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permits for local regulations only if they are “additional requirements for the public safety.”<sup>128</sup> These may regulate the “type of vending and the time, place, and manner of vending from vehicles.”<sup>129</sup> *Vasquez v. City of Santa Ana* emphasizes that section 22455(b) only permits additional local regulation if it is for public safety, such as crime.<sup>130</sup> Accordingly, local regulation must be for public safety and cannot focus on matters such as business competition or a neighborhood’s “quality of life,” which inspired recent county and city restrictions.

Local prohibitions of vehicle vending are not permitted by the code. In a 1985 amendment, the legislature deleted the section’s prior wording, permitting local governments to prohibit this vending.<sup>131</sup> Appeals Court decisions have interpreted this amendment as the legislature’s expressed intent to bar local prohibitions, reflecting a matter of statewide concern preempting local authority.<sup>132</sup>

Section 21 of the Vehicle code similarly bars any local authority in this regard. It states the code is applicable throughout the state and “no local authority shall enact or enforce any ordinance on matters covered by this code unless expressly authorized herein.”<sup>133</sup> *Garcia* and *Vasquez* hold that section 21 invalidates local regulation of food trucks by LA County and Santa Ana. Recent Court of Appeals decisions affirm that section 21 bars local regulation of matters within the domain of the Vehicle Code unless the matter is expressly exempted by the legislature.<sup>134</sup> Future local regulation of vehicle vending should be invalidated per California preemption doctrine, unless the legislature expressly permits local regulation or local regulations are in addition to Vehicle Code Section 22455 and specifically focused on public safety. Local regulations contradicting section 22455 or not for

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128. *Id.*

129. *Id.*

130. Case No. 05CC13450 (Cal. Super. Ct. Aug. 18, 2006) (Order granting preliminary injunction); *Id.* at 5-8 (finding no relation between public safety and regulations on timed parking and rejecting the city’s “broken window theory” in which food trucks lead to a cycle of disrepair and neighborhood disrepair).

131. § 22455, *supra* note 97.

132. *Barajas v. City of Anaheim Barajas*, 15 Cal. App. 4th 1808 (App. 4th Dist. 1993); *see also* § 22455, *supra* note 97.

133. CAL. VEH. CODE § 21 (2000).

134. *See Save the Sunset Strip Coalition v. City of West Hollywood*, 105 Cal. Rptr. 2d 172, 87 Cal.App.4th 1172 (App. 2d Dist. 2001), rehearing denied, review denied; *cf.*, *Zack’s Inc. v. City of Sausalito*, 81 Cal. Rptr. 3d 797, 165 Cal.App.4th 1163 (App. 1st Dist. 2008).

public safety (e.g., quality of life and business competition issues), are inconsistent with California precedent and established doctrine.

Courts have also found that local regulations of food trucks are unconstitutional violations of due process and equal protection rights. In 2006, a Superior Court of California found a Santa Ana city ordinance to infringe on a truck owner's due process rights where it permitted truck owners to lose their licenses if they received three citations in twelve months.<sup>135</sup> In 1979, an appellate division of the California Superior Court found LA County's regulations as violative of a truck operator's fourteenth amendment equal protection rights.<sup>136</sup> These regulations attempted to prohibit trucks from operating within 100 feet of a fixed restaurant. The court found such restrictions to be "wholly arbitrary."<sup>137</sup>

Food trucks are required to comply with the California Retail Food Code, which addresses the common complaints regarding trucks' sanitation and cleanliness of food preparation and storage. Section 113725 regulates the types of food, temperatures for preparing and storing food, employee hygiene, and cleaning equipment.<sup>138</sup> This code covers the issues many restaurants, public officials, and neighborhoods complain about when justifying anti-truck restrictions and increased enforcement. Like with vehicles, the Retail Food Code requires uniform statewide standards with the legislature's intent "to occupy the whole field of health and sanitation standards for retail food facilities."<sup>139</sup> The legislature has not been silent on these matters and has recently expressed when and how localities may regulate food trucks, but this does not include parking, "quality of life," or matters addressing fairness in competition.<sup>140</sup> Most local jurisdictions only have power to regulate food production, distribution, and sale. Even these powers are subject to the state delegating the requisite authority to localities.<sup>141</sup> Local regulation must not be arbitrary, discrimina-

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135. *See Vasquez*, No. 05CC13450 at 3.

136. *People v. Ala Carte Catering Co.*, 98 Cal. App. 3d 1, 159 Cal.Rptr. 479 (Cal. Super. Ct. 1979).

137. *Id.* at 483-484.

138. *See generally* CAL. HEALTH & SAFETY CODE § 113725 (2007) (describing the detailed inspection process for food facilities and providing for state and local action).

139. CAL. HEALTH & SAFETY CODE §113705 (2007).

140. *See generally* 2008 Cal. Legis. Serv. Ch. 139 (A.B. No. 2588) (2008) (reporting on Amendments implemented on July 17, 2008, which delineate when local authority is permitted).

141. *See generally* 36A C.J.S. *Food* § 12 (2011); 64 C.J.S. *Municipal Corporations* § 1455 (2011); 35A AM. JUR. 2D *Food* § 4.

tory, or be in conflict with state constitution provisions or the legislature's actions.<sup>142</sup>

### III. FOOD TRUCKS STEWING IN FOOD'S CULTURAL CONTESTS: SHOULD WE ADD MORE POLICY?

For food truck debates, cultural negotiations between the government and community members motivate new policies and consequent litigation. Food trucks are viewed in some sectors of a community as appealing and seen as blight to others. For the LA Taco Truck War, these negotiations concerned assumptions on economics, food practices, and public space. Added to these are concerns for what is foreign or immigrant, with its racial undertones, and the local economics of gentrification and recessionary pressures since October 2008. This Article labels these factors as "food culture contests," which serve as the platform from which the law impacts *loncheros* in Boyle Heights and East LA. Since 2009, LA police and the Cities of Santa Monica and Venice have begun to restrict gourmet food trucks as well, with similar food culture contest justifications.<sup>143</sup> This section expands on the law's role in these cultural contests, with an eye on the past taco truck war and the inevitable future increase in regulations for food trucks.

#### a. *Local Food Truck Economics: Perceived "Eye-sores" and the Fallacy of Unfair Competition*

In food truck debates, community economic issues arise as the most frequently articulated reason to prohibit food trucks. This cultural aspect concerns how food is sold in a community, how residents and visitors may eat, and what businesses are permitted. Restaurants, property owners, business groups or districts, and real-estate developers raise these arguments. The theories

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142. 64 C.J.S. *Municipal Corporations* §1455 (2011).

143. See *Impondrán calificaciones a 'loncheras'*, VIVE LO HOY (Los Angeles), (Oct. 13, 2010) <http://www.vivelohoy.com/noticias/localidades/losangeles/hy-la-1013-calificacion-20101013,0,1110303.story>; Rong-Gong Lin II, *A drive to grade food trucks in L.A. County*, L.A. TIMES, Sept. 14, 2010, <http://articles.latimes.com/2010/sep/14/local/la-me-food-trucks-20100914>; J. Patrick Coolican, *Food Truck Battle: City Council Hears Testimony*, LA WEEKLY BLOG, Aug. 11, 2010, <http://blogs.laweekly.com/informer/city-news/food-truck-battle-city-council/>; Lynne Bronstein, *Parking Solutions for Abbot Kinney*, SANTA MONICA MIRROR, Sep. 22, 2010, available at <http://www.smmirror.com/?ajax#mode=single&view=31069>; Katherine Peach, *Food Trucks Given Green Light to Park*, SANTA MONICA MIRROR, Sept. 29, 2010, available at <http://www.smmirror.com/?ajax#mode=single&view=31103>.

are that truck vending limits the economic potential of a neighborhood and it competes unfairly with fixed restaurants. Food trucks are seen as incompatible or undesired by corporate businesses, offices, chain restaurants, and existing merchants. A community like East LA or Boyle Heights may be viewed as a site of potential growth in both real estate and consumer markets (i.e., gentrification). It's argued that a community tolerating public food consumption, waiting in line, and food sales on sidewalks and streets could not support the more affluent markets.

There is no intrinsic conflict between more expensive retailers and higher-income residents and sales and consumption of food from trucks, if parking and traffic rules and zoning regulations are enforced. For this reason, the California Vehicle Code permits limited local regulation of the trucks (i.e., only for public safety).<sup>144</sup> Food truck advocates point to the need to increase health and sanitation enforcement versus crafting new and unfair vendor regulations. Portland provides a good example of how corporate retailers, offices, and high population density residential and commercial areas can support street vending.<sup>145</sup> In economic terms, if the free-hand of consumer demand did not like food trucks they would not support them. Why should local regulation disrupt this market?

Competition arguments express the economic frustration fixed restaurants may feel, especially with the recession beginning in 2008 and thereafter. It is theorized that trucks violate communal rules about how to conduct business or how innovation implicit in that mobility is unfair. Competition arguments vary, but at their core they offer commentary on how mobile vending disrupts restaurants' business practices, which the community supports. Restaurants point to the ethical problem of trucks parking near them. It's argued that trucks take business away from restaurants, assuming consumer demand is guaranteed for restaurants. Any free-market choice that consumers exercise is overlooked because it is presumed that trucks violate local business culture. These assumptions seem to be misapplied more to trucks. Restaurant chains, corporate retailers, and coffee shops are permitted to operate close to each other (e.g., Starbucks near Coffee

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144. See *People v. Garcia*, No. 8EA05884 at 2-3.

145. See Dave Hoekstra, *Portland dines a la cart*, CHICAGO SUN TIMES, Sept. 12, 2010, <http://www.suntimes.com/lifestyles/hoekstra/2694652,portland-food-carts-091210.article>; Lucy Burningham, *Portland Food carts push through recession*, OREGON BUSINESS, Jan. 2010, <http://www.oregonbusiness.com/articles/78-january-2010/2775-cash-and-carry>.

Bean or McDonalds near Burger King or Walgreens near Rite-Aid), without claims of either being unfair.

Competition arguments also mischaracterize what consumers demand and what trucks supply. It is assumed that food truck consumers would spend their money at a restaurant if the truck were not permitted to vend. This is not true. Trucks charge a different price and sell different items because of their limited space and mobility. Restaurants can offer the additional services of eating and serving areas protected from street elements and noise, staff to clean these areas, and wait staff or parking services. By choosing a restaurant, consumers are offered some of these and pay for them accordingly. They, similarly, are paying for the goodwill accumulated from a fixed location. Restaurants usually offer more since they have facilities to provide it.

Food trucks operate in a distinct supply market. When a truck consumer makes a purchase, they must stand in line, be exposed to street noise and traffic and weather, and they then have no provided eating area. The two supply markets are differentiated, not wholly distinct, since a few items may be purchased at both trucks and restaurants. Were trucks really uncompetitive then perhaps to-go food sales, food deliveries, supermarket or deli prepared meals, and restaurants that offer less physical comforts would also be uncompetitive. Restaurant complaints invariably reflect their own economic frustrations, consequent to overhead and finicky eater demands. While food trucks' catchy appeal in their mobility and limited space provides for their entrepreneurial advantage (i.e., the ability to move where customers are, different operation costs, and offering fewer services). These benefits may also be their economic weaknesses since customers cannot count on a truck's location, operations may outgrow serving and cooking capacity, and customers may want to sit, be inside, and distanced from the public or protected from the rain, sun, and wind.

Competition arguments also mischaracterize the legality of truck vendors. Restaurants often claim the trucks do not have licenses or permits and thus operate unfairly while restaurants have to pay taxes and abide by regulations and licensing requirements. In reality, trucks are regulated by a series of state and local laws, encompassing food, health, vehicle, and business issues. Like restaurants, they are inspected for health and sanitation compliance. Additionally, they are required to clean and store

the trucks at licensed commissaries.<sup>146</sup> Food trucks operate as businesses and must be licensed and pay taxes. Because they are mobile, some have licenses in many local jurisdictions. As with other issues, the problem is not that trucks compete unfairly but, perhaps, that enforcement is lacking in many existing regulatory areas. Enforcement could be increased versus having food truck specific policies.

*b. Food Trucks and What they Serve Question Food Practices*

Cultural negotiations on who can operate legitimate businesses and what should not be eaten are topics that fuel food truck debates. Representing international cuisine and various immigrant groups, food trucks often serve a large plate of cultural conflict in the communities where they operate. *Loncheros* in LA and nationwide explain that anti-vendor forces invariably view their businesses as a blight or an eye-sore. As described above, the claims focus on competition arguments or on actions considered distasteful. Here, the cultural assumptions are that the proper places to eat, purchase, or serve food are in a house or in a fixed-location restaurant. Displaying food preparation and consumption in public, food trucks violate these decorum norms. Assumptions concerning a consumer's inability to either afford to go, or having time to go, to a restaurant undergirds critiques of eating street food.

Assumptions on socio-economic status are the framework, but a great deal has to do with anti-immigrant or anti-Latino sentiment.<sup>147</sup> In LA, the demarcations are difficult to draw since many

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146. Since the Taco Truck War and the rise of new style food trucks, the City of Los Angeles has developed new food trucks regulations on health and sanitation and a permit process, initiated a task force for food trucks, public officials, and other stakeholders, and begun to explore "issues and concerns" such as business development districts, parking, outdoor dining, waste, etc. . See generally Maria Souza-Rountree, Report of the Chief Legislative Analyst, Regulation of Mobile Food Trucks, Council File No. 09-2357, Assignment No.: 11-02-0125, Feb. 17, 2011, available at [http://clkrep.lacity.org/onlinedocs/2009/09-2357\\_RPT\\_CLA\\_02-17-11.pdf](http://clkrep.lacity.org/onlinedocs/2009/09-2357_RPT_CLA_02-17-11.pdf).

147. Despite Mexican and Indigenous influences in Californian cuisine since the region was a colonial outpost of Spain, Mexican elements of this cuisine (i.e., corn, chiles, and beans), have historically been downplayed or denigrated as inferior. See *Cuisine, California*, 2 ENCYCLOPEDIA LATINA: HISTORY, CULTURE, AND SOCIETY IN THE UNITED STATES 13-17 (2005) (describing *Californio* cuisine, Anglo-American "rejection of Mexican food as inedible" and "poisonous," and Mexican food was not well-received until "the mid-1930's and 1940's"); Charles Perry, *Piedad Yorba*, 10 GASTRONOMICA: J. FOOD AND CULTURE 52 (Summer, 2010) (describing how from 1900-1930's, Mexican food was presented as "Spanish").

regions in question are traditionally Mexican-American with food trucks owned by and attending to more recent immigrants. But even in these locations, policymakers act on these prejudices when approving policies to be enforced in a Latino community. In areas where Latino immigrants may be more recent, food truck regulations serve as proxies for limiting food practices of immigrant groups. In areas as diverse as Washington state, Houston, and Iowa, Latino immigrants see food truck regulations as a proxy for nativism.<sup>148</sup> For decades Mexican migrants have raised these discrimination claims in court.<sup>149</sup> The new wave of gourmet trucks represents a host of foreign cultural elements, showing off Vietnamese, Korean, Chinese, Japanese and Indian food cultures. Food truck regulations have a significant cultural impact. They limit eating options, erase jobs, make businesses illegal, and have the effect of restricting foreign public presence.

*c. Food Trucks Raise Old Questions about Public Space*

Recent and pending questions about food trucks' legality point to traditional debates about what things local governments should permit (or prohibit) in public spaces.<sup>150</sup> The Taco Truck War raised legal questions about vendors using public parking spaces. More generally, though, the political debate is about how public property, not owned by private individuals or businesses, may be used by members of a community.<sup>151</sup> Pro-vendors argue that selling and eating from food trucks on sidewalks or from public parking spaces represents legal acts and the freedom to use public space. Anti-vendors contend that this use is wrong and illegal for reasons such as congestion, unfair competition, sanitation, or unsightliness.

For the recent Taco Truck War, this discourse was framed by

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148. See Gottlieb, *supra* note 21.

149. See *supra* notes 59-62 and accompanying text. (discussing race-based and anti-immigrant reasoning in taco truck regulations).

150. For a description of how debates about urban space reflect struggles for justice and democracy, see DON MITCHELL, *THE RIGHT TO THE CITY: SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE* (Guilford, 2003). For similar analysis focused on sidewalk, see RENIA EHRENFUCHT AND ANASTASIA LOUKAITOU-SIDERIS, *SIDEWALKS: CONFLICT AND NEGOTIATION OVER PUBLIC SPACE* (MIT Press, 2009).

151. For descriptions of how public space and food culture are debated, see HELEN TANGIRES, *PUBLIC MARKETS AND CIVIC CULTURE IN NINETEENTH CENTURY AMERICA* (Johns Hopkins Univ. Press, 2003); JOHN A. JAKLE AND KEITH A. SCULLE, *FAST FOOD: ROADSIDE RESTAURANTS IN THE AUTOMOBILE AGE* (Johns Hopkins Univ. Press, 1999).

a variety of public space issues. These include: political tensions of pending gentrification, most vivid in the metro line extension; perceived increases in real estate values and more corporate retailers; local economics of unfair competition from this use of public space; stereotyping food trucks as evading business, health, and vehicle regulations; and insider/outsider dynamics casting *loncheros* as immigrant, Latino, and/or lower class.

Cultural issues intrinsic to food practices serve as the driving force for these public space debates. Deciding what is permitted in public space effectively shapes food's place in local culture. Mexican food in the U.S. is often theorized to be a source of cultural pride and identification for populations with centuries of history here as well as for recent immigrants. Ramona Lee Pérez and Meredith E. Abarca describe four points on how Mexican food is fundamental to identity, belonging, power, and social change.<sup>152</sup> These points are: 1) food fuels negotiation of ideological and physical borders, raising questions about cultural values and economic realities; 2) cooking and eating function as public performances for these negotiations; 3) food in public space transcends geo-political borders revealing "unspoken" class and race tensions and the extra-legal aspects of food practices; and 4) food fuels memories of crossing borders. Abarca describes how the concept of "familial wealth" sustains a sense of empowerment and agency for Mexican women who own foods stands.<sup>153</sup> Mexican food, whether sold from *loncheros* or as an inspirational sales format for street eating, is intimately contributing to and responding to political and cultural borders. These food practices provide a way to negotiate urban borders between neighborhoods and communities and between private and public space. Likewise, the practice of eating Mexican food is a negotiation of macro-borders, such as the political boundaries crossed to migrate internationally from Mexico to the U.S., and individual remembrance of the journey and what remains abroad.

Whether it's eaten by immigrants or inherited from centuries of local and regional culture, Mexican food has had a powerful role in the cultures of the Southwestern U.S.<sup>154</sup> It serves and has

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152. Ramona Lee Perez & Meredith E. Abarca, *Cocinas Públicas: Food and Border Consciousness in Greater Mexico*, 15 *FOOD & FOODWAYS* 137, 146 (2007).

153. Meredith E. Abarca, *Charlas Culinarias: Mexican Women Speak From Their Public Kitchens*, 15 *FOOD & FOODWAYS* 183 (2007).

154. For descriptions of the historical significance of Mexican food in contemporary California cuisine, see generally MERRILL SHINDLER, *EL CHOLO COOKBOOK: RECIPES AND LORE FROM CALIFORNIA'S BEST-LOVED MEXICAN KITCHEN* (1998); and VICTOR M.



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served as a means for articulating communal pride and bonding, while also being the subject of disdain, stereotyping, racism, and class-based antagonism.<sup>155</sup>

Food's cultural and material currency is by no means limited to Mexican food or food trucks in LA. Lucy Long describes food and food practices as "expressive of how a culture conceptualizes its physical, social, and cultural universes."<sup>156</sup> This cultural significance becomes enormous when contemplating the fact that we all eat, making food "a language accessible to all."<sup>157</sup> This Article identifies food's cultural contests by examining the symbolic and material power of food (e.g., what one can sell or buy from a *lonchero* or gourmet food truck). Law is an important utensil in limiting or fostering these choices. The symbolic, ideological, and communal force of eating and selling is no less influential than its corresponding economic, spatial, political, and nutritive elements. Massimo Montanari describes the mutual influence of food's cultural and material attributes in what he labels the "grammar of food." He states this grammar is able to redefine "itself in the changing context of environmental, economic, social, and cultural

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VALLE AND & MARY LAU VALLE, *RECIPE OF MEMORY: FIVE GENERATIONS OF MEXICAN CUISINE* (1995).

155. See generally, Mario Montaña, *Appropriation and Counterhegemony in South Texas: Food Slurs, Offal Meats, and Blood*, in *USABLE PASTS: TRADITIONS AND GROUP EXPRESSIONS IN NORTH AMERICA*, at 50 (Tad Tuleja, ed., 1997) (describing how the food of Mexicans and Mexican-Americans in South Texas has been used to stigmatize and subordinate, to resist Anglo domination, and to later selectively appropriate into U.S. cuisine, with examples of menudo, fajitas, and morcilla); Jeffrey M. Pilcher, *Was the Taco Invented in Southern California?*, 8 *GASTRONOMICA: J. OF FOOD AND CULTURE* 26, 28 (2009) (analyzing Mexican food's ambivalent role in California culinary history, the late nineteenth century birth of "tacos" and their perception as "street food" in Mexican culinary history, and taco innovations in post-war Los Angeles culture such as fast-food enterprises, tortilla fryers, and "Mexican -American taco" adoptions of cheddar cheese, shredded lettuce, flour tortillas and ground beef); Jeffrey M. Pilcher, *The Globalization of Mexican Cuisine*, 6 *HISTORY COMPASS* 529, 551 (2008) (examining ethnic stereotypes and changing roles of Mexican food in the U.S. from the "Columbian exchange" when American and European food cultures traded essential products to the recent "McDonaldization" of Mexican food around the world); Jeffrey M. Pilcher, *Tex-Mex, Cal-Mex, New-Mex, or Whose Mex? Notes on the Historical Geography of Southwestern Cuisine*, 43 *J. OF THE SOUTHWEST* 659, 679 (2001) (providing a geographic, transnational, and cultural explanation for why "Mexican cooking" varies in its history, ingredients and dishes in Arizona, California, New Mexico, and Texas).

156. Lucy M. Long, *Nourishing the Academic Imagination: the Use of Food in Teaching Concepts of Culture*, 9 *FOOD & FOODWAYS* 235 (2001).

157. See CAROLE COUNIHAN, *THE ANTHROPOLOGY OF FOOD AND BODY: GENDER, MEANING, AND POWER* 19 (1999).

circumstance.”<sup>158</sup>

Served on this symbolic and economic table, local efforts to limit food trucks must contend with the material and cultural influence possessed by this food practice. This Article views the Taco Truck War regarding parking regulations as just one course in a political buffet redefining public space and food in LA. Local regulations affecting public space, which ignore the economic and cultural value of street vending, may eliminate the established, cherished, and rejuvenated LA tradition of eating from food trucks. Zoning, health, vehicle, or parking regulations that effectively prohibit food trucks operations by making it impossible to function economically may make this tradition a fond memory. Such myopic regulations may kill a cultural practice unique to LA's car, neighborhood, immigrant, dining, and Latino cultures. Street food, including that from trucks, has a long history in both LA and Mexico.<sup>159</sup>

Historic lessons from the abolition of pushcarts in New York City's Lower East Side and “Chili Queens” in San Antonio, Texas show how myopic regulations erase cherished local public culture and wash away jobs and local markets. The turn of the century developmental push for “modern” businesses and urban space and stereotyping of immigrants and foreigners influenced both of these policies.<sup>160</sup> Early twentieth century city politics supporting larger department stores and streets and sidewalks to move goods and people, versus fostering open-air markets or plazas, fueled the drive to end street vending.<sup>161</sup> By mid-century, cultural observers noted the Lower East Side had lost much public space for pushcarts, which had provided a commercial and cultural link to East European and Southern European traditions for Jewish and Italian residents.<sup>162</sup> Without pushcarts and peddlers, the sidewalks

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158. MASSIMO MONTANARI, *FOOD IS CULTURE* 99 (Albert Sonnenfeld trans., Columbia Univ. Press 2006).

159. See generally David R. Diaz, *Street Vendors: the Cultural Battle over Cultural Interpretation*, in *THE LATINO/A CONDITION: A CRITICAL READER* 661 (Richard Delgado & Jean Stefancic eds., 2010); Janet Long-Solis, *A Survey of Street Foods in Mexico City*, 15 *FOOD & FOODWAYS* 213 (2007).

160. See generally, Daniel M. Bluestone, “*The Pushcart Evil*”: *Peddlers, Merchants, and New York City's Streets, 1890-1940*, 18 *J. URBAN. HIST.* 68 (1991); Suzanne Wasserman, *The Good Old Days Of Poverty: Merchants and the Battle Over Pushcart Peddling on the Lower East Side*, 27 *BUSIN. & ECON. HIST.* 330 (1998); Jeffery M. Pilcher, *Who Chased Out the “Chili Queens”? Gender Race, and Urban Reform in San Antonio, Texas 1880-1943*, 16 *FOOD & FOODWAYS* 173 (2008).

161. See Bluestone, *supra* note 160; see also Wasserman, *supra* note 160.

162. See Bluestone, *supra* note 160; see also Wasserman, *supra* note 160.

and streets lost their appeal as spaces of social invitation. Indoor markets and larger storefronts did not appeal to many consumers accustomed to open-air and personal exchanges of peddlers and pushcarts. The Lower East Side lost this communal element and income source for many.

In San Antonio, similar urban reform and cultural stereotyping led to the elimination of the business role of female vendors of Mexican food, called “chili queens.”<sup>163</sup> There, a city with an established Mexican-American population grew to take a disdainful view of the open-air and public sale of Mexican food by Mexican immigrants who had increased in numbers after the Mexican Revolution (1910-17) and resulting decades of violence.<sup>164</sup> Urban planning, with its support of free-moving streets and commerce, provided the context to look down on food practices associated more with Mexico than with the perceptions of a modern American city. Chili queens were cast as unhygienic. Eventually by the 1940s, this public and open-air space to eat Mexican food was eliminated, despite its draw for tourists and multicultural appeal since the 1880s.<sup>165</sup>

#### IV. CONCLUSION

In conclusion, this Article describes how in LA’s Taco Truck War from 2008-09, law was a vital ingredient to food culture contests. Taco trucks, or *loncheros*, and new trends in gourmet food trucks must function within these complex discourses in law, policy, and culture. These debates about what local governments may restrict or permit, regarding food sold and consumed from trucks, reflect larger negotiations on community economics, food practices, and public space. The simple act of eating or selling food publically includes large helpings of symbolic and material importance. Culturally, food trucks represent culinary innovation, shared public space, foodie culture, associations with Latino and immigrant cultures, and meals made more accessible to consumers. To other sectors of society, alternatively, food trucks represent a foreign, undesirable, lower economic class, misuse of public

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163. Robb Walsh explains American taste for chili con carne and chile began with the 1893 Columbian Exhibition in Chicago, when the Texas exhibit recreated a San Antonio chili stand with food sold to fair-goers. With worldwide fame, San Antonio chili stands existed in public squares along with nightlife entertainment and early morning vegetable markets. See ROBB WALSH, *THE TEX-MEX COOKBOOK: A HISTORY IN RECIPES AND PHOTOS* 40, 45 (2004).

164. See Pilcher, *supra* note 160.

165. See *id.*

space, unsanitary food practice, and unappealing noises, sights, and smells. In material terms, food trucks provide economical food options, new sources of income, small business prospects, and the opportunity to socially revitalize sidewalks, streets, and public areas. Others still view trucks as unfair competitors, who use mobility and limited space to take business from restaurants and encroach upon urban public space.<sup>166</sup>

This complex discourse has played out in LA's recent Taco Truck War, focused on *loncheros*. In East LA and Boyle Heights, City and County ordinances attempted to restrict food trucks by making it illegal to park and vend for more than 30 minutes in residential and 60 minutes in commercial zones. Courts found these ordinances to be invalid because they conflicted with California's Vehicle code and because the ordinances were too vague. Decided in 2008, *People v. Garcia* held the County food truck ordinance was too ambiguous to enforce, was pre-empted by California state law and was thus unconstitutional. Further, because it conflicted with California Vehicle Section 22455, which only permits local regulations for public safety,<sup>167</sup> the ordinance was found to be unconstitutional because the California Legislature has limited the scope of local governmental regulation to enact ordinances which *regulate* rather than *prohibit* sales from vehicles.<sup>168</sup> The next year, LA's similar ordinance was struck down in *Gonzalez v. City of Los Angeles Department of Transportation* when the court found it was "not rationally related to the public safety"<sup>169</sup> and "expressly conflict[ed]" with California Vehicle Code Sections 21 and 22455(b). These pro-vendor decisions reflect California jurisprudence on food trucks and vehicle code pre-emption of local regulation.

LA, its surrounding municipalities, and cities nationwide will likely pursue new food truck regulations. Food culture contests concerning local economics, food practices, and public space in LA promise to draw in *loncheros* and gourmet trucks. The last taco truck war focused on parking regulations and was inspired by community ambivalence about gentrification, most poignant in the Gold Line extension to Boyle Heights and East LA. The potential economic gains for merchants and property owners in the area

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166. See discussion, *supra* note 23 and accompanying text.

167. *People v. Garcia*, No. 8EA05884 (L.A. Super. Ct. Aug. 27, 2008) (order following demurrer hearing).

168. *Id.* at 6-7.

169. *Gonzalez v. City of Los Angeles Dept. of Transportation*, No. 09K08485 (L.A. Super. Ct. June 8, 2009) (order reversing administrative decision).

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provided the push to rid the streets of what was perceived to be problematic. Perhaps a better solution would be enforcing existing business, health, and parking rules, versus spending the resources and political capital to draft invalid ordinances and enforce them. Hopefully, future regulation efforts in the LA area will conform to the fact that the state Vehicle Code provides little room for local inconsistency. Ideally, *loncheros*, gourmet trucks, and their consumer communities will remind political leaders of the cultural benefits of food trucks by forming associations which will, in turn, inspire voters.