

Food Truck Freedom: Removing Barriers for Mobile Businesses



SUMMARY

Governments regularly struggle to apply antiquated laws to new, innovative businesses. Food truck owners have experienced this firsthand, with cities unaware of how to best classify and regulate their mobile kitchens.

Unfortunately, this has resulted in a patchwork of arbitrary and redundant policies that frustrate truck owners, provide no consumer protection, and in the aggregate result in significant compliance costs that threaten to undermine an upstart business.

Unnecessary regulations should be eliminated—duplicative health and fire permits, prohibitions on operating within a certain distance from restaurants, mandates to change locations frequently, costly bonding, background checks, and more. Even worse, many cities in Utah completely ban food trucks.

Food trucks are highly popular and provide a great community service and economic development opportunity. Barriers placed in their way should be reduced or removed.

Mobile food vendors should not be subjected to an arbitrary maze of inconsistent municipal regulations that do not protect Utah consumers.

Legislatures and bureaucracies do not adapt well to the ever-changing market. Innovative enterprises spring up constantly, yet often find themselves stymied by antiquated and arbitrary regulations through which they must navigate to be successful.

Street food and mobile dining predate the American government. Push carts and chuck wagons enabled entrepreneurs to cater to passing pedestrians and hungry workers in an affordable and convenient way.

Food trucks, as they're known today have operated for decades, though a post-recessionary shakeup in the restaurant industry has led to many cooks and business owners experimenting with this unique and dynamic approach to food. Fueled by social media and a dramatic increase in popularity, mobile food vendors are proliferating throughout Utah.

This policy brief will outline many of the regulatory problems faced by food trucks in Utah and will propose a reasonable solution that is designed to protect consumers while ensuring that these mobile entrepreneurs can fairly compete and operate without unnecessary barriers in their way.



Laborers in 1898 break for lunch in front of a chuck wagon, a precursor to today's food trucks.

A Patchwork of Policies

Perhaps the greatest struggle faced by food truck owners in Utah is the variety of city ordinances and county regulations imposed upon their inherently transient business. To operate in multiple municipalities, truck owners must research and comply with each unique process—navigating a maze of policies that often change.

This problem is compounded by the fact that many cities are uncertain how to regulate this newly popular industry. Unfortunately, in some instances small Utah cities have copied policies from large metropolitan cities and adopted them wholesale, resulting in a heavy-handed approach that is unnecessary to protect consumers.

Regulatory compliance for operating a food truck in several different cities entails having to research and complete multiple application processes, abide by a variety of permit requirements, and pay redundant fees. All of this makes operating in more than one city burdensome and impedes business growth as well as economic opportunity.

From Barriers to Bans

While most cities allow food trucks, provided the owners comply with zoning laws and other regulations, several cities completely ban food trucks from operating at all.

Highland, Roy, Riverdale, Centerville, Hurricane, and Brigham City are on this list. Some owners have occasionally found ways to operate in a couple of these cities—usually by knowing the right person in city government—but the general industry is unwelcome, and owners are not issued operating permits.

This discriminatory practice is unique to the food truck industry and does not apply to brick-and-mortar restaurants.

Unnecessary Redundancy

In Utah, a health permit is required for each county in which a food truck operates. This duplicative requirement involves an unnecessary burden and extra cost on small businesses that often operate in many counties. Permit costs run from several hundred dollars to over a thousand dollars in each case, and must be renewed annually.

Fire regulations on food trucks are also redundant. When applying for a city permit, a business owner must have the truck inspected, even though it may have been approved in another city the very same day. Confusing and changeable policies have led to unnecessary requirements. Salt Lake City, for instance, requires owners to enclose generators and mount them on their truck, even if the generators are designed to operate safely in the open and on the ground.

Restaurant Protectionism

Many municipalities around the country create arbitrary zones around restaurants within which food trucks may not operate. This effort to protect a specific type of business from competition is not a legitimate government interest. Many cities are now reversing course, following litigation from the Institute for Justice challenging these proximity provisions.

Unfortunately, many cities throughout Utah impose distance requirements on food trucks, prohibiting them from operating near their brick-and-mortar competitors. Provo, Layton, Lehi, Ogden, South Ogden, Pleasant Grove, Bountiful, South Salt Lake City, Salt Lake City, Washington, Syracuse, Taylorsville, and others are guilty of using the law in this way.

In Provo, for example, the city council unanimously approved regulations in 2014 that establish a Food Truck Restriction Area around the downtown area in an effort to shield restaurants from competition. This regulation was the result of negotiations with restaurant owners and residents who used political leverage to exclude food trucks from the area.

Further, Section 6.32.090 of Provo's municipal code states, "No mobile food business shall operate within a one hundred (100) foot radius of any public entrance to a restaurant ... unless the mobile food vendor obtains the written consent of the proprietor of such restaurant or shop." South Ogden extends this protection to 150 feet. Layton requires 200 feet and includes parks and schools (both public and



Layton City prohibits food trucks from operating within 200 feet of restaurants, parks, or schools without permission (restrictions shown in red).

private) in the list, unless written permission from the property managers or owners has been granted. Taylorsville extends the protected area to 1,000 feet from "any restaurant... or like business."

Policies such as these—imposed by cities throughout the state—are designed to shield businesses from competition and are therefore an illegitimate use of government power.

Regulatory Inconsistency

Many of the onerous policies that plague food truck owners are not applied to similarly mobile businesses. Contractors operate around the state and yet cities do not impose on these business owners—plumbers, landscape architects, electricians, and more—any sort of redundant permitting requirements. A license from the city in which the business is registered is sufficient, even when goods and services are provided in other cities.

A more relevant example is that of catering companies, who likewise face no requirement of additional permits and fees. These businesses provide food service to groups around the state, and yet unlike food trucks, are not subjected to duplicative regulatory mandates.

Mobile Immobility

Part of the appeal of food trucks is their spontaneity—appearing in different locations at different times, traveling and catering to a variety of people. This mobility is essential to their successful operation; food trucks go where the crowds are.

Unfortunately, many cities in Utah impose restrictions on mobile food vendors that limit their options and make it difficult to serve potential customers. For example, Logan states that food trucks "shall not be parked in one location on public property for longer than thirty (30) minutes." And even on private property, they are prohibited from operating more than 180 consecutive days within a 12 month period of time.

In Taylorsville, food trucks are prohibited from operating for more than two consecutive hours at any location except for events run by the city. South Jordan states that they "shall not conduct business within city limits for more than any part of sixty (60) days per calendar year."

Costly Compliance

Food truck owners who want to operate in more than a small handful of locations quickly find that the compliance portion of their business becomes overwhelming and costly. For some, this series

of regulatory barriers discourages business expansion and can even create enough pressure to shutter the business altogether.

In fact, service providers have organized in Utah to help alleviate this burden for food truck owners by assisting them in navigating through the regulatory compliance. This unfortunate situation—creating a market for middlemen to help jump through bureaucratic hoops—would not otherwise exist in a streamlined regulatory environment that was friendly to business.

Some food truck businesses have become so successful that their operations span dozens of cities. This has required them to employ staff dedicated to regulatory compliance. These added costs—along with the fees paid directly to each government agency—are passed on to the consumer yet add no value for either the business owner or customer. They are the unfortunate byproduct of unnecessary regulatory complexity.

Assorted Arbitrariness

While the above-listed issues are the primary grievances food truck owners have, that list is by no means comprehensive. Different cities throughout Utah place a variety of restrictions on the operation of mobile food vendors, some of which we include here as a sample of the regulatory burdens imposed upon these entrepreneurs.

One License per Location

Several cities in Utah require food truck owners to obtain a license and pay a fee for each location where they will operate. For an inherently mobile business looking to follow crowds

and test different areas of town, this burden creates a substantial cost that discourages mobility within the city and sometimes keeps businesses out of the city altogether.

Syracuse, Bountiful, North Ogden, Taylorsville, Kaysville, Clearfield, Herriman, West Jordan, and Sandy each require one license per location, requiring fees of up to \$150 per license. In some cities, such as West Jordan, the single-location license is temporary, meaning that the fee must be paid several times per year to park in a single spot in the city.

Commissary Connections

Each city (usually through the county health department) requires trucks to prepare food in a commercial quality commissary. However, some jurisdictions go beyond this reasonable requirement to force food truck owners to operate from a commissary within their county, rather than transporting the food from a commissary located elsewhere.

These commercial kitchens are costly, and it is not feasible for a business to pay commissaries in every county where they desire to sell to customers. Making matters worse, some municipalities will only grant temporary permits without a commissary connection, which become extremely costly to the point of making business in that municipality completely cost-prohibitive.

Site Maps

Sandy, Layton, Syracuse, and other cities require food trucks to provide a site map for each location in which they will operate. This map typically must include the location address, a parking lot layout, adjacent streets,

location of adjacent buildings, the specific location and dimensions of the food truck, and applicable school, park, or restaurant buffers as required by city law.

Taylorsville requires truck owners, in their plan, to outline how they will “mitigate possible odors.” In Davis County, business owners must provide a “daily operation schedule” for each location, and must notify the Health Authority prior to any effected changes.

A Two-Truck Event

Food truck business owners, like other businesses, remit sales taxes they have collected through their assigned identification number. However, should one of their trucks join with another truck at the same location, the Utah Tax Commission requires them to use a temporary ID number for their “special event”—a requirement any time two or more trucks team up.

This creates a complicated paperwork process for owners who often appear with different trucks at different events. Owners must keep track of which sales pertain to which events in which cities, and remit them accordingly—rather than in one large batch under their business’s assigned tax ID.

Restroom Requirements

Salt Lake City, Davis County, and other municipalities require food trucks to be parked near a facility with a restroom accessible to the public with permission from the landlord. This limits the number of locations where food truck owners might operate and imposes a burden not required of other mobile or temporary businesses.

An Over-Regulated Dream

Utah's greatest food truck success story combines passion and flavorful food with a frustrating struggle against arbitrary regulations threatening to undermine the now-popular business at its beginning.

Waffle Love was started by Adam Terry in 2012 after he lost his job in banking. In an interview with Libertas Institute, he said, "I had been looking around for a job in that industry but couldn't find one, so I decided to go for my dreams and do something I was super passionate about: food."

Terry grew up in a family of 14 with a mother who home-cooked each of their meals. "I grew to appreciate whenever somebody went to the effort to make something delicious, and others get to enjoy it," he added. "I wanted to do that as well and see if I could build a successful food truck business."

When Waffle Love first opened its doors, there were only a handful of food trucks in all of Utah—and none in Utah County, where Terry decided to begin. County regulators and city staff didn't quite know how to deal with these mobile enterprises—a frustration that continues to this day, with hundreds of business owners now struggling to navigate a patchwork of policies and stomach all the fees. Food trucks, he argues, should be afforded the same reciprocity as contractors or caterers.

At present, Waffle Love has been granted dozens of permits around Utah, costing them an estimated \$5,000 annually—a steep amount for a business with small margins.

"The thing is, these city permits don't provide any consumer protection," argues Terry. "Our food is not any safer, and our trucks are not any cleaner, because of the hurdles cities make us jump through. But it definitely impacts our business in a negative way. We really shouldn't have to deal with all of these headaches."



Even worse, Terry argues, are the distance rules that protect restaurants and set up a buffer zone within which Waffle Love and others cannot operate. "There have been many times we wanted to set up shop, for example, in downtown Provo—but we're not allowed to," he explains. "Again, there's no issue about health or safety. The only reasonable explanation for these restrictions is that they benefit restaurants that don't want us nearby. That's not what the law should be about."

Waffle Love now operates five trucks and four stores in Utah. Terry feels he was fortunate in opening his business ahead of the regulatory curve. He speaks of his fellow food truck owners struggling to succeed, finding ways to afford the fees and spend significant time on all the paperwork—money and time that they really need to be spending on their upstart enterprise. "It's just not fair—plain and simple," he says. "Even worse, a lot of these policies are plain unconstitutional. Change is needed, and soon."

"I'm not alone in feeling this way," he adds. "Every food truck owner feels a significant amount of frustration in having to deal with all of these permits, policies and fees." More specifically, in conversations with Libertas Institute, many of these owners worry that regulatory burdens may overwhelm their young businesses.

"For me," Terry says, "a food truck was an inexpensive way to

open a business and see if there was a market for my product. Having to find enough capital to open a brick-and-mortar restaurant was simply not an option for me when I was flat broke, but now we've been able to grow our business, enhance Utah's culture, and bring joy to thousands of eager and loyal customers."

"Other entrepreneurs should have the same chance to succeed," Terry said, emphasizing that a free market for everybody is what is needed. "All of these regulations aren't helping."

Removing the Barriers

Throughout the country, cities have been enacting regulations on mobile food vendors much like those in Utah. Some business owners have begun fighting back, suing cities with the help of the Institute for Justice, a public interest law firm.

Cities are particularly vulnerable legally for protectionist policies that keep food trucks away from restaurants. This was evident, most recently, in a legal challenge against San Antonio’s food truck ordinance. Once the city attorney informed the council that the city would likely lose in court, the council unanimously repealed the law.

Cities in Utah are subject to similar litigation attempts, and many food truck owners are interested in defending economic liberty in the courts. However, in an effort to help cities avoid protracted and costly legal proceedings, we propose legislation designed to eliminate many of the arbitrary barriers put in the way of food truck businesses. Doing so would use state law to ensure cities throughout Utah immediately adhere to free market policies and regulate only when necessary for the public’s health and safety—and where policies are enforced, that those laws be as least restrictive means possible.

Part A: Create a Statewide Standard for Municipal Reciprocity

Perhaps the most important purpose for confederation between American colonies was the elimination of protectionist policies that impeded trade between them. As political subdivisions of the state, cities should likewise be prevented from

establishing burdens on economic activity that spans multiple boundaries. We therefore recommend legislation that establishes a municipal reciprocity system such that mobile food vendors would no longer be required to obtain multiple health and fire inspections and city permits.

This proposal would eliminate bureaucratic redundancy, streamline a complicated compliance process, and save food truck businesses and their customers substantial amounts of money, both in terms of the fees themselves and the employment overhead necessary to comply with each city’s unique process.

A comparison may be drawn here to catering companies, which in many ways operate like food trucks—they prepare and transport food to be cooked and served to members of the public. Unlike food trucks, cities do not require catering companies to navigate the same complicated set of policies; no extra business licenses and inspections are required of them. Allowing mobile food vendors the ability to register and be inspected once, and then have that result recognized by municipalities statewide, would relieve some of the most significant regulatory pressure these business owners face.

Part B: Prohibit Distance Requirements, Bans, and Mobility Mandates

Article XII, Section 20 of the Utah Constitution requires that “a free market system shall govern trade and commerce in this state.” Many cities throughout Utah violate this provision by imposing complete prohibitions on the operation of food trucks, while others enact protectionist distance requirements to shield brick-and-mortar restaurants from competition.

In furtherance of their oath of office, we believe that legislators should adopt a statute designed to override these ordinances to fulfill the policy objectives outlined in this section of the state’s constitution—to “promote the dispersion of economic and political power and the general welfare of all the people.”

Some city leaders may object to the state limiting their power. It is important to recall that municipalities in Utah are created as political subdivisions of the state, and receive their authority from the state. As such, when appropriate, the state may alter or rescind that authority. Given the proliferation of duplicative and protectionist policies that do not protect Utah consumers, we believe that this situation merits such an action.

This limitation of their regulatory power would not preclude cities from imposing other requirements in line with protecting public safety and health, such as ordinances addressing waste disposal, noise, pedestrian safety and access, etc. To the extent that such city regulations are narrowly tailored in furtherance of legitimate public interest and protection, the state should not interfere.

“The case is not defensible. I don’t know how else I can say that.”

—San Antonio City Attorney Martha Sepeda, commenting on a constitutional challenge in court to the city’s proximity prohibition on food trucks operating near restaurants. The city unanimously repealed the law.

A MODEST PROPOSAL FOR FOOD TRUCK FREEDOM

While the model legislation provided below is envisioned to be introduced as a comprehensive bill incorporating the two parts listed on the left page, it is possible to separate them, if necessary or desired, into separate bills.

Title 10, Chapter 8, Part 1, Section 44.7: Mobile Food Vendors

- (1) As used in this section:
 - (a) “Mobile food vendor” means a person who serves, vends, or provides food or beverages intended for human consumption from a motor vehicle or trailer upon public streets or private property.
 - (b) “Operating permit” means a city business license, county health inspection certificate, or fire inspection certificate.

- (2) A political subdivision of the state shall consider valid within its jurisdiction an active operating permit that has been issued to a mobile food vendor in another municipality of the state for the period of time listed on the operating permit.

- (3) A political subdivision may not:
 - (a) prohibit a mobile food vendor from operating in agricultural, industrial, manufacturing, or commercial zones;
 - (b) enact or enforce an ordinance prohibiting a mobile food vendor from operating within a certain distance of a restaurant;
 - (c) restrict the number of hours that a mobile food vendor may remain in a public right of way during daytime business hours;
 - (d) prohibit a mobile food vendor from operating in the same location on successive days;
 - (e) require a mobile food vendor to obtain an operating permit for different locations within the same municipality;
 - (f) deny an operating permit to a mobile food vendor because of a past criminal conviction; or
 - (g) require a mobile food vendor to operate from a commissary within its jurisdiction as a condition of obtaining an operating permit.

- (4) Subjection to Subsections (2) and (3), this Section shall not be intended to prevent a political subdivision from requiring a mobile food vendor to comply with reasonable regulations designed to protect public health and safety.

PUBLIC POLICY BRIEF

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RECURRENCE
===== TO =====
FUNDAMENTAL
PRINCIPLES IS
ESSENTIAL
===== TO =====
THE SECURITY
===== OF =====
INDIVIDUAL
RIGHTS

UTAH CONSTITUTION
ARTICLE I, SEC 27