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The Truck Stops Here—Or Should It?

By David S. Houston, Esq.

The proliferation of food trucks has been one of the hottest trends in the food service industry the last few years, according to the National Restaurant Association's "What's Hot in 2012" survey of professional chefs. Such trucks have become technologically advanced and bear little resemblance to the Good Humor trucks and the so-called construction site "chuck wagons" that have previously dominated the mobile food truck sector. Mobile food trucks have become such a phenomenon that some national food chains are experimenting with their own trucks to further enhance a brand name in a region or neighborhood in which such chains don't presently have permanent locations—for example, Taco Bell recently received positive publicity after it airlifted a hot truck full of 10,000 tacos to a town in Alaska.

For some property owners, the presence of these next-generation food trucks can satisfy a need for diversified food options at a property or otherwise enliven a project. For others, food trucks may not fit within the tenor of the development, may conflict with a project's leasing plan, or may otherwise present too many regulatory hurdles for the property owner. As many local jurisdictions look into either adopting new laws to govern the operation of mobile food trucks or updating existing laws that were previously implemented to govern ice cream trucks or other specific types of food trucks, property owners and developers need to be aware of the potential impact of these laws on existing and future projects, in addition to more obvious considerations regarding a project's scope and food service needs, in order to determine whether the presence of food trucks on or around their projects is positive or negative.

In determining whether to allow food trucks on or around their properties, owners should consider the following to assess whether these mobile eateries will benefit their individual properties.

Taking Advantage of Food Truck Benefits

Benefits of the increased presence of mobile food trucks include:

- Enabling potential restaurant owners to start a new business with little capital and low overhead;
- Providing a forum for existing restaurant owners to test gourmet or unique food concepts for customer acceptance before bringing them to a more traditional food service format; and
- For property and restaurant owners, meeting the demand for trendy food service options in areas that may be underserved, such as fringe urban areas, retail centers, universities, or suburban office parks, where brown bag lunches, limited choices, and large parking lots are the norm. In these areas, food trucks bring needed foot traffic and street vibrancy, as is the case with the "Street Feast" at The Americana at Brand, a retail, entertainment, and residential project in Glendale, Calif. The Street Feast brings together some of the more well-known Los Angeles-based food trucks and combines them with music as a way to bring more visitors to the project. The International Council of Shopping Centers (ICSC) recognized the project's owner with ICSC's highest award for excellence and innovation in retail marketing.

Food trucks also can help contribute to environmental sustainability by reducing vehicle

trips needed by the work force in an office park or the residents in a fringe urban area to access alternative food options. Food trucks also may provide an excellent interim use of land prior to development. For example, Washington, D.C., has a monthly food truck event called “Truck-eroo” that attracts a diverse group of vendors, along with live music, to an area of the city that, except for the new Washington Nationals baseball stadium, includes mostly vacant and undeveloped office buildings. Over 18,000 people reportedly attended the first event.

In addition to the reasons set forth above, an owner may have more immediate and practical considerations that favor inclusion of food trucks at its property. For example, if an office building doesn’t have a restaurant in the building or located conveniently nearby, and it’s cost-prohibitive for the building owner to retrofit the building to accommodate a restaurant’s unique utility and building system needs, providing food service via food trucks may become another tenant “amenity.” Likewise, if a shopping center isn’t at full occupancy or doesn’t offer a variety of eating choices for its customers, food trucks may fill that void and create an atmosphere that keeps shoppers on-site longer.

Balancing All Interests

Despite the benefits of mobile food trucks, not all owners may be in favor of their increased presence. Owners of brick-and-mortar restaurant sites could be adversely affected by food trucks if increased sales by food trucks result in a decrease in rents (especially percentage rent if tenants’ sales suffer). Food trucks also may utilize parking and loading spaces, which may be at a premium; create potential traffic safety issues (both vehicular and pedestrian); and cause issues with trash, odor, vermin, pollution, and loitering. That food trucks don’t pay rent or real estate taxes, are often not as strictly regulated from a health safety standpoint, and may impair access and visibility often further exacerbate an owner’s or developer’s concerns.

With careful planning, however, owners and developers may be able to meet existing tenants’ and visitors’ needs while also creating additional foot traffic and bringing in new customers, all while mitigating any actual or perceived negative attributes of food trucks. Once owners and developers have determined: (1) that they might

like food trucks at their properties to satisfy a demand or need for additional food service; and (2) that the presence of food trucks won’t violate the rights of existing tenants, they should evaluate the local laws and regulations presently applicable to food trucks, as well as the broader regulatory environment, in order to ascertain if compliance costs may affect the benefits of allowing food trucks.

With respect to a formal agreement between the owner and the prospective food truck operating on the property, a revocable license agreement may be best because it doesn’t create a landlord-tenant relationship and the owner would be able to terminate the agreement immediately. As with any license agreement, the owner will want to include certain protections in the agreement covering such issues as: definition of the license area; confirmation that the license will be nonexclusive, revocable, and nontransferable; requirement to keep the license area clean and safe; compliance with all applicable laws and regulations; maintenance of liability insurance; and other controls to minimize any adverse impacts on the building’s occupants.

Evolving Regulations

Many local jurisdictions are now taking into account the competing factors affecting the growth of the food truck sector and are considering a variety of forms of regulations to address this phenomenon. Regulation may come in the form of: (1) health code requirements for food preparation (such as inspection of the trucks and the kitchens—which are not always one and the same); (2) zoning regulations that may prohibit the introduction of a commercial “fast food” type of use to property not entitled to such use as a matter of right; (3) parking regulations both on public and private property regarding time limits and availability; (4) taxes for operating a business and sales tax; and (5) licenses and permits for the truck, its operator, and any food handlers.

The creation and enforcement of food truck regulations have given rise to mixed results in local jurisdictions. Certain locales embrace them, such as Los Angeles, which has more than 9,500 food trucks due to greater regulatory and consumer acceptance, while others, like Washington, D.C.; Dallas; Detroit; and Miami, under pressure from traditional restaurant owners, are

considering or have enacted stricter regulations for food trucks. The types of local regulatory initiatives that have been recently proposed or adopted throughout the country to address concerns about food trucks include:

- Strict inspection requirements (e.g., Los Angeles);
- Requiring food preparation to be done at a commercial kitchen located within the jurisdiction (e.g., Montgomery County, Md.);
- Limiting the number of licensed operators in a jurisdiction (e.g., Toronto and Raleigh);
- Limiting the location of food trucks to specific “parking zones” or other areas (e.g., Baltimore);
- Limiting hours of operation (e.g., Chicago, Nashville, Santa Monica, and Portland, Maine);
- Prohibiting operation on public streets and public spaces (e.g., Miami, Detroit, and Austin);
- Enforcing time limits on parking in one location (e.g., Washington, D.C., New Orleans, and Arlington, Va.); and
- Placing radius restrictions to space trucks away from each other and away from other uses such as restaurants, schools, and places of worship (e.g., Houston, Buffalo, and Boston).

Because many of the laws and regulations applicable to food trucks are relatively new, the long-term effect on the economics of both the food trucks themselves and the surrounding properties is not yet known.

Enabling Operators’ Success

Regardless of whether their property is located in a jurisdiction that favors food trucks or one that restricts such enterprises, if owners decide to pursue having food trucks at their properties, they should attract food truck operators by offering to help them obtain the necessary governmental permissions and permits and providing a dedicated area in which the trucks can park and operate. In addition, owners may want (or need, depending on applicable regulations) to provide seating, access to electricity, trash receptacles, and restrooms in or near the area. In locating a dedicated area, the owner should select one where traffic safety is not a concern.

Taking Brick-and-Mortar Tenants into Account

The owner also may need to determine whether it makes sense to locate food trucks close to or away from existing restaurants at the property. As long as the food trucks don’t duplicate or directly compete with the menu offerings of any existing restaurant tenants, then it’s possible that a synergy may exist between the food trucks and existing brick-and-mortar restaurants, and proximity between the two may allow them to cross-market or take advantage of other efficiencies.

In fact, despite the popular belief that food trucks pose a threat to sit-down full-service restaurants, studies show that food trucks are more likely to compete with fast-food and quick-service restaurants rather than sit-down restaurants. (See “10 Things Food Trucks Won’t Say,” *Smartmoney.com*, Aug. 1, 2012.)

If the owner’s building lease form doesn’t already provide so-called site plan flexibility, a clause should be added allowing the right to modify the property to accommodate food trucks in the future. Any income or costs associated with food trucks should be factored in each tenant’s share of operating expenses. Tenants may negotiate additional terms and conditions into the lease to minimize the impact of the food trucks with regard to trash, odor, safety, access, and parking.

There’s no doubt that next-generation food trucks can satisfy a need for diversified food options at a property or otherwise enliven a project. With proper analysis of a development’s needs and the applicable regulatory requirements, owners and developers can take advantage of the benefits of having food trucks at their properties while minimizing the challenges that food trucks may otherwise present. ♦

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