

In the Zone Current Trends in Land Use Law

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Welcome to **Ancel Glink's *In the Zone***. Our e-newsletter includes articles on lively land use topics designed to inform local government officials about current trends in Illinois land use law and provide useful resources to promote planning and zoning practice throughout the state. ***In the Zone*** is a publication of Ancel Glink's Zoning and Land Use Group. For more than 80 years, Ancel Glink has counseled municipalities and private clients in zoning, land use, and other municipal matters.

Why Food Trucks May Be the Best Way to Introduce “Placemaking” Strategies in Your Community

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Across the country in communities of all sizes an old idea has gained new currency and a devoted following: the food truck, also known as mobile food vendors. More specifically, the gourmet food truck, a feat of entrepreneurialism challenging notions on how the marketplace provides quality food to people.

In so far as you are not familiar with these food trucks, ditch your thoughts of the construction site “roach coach” with prepared sandwiches in plastic containers sealed with Saran Wrap, packaged chip, donuts, cookies, and candy. The food trucks that are the topic of this article are brightly colored with wrap around graphics, expertly use social media to reach their customers, and serve fresh foods, often from locally sourced ingredients, sometimes prepared on the truck and sometimes prepared at a bricks and mortar kitchen the same day as sale. In either case, the foods are marketed as fresh, flavorful, and often ethnic, with Latin and Asian cuisine common among the choices of vendors.

These food trucks present a tremendous opportunity for communities to create activity areas, where people can congregate, share meals, and interact outside their offices or homes. Among all human activities, sharing meals is one of the most time honored experiences of society.

¹ The author gratefully acknowledges the contributions of Matthew DiCianni with the writing of this article.

This article overviews the economic development and “placemaking” advantages of food trucks, and the regulatory issues that attend the rapidly expanding marketplace of food truck businesses.

1. Food Trucks and Economic Development Strategies.

As an initial point, food trucks are a relatively inexpensive way for people to enter the restaurant industry. The average cost of purchasing and outfitting a food truck is significantly less than opening a brick and mortar restaurant.² In this regard, communities looking to promote business development generally, or specifically in the restaurant industry, have a strong incentive to create programs and regulations that allow food truck operations to take root and expand.

There are several instances where food truck operations, after establishing a devoted clientele, have evolved into a brick and mortar restaurants.³ This creates an economic development lifecycle for a business that is not commonly found in other market segments.

Regardless of whether a food truck stays mobile, converts to a brick and mortar restaurant, or—as is often the case—a combination of both, they serve economic development efforts and support community planning efforts aimed at reinvigorating underutilized areas or injecting life into isolated parts of a community.

2. Food Trucks and “Placemaking” Strategies.

Current planning literature is filled with “placemaking” strategies, which at a most basic level involves identifying places where social activities can be located. A common placemaking strategy is to identify an underutilized or underperforming park, parcel of land, or even area of a community and reprogram the space or area by promoting “spontaneous” recreational activities, spontaneous retail activities such as “pop-up” retail, or development activities that will attract people who work or live nearby. Placemaking is one of the quickest, easiest, and low cost ways for communities to enliven streets and sidewalks using available land assets and surrounding infrastructure.

Now consider adding food trucks into a placemaking strategy. Food trucks, as noted above, are low cost avenues for entrepreneurs wanting to enter the restaurant industry. Their mobility complements the placemaking strategy by easily adding a commercial component that naturally draws people. Parking three or more food trucks offering an array of cuisine around a park area, vacant parcel of land, or even underperforming business district, and outfitting the space or area with park tables and chairs creates an instant activity area for people living and working nearby. Portland, Oregon and Austin, Texas, among other communities, present another model of

² See: <http://www.investopedia.com/financial-edge/0912/the-cost-of-starting-a-food-truck.aspx> and <http://www.entrepreneur.com/article/220060#>

³ See <http://www.startribune.com/lifestyle/taste/blogs/152361165.html> and <http://www.chicagobusiness.com/article/20110923/NEWS07/110929931/chicago-food-trucks-new-twist-their-own-permanent-restaurants>

placemaking strategy using food trucks. Both cities allow food trucks to park on a vacant parcels or other underutilized public property on a semi-permanent basis to create food truck parks. Both cities allow the vendors to set up tables and chairs.

Repurposing vacant and underutilized parcels in this way fills in the blanks along street fronts, providing connections between more complete sections of a given street, and generating pedestrian traffic that benefits adjacent areas.



South Congress Avenue Mobile Food Vendor Park, Austin, Texas. *Source:* Author.

3. Regulatory Considerations.

The economic development and planning benefits of food trucks create challenges for local governments too. Among the common issues are increased traffic congestion in areas where more than one food truck parks, the use of on street parking spaces in business districts, opposition from brick and mortar restaurants and nearby residents, and paper and food waste.

As an initial matter, a community must determine the best way to regulate food trucks. There is no single way to regulate food trucks, but two avenues are readily apparent: business licensing and zoning, and perhaps a combination of both.

Many communities license restaurants and mobile vendors under their broad business regulatory powers in Division 42 of the Illinois Municipal Code, 65 ILCS 5/11-42-1 *et seq.* In addition, communities have broad regulatory powers over the use of streets under their jurisdictions in Division 80 of the Illinois Municipal Code, 65 ILCS 5/11-80-1 *et seq.* The

operation of food trucks fall easily within these regulatory powers, but regulation through zoning is a trickier proposition.

Zoning typically affects fixed uses at specific locations. Food trucks are, by their very nature, not fixed land uses. However, many communities do regulate the temporary use of land and in conjunction with the powers noted above, municipalities can establish a complete regulatory system for food trucks, with the licensing powers governing food truck operations on public streets and zoning regulating food trucks at semi-permanent locations on either public or private property. In either event, the following considerations for regulations are useful:

- Location. What locations in the community can food trucks operate for short durations or on a more semi-permanent basis. Regardless of whether a food truck operates for a few hours or a few weeks or longer, standards should be established on how many food trucks can operate at one time in close proximity to one another, ensure adequate distance requirements between food trucks and brick and mortar restaurants, and between food trucks and residential districts.
- Duration of Operations. As noted above, food trucks operating on public streets are usually relegated to using available on street parking, taking away public parking spaces for potential customers of nearby businesses. In this regard, durational limits of a few hours, or as permitted by the parking zone may be appropriate. Also, restrictions on overnight parking may be considered. Similarly, where food trucks operate on private property or available public land, durational limits ought to be considered as part of a temporary use permit program which can vary from a few days to several months or more. Communities may also want to place limits on the hours of operation for food trucks.
- Operating Standards. Taking a cue from regulations on outdoor dining areas, many communities will want to consider requirements on how food is packaged and presented to customers. Also, consideration should be given to require food truck vendors to have adequate sealed waste containers in close proximity to their operation. In addition, where food trucks are located on a semi-permanent basis, site use standards should not only address waste disposal, but also public accommodations like tables, chairs, shaded areas, site lighting, noise regulations, and bathroom facilities.

Other regulatory considerations for communities may include:

- Types of Vehicles. Mobile food vendors are not limited to trucks or vans, and may include trailers, pushcarts, temporary concession stands, mobile cookers, and barbecue pits. Trucks, vans, and trailers are easier to register and inspect than other mobile food platforms, and have the advantage of providing many of the amenities of a brick and mortar establishment, such as ovens, refrigerators, and garbage disposal systems, while providing the mobility that consumers seek.

- Sanitation. One of the biggest fears consumers have regarding mobile food vendors is the sanitation and cleanliness of their food and facilities. Requiring mobile food vendors to be registered with the Health Department is one step toward creating public assurances on sanitation. Public health inspectors should conduct random audits of vendors to ensure that they are preparing and serving food in a sanitary way. All equipment and utensils should conform to National Sanitation Foundation (NSF) standards, and employees must wear clothing in conformity with NSF standards. A community may require a modest permit fee to cover the costs of registering and inspecting vendors on an annual basis.
- Insurance. To ensure the public against contaminated food or property damage, mobile food vendors should be required to carry liability and property damage insurance. This insurance should be at a level that could adequately compensate a consumer for injuries resulting from food contamination, or a property owner from the reckless operation of a mobile food platform.
- Mobile Food Vendor Hotline. The mobile and temporary nature of mobile food vendors presents unique challenges for communities. Communities may consider creating a hotline where consumers can direct any complaints relating to mobile food vendors. This hotline can also answer questions posed by the vendors themselves, and help to clarify the regulations for everyone.

Municipalities Should Review Bans on Gun Shops and Sales After Court Strikes Down Chicago Ban

Recently, a District Court struck down the City of Chicago's sweeping ban on gun sales and transfers in [*Illinois Ass'n of Firearms Retailers v. City of Chicago*](#), 10 C 04184, 2014 WL 31339 (N.D. Ill. Jan. 6, 2014). The City prohibited sales or transfers of firearms, except in the case of inheritance. In ruling on a gun dealers' Second Amendment challenge, the Court found that the City failed to establish that the ordinance regulates activity generally understood to be unprotected by the Second Amendment in 1791. Next, the Court went on to test the justifications for the City's ban under heightened, but "not quite strict scrutiny," due to the number of people affected and the heavy burden on the core Second Amendment right. In arguing for lesser scrutiny, the City pointed to the fact that gun purchases could be completed in the suburbs. The Court rejected this argument, citing the line of First Amendment cases requiring alternative channels "within the city."

The City argued that its ban on gun transfers was justified by its desire to (1) restrict criminals' access to licensed dealers; (2) restrict gun acquisition in the illegal market; and (3) eliminate gun stores from Chicago, which are dangerous in themselves and cannot be safely regulated. Even if licensed dealers gave criminals more access to guns, the City could have used a more focused regulation that would not have burdened the rights of non-criminals. Next, the Court found the sales-and-transfer ban does not significantly reduce illegal-market gun acquisition by increasing the frictions inherent in illegal sales. Finally, the Court rejected the City's argument that a complete ban is required based on the supposed ineffectiveness of ATF in regulating gun dealers. Additionally, possible burglaries at gun shops do not justify a sweeping ban on gun sales and transfers. The City offered no evidence to justify its ban on the transfer of guns as gifts.

While the Court rejected the Chicago ban, it concluded that "nothing in this opinion prevents the City from considering other regulations—short of the complete ban—on sales and transfers of firearms to minimize the access of criminals to firearms and to track the ownership of firearms." Chicago has decided not to appeal this decision, which means that it will not be binding on other courts.

Nevertheless, a complete prohibition on gun sales and gun shops will likely draw a Second Amendment challenge, and municipalities should review their ordinances to ensure such a ban is not on their books. Zoning codes may unintentionally prohibit gun shops, by omitting "gun shops" and "sporting goods stores" from lists of permitted and special uses. While no court has held that a gun shop must be located in every town, firearms retailers may be emboldened by the Chicago decision, and municipalities may wish to consider appropriate locations for such uses within their limits to avoid becoming the next Second Amendment test case. At least one District Court has upheld local zoning restrictions for gun shops. *Teixeira v. Cnty. of Alameda*, 12-CV-03288-WHO, 2013 WL 4804756 (N.D. Cal. Sept. 9, 2013)(requiring sale of guns to occur at least 500 feet away from schools, residences, establishments that sell liquor, and other gun stores). Sales of "dangerous and unusual weapons" such as machine guns and short-barrel shotguns may be prohibited. *D.C. v. Heller*, 554 U.S. 570, 627 (2008); see also 720 ILCS 5/24-1. While municipalities might be tempted to tax gun sales, Cook County's \$25 gun tax is being challenged under the Second Amendment, and the preemption provisions of the Firearm Concealed Carry Act. *ERP Inc. v. Ali*, 2013CH07263, Cook County Circuit Court, Chancery Division (Chicago).

School District Must Comply With Local Zoning

A McHenry County Circuit court recently ruled that a Crystal Lake school district cannot ignore local zoning regulations. In [Gurba v. Community H.S. Dist. 155](#), a high school installed bleachers at its football stadium without applying for a variation from the height restrictions in the Village of Crystal Lake's zoning code. Adjacent property owners sued the school district, alleging that the school district was in violation of local zoning laws. The City also argued that the school district was required to comply with municipal zoning and storm water regulations. The school district defended its decision to install the bleachers without local zoning approvals, claiming it was exempt from local zoning because of statewide preemption of municipal land use authority over schools.

The circuit court judge ruled in favor of the City, granting its motion for summary judgment. The court acknowledged that there was no case directly on point, although a similar issue had been raised in a case involving zoning of park districts where the court held that park districts were subject to local zoning. Significantly, the court found no provision in the Illinois School Code that would exempt schools from complying with local zoning regulations.

This case could certainly be appealed by the school district, as it and many other school districts routinely take the position that they are exempt from local zoning regulations. While it is true that the Illinois School Code exempts schools from local building codes, municipalities argue that there is no similar provision in the School Code exempting schools from compliance with zoning regulations. The Illinois School Code also contains express language authorizing schools to apply for zoning relief from municipalities, further supporting a municipal argument that schools are subject to local zoning regulations.

Court Decides Annexation Dispute Between Competing Municipalities

In a Rule 23 order, an appellate court recently addressed an annexation dispute involving competing municipalities. [People v. Village of Glendale Heights](#), 2013 IL App (2d) 13-0472-U (Rule 23 Order).

On August 22, 2012, the Village of Glendale Heights provided notice to taxpayers of record that it intended to forcibly annex certain properties to the Village by ordinance at a meeting scheduled for September 6, 2012. The day before the meeting, the owners of those same properties filed a petition for annexation with the Village of Bloomingdale asking that Bloomingdale annex the property. On September 6, 2012, Glendale Heights adopted an ordinance annexing the properties and recorded a certified copy of that ordinance on September 12th.

The owners filed a quo warranto lawsuit against Glendale to challenge the annexation. The owners claimed that the voluntary annexation petition submitted to Bloomingdale took priority over the involuntary annexation by Glendale Heights.

The trial court agreed, finding that the Bloomingdale annexation had priority. The trial court ruled on the basis of the common law rule of "priority of annexation" that annexation proceedings must be considered and completed in the order in which they are initiated. Voluntary annexations are considered initiated when an annexation petition is filed. Involuntary annexations, on the other hand, are not "initiated" until the municipality adopts the annexation ordinance. According to the trial court, because the voluntary annexation was initiated the day before Glendale Heights adopted its ordinance, the annexation petition filed with Bloomingdale had priority and Glendale Heights' annexation was void.

On appeal, the appellate court first reviewed the various methods of annexation permitted by state law. The process used by Glendale Heights (65 ILCS 5/7-1-13) allows a municipality to forcibly annex territory that is 60 acres or less in size and is wholly bounded by one or more municipalities upon providing mailed notice to the taxpayers of record and others, and publication of notice in the newspaper. That statute also provides that "no other municipality may annex the proposed territory for a period of 60 days from the date the notice is mailed or delivered to the taxpayer of record." There is an exception allowing another municipality to annex the property if a voluntary annexation procedure is initiated prior to publication and mailing of the notices for the involuntary annexation.

Although the trial court based its ruling on "priority" rules, the appellate court determined that priority was not at issue in this case. Instead, the appellate court determined that the question at issue was simply whether Glendale Heights had the authority to annex the territory. The appellate court said yes, finding that Glendale Heights met its burden of showing it complied with 7-1-13 in annexing the territory. The court further stated that it need not address the priority issue because priority only becomes relevant when two municipalities have annexed the same territory - here, only Glendale Heights completed annexation. Consequently, Bloomingdale had no rights in this case, and Glendale Heights' annexation was valid.

Legislation to Love

Many communities have resolved to redouble their economic recovery efforts in the new year. To that end, municipalities should remember that they have explicit authorization to spend money on economic development efforts. In July 2011, the General Assembly granted municipalities seemingly limitless authority to spend funds promoting economic development:

[t]he corporate authorities may appropriate and expend funds for economic development purposes, including, without limitation, the making of grants to any other governmental entity or commercial enterprise that are deemed necessary or desirable for the promotion of economic development within the city.

65 ILCS 5/8-1-2.5.

Typically, the General Assembly imposes significant conditions on any power it cedes to local authorities, but that is not the case here. Instead, home rule and non-home rule municipalities enjoy the same broad power to spend funds to promote local economic development efforts. The only practical limitation imposed by the General Assembly is that economic development funds must first be appropriated (*i.e.*, a village can't simply write a check; it must include an "economic development" line item in its annual budget).

This law allows municipalities to play a more active role in determining how their communities develop. The law does not define what qualifies as economic development; instead, communities are left to decide. Consequently, villages can now establish and administer façade grant programs, small business loan programs and signage replacement incentives. Similarly, municipalities can hasten progress towards environmental goals by providing economic sweeteners for investing in green infrastructure, including energy efficient heating and cooling systems and alternative fueling stations. The broad sweep of the law presents countless opportunities for municipalities to support local business development.

With many municipalities short on capital to invest in private economic development efforts, there have been limited opportunities for cities to exercise their newfound economic authority. The recent uptick in real estate development and home sales, however, provides cities with an excellent opportunity to reevaluate their economic development goals and identify strategies for implementation.

Of course, any successful economic development strategy must be accompanied by clear, common sense eligibility criteria and program requirements. Thankfully, Springfield granted each municipality the freedom to structure economic development programs in the manner that each community sees fit. With a well-planned economic development strategy, a more prosperous 2014 may be a resolution that your community can actually keep.

ABOUT ANCEL GLINK

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[Zoning Administration Tools of the Trade](#)

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[Economic Development Toolbox for Municipal Officials](#)

[Municipal Annexation Handbook](#)

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