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Using Cross-practice Collaboration to Meet the Evolving Legal Needs of Local Food Entrepreneurs

Emily M. Broad Leib and Amanda L. Kool

Recent years have seen a dramatic shift in consumer attitudes regarding where and how the food they purchase is produced. Responding to the consequences of the consolidated national food supply that occurred as a result of proindustrialization policies and a market driven primarily by cost-efficiency, buyers have grown increasingly aware of the hidden costs of inexpensive food. A growing number of shoppers prefer locally sourced, sustainably produced food and are willing to pay a premium for it. To see this shift in demand, one need only look at the increase in the number of farmers markets across the United States over the past decade: the USDA reports that 8,144 farmers markets are in operation in 2013, which is nearly double the number that existed in 2006. *National Count of Farmers Market Directory Listings*, USDA-AMS-Marketing Services Division, www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateS&leftNav=WholesaleandFarmersMarkets&page=WFMFarmersMarketGrowth&description=Farmers%20Market%20Growth (Aug. 3, 2013). The reasons for this shift are multifaceted. Some consumers seek to promote economic development in their communities and thus financially support local businesses by spending their “food dollars” on local food. Other shoppers “buy local” because they recognize that purchasing locally grown food can decrease the negative environmental impacts of food transportation by reducing the number of miles that food travels from the farm to the table. Some consumers seek to replace processed, packaged products in their diets with fresher, more nutritious foods. While the reasons for the change in consumer choices are varied, the cumulative effect is a demand for local foods that has outstripped the supply, thereby creating profitable opportunities for entrepreneurs to produce and sell locally sourced foods. Many urban farms must now employ seasonal labor to keep up with increased production. Community-supported agriculture (CSA) operations must expand operations or implement waitlists to manage growing customer interest. Likewise, artisanal baked goods and home-canned products are in high demand, as are the individuals possessing the skills to produce them. There is money to be made by entrepreneurs willing to enter local food markets.

Unfortunately, as the U.S. food chain grew and consolidated, so did the legal and regulatory regime that governs the

food system. The existing body of laws is intended to apply to massive food industries and is thus ill-equipped to govern small-scale, local food enterprises. While local and state governments have in some instances stepped in to encourage policy changes that would accommodate the shift in consumer demand toward local food by encouraging entrepreneurs to step into this field, there are still many legal barriers that stand between local food entrepreneurs and the customers they hope to serve. Even in places where local laws and policies are tailored to small-scale food enterprises, barriers to market entry still persist, especially for entrepreneurs who lack the resources to conduct legal research or retain counsel to assist in developing their enterprises.

This article begins by highlighting several of the legal barriers commonly faced by local food businesses. The article then demonstrates that policy lawyers and transactional lawyers can effectively collaborate to improve the food system by providing synergistic feedback that informs each other’s practices, thereby improving service for food-related clients and enhancing the legal environment for future local food entrepreneurs. The article describes the methods that two clinics at Harvard Law School—the Food Law and Policy Clinic and the Community Enterprise Project of the Transactional Law Clinics—have used to provide comprehensive assistance to food truck entrepreneurs in support of a more robust local food system in Boston. The article concludes with examples of additional ways in which a cross-practice, cyclical model of client service can be applied by different legal teams to better serve food entrepreneurs and improve the success of local and alternative food systems. Although this article details a particular model of cross-practice work, it aims to encourage proliferation of this model through tailored, cross-practice collaboration among lawyers operating in a variety of settings to address a range of local food industry issues, or those issues inherent in other emerging industries.

General and Specific Legal Barriers Facing Food Entrepreneurs

All entrepreneurs face general legal barriers to market entry, and entrepreneurs entering the local food system are no exception. At the outset of any business endeavor, entrepreneurs must choose from a number of entity formation types, each with its own tax, maintenance, and managerial implications. Then, the business owner must negotiate and adopt additional governance documents, a process that forces the business owner to anticipate and plan for future business developments.

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Additional legal puzzles will likely arise, including obtaining intellectual property protection for logos or products and formalizing contractual relationships with vendors or employees. After clearing these initial hurdles, the business owner must make timely filings with relevant governing bodies, keep licenses and permits current, and maintain compliance with federal, state, and local laws.

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Although some new business owners will navigate these steps without seeking the advice of a lawyer, any uninformed or misinformed decision regarding a legal matter can carry with it a host of negative implications. A Boston food truck that fails to obtain a Hawkers and Peddlers license for each person working on the truck or to maintain an up-to-date Public Site License as required by the city of Boston may be subjected to a \$300 fine. A local farm that ignores state and federal wage laws when hiring seasonal laborers is accepting the risk that workers may file claims for back wages. Even business owners who do not violate the law can inadvertently make legal decisions that carry disadvantageous economic consequences. Partners in a craft brewery business who do not incorporate may expose themselves to personal liability for loan defaults and other actions of the company. Even if those partners incorporate, failure to adopt thorough governance documents at the outset could leave the partners without an adequate plan to guide the exit of a partner or the dissolution of the business. Just the perception of legal red tape or fear of the unknown with respect to these unintended consequences can paralyze a potential entrepreneur, thereby causing the potential entrepreneur to abandon an otherwise sound business plan.

New local food businesses also face a specific set of legal barriers, in addition to the general transactional barriers mentioned above. Innovative food ventures, products, and markets have outpaced legal structures that were created to accommodate outdated systems of food production and sale. Traditional zoning and land use rules were developed based on the assumption that agriculture would take place in rural areas that are outside the city limits and away from population centers. Many cities maintain long-standing bans on food trucks or do not have permitting systems that accommodate mobile vending. At the state level, most food safety laws, which are based on the Food and Drug Administration's model Food Code and designed for national and global food businesses, require food preparation to take place in certified commercial kitchens, a regulation that creates costly barriers for small-scale producers.

The good news is that stakeholders in the local food industry, with the help of policy lawyers, have begun to break down these barriers. In response to cumbersome zoning restrictions on urban agriculture, cities from Cleveland to Seattle

have rewritten their zoning codes to allow for food to be produced closer to the intended consumers. To embrace the trend toward mobile vending, cities have amended their zoning codes to allow for the operation of food trucks and other mobile food businesses in more areas, and they are creating new permits that authorize street vending where such permits did not previously exist. To lessen the burden on small-scale bakers and food preparers, most states now allow for the sales of "cottage foods," or low-risk foods produced in home kitchens, without subjecting those producers to the typical, costly permitting process involved in using a commercial kitchen.

These changes are welcomed by local food proponents, but the evolution of policies regarding food and agriculture can make it difficult for existing local food businesses to stay informed about changes in the law. Throughout the legislative or regulatory process, farmers and food entrepreneurs often must rely on the assistance of policy lawyers to ensure their requests are heard by governmental decision makers. Yet after new legislation is enacted, even if the new laws are intended to expand opportunities for food enterprises, the changing regulatory landscape often leads to new legal needs among farmers and food entrepreneurs. Without informed counsel to guide them through the latest legal framework, entrepreneurs may be left behind. Thus, lawyers with different skill sets play key roles in the development of the local food system, from creating new policy regimes that support the development of local and alternative food systems to handling the specific legal needs of individual entrepreneurs.

Need for Cross-Practice Collaborations

Comprehensively and effectively addressing current challenges facing the American food system will require leadership and collaboration among stakeholders from various professions. As described above, attorneys play a crucial role in this work and can amplify their impact by engaging in creative collaborations across legal practice areas. In particular, a cross-practice collaboration that includes policy and transactional expertise can effectively surmount the range of legal barriers described above, improving the regulatory landscape for local food entrepreneurs while successfully fulfilling individual entrepreneurs' legal needs. Implementing a feedback loop between the transactional and policy practices can improve outcomes for both practices, fostering policy changes that are best targeted to the systemic legal barriers facing these entrepreneurs while linking individual clients with transactional lawyers that are both informed regarding ongoing legal developments and prepared to address the individuals' particular legal needs.

Shifting the boundaries of a particular area of law is a challenge best handled by policy lawyers, who can help to create opportunities for both emerging and existing market participants. Such opportunities can be achieved by changing zoning codes to allow for urban agriculture; creating tax incentives for certain types of food production or sales, such as tax credits for restaurants that purchase local food; and ensuring that permitting requirements and food safety rules are tailored to small-scale food enterprises. Policy lawyers are uniquely qualified to recognize both specific and general legal barriers, identify stakeholders, and strategize to bring about responsive legal change, efforts that in turn create new avenues for food production and sales and give rise to new classes of food entrepreneurs and innovators.

As a result of such policy change, these emergent classes of food entrepreneurs and innovators find themselves in need of the hands-on, business-oriented legal assistance that transactional lawyers can provide. Rather than handling the policy and transactional needs of the market participants in silos, policy lawyers can engage with transactional lawyers by providing insight when new laws are implemented that help transactional lawyers to prepare for the new clients they are likely to receive, as well as remain informed about progressing legal developments. These smaller feedback loops are an integral part of the larger structure of cross-practice collaboration, and they ensure that the outcome of the collaborative effort will comprise more than the sum of its parts.

Once a legal framework favorable to small, local food entrepreneurs is in place, transactional lawyers can serve individual entrepreneurs by providing advice with respect to choice of legal entity for their business, drafting incorporation and governance documents, assisting with employment issues and negotiating contracts, and ensuring compliance with permitting and licensing requirements, all while staying abreast of the latest changes in food law and policy by remaining in contact with the policy lawyers involved in the collaboration. With time and experience serving this particular niche of clients, transactional lawyers can build industry-specific expertise while also uncovering those areas of applicable law that appear vague, discriminatory, outmoded, or inconsistent. It is here that the larger circuit connects, as the transactional lawyers can then provide feedback regarding systemic legal barriers to the policy lawyers, who can strategize, organize, and advocate for appropriate legislative or regulatory changes, fostering further improvement for the local food industry.

Proof of Concept: Collaboration Between FLPC and CEP

The policy-oriented students in Harvard's Food Law and Policy Clinic (FLPC) and the students focused on transactional law and community development in the school's Community Enterprise Project (CEP) of the Transactional Law Clinics (TLCs) were a natural fit for a cross-practice collaborative project to confront emerging food system challenges. This particular collaboration was formed to address the needs of the nascent food truck and mobile vending community in Boston, with which FLPC had recently become involved.

The FLPC was established in 2010 to give Harvard Law School students the opportunity to assist clients and communities with various food law and policy matters, and it is the first law school clinic in the United States devoted solely to addressing food system issues. The clinic provides legal advice to nonprofit and governmental clients at the federal, state, and local levels who seek to increase access to healthy food, prevent diet-related diseases, and reduce barriers to market entry for small-scale and sustainable producers. Projects carried out in the clinic educate students about using law and policy in creative ways to improve the food system. Recent FLPC projects include assisting food policy councils in passing legislation that supports local food systems, educating farmers market vendors about tax rules and food safety requirements, and recommending state-level administrative changes that will improve access to food assistance programs for those in need. The FLPC is a division of the Harvard Law School Center for Health Law and Policy Innovation, which advocates broadly

for legal, regulatory, and policy reforms to improve the health of underserved populations, with a focus on the needs of low-income people living with chronic illnesses and disabilities.

Prior to the FLPC's involvement in mobile vending advocacy in Boston, mobile vending had been prohibited in most areas of Boston for many years. This ban formally began in 1977, when a policy document barred mobile vending from 8 a.m. to 8 p.m. in "the public way," in so-called "restricted zones" that covered most of downtown Boston. However, noting the trends toward local food production and food innovation, Boston passed a new ordinance in 2011 and initiated a pilot program to allow food trucks to vend in the previously restricted zones, a change that presented new market opportunities for food trucks. The program saw early and consistent success, but it became difficult to ensure that the guidelines were accurately understood by food truck vendors and properly enforced by the city without overutilizing scarce administrative resources.

Lawyers are well positioned both to push for broad food system policy change and to assist individual food entrepreneurs, and they can be more successful in both endeavors when they collaborate.

It was against this backdrop that the lawyers and student advocates in the FLPC began working with the Boston Office of Food Initiatives in 2012 to conduct an in-depth review of the Office's rules for food trucks and to recommend changes that would streamline the program, improve its efficiency, and allow for controlled expansion to accommodate more market entrants. The FLPC also analyzed potential policy changes that would broaden the scope of mobile vending allowed in the city from just food trucks, which are essentially restaurants on wheels, to other types of mobile vendors, such as produce carts and mobile farmers markets. In order to recommend improvements to Boston's food truck program, the FLPC first needed to understand the food truck ordinance as well as the body of local and state laws implicated by the ordinance. The FLPC quickly realized that the permitting and enforcement processes were quite complicated and that many food truck vendors were in need of legal guidance on the specific food truck permitting process as well as help with the more general legal challenges faced by any new businesses. The clinic first created a flowchart to inform food truck vendors about the permits and licenses required to launch a food truck business in Boston, laying out the specific steps food truck operators must take to legally vend in a range of manners and locations.

Having developed the flowchart and delivered specific

policy recommendations to improve the food truck permitting process to the Boston Office of Food Initiatives, FLPC students and attorneys were ready to tackle the general legal challenges faced by aspiring food truck vendors. To bring general business law expertise into the fold, the FLPC engaged another clinical program at Harvard Law School, the CEP, to create the cross-practice collaboration described in this article. The CEP is a division of the TLCs, which also house Harvard Law School's Real Estate Law Clinic, Business and Non-profit Clinic, and Entertainment Law Clinic. TLC students represent clients in matters including entity formation, contract negotiation, intellectual property protection, tax-exempt status applications, real estate purchases and sales, and a broad range of other transactional legal matters. The CEP engages a small team of students to undertake the transactional work of the TLCs within a community development framework. In addition to serving community-based clients in need of transactional legal assistance, CEP students connect with community organizations, identify organizational and community legal needs, and develop comprehensive strategies to address those needs by offering legal representation, hosting trainings, building coalitions, or performing a combination of these services.

The cross-practice collaboration between the FLPC and CEP began with a plan to expand the flowchart into a more comprehensive tool kit for new food truck entrepreneurs. To ensure that the information provided in the tool kit was comprehensive and carefully tailored to answer the anticipated questions of its readers, the cross-practice team met with various stakeholders in the food truck industry, both at community events geared towards these stakeholders and through individual meetings. The CEP applied its knowledge of general transactional legal concepts to the specific needs of food truck operators, developing sections of the tool kit dedicated to choice of entity analysis, insurance requirements, and contractual arrangements to facilitate parking for the trucks. The FLPC expanded the flowchart into an easy-to-follow narrative and ensured that the materials related to city permitting and licensing requirements were thorough and current. Once it is complete, the tool kit will be used as a springboard to host interactive workshops and build capacity among potential food truck entrepreneurs. Ultimately, some entrepreneurs who attend a workshop or receive the tool kit will want to access individual legal services in order to start their food truck businesses, but they may be unable to afford the traditional hourly rates charged by law firms. The CEP is well positioned to take on those individuals as clients, and student advocates can use their general transactional law training and specific knowledge of food truck laws to guide those individuals through the host of legal obstacles that stand between them and their first day of business.

As clients are served by the CEP, new food truck businesses are established, and lessons are learned by the transactional lawyers and student advocates representing these clients, the CEP will systematically deliver to the FLPC feedback regarding policy changes that could further remove unnecessary barriers for food truck entrepreneurs. The FLPC will then translate these firsthand experiences into efforts to further strengthen the food truck policies in Boston as well as to help inform the development of new food truck permitting processes in other cities. In effect, this postrepresentation feedback closes the loop in the cross-practice collaboration, although the ongoing viability of the collaboration will rely

on smaller continuous feedback loops between the practices to present community workshops, disseminate the tool kit, market services to potential clients, advocate for policy changes, and communicate real-time developments in applicable laws to clients and the food truck community.

Other Food System Applications

Though the cross-practice collaboration between FLPC and CEP involves its own unique, tailored approach to address a particular area of need, an integrated model of lawyering that utilizes cyclical feedback across practice areas can be adapted by many types of lawyers across many different subject areas. The cross-practice collaboration between the FLPC and CEP with respect to food trucks is one iteration of that model, but the FLPC and CEP could readily adjust the model to meet the needs of other types of mobile vendors. For example, the city of Boston has expressed interest in expanding its food truck permitting system to accommodate other types of mobile vending, such as produce carts and mobile farmers markets. The FLPC has already begun research in this area, analyzing the changes that would be required to establish a legal framework for other forms of mobile vending and preparing relevant policy recommendations. If and when laws are adopted with respect to these new areas of food entrepreneurship, the CEP can be reengaged to identify and meet the needs of mobile vending clients as a partner with the FLPC in a new cross-practice collaboration.

While adapting the food truck model to meet the needs of other types of mobile vending is a natural evolution, the same model can also be tailored to entirely different food system enterprises. For example, as cities (including Boston) amend their zoning laws to permit food production on vacant lots and rooftops, thereby bringing food production closer to the centers of demand, policy lawyers will play a key role in identifying the particular zoning challenges and other legal barriers to urban agriculture and advocating for needed policy changes. If these changes are successfully made, new business opportunities will emerge not only for farmers, but also for food processors, distributors, and retailers hoping to benefit from these new markets, and transactional lawyers possess valuable skills to aid these new businesses in meeting the emerging opportunities. Synergistic feedback between these two sets of lawyers can promote market improvements and ensure that urban agriculture continues to flourish.

Another aspect of the local food system that is well suited for cross-practice collaboration stems from a relatively new but growing entity: the "food hub." The lack of distribution channels for local food is one of the main barriers to the expansion of local food networks. Food hubs thus emerged to provide the missing link between farmers and consumers, by serving as an intermediary to manage the aggregation and distribution of small-scale food products. In this role, food hubs allow growers and producers to satisfy market demands that those growers and producers, when working independently, could not reliably fulfill. Food hubs present a prime opportunity for cross-practice collaborative teams to become involved with the local food market. On the policy side, lawyers can help to ensure the food safety regulations are tailored to support the local food context rather than merely facilitate the needs of national and global supply chains; on the transactional side, lawyers can help food hubs with corporate formation, contract drafting,

and other general business law needs. By addressing the unmet legal needs incurred by these new entities, lawyers can help food hubs to succeed, thus positively impacting all stages of the local food system.

Conclusion

To effectuate meaningful, sustainable improvements in the local food system, legislative and regulatory changes are essential, and new entrepreneurs will need to find innovative ways to satisfy changing markets. While the existing paradigm of legal representation in practice area silos contributes to specialization and expertise among lawyers, calculated collaboration and integrated feedback among lawyers from varying areas of expertise holds greater potential for holistic legal representation and generates increased momentum toward comprehensive change. In one iteration of this model, recent policy changes regarding food trucks in Boston presented a prime opportunity for cross-practice collaboration between the FLPC and CEP, and it is our goal to sustain this model in order to continue serving the evolving needs of the food truck industry.

The cross-practice collaborative model described in this article can also be adapted to serve other types of local food entrepreneurs. Urban farmers and food hubs are only two such potential adaptations. While the collaboration between the FLPC and CEP works particularly well because the two clinics are part of the same institution, the model can be used by attorneys working in other practice settings. The cross-practice collaborative model can accommodate partnerships between two practice areas in one law firm or between a nonprofit

organization working to effect policy change in the food system and a law practice that provides business law expertise. Although the clinics provide these services free of charge, the cross-practice model can also function in scenarios involving paying clients. Each practice group better serves its clients, whether those clients are paying hourly rates or are being represented on a pro bono basis, by bringing another set of valuable legal skills to the table.

Lawyers are well positioned both to push for broad food system policy change and to assist individual food entrepreneurs, and they can be more successful in both endeavors when they collaborate. We hope to see this model of cross-practice collaboration applied by lawyers in diverse contexts as a means of comprehensively and systemically addressing a multitude of legal issues inherent in emerging local food systems. Large-scale implementation of this style of representation will require not only teams of lawyers willing to commit to a new model of client service, but also the devotion of resources by legal aid programs, government agencies, and private funders to facilitate these models. Although money allocated to legal services for those in need is always money well spent, resources devoted specifically to cross-practice collaborations generate a return that is greater than its individual successes. When lawyers find innovative ways to connect their expertise and inject cyclical, systemic feedback into the representation process, resources intended to assist individual clients with particular legal barriers can be used to address the root causes of those barriers, thereby reducing their negative effects on the clients at hand, clients yet to exist, and other market stakeholders, ultimately serving as a sound investment in the positive growth of an entire industry. 🌱