

COMMENTARY

Beyond Nathan: Food cart restrictions a national issue

By Derk Wilcox
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Midland — The story of 13-year-old Nathan Duszynski and his hot dog cart resonated with the public and generated interest far beyond Holland. That a young teen would take the initiative and work hard to help support his troubled family, only to be shut down before he even began by local zoning ordinances has the makings of an especially poignant story. But, as has been asked, what if Nathan hadn't been a young teen with a compelling back story? Should he still have been able to operate his food cart?

Mackinac Center analysts took an interest in this matter to draw attention to how local governments protect certain groups of businesses from competition. While most people are familiar with the problems posed by excessive regulations imposed by the state and federal governments, few are aware of how pervasive such hurdles are at the local level, and how these can be used to strangle start-up businesses, restrict competition and exclude those at the bottom looking to work their way up.

In Nathan's case, the Holland officials were upfront in admitting that the zoning ordinances, as written, were enforced to protect the existing "brick-and-mortar" restaurants from competition, particularly because such establishments have paid more in taxes and special assessments.

But the economic outcomes, not to mention the fairness, of such an entitlement lead to some pretty bad results. Should paying more money to government coffers buy special rules to benefit those who can afford to pay more?

Increasingly, the problem is being recognized and the courts are striking down ordinances whose sole purpose is to protect existing businesses from lower-cost competitors. The federal appeals court for the Sixth



Food vendor booths at Fiesta in this Sentinel file photo.

Circuit (which includes Michigan) struck down a Tennessee law that created a "fortress" protecting certain businesses by restricting lower-cost competitors. The court explained that: "This measure to privilege certain businessmen over others at the expense of consumers is not animated by a legitimate governmental purpose and cannot survive even rational basis review."

Food carts and food trucks are not a new phenomenon, and not just confined to simple fare like hot dogs. Watch the Food Network or the Cooking Channel for any length of time and you will see that entrants bring a new dimension to the restaurant business. Gourmet food and ethnic specialties can now be had quickly and conveniently from these mobile servers.

Not everyone looking for a meal wants to sit down and be waited on in a restaurant setting. Food carts and trucks are the perfect opportunity for the chef without the financial wherewithal to invest in a building, staff and equipment. Carts and trucks are also frequently used by immigrants to get a foothold into the world of entrepreneurship. These carts add to the ambience — the sights and smells — of a downtown and add new dimensions to a simple walk through town.