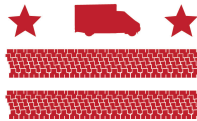


**DC FOOD  
TRUCKS  
ASSOCIATION**



Nov. 13, 2012

Mr. Helder Gil  
Legislative Affairs Specialist  
Department of Consumer and Regulatory Affairs  
1100 Fourth Street, SW  
Room 5164  
Washington, D.C. 20024

**RE: Third Proposed Rulemaking to Amend Chapter 5 (Vendors) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations**

Dear Mr. Gil:

The Food Truck Association of Metropolitan Washington (FTA) appreciates the opportunity to comment on the Third Proposed Rulemaking to Amend Chapter 5 (Vendors) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (the "Proposed Rules"). We also appreciate the opportunity that the District Department of Transportation (DDOT) extended to our industry to meet with Department officials last month to seek helpful clarifications on the Proposed Rules.

As you know, we offered extensive comments on the Second Proposed Rulemaking published earlier this year. While the FTA expressed concerns about specific provisions of that particular rulemaking, those rules reflected a number of fair and meaningful compromises that represented a significant improvement over current vending regulations. Thus, we supported the Second Proposed Rulemaking and asked that those rules be submitted to the District Council for their review and ultimate approval. More than 3,500 comments were submitted at that time to the Department of Consumer and Regulatory Affairs in support of the FTA's position. By our count, fewer than 100 commenters expressed opposition to that earlier proposal. Nonetheless, the Gray administration declined to finalize their proposal and instead moved to take it "back to the drawing board," just as a minority of commenters had advocated.

The FTA continues to support vending regulations that promote food safety, provide effective mobile vending consumer protections and establish appropriate vending licensure, within a modern regulatory regime designed for an increasingly vibrant and diverse industry that has long outgrown the so-called "ice cream truck" rules that now govern it. Further, we recognize the Office of the City Administrator's objective "to achieve the safe, efficient and effective management of vending throughout the District of Columbia," including fair and balanced management of finite public space within the District.

*A' Lo Cubano  
AZN Eats  
Basil Thyme!  
BBQ Bus  
Best Mexican Burritos and Tortas  
Big Cheese  
Borinquen Lunch Box  
Cajunators  
CapMac  
Captain Cookie and the Milk Man  
Carnivore BBQ  
Chef Driven  
Chupacabra  
Crepe Love Truck  
Curbside Cupcakes  
Dangerously Delicious Pies  
DC Ballers  
DC Empanadas  
DC Kabob and Grill  
DC Slices  
Dorothy Moon's Gourmet Burgers  
Doug the Food Dude  
El Floridano  
Feelin' Crabby  
Fojo Bros.  
Goode's Mobile Kitchen  
Goodies Frozen Custard & Treats  
Halal Grill  
Hala Gyro Plus  
Hula Girl Truck  
Kababji Grill  
Kabob Bites  
Lemongrass  
Mojo Truck  
Orange Cow  
Pepe  
PhoWheels  
Pleasant Pops  
Popped! Republic  
PORK  
Red Hook Lobster Pound-DC  
Rolling Ficelle  
Rolls on Rolls  
Sang on Wheels  
Seoul Food  
Simplicity Ice Cream  
Sol Mexican Grill  
Something Stuffed  
Stella's PopKern  
Stix  
Sweetbites Desserts  
TaKorean  
Tapas Truck  
Tasty Fried  
Tasty Kabob  
That Cheesecake Truck  
TOPS American Food Co*

We support specific sections of these rules, and in particular we are appreciative that the elimination of the “ice cream truck rule” and creation of Employee Identification Badges have been carried over from the previous rule making.

However, we strongly oppose the substantial discretionary authority the Proposed Rules grant to DDOT over the newly created designation of Mobile Roadway Vending (“MRV”) and that threaten the livelihood of our young industry. This provision (§ 530.1) would appear to ban mobile food vendors from vending in ANY public space in the District, other than those spaces that may be set aside by DDOT in a designated MRV location. The Proposed Rules would give DDOT new sole powers to decide how many MRV locations would be created, when they would be created and where they would be located. In addition, the Proposed Rules grant DDOT equally broad authority to decide how many MRV location parking spaces would be designated for mobile vending purposes, and where they would be located in each and every MRV location. This provision would appear to ban mobile food vendors from vending in ANY public space in the District, other than those spaces that may be set aside by DDOT in a designated MRV location.

While we know that the Proposed Rules make exceptions to the 10-foot requirement by creating MRV locations, again, spaces created by regulators in those locations could be very limited, and the Proposed Rules are silent on the process for selecting those locations and spaces.

In addition, it is troubling that DDOT staff have advised the FTA that even though their own Proposed Rule provisions fail to say so, their intent (verbally expressed at its Oct. 15 street vendors meeting) is to ban all mobile vending within a MRV location that is not confined to the limited number of spaces that DDOT designates for a given MRV location. In addition, § 530.1 and § 531.1 appear on their face to conflict with one another.

Additionally, DDOT would be responsible for enforcing strict and, we believe, unduly restrictive minimum sidewalk width lengths for mobile vending (both within the Central Business District and beyond) that we believe would place excessive, anti-competitive and wholly unnecessary limitations on the ability of mobile food vendors to serve customers in some of the most attractive vending locations in the District. The current proposal to restrict vending where there is less than 10 feet of “unobstructed” sidewalk in the Central Business District and less than 7 feet of “unobstructed” sidewalk in other parts of the city would severely restrict mobile vending in many locations throughout the District. We also question the notion that such restrictions are both consistent with and formed on the basis of rules that DDOT has established for other industries and practices. For example, construction companies are required to maintain only 8 feet of unobstructed sidewalk clearance when building a covered sidewalk outside a construction area, and brick-and-mortar restaurant sidewalk cafes are able to operate with as little of 6 feet of unobstructed sidewalk. However, perhaps the clearest evidence that the proposed sidewalk width restriction would treat mobile vendors very differently than others in comparable situations is the fact that there are no existing or proposed sidewalk width restrictions applicable to Stationary Roadway Vendors. There is no reason to single out food trucks from all other commercial vehicles and impose special burdens on them that the rest do not share.

Unlike sidewalk vendors or brick-and-mortar businesses with café seating – both of whom physically encroach on public sidewalks – mobile food vendors do not park on sidewalks, and therefore create no such physical encroachments. We have nonetheless been advised by DDOT staff that our customers can create obstructions to pedestrian traffic while they wait in line for service. We note that this issue is simply not addressed in the Proposed Rules, raising concerns within our industry as to the basis for, and the terms of, our customers as obstructions or impediments to other pedestrian traffic. Accordingly, we believe that there is no valid safety or other reason for any sidewalk width restrictions to apply to Mobile Roadway Vendors and the restrictions should be deleted from the Proposed Rules.

Good food truck regulations are clear, straightforward and narrowly tailored to address specific, legitimate concerns for consumer health and safety. The current proposed rules fall short of that.

In response, the FTA in these comments has submitted its own proposal to meet the District's stated objectives. Our proposal consists of three primary concepts:

- A Citywide Mobile Roadway Vending Parking Permit
- A Fair and Transparent Process to Determine Mobile Roadway Vending Locations that is based on clear and demonstrable criteria
- The Creation of a Vending Improvement Detail (VID)

The Mobile Roadway Vending Parking Permit (MRVPP) would be available to Mobile Roadway Vendors and allow them to park at any metered location in the District for a period of up to four hours. Among its benefits, the MVPP offers the District a better method than the current to collect parking fees from vendors, enforce parking limits and facilitate appropriate parking space turnover and maximizes the window to collect revenue for the District via sales tax.

Again, the FTA strongly opposes the proposal to create MRV locations because the Proposed Rules would give DDOT new, unfettered powers to decide when, where and how many MRV locations would be created and equally broad authority to decide how many parking spaces would comprise each and every MRV location.

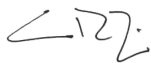
Nevertheless, if the District feels compelled to limit the number of Mobile Roadway Vendors in an areas with high demand for food trucks, then the FTA proposes creating an MRV location after a fair, transparent process based on clear, demonstrable criteria, including a 60-day study period and input from an advisory board comprised of stakeholders.

MRV locations will require management on a number of levels, including allocating the dedicated spaces among multiple Mobile Roadway Vendors, monitoring the effectiveness of the MRV locations, and providing a two-way communications channel among interested stakeholders. To assist with this management and avoid placing a burden on public resources, we propose the creation of a Vending Improvement Detail (VID). The VID, comparable to a BID but without a geographic component, would be a private, non-profit, entity established to work in partnership with DDOT to manage Mobile Vending in MRV locations and in other areas of the city and to undertake other activities to improve mobile vending in public spaces.

We believe that a Mobile Roadway Vending program structured in this way would help satisfy the many goals of DDOT in managing the public space in general and as it relates to mobile vending in particular, and would identify the District as the nationwide leader in mobile vending regulations that effectively balance the needs of all stakeholders. We discuss our proposal in greater detail at the conclusion of our comments.

We look forward to continuing to work with you to improve on the Proposed Rules. Once again, we appreciate the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Ruddell-Tabisola".

Che Ruddell-Tabisola  
Executive Director  
Food Truck Association of Metropolitan Washington

- **Comments in Response to Third Proposed Rulemaking to Amend Chapter 5 (Vendors) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations**

### **§ 501 Agency Responsibilities**

- The FTA supports the proposed continuing roles and responsibilities outlined for the several agencies that currently regulate food trucks, with one exception. We strongly oppose the substantial discretionary authority the Proposed Rules grant to the District of Columbia Department of Transportation (DDOT) over the newly created designation of Mobile Roadway Vending (“MRV”) outlined in Part 4 of the Proposed Rules. As we describe in more detail below, Part 4 would give DDOT new sole powers to decide how many MRV locations would be created, when they would be created and where they would be located. In addition, the Proposed Rules grant DDOT equally broad authority to decide how many MRV location parking spaces would be designated for mobile vending purposes, and where they would be located in each and every MRV location.
- Additionally, DDOT would be responsible for enforcing strict and, we believe, unduly restrictive minimum sidewalk width lengths for mobile vending (both within the Central Business District and beyond) that we believe would place excessive, anti-competitive and wholly unnecessary limitations on the ability of mobile food vendors to serve customers in some of the most attractive vending locations in the District.

### **§§ 502-519 Vending Licenses, Permits and Authorizations**

- The FTA supports vending licensure, site permitting and health inspection certificate regulations that promote food safety and consumer health. In particular, we appreciate the efforts of the Office of the City Administrator and other Executive agencies to embrace the creation of a Vending Business License for employees of licensed vendors (§ 502.4), as we discuss in greater detail in our comments to § 558.
- In regard to the proposed quarterly fee for Mobile Roadway Vending parking permits (§ 508.10), the FTA supports the proposal to offer a four-hour Mobile Roadway Vendor parking permit. The proposed \$480 fee is the equivalent of paying to access a metered space for up to four hours a day, five days a week for three months. However, it should be noted that the vast majority of vendors do not typically vend in the District every business day over a given three-month period; reasons why include (but are not limited to) the desire to vend in jurisdictions outside the District, inclement weather and the need for administrative downtime and designated food preparation days. Thus, the \$480 fee reflects a premium price for vendors’ use of a parking space.
- The four-hour permit offers benefits for a number of stakeholders in the District, which we discuss in detail further in our comments. However, these benefits are diminished by limiting the use of parking permits to a limited number of locations as proposed. However, the far more serious concern is that the Proposed Rules fail to

provide adequate assurances that there will be sufficient designated MRV location spaces available to mobile vendors who purchase an MRV parking permit. If there is ultimately an insufficient supply of designated spaces from which to vend under the MRV parking permit, the fee could hardly be justified.

- A solution to this problem is to make available to vendors a Mobile Roadway Parking Permit (MVPP) that allows parking at any metered location in the city for a period of up to four hours, which we discuss in greater detail further in our comments.

### **§ 520 Vending Locations: General**

- As noted in our comments to § 501 Agency Responsibilities the FTA strongly opposes the proposal to grant DDOT the broad authority to “approve” what it deems as acceptable locations for all types and varieties of vending throughout the District, as well as to “eliminate” all such locations that it may deem as inconsistent with “the interests of the District.” We have particular concerns about § 520.2 (c), which would allow DDOT to designate a Vending Location for an alternative use, with no defined regulatory standards or criteria to govern the process by which a vending location would be re-designated for that other use.

### **§§ 529 –531 VENDING LOCATIONS**

- The FTA strongly opposes the proposal to create specifically designated MRV locations, which appear to place unnecessary and anti-competitive restrictions on the ability of mobile food vendors to serve customers in some of the District’s most popular food vending locations, both within and even outside of the Central Business District.
- This provision would appear to ban mobile food vendors from vending in ANY public space in the District, other than those spaces that may be set aside by DDOT in a designated MRV location. In addition, § 530.1 and § 531.1 appear on their face to be conflicted.
- This believe this is likely to result in a severe diminution in the number of food trucks serve customers, adversely impacting District residents and workers who now enjoy the convenience, quality and value that mobile food vendors provide these consumers on a daily basis.
- The provision also threatens to greatly reduce the food choices currently available to these consumers, while also undercutting a growing, vibrant and innovative mobile food vending industry.
- -If the Gray Administration were to adopt this heavily regulated, top-down approach for deciding where, when and how robustly food trucks may serve District residents and workers, the Office of the City Administrator may be sending the unintentional

- signal to all newly emerging, entrepreneur District-based businesses that this jurisdiction is less than supportive of their enterprises.
- We hope to have the opportunity to work with the Administration to find alternative approaches to public space management that don't rely exclusively on the government to pick and choose where our businesses can legally operate in the District. Rather, we support reasonable and fair-minded public space management that creates space for mobile food vendors to be able to make some of their own independent decisions about where and for how often they can vend.
  - First, and perhaps most troubling of all, DDOT staff have advised the FTA that even though their own Proposed Rule provisions fail to say so, their intent (verbally expressed at its Oct. 15 street vendors meeting) is to ban all mobile vending within a MRV location that is not confined to the limited number of spaces that DDOT designates for a given MRV location.
  - Second, the Proposed Rules grant DDOT overly broad discretion to determine where and how many MRV locations can be established, with no apparent standards or process for public input to do so. Also, the finite number of spaces DDOT would make available to Mobile Roadway Vendors in an MRV location – the Proposed Rules merely stipulate “three or more” in each MRV location – would be secured on a first-come, first-serve basis, seemingly exacerbating issues surrounding competition for the far more robust supply of existing legal parking spaces.
  - Further, setting a limited number of spaces in an MRV location and restricting other food trucks from vending on that block adversely affects the diversity of food available in that location. Some food trucks, such as sweets trucks, vend in a particular location for short, one- to two-hour periods then move to another location (therefore serving several locations a day). This mix of different foods available is in part what makes vending locations popular and attracts customers seeking diverse options. Banning vending from regularly metered locations in an MRV location would prohibit these vendors’ ability to do business.
  - Third, the Proposed rules fail to establish a process or even any objective criteria for determining how MRV locations would be chosen, no less the specific areas of the District that would be subject to such designation.
  - Fourth, the proposal to limit MRV locations to one per block on any one side of the street (§ 530.3) is vague and unclear. Specifically, would section § 530.3 ban mobile vending within all other street spaces on the same block? If so, it would, for example, eliminate half of the food trucks on Virginia Avenue between 20<sup>th</sup> and 21<sup>st</sup> St. NW, where food trucks currently vend on both the north and south sides of the street. Further, would the designation of an MRV location on a given block prohibit vending on multiple sides of that entire block, thereby banning the use by mobile vendors of non-MRV location spaces at Franklin and Farragut Squares?
  - Additionally, limiting the number of spaces available to food trucks in an MRV location also creates unnecessary confusion for food trucks that are not vending but need to park in an MRV location. Being small businesses, our food trucks are also catering and delivery vehicles. Would a food truck providing a delivery be

prohibited from parking in an MRV location, despite that there might be an available and otherwise valid parking spot?

- Fifth, the current proposal to restrict vending where there is less than 10 feet of “unobstructed” sidewalk in the Central Business District and less than 7 feet of “unobstructed” sidewalk in other parts of the city would severely restrict mobile vending in many locations throughout the District. We also question the notion that such restrictions are both consistent with and formed on the basis of rules that DDOT has established for other industries and practices. For example, construction companies are required to maintain only 8 feet of unobstructed sidewalk clearance when building a covered sidewalk outside a construction area, and brick-and-mortar restaurant sidewalk cafes are able to operate with as little of 6 feet of unobstructed sidewalk. However, perhaps the clearest evidence that the proposed sidewalk width restriction would treat mobile vendors very differently than others in comparable situations is the fact that there are no existing or proposed sidewalk width restrictions applicable to Stationary Roadway Vendors.
- In our view, the solution does not lie in adding yet more restrictions on Stationary Roadway Vending. Rather, we urge the Office of the City Administrator to strike a fair and reasonable balance between the safe and effective management of public space and the ability of mobile food vendors to continue to serve customers in the most popular locations both within and outside the Central Business District.
- Unlike sidewalk vendors or brick-and-mortar businesses with café seating – both of whom physically encroach on public sidewalks – mobile food vendors do not park on sidewalks, and therefore create no such physical encroachments. We have nonetheless been advised by DDOT staff that our customers can create obstructions to pedestrian traffic while they wait in line for service. We note that this issue is simply not addressed in the Proposed Rules, raising concerns within our industry as to the basis for, and the terms of, our customers as obstructions or impediments to other pedestrian traffic. Furthermore, we have found no specific regulatory definition of what constitutes the creation of customer-related obstructions. Downtown brick-and-mortar businesses sometimes spur lines of waiting customers outside their perimeter that can and do reduce the unobstructed sidewalk width adjoining their businesses to less than 10 feet. In order for the proposed sidewalk width rule to be evenly and fairly applied to all providers, brick-and-mortar businesses would need to be strictly held to the 10-foot rule as well.
- Our comprehensive survey of sidewalks in the Central Business District found that eight of the 10 most popular mobile food vending locations could be deemed off-limits for our industry, with the sole exception of the designated mobile roadway vending location spaces. The survey measured sidewalk widths in 10 of the highest-demand areas for food trucks: Capitol South, Chinatown, Farragut and Franklin Squares, George Washington University, L St. NW, L’Enfant Plaza, Metro Station, Union Station and Virginia Ave. NW and compared those measurements against the § 531.2 of the proposal to require at least 10 feet of unobstructed sidewalk in order for a food truck to be able to serve customers. By our measure in the 10 locations surveyed, only Metro Center and L St. NW provide 10 feet or more of unobstructed sidewalk space.



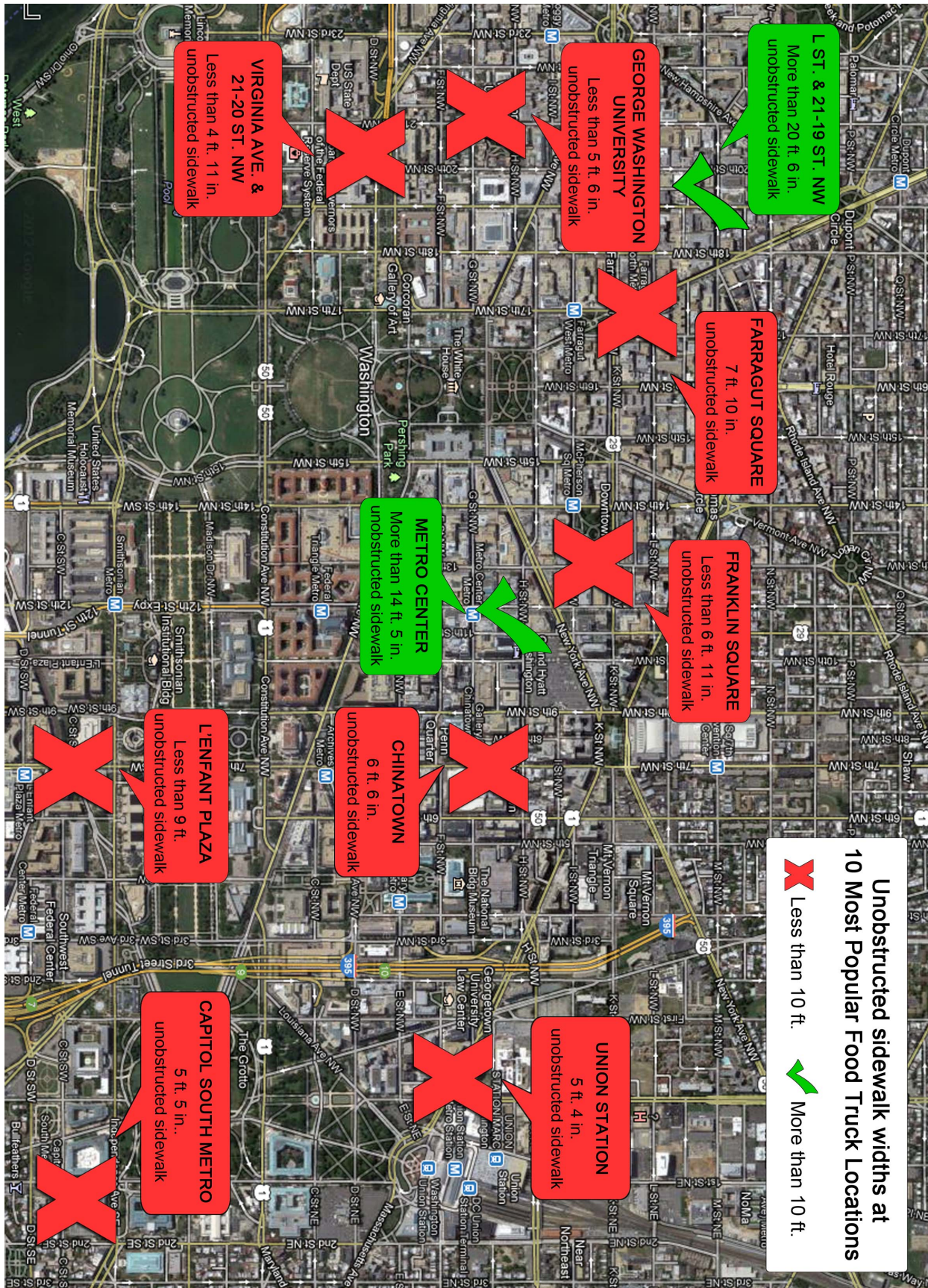
- Once again, we know that the Proposed Rules make exceptions to the 10-foot requirement by creating MRV locations, but again, spaces created by regulators in those locations could be very limited, and the Proposed Rules are silent on the process for selecting those locations and spaces. There frankly appear to be no guarantees in the proposed regulatory framework for our industry that our voices or those of other stakeholders will be heard or seriously considered once the all-important process of choosing MRV locations and spaces commences. Moreover, there are no regulatory criteria offered in the Proposed Rules for how these locations or spaces will be selected.
- What follows is our survey of the 10 most popular mobile food vending locations and the likely impact of the Proposed Rules on unrestricted mobile food vending in those locations.

*Chart and map on following pages*

SIDEWALK SURVEY OF TOP 10 FOOD TRUCK LOCATIONS				
Food Truck Location	Total Length of Sidewalk	Length of Curb to Obstruction	Unobstructed Sidewalk Length	More than 10 feet of unobstructed sidewalk?
<b>Capitol South</b> North side of D St. between 1 <sup>st</sup> and 2 <sup>nd</sup> St. SE	10 ft.	4 ft. 7 in. (Tree boxes)	5 ft. 5 in.	<b>NO</b>
<b>Chinatown</b> West side of 7 <sup>th</sup> St. between F and G St. NW	13 ft.	6 ft. 6 in. (Tree boxes)	6 ft. 6 in.	<b>NO</b>
<b>Farragut Square</b> East side of 17 <sup>th</sup> St. between I and K St. NW	10 ft.	2 ft. 2 in. (Parking meters)	7 ft. 10 in.	<b>NO</b>
<b>Farragut Square</b> West side of 17 <sup>th</sup> St. between I and K St. NW	10 ft.	2 ft. 2 in. (Parking meters)	7 ft. 10 in.	<b>NO</b>
<b>Franklin Square</b> South side of K St. between 14 <sup>th</sup> and 15 <sup>th</sup> St. NW	9 ft. 11 in.	3 ft. (Parkmobile kiosk)	6 ft. 11 in.	<b>NO</b>
<b>Franklin Square</b> 13 <sup>th</sup> St. between I and K St. NW	10 ft.	3 ft. 9 in. (Lamp post)	6 ft. 3 in.	<b>NO</b>
<b>George Washington University</b> North side H St. between 21 <sup>st</sup> and 22 <sup>nd</sup> St.	12 ft. 2 in.	6 ft. 9 in. (Tree boxes)	5 ft. 5 in.	<b>NO</b>
<b>George Washington University</b> South side H St. between 21 <sup>st</sup> and 22 <sup>nd</sup> St.	12 ft. 2 in.	5 ft. 8 in. (Tree boxes)	5 ft. 6 in.	<b>NO</b>
<b>L St. NW</b> Between 19 <sup>th</sup> and 20 <sup>th</sup> St.	27 ft. 7 in.	4 ft. 7 in. (Tree boxes)	23 ft.	<b>YES</b>
<b>L St. NW</b> Between 20 <sup>th</sup> and 21 <sup>st</sup> St.	24 ft.	4 ft. 6 in. (Tree boxes)	20 ft. 6 in.	<b>YES</b>

SIDEWALK SURVEY OF TOP 10 FOOD TRUCK LOCATIONS				
Food Truck Location	Total Length of Sidewalk	Length of Curb to Obstruction	Unobstructed Sidewalk Length	More than 10 feet of unobstructed sidewalk?
<b>L'Enfant Plaza</b> Maryland Ave. between 6 <sup>th</sup> and 7 <sup>th</sup> St SW	15 ft.	6 ft. (Tree boxes)	9 ft.	<b>NO</b>
<b>L'Enfant Plaza</b> 7 <sup>th</sup> St. between Independence and Maryland Ave. SW	10 ft. (From edge of tree box to concrete barrier)	2 ft. (Concrete barrier)	8 ft.	<b>NO</b>
<b>Metro Center</b> 12 <sup>th</sup> Street between F and G St. NW	17 ft. 8 in.	3 ft. 2 in. (Trashcan)	14 ft. 6 in.	<b>YES</b>
<b>Metro Center</b> 12 <sup>th</sup> Street between G and H St. NW	20 ft. 8 in.	4 ft. 8 in. (Tree boxes)	16 ft.	<b>YES</b>
<b>Union Station</b> South side of Massachusetts Ave. at North Capitol St.	11 Feet, 4 Inches	6 ft. (Tree boxes)	5 ft. 4 in.	<b>NO</b>
<b>Virginia Ave</b> North side between 20 <sup>th</sup> and 21 <sup>st</sup> St. NW	10 Feet 9 inches	6 ft. (Tree boxes)	4 ft.	<b>NO</b>
<b>Virginia Ave</b> South side between 20 <sup>th</sup> and 21 <sup>st</sup> St. NW	12 Feet	7 ft. 1 in. (Tree boxes)	4 ft. 11 in.	<b>NO</b>





As one can glean from the above surveys, nearly all of the most popular mobile food vending locations spread across much of the District fail to meet the proposed 10-foot rule.

We urge you to establish clear, demonstrable criteria by regulation to determine the number of Mobile Roadway Vendor spaces that are sustainable and appropriate for a given MRV location. By contrast, merely offering at least three Mobile Roadway Vending spaces in a given MRV location – and otherwise providing no regulatory guidance on the issues of where either those locations or those spaces will be designated -- is not, in our view, the best way to tailor the existing supply of spaces to both mobile food vending demand and public space management needs and priorities.

When you strip the Proposed Rules down to their essence, they appear to us to simply say, “We will give you at least a few spaces that we will establish in locations that we alone select, but otherwise we will decide for you how and where you will carry out your mobile food vending operations in the most popular mobile vending locations throughout the District.”

We propose, alternatively, that the Office of the City Administrator consider a more circumspect regulatory regime. Such determinations should be made based on all the facts on the ground and we believe this requires a process for thorough input from all interested parties -- regulators and otherwise. Additionally, we propose the creation of a food truck counterpart to a Business Improvement District called a Vending Improvement Detail (VID). We discuss in greater detail further in our comments a fairer method to determine MRV locations as well as the VID.

### **§ 532 Application for New Locations**

Once again, the Proposed Rules do not provide any meaningful guidance or process for determining whether, where and when to create new MRV locations. There should be a transparent process through our proposed VID, along with demonstrable criteria established by rule and an opportunity for meaningful public input. Also, the Proposed Rules should specify that all valid licensed food truck owner-operators may apply under this section. Applications should be determined within a reasonable and specific time period. Finally, applicants should have a full and fair opportunity to appeal these MRV determinations, both informally by filing an internal appeal with DDOT and then formally through an independent administrative hearing process.

### **§ 533 Directors Discretion**

This blanket MRV provision reinforces a concern we raised above about the extent to which the Proposed Rules concentrate an enormous amount of broad, discretionary authority in the hands of one public agency to decide where our members can and cannot vend across the District. At minimum, mobile food vendors should have a full and fair opportunity to appeal these MRV determinations, both informally by filing an internal appeal with DDOT and then formally through an independent administrative hearing process.



### **§ 546 Authorized Hours of Operation**

As we noted in our comments submitted on March 1, 2012 in response to the Second Proposed Rulemaking, the FTA does not believe that mobile food vendors should be subject to restrictions on their hours of operation that do not apply to brick-and-mortar restaurants. Rather, we support mobile food vending regulations that are designed to promote food safety and consumer health, regardless of a given vendor's hours of operation.

We are not aware of any basis for distinguishing between our two industries when determining the times and durations when our retail businesses can offer food to customers – particularly in light of the fact that food trucks, unlike many restaurants, are strictly prohibited by law from serving alcohol.

### **§ 558 Employees of Licensed Vendors**

The FTA supports this section of the Proposed Rule to the extent it would eliminate the need for mobile food vendors to purchase multiple vending licenses for periods when the owner-operator is not on site. However, the proposed Employee Identification Badge should be transferable from one business to another (not restricted to individual businesses, as proposed in § 558.7 (b)), which is a similar manner to how employees' Certified Food Protection Manager Identification Cards is treated.

### **§ 564 Vending Development Zones**

As also stated in our comments submitted in response to the Second Proposed Rulemaking, the FTA fully supports the idea of Vending Development Zones ("VDZs") as a means to increase competition and consumer choice by creating innovative vending opportunities. However, we remain deeply concerned over the language in § 564.1 (b), which states that one of the objectives of the VDZs is: "For communities to have expanded capability to manage vending and public markets in unique high-density hospitality zones." The FTA is of the opinion that this objective is fundamentally in conflict and wholly inconsistent with the other stated objectives of the VDZs, namely the stated goals to "promote new and innovative vending practices ... provide opportunities for vendors to expand their creativity and entrepreneurship ... and to expand vending and public market opportunities for small and local businesses." The language of § 560.1(b) is clearly targeted to achieve the exact opposite of these other stated objectives – it is drafted to allow VDZs the ability to restrict or eliminate vending opportunities all together.

The FTA interprets this language as a threat for food trucks, and consequently on consumer choice, competition, economic freedom, and small and local businesses. We reiterate and reincorporate the comments we previously submitted on this section on March 1, 2012.

## **Food Truck Association Proposal in Response to Third Proposed Rulemaking**

The FTA reiterates its strong opposition to the substantial discretionary authority the Proposed Rules grant to DDOT under §§ 530 and 533. The FTA understands and accepts DDOT's authority over management of public space in the city but does not agree that such authority should be wielded without input from affected stakeholders. As set forth in detail below, we submit therefore that the Proposed Rules be amended to include specific criteria that DDOT will use in creating, modifying or removing MRV locations and a public comment period and an appeal process.

Additionally, DDOT apparently would be responsible for enforcing strict and, we believe, unduly restrictive minimum sidewalk widths for mobile vending (both within the Central Business District and beyond) that we believe would place excessive, anti-competitive and wholly unnecessary limitations on the ability of mobile food vendors to serve customers in some of the most attractive vending locations in the District. As clearly demonstrated in our section-by-section comments above and in our sidewalk survey, such minimum sidewalk width restrictions are wholly inapplicable to food trucks (as compared to sidewalk vendors, covered sidewalks for construction or sidewalk cafes) because food trucks place absolutely no physical barriers or obstructions on the sidewalk. If a sidewalk is currently wide enough for unobstructed passage, the presence of a food truck will not somehow make it obstructed. Accordingly, we believe that there is no valid safety or other reason for any sidewalk width restrictions to apply to Mobile Roadway Vendors and the restrictions in §§ 530.8 (c) and 531.2 (c) should be deleted from the Proposed Rules.

The FTA puts forward the following proposal to address the stated goals of the District to achieve the safe, efficient and effective management of vending that advance the paramount interests of public health and safety, enhance consumer choice and healthy competition, promote innovative small businesses and enhance city life through creative and dynamic streetscapes. Our proposal consists of three primary concepts:

- A Citywide Mobile Roadway Vending Parking Permit
- A Fair and Transparent Process to Determine Mobile Roadway Vending Locations that is based on clear and demonstrable criteria
- The Creation of a Vending Improvement Detail

### **Mobile Vending Parking Permit (MRVPP)**

Mobile Roadway Vendors would have the option of applying for a Mobile Roadway Vending Parking Permit (MRVPP) that allows parking at any metered location in the city for a period of up to 4 hours. The MRVPP would not extend the posted time of day limits. The fee for such a permit would be \$480, which is the equivalent of paying to access a metered space for up to four hours a day, five days a week for three months and as noted before reflects a premium price for vendors' use of a parking space. The permit should be offered quarterly because many vendors may operate seasonally. In addition to allowing mobile vendors to park for up to 4 hours at any legal parking spot, this permit would also be required to park in MRV Locations. Mobile Vendors choosing not to obtain a permit would be subject to the standard posted time limits and would be subject to increased fines for violation of those limits.

The goals of the MRVPP are to:

- Offer the District a better method to collect parking fees from vendors, enforce parking limits and facilitate appropriate parking space turnover.
- By making the permit valid in any metered location, the MVPP incentivizes Mobile Roadway Vendors to serve in outside MRV locations and in communities across the District.
- Maximize the vending window to collect revenue for the District via sales tax;
- Allow Mobile Roadway Vendors to better and more efficiently operate without having to leave a location while there is still a line of waiting customers or else face a parking ticket.
- Maximize one of the greatest benefits that food trucks provide – our ability to draw people to into public space, making the space more vibrant and exposing surrounding brick-and-mortar businesses to potential new customers, thereby stimulating economic development and revitalization throughout the District.
- Ensure reasonable and appropriate reimbursement for private use of public space.

As an alternative to a 4-hour MRVPP, the FTA would support the concept of a time limit doubling parking permit that would allow the Mobile Roadway Vendor purchaser to park at any metered location for double the allowed time period (while still respecting any time of day restrictions). Such a permit would not eliminate the need to pay meter fees. This approach would generate yet additional revenues for the city while at the same time satisfying the above listed goals.

### **Mobile Roadway Vendor Locations (MRV Locations)**

As noted in our section-by-section comments, the FTA strongly opposes the proposal to create MRV locations. The Proposed Rules would give DDOT new, unfettered powers to decide when, where and how many MRV locations would be created. In addition, the Proposed Rules grant DDOT equally broad authority to decide how many parking spaces would comprise each and every MRV location.

Nevertheless, if the District feels compelled to limit the number of Mobile Roadway Vendors in an areas with high demand for food trucks, then the FTA proposes creating an MRV location after a fair, transparent process based on clear, demonstrable criteria:

Step 1 – Defining an MRV location:

- (§ 530.4) Parking within MRV locations shall be limited to MVPP permitted vehicles during the hours of 10:30AM to 2:30PM on weekdays. Additionally, where applicable, an MRV location can be established using different hours if the needs of that area are different. For example, it may be relevant to establish an MRV location



for Mobile Roadway Vendors who wish to vend in the evening hours in specific locations.

- (§ 530.5) A Mobile Roadway Vendor may park within an MRV location for no more than four hours and must be actively preparing to vend, actively vending, or preparing to depart the MRV location during this period of time.
- (§ 530.6) MRV vehicles parked in a designated MRV location shall be subject to the design standards of § 538.

Step 2 – Criteria for the Establishment of an MRV Location:

- There have been multiple, documented and continuing complaints of blocked entrances to buildings, impaired pedestrian or vehicular passage, or instances of unsafe conditions as a result of mobile vending operations.
- More than 80% of metered spaces are occupied by Mobile Vendors on a regular (daily) basis over a 60-day study period.
- The Block in question has no offsetting or unique characteristics (such as less commercial density, a larger geographic area, less pedestrian or roadway congestion, a need for revitalization, etc.) that would merit an exception to an MRV location designation.

The process for qualifying the establishment of an MRV location would be as follows:

- DDOT or other agencies would document all complaints they receive regarding blocked entrances to buildings, impaired pedestrian or vehicular passage, or instances of unsafe conditions as a result of mobile vending operations on a particular Block where an MRV location is being proposed and submit those complaints to the Mobile Roadway Vending community, either through the FTA or through the VID, which is a private, non-profit entity established for this purpose further described below. Mobile Vendors would then have the opportunity to address the complaints before they become chronic.
- If the complaints continue unresolved, DDOT would notify the Mobile Vending community that it is initiating a 60-day study to determine whether the block meets the qualification of a MRV location. This study would document the number of Mobile Roadway Vendors operating on the block on a daily basis and identify whether there are any offsetting or unique characteristics that would merit an exception. The public would have an opportunity to comment on the proposal to create the MRV location.
- After reviewing the public comments, DOT would issue a final determination regarding the creation of the MRV location.

- Parties disagreeing with the final determination would have the ability to appeal the decision based on the criteria described above.
- The same procedures would apply if DDOT chose to modify or remove an MRV location.

#### Stakeholders Can Apply for an MRV Location:

- DDOT will establish an application process by which vendors or non-profit associations that support the vending community can apply to establish an MRV location.
- An advisory board comprised of stakeholders including mobile vendors, restaurants, BIDs, and industry associations will be in place to apply and review the process of establishing MRV locations.
- DDOT will respond to applications to consider creating new MRV locations within 60 days.
- Parties disagreeing with the final determination would have the ability to appeal the decision.
- The same procedures would apply if a stakeholder applied to modify or remove an MRV location.

#### Step 3 - Establishing a Mobile Vending Roadway Location:

- Upon a final determination that a particular block satisfies the criteria, DDOT would then establish the block as an MRV Location.
- An MRV location can reduce the amount of parking space presently available to Mobile Roadway Vendors by no more than 20 percent.
- Once an MRV location is created, DDOT would install signage identifying the appropriate number spaces at the MRV location.

#### **Vending Improvement Detail (VID)**

MRV locations will require management on a number of levels, including allocating the dedicated spaces among multiple Mobile Roadway Vendors, monitoring the effectiveness of the MRV locations, and providing a two-way communications channel among interested stakeholders. To assist DCRA/DDOT with this management and avoid placing a burden on public resources, we propose that DCRA/DDOT consider entering into a form of public-private partnership with a private, non-profit entity established for the purpose of helping to manage the MRV location establishment and management process.

Specifically, we propose the creation of a Vending Improvement Detail (VID). The VID, comparable to a BID but without a geographic component, would be a private, non-profit, entity established to work in partnership with DDOT to manage Mobile Vending in MRV locations and in other areas of the city and to undertake other activities to improve mobile vending in public spaces.

Specifically, VID services would include:

- Serving as a liaison with DCRA/DDOT by:
  - Assisting with stakeholder outreach, answering inquiries and investigating and resolving Mobile Vending complaints from the public on a real-time basis (perhaps through social media), as passed on to the VID by DCRA/DDOT.
  - Assisting DDOT with respect to the identification and study of potential MRV locations as described above.
  - Providing feedback to DDOT regarding existing MRVs and the establishment of future MRVs.
- Managing the allocation of designated parking spaces in the MRV location among MVPP holders in a fair and equitable manner. The VID would develop and implement a methodology whereby MVPP holders interested in vending in the MRV location would be assigned spaces in the MVZ, perhaps on a daily, rotating basis. Such an online technology is currently used in Los Angeles.
- Deploying VID employees in MRV locations and other areas of the city to help ensure that:
  - Customer lines are managed such that sidewalks, building entrances and driveways remain unobstructed.
  - Mobile Vendors do not park in no parking areas such as bus and loading zones.
  - Trash generated from Mobile Vendors is removed from the MRV locations and disposed of properly.
  - Complaints involving Mobile Vendors are documented and communicated to the Mobile Vending community and are resolved in a timely and satisfactory manner.
  - As part of the MRVPP application process, all Mobile Vendors seeking MRVPPs would agree to abide by the rules and policies of the VID as described above, including the requirement to pay fees to the VID to cover the costs of VID services.

The VID would be funded through VID fees, which would be assessed on mobile vendors who chose to vend at MRV locations. For example, mobile vendors would be charged a flat fee for parking at an MRV location on the day they are chosen to park in that location through the rotation process.

We believe that a Mobile Roadway Vending program structured in this way would help satisfy the many goals of DDOT in managing the public space in general and as it relates to mobile vending in particular, and would identify the District as the nationwide leader in mobile vending regulations that effectively balance the needs of all stakeholders.