

# Penn Quarter Neighborhood Association

13 October 2012

Helder Gil, Esq.  
Legislative Affairs Specialist  
DC Department of Consumer and Regulatory Affairs  
Room 5164  
1100 4th Street, SW  
Washington, DC 20024

Re: Comments on Third Proposed Rulemaking for Title 24, Chapter 5, Vendors

Dear Mr. Gil:

We are commenting on the October 5, 2012 Proposed Vending Regulations, which if adopted would change DCMR Title 24, Chapter 5. We have reviewed the proposed regulations and have attached specific changes, to the sections cited. But we also have some general comments that follow below.

Generally, we think this draft an improvement over the January draft that this superseded.

- We previously mentioned that we had a problem in that the proposed regulations allow food trucks to park their vehicles wherever a car can legally park. In the current draft there are certain limitations related to distances from alleys, driveways, transit stops, and crosswalks but there was no attempt to limit their locations vis-à-vis the uses in front of which they park. Thus, a lobster truck could park directly in front of a lobster shack whose owner pays rent and taxes to the city. This is not fair competition; it favors the truck over the fixed location. As we previously pointed out, fixed vending locations are highly regulated. But unlike your regulations for sidewalk vending locations, vending trucks can still park at any free meter. Except for the potential for management in Vending Development Districts, there is little management and virtually no review of where the trucks can locate. The city established the Public Space Committee to review proposals for use of public space, with the public's safety, mobility, and compatibility with other uses as criteria for determining if an applicant's use should be approved, modified, or rejected. Thus the location and design of sidewalk cafes, bike racks, benches, and even trash cans have to be presented to the Public Space Committee for review and action. Why not the food trucks? We made several suggestions how that can be accomplished that I won't reiterate here. As we wrote previously, it is ironic that food establishments whose overhead costs (rent, taxes, pass throughs) are higher, who can be easily inspected by the health department, and who help energize the city are ignored, while those who remit little to the city and would be difficult to find to inspect without advance notice are exempt from such review.

We do applaud you for hearing us and simplifying the process to establish a Vending Development Zone and for grandfathering in the work that the Downtown BID had done to attempt to improve vending in our neighborhood.

Baring a VDZ, and it is likely that it will take some time for these to form, this could be remedied, at the least it would be of great help. To be most effective it would require DCRA, DDOT, and the Public Space Committee to work together in consultation with other departments such as Fire and Police to develop and include pre-approved locations for mobile food vending and mobile non-food vending in the regulations. These locations would be selected after all are satisfied that they will ensure that there is

- Adequate sidewalk space for pedestrians, including those who are handicapped and those walking dogs, as well as space for truck customers;
- Access by fire trucks and ambulances to hydrants, stand pipes, entrances, and fire control rooms is not compromised due to customer lines in combination with the vehicle's size and positioning;
- Space on each block front available for vehicles other than food trucks, which may require that the number of food trucks that can park on block fronts in certain areas of the city or along certain streets in such areas need to be limited;
- No infringement on spaces designated for residential parking in commercial zones.

Numerous food trucks could use each approved location and each food truck could park in several approved locations in a day. Further, the regulations could provide that these approved locations could be changed via a VDZ plan and, further, that DCRA, DDOT, and the Public Space Committee will re-examine the approved locations every other year (or perhaps every five years) and modify the list of locations as appropriate should a VDZ not be in place for the area.

- We recommend that the proposed regulations include a requirement that food trucks have to notify DCRA how they will alert their potential client base to their location each day and allow inspectors from DCRA and other regulatory departments having oversight over food trucks to have access to such notifications. Unlike a vendor in a fixed location where an inspector can return the next day or week to see if the violation is corrected, a food truck travels around to sell its food. Thus, it will take some time for the inspector to catch up with that vehicle unless inspectors are required to check Twitter and the food trucks are required to accept them as followers. And a food truck could possibly show up in several other locations without correcting the violation for an extended period.

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- Fees for violations are often regarded as the cost of doing business; they do not prevent violating a law or regulation. The proposed regulations should stipulate that fees should not be nominal but steep enough to deter unlawful actions and, further, should increase with each repetition of the offense for which the food truck or driver is being cited. Further, there should be a requirement to issue violations/tickets and not warnings. I understand that these are being tracked and that DCRA can revoke a license for a specified period of time if four violations have been issued.

- We request that the proposed regulations be amended to prevent food trucks from parking adjacent to sidewalks where there are outdoor cafes and the remaining sidewalk width available for pedestrians to walk unencumbered, which would exclude that portion of the sidewalk where there are tree pits, bicycle racks, benches, and trashcans, is ten feet or less. We believe that most non-criminal laws and regulations are not well enforced and that there are not enough enforcement officials to check the crowded urban centers to see if food trucks are voluntarily observing the vague language in the proposed regulations. It is just the sort of language that will require a law enforcement officer or other individual able to enforce the regulation to be present to see if pedestrian passage is blocked – if they even appear and if they do, if they appear in time to see the violation, given that food trucks move around and customer lines grow or shrink by the minute. Unfortunately, our experience has been that most of the time officers do not appear when one calls 311 or evenings and weekends 911 as they are busier with more significant infractions of the law. When they do appear, they report that they must see the violation. Obviously, in the presence of an officer the offender corrects the violation or, if he/she doesn't see the officer, the officer tells the offender to correct the violation, at which time he/she corrects it. If the officer leaves, the problem is as likely as not to re-occur; if the officer remains to see it is not repeated, often an officer will not issue a violation. In almost all instances, the violator is off the hook and the actions repeat without fear of being cited.
- We request that the proposed regulations be amended to prohibit a food truck from parking along a block front where an establishment that sells prepared food that is not pre-packaged for carryout, whether or not the establishment also serves food on the premises, if the food it sells is similar to the food that the food truck offers. By this we do not mean that if the food truck sells cupcakes it cannot park near a carry out that sells Hostess Cupcakes or apple pie. But it would be restricted from parking on the block front where Crumbs, Georgetown Cupcakes, or Red Velvet Cupcakes sell cupcakes – like food packaged for carry out. Similarly, a pizza food truck or a pasta food truck could not park in the block where Vapiano's is located as Vapiano's asks when ordering if the food is for here or to go. It could however park by Tosca, a white table cloth Italian restaurant where people may take leftovers with them but where one does not go for carry out food. There should be one exception to this. If a restaurant also has its own food truck and wants to park it for the purpose of selling food items from it by their establishment or stocking the truck, they should be allowed to do so.

By adding this regulation, DCRA would be limiting the direct but quite unequal competition for like goods. Luke's Lobster pays rent and all pass throughs – that would be utilities, property taxes, the BID tax, and condo fees. None of these would a food truck need to pay. In addition, Luke's Lobster pays sales tax and at least for some employees unemployment and social security, and, of course, actual sales tax. The overhead for Luke's Lobster is enormous compared to the overhead for a lobster truck. This provision would allow a lobster truck across the street, around the corner or in the next block, but it would not allow it right on the same block front, certainly a reasonable compromise and one that should be able to pass muster with the courts.

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- Last, the regulations for Vending Development Zones are not sufficiently clear; we recommend they be edited at the least. We also believe the process for establishing a VDZ is so difficult and time consuming that it will prevent any from being created. The result then would be the government shirking its responsibility to oversee and properly manage vending for the benefit of everyone.

I was not able to determine how the VDZ proposed plan would be affected by the other regulations; it required some discussion with you to obtain some clarity. There are still a myriad

of questions that I did not have time to ask. But if the proposed regulations are that unclear, they need to be looked at again and revised before they are published as final. We would suggest having people who have not participated in writing the regulations be consulted to identify where the proposed regulations lack clarity. Our concern is that once adopted there will be great difficulty in changing that which is a problem; and if the special event regulations are any indication of the future, nothing will be enforced because it is unclear who should and what can be enforced. Thus, total government irresponsibility.

Thank you for the opportunity to comment on the proposed regulations. I remain,

Very truly yours,

Jo-Ann Neuhaus  
Executive Director

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