



November 13, 2012

Helder Gil,
Legislative Affairs Specialist
Department of Consumer and Regulatory Affairs
1100 Fourth Street, SW
Room 5164
Washington, DC 20024
DCVendingRegs@dc.gov

**RE: Notice of Third Proposed Rulemaking
Concerning Chapter 5 (Vending) of Title 24
(Public Space and Safety) Published
October 5, 2012
Comment Letter**

Dear Mr. Gil:

Our organization, Restaurant Association Metropolitan Washington ("RAMW"), has over 700 members and is the principal representative of sit-down restaurants in the District of Columbia. We have reviewed the Notice of Third Proposed Rulemaking in connection with the above captioned regulations. The proposed regulations provide a reasonable framework for the operation of vending businesses, both sidewalk vendors and stationary roadway vendors, in the District of Columbia. With respect to Mobile Roadway Vendors, however, the proposed regulations are utterly inconsistent with the Vending Regulation Act of 2009 (the "Vending Act"), which requires that vending site permits be issued for specific locations. Indeed, the very definition of a Mobile Roadway Vendor is "a vendor who operates in unassigned locations."

Specific locations are mandated by the Vending Act for three equally important reasons. First, management of public space requires that in designating vending locations, consideration be given to other uses of public space which may be impacted by vending. Currently, every inch of public space is managed with reasoned decisions made concerning the locations of bus shelters, loading zones, tree boxes, sidewalk cafes, street signs, valet parking zones and plantings in public space. In making the decisions, DDOT considers the locations of the proposed use, adjacent uses of public space and the impact of the proposed use on vehicular traffic and on the pedestrian passageway. Ignoring the provisions of the Vending Act which require designated locations upsets the management of public space and provides an unfair preference for food trucks over all other public space uses.

For example, presume a brick and mortar restaurant desires an unenclosed sidewalk café adjacent to its restaurant. The application must be reviewed by the Public Space Committee which will make a determination as to whether the proposed café has an impact on the needed pedestrian passageway. Likewise, the location of vendors, other than Mobile Roadway Vendors, must be approved after consideration of the need for pedestrian passageway and other uses of public space in the area.



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The second reason the Vending Act requires designated spaces relates to the history of vending in the District of Columbia which led to the passage of the Vending Act. The Report of the Committee on Public Services and Consumer Affairs on Bill 18-257, the "Vending Regulation Action of 2009," repeatedly references the need for assigned vending spaces because the lack of designated vending locations led to violence, as the more profitable sites were hotly contested.

Furthermore, in the absence of fixed locations, the report indicates that DCRA was unable to locate vendors to determine regulatory compliance, putting the public at risk. The risk to the public is highlighted by the concerns expressed by the Department of Health, that without fixed locations, trucks cannot be located for random health inspections. In the event a Mobile Roadway Vendor is inspected, and critical violations are found, the Department of Health has no meaningful way to close the business operation: the Mobile Roadway Vendor can merely locate to another part of the District of Columbia and resume operations. The Department of Health does not have the resources to follow the truck and assure that it is taken out of service until the critical violations are corrected. If the proposed regulations are not to be amended such as to comply with the Vending Act, then the recommendation by the Department of Health that Mobile Roadway Vending trucks be outfitted with mandatory GPS systems so DOH can locate them at all times should be taken seriously and made part of the regulations.

In addition to the general foregoing comments, RAMW has the following specific comments. The numbers relate to the Section numbers in the proposed regulations:

<u>Section</u>	<u>Comment</u>
501(g)	Maximum hours of operation for vendors should be set by the regulations, and not left to the whim of DCRA, without guidelines as to how such authorized hours should be established.
504.3	Change the introduction to (c) to: "The applicant, any officer, director, member, or owner of applicant or any business in which they have had an interest, has been:" Otherwise, a violator need only to set up an new entity to evade the restrictions against licensure for previous violations.
504.4	Change "until one year after" to "within three years of."



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- 504.5 Change the word "person" to the word "individual."
The term "person" is broadly construed under the basic business licensing statute. The minimum age should be for individuals, not business organizations.
- 507.1 Change the word "may" to "shall." The regulations otherwise contain no standard by which the Director might exercise discretion concerning whether a license should be revoked, suspended, or denied. The revocation, suspension or denial should therefore be mandatory.
- 514 In addition to the information required, a Mobile Roadway Vendor should be required to identify restroom facilities available for its employees in the District of Columbia. It is understandable that requiring Mobile Roadway Vendors to meet restroom requirements for patrons is unworkable, but Mobile Roadway Vendors should be required to provide basic sanitation for employees by way of restroom facilities. Dallas, Texas is an example of a jurisdiction with such a requirement. There, vendors must show a written agreement with one or more businesses for restroom access as a condition of licensure.
- 515.2 Health inspection certificates issued to Mobile Roadway Vendors should be conditioned upon the vendor installing and maintaining such GPS system as shall be approved by DOH, so that DOH, shall at all times, know the Mobile Roadway Vendor is in the District of Columbia and it may be located for purposes of inspection or enforcement. Without such tracking, DOH is powerless to conduct random inspections, and, more importantly, powerless to ensure that Mobile Roadway Vendors with critical violations do not continue to operate after suspension of their health inspection certificate.
- 529.1 There are technical problems with this subsection in using the term "person" holding a vending business license. "Persons" includes corporations and limited liability companies. Accordingly, the first reference to "persons" should be changed to "Individual" such that the Mobile Roadway Vendor will either have an Individual Class A, Class B or Class D license on the vehicle, or, if the Vending Business License holder is an organization, the Mobile Roadway Vendor will have a vendor employee with an identification badge inside the vehicle. Without this change, Mobile Roadway Vendors which are organizations (corporations or limited liability companies), could merely have officers or members of the organization on the vehicle, and they technically would be in compliance.



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529.6 Add a new subsection:

A Mobile Roadway Vendor may not vend in the Central Business District, except in a designated Mobile Roadway Vending location.

530.2 Strike "at least." Three Mobile Roadway Vendors on any block face is an appropriate number such that disruption of sidewalk space is minimized and there is sufficient vehicle parking for other users. If more Roadway Vendors are desired, than rules may be liberalized by way of a Vending Development Zone.

530.8(b) Add, as a prohibited zone, valet parking zones.

530.8(c) Amend as follows:

Where the adjacent unobstructed sidewalk is less than 10 feet wide, provided if the DDOT Director finds that during the hours of 11:00 a.m. to 3:00 p.m., on weekdays, the flow of pedestrian traffic at a location is sufficiently light to permit a passageway narrower than 10 feet, a Mobile Roadway Vending location outside the Central Business District, with a passageway as narrow as seven feet, may be approved.

This is consistent with the determination made by the Public Space Committee in reducing the required ten foot clearance for sidewalk cafes.

530.8(j) Add the following:

(j) Any location that is adjacent to a duly permitted sidewalk café.

530.8(k) Add the following:

(k) Within (ten) 10 feet of the entrance way of a licensed business. The entrance way shall be defined as the area between two parallel lines, extending perpendicular from each side of the entrance to the building where the business is located.

531.2(b) Add, as a prohibited zone, valet parking zones.



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531.2(j)

Add the following:

(j) On any block in which a designated Mobile Roadway Vending location has been established.

531.2(k)

Add the following:

(k) Any location that is adjacent to a duly permitted sidewalk café

531.2(l)

Add the following:

(l) Within (ten) 10 feet of the entrance way of a licensed business. The entrance way shall be defined as the area between two parallel lines, extending perpendicular from each side of the entrance to the building where the business is located.

531.2(m)

Add the following:

(m) On any block where two or more Mobile Roadway Vending vehicles are parked.

531.2 (o)

Add the following:

(o) Within twenty (20) feet of another Mobile Roadway Vending vehicle.

533.1

Add the following:

In addition, the DDOT Director shall not modify or remove any Mobile Roadway Vending Location which, through changed circumstances, no longer complies with the requirements of Section 530.8.

546.1

Vending should be limited to midnight (12:00 a.m.) on Friday and Saturday nights, as it is the hour by which service must end in most outdoor dining facilities, including sidewalk cafes and rooftop patios.



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- 551.1 Strike "as a means of advertising." Otherwise, music can be played that is not a "means of advertising" but nonetheless disrupts residences and neighboring businesses.
- 559.2 Between the two sentences, add the following, "Vendors shall store litter in a sealed container in their carts and trucks until it can be disposed of in a trash or garbage container maintained with someone whom the vendor has a contract for trash disposal."
- 564.3 Clarify that both ANCs and BIDs may submit applications for Vending Development Zones.
- 569 Penalties for violation of parking regulations should be sufficient to deter conduct, and not such that they will be paid by the vendor as a "cost of doing business." A minimum fine of \$500.00 is appropriate. A separate violation of "non-compliance with parking regulations while in the act of vending" should become part of the traffic regulations. There should be escalating fines for repeat violators, just as there are for regulatory infractions committed by other businesses.

Although the press has reported the possibility of higher fines, as we suggested in our comments to the last proposed set of vending regulations, thus far, we have seen no new proposed traffic regulations that cover this issue. As vendors have seemed to flaunt even the few existing regulations governing their conduct, it would seem regulations providing for higher traffic fines should have been proposed even before these regulations. RAMW is concerned that we not see a repeat of the situation we have seen with taxicabs: the higher fares have been put in place, but the promised improvements in taxis have been delayed. It is only fair that penalties for appropriating public space for commercial advantage in violation of traffic and parking regulations applicable to all, be put in place immediately.



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Thank you for giving RAMW the opportunity to submit comments. We are happy to work with you to resolve these serious issues and concerns.

Very truly yours,

Andrew J. Kline
Legislative Representative, RAMW

cc: The Honorable Vincent Gray, Mayor
Nicholas Majett, Director, DCRA
Phil Mendelson, Chair, DC Council
Michael Brown, At-Large Councilmember
David Catania, At-Large Councilmember
Vincent Orange, At-Large Councilmember
Jim Graham, Councilmember, Ward 1
Jack Evans, Councilmember, Ward 2
Mary Cheh, Councilmember, Ward 3
Muriel Bowser, Councilmember, Ward 4
Kenyan McDuffie, Councilmember, Ward 5
Tommy Wells, Councilmember, Ward 6
Yvette Alexander, Councilmember, Ward 7
Marion Barry, Councilmember, Ward 8
David Grosso, At-Large Councilmember-elect
Janene Jackson, Director, OPLA
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Greg Casten, Chair, RAMW