



To: Helder Gil, Legislative Affairs Specialist, DC Dept. of Consumer & Regulatory Affairs

From: Baylen J. Linnekin, Executive Director, Keep Food Legal

Re: *Comments OPPOSING Notice of Third Proposed Rulemaking; Adoption of New Chapter 5 (Vendors) of Title 24 (Public Space and Safety) of DC Municipal Regulations*

Date: Nov. 13, 2012

Thank you for accepting these comments of Keep Food Legal, a grassroots nonprofit incorporated in Washington, DC, on behalf of our members and supporters. Keep Food Legal is the first and only nationwide, nonprofit membership organization devoted to food freedom—the right of every American to grow, raise, produce, buy, sell, share, cook, eat, and drink the foods and beverages of their own choosing. Keep Food Legal members and supporters hail from Washington, DC and from states, cities, and towns across the United States. Our members and supporters are key cogs in nearly every link in the food chain—including farmers, manufacturers, grocers, restaurateurs, mobile food vendors, tavern owners, chefs, consumers, foodies, activists, academics, and authors.

I am the founder and executive director of Keep Food Legal. I am a lawyer, earned an advanced degree in agricultural and food law, and have written and spoken extensively on mobile food vending law and policy. I have served as a panelist and panel organizer on mobile vending issues at academic and applied conferences held in California, Illinois, Louisiana, Massachusetts, and here in the District. I have researched and written extensively on Washington, DC regulations pertaining to mobile food vending, including “The New Food Truck Advocacy,” a scholarly article that appears in the current issue of the *Nexus Journal of Law and Policy*; a May 2012 *Huffington Post* article, “Make the Smart Choice: Don’t Limit Where Food Trucks Can Park in the District;” and a March 2011 *Reason* magazine article. In addition to my research and writing on the subject of food truck regulations, I designed and currently teach an undergraduate course at American University here in the District that focuses largely on mobile food vending.

Keep Food Legal and our members and supporters **OPPOSE** the *Notice of Third Proposed Rulemaking; Adoption of New Chapter 5 (Vendors) of Title 24 (Public Space and Safety) of DC Municipal Regulations* (“the proposed regulations”) in its current iteration for several reasons.

First, §§ 530.8(c) and 531.2(c) of the proposed regulations would together ban mobile vendors from parking and vending “[w]here the adjacent unobstructed sidewalk is less than ten feet” in width. These distance regulations are unreasonable, arbitrary, and unfair for several reasons.

The DC Department of Transportation (DDOT) currently defines an “obstruction” of “clear sidewalk space” as pertains to a sidewalk café—the public space most analogous to that used by mobile food vending consumers—as “trees, streetlight poles, sign poles, fire hydrants, and other objects located on the surface space[.]” The proposed regulations would appear to expand the definition of an “obstruction” to include people. Unlike a brick-and-mortar restaurant—which in creating an outdoor café establishes a permanent or semi-permanent space on city sidewalks—the chief so-called “obstruction” when it comes to mobile food vending in the District is not tables and chairs and umbrellas but consumers standing on a sidewalk. Do District regulators sincerely believe that District taxpayers are an “obstruction”? Furthermore, unlike a sidewalk café, which stands across the sidewalk from curbside obstructions like sign poles and therefore may multiply the number of so-called obstructions on a given sidewalk, mobile food vending consumers tend to stand alongside the curb and present no such multiplier impact.

The proposed regulations also treat mobile food vendors far differently (and more harshly) than they do brick-and-mortar restaurants in other ways. For example, the proposed regulations appear to permit case-by-case reductions of the minimum sidewalk width from ten to seven feet. But current DDOT regulations pertaining to brick-and-mortar restaurants—again using the illustrative example of the sidewalk café—give the agency “the authority to reduce the sidewalk width adjacent to a [sidewalk] café to 6 feet.” As previously mentioned, an outdoor café is a permanent or semi-permanent, often year-round space on city sidewalks. Conversely, consumers may queue on any given area of sidewalk in the District to purchase food from a mobile vendor for perhaps ten to fifteen hours a week (2-2.5 hours/day during lunchtime on weekdays). There is no good reason to crack down on the District’s popular sidewalk cafés. Rather, we urge that the District not arbitrarily regulate the less frequently used space around a mobile food vendor more severely than it does the more frequently used space in and around a sidewalk café.

Second, under the so-called “ice-cream truck” rule, DCRA has long mandated that the potential customers of a mobile food vendor form a line (or queue) before a food truck may stop and serve food. DCRA has also required that a truck must leave a parking space without delay after serving the last customer in a queue. Hence, existing DCRA regulations have been an important driver of queues in places like Farragut Square because they effectively prohibit any mobile food vendor from parking and vending unless they do so at a place with a high concentration of people standing in a line.

The proposed regulations, on the other hand—including especially the proposed ten-foot width requirement described above—seem designed to punish mobile food vendors *because* these vendors have been mindful of DCRA regulations and vend only when and where they find large numbers of potential customers standing in line to buy their food products. It would be unjust for the District to penalize mobile food vendors for complying with an absurd regulation like the ice-cream truck rule just because compliance with that absurd rule has perhaps created a fresh set of unintended consequences.

Even if DCRA rules artificially increase the size and frequency of a queue, sidewalk queues are the inevitable result of consumer demand—as evidenced not just by queues formed by mobile food vending consumers but also by similar lunchtime and dinnertime lines outside downtown brick-and-mortar restaurants and by weekend crowds flocking to sidewalks in Georgetown and around Eastern Market. Pedestrians also crowd city sidewalks during rush hour at most downtown Metro stations; assemble on the sidewalks around the Washington Nationals ballpark before, during, and after games; and congregate on the sidewalks outside the Verizon Center before and after concerts and sporting events. These mass consumer gatherings are not problems in search of regulatory solutions. Rather, they’re each examples of the economic activity that has helped transform some previously moribund parts of the District into particularly vibrant public spaces full of taxpayers.

Furthermore, even if a queue does crowd a sidewalk, any objective assessment of that crowding should consider facts before succumbing to rhetoric. Take Farragut Square, for example. Mobile food vendors are not permitted to park on either side of I St. or K St.—which helps keep those sidewalks on and around the Square free of consumer queues. There are four easily navigable sidewalks on the opposite sides of the street all around Farragut Square (including I and K Streets) just as there are two easily navigable bisecting walkways right through the center of Farragut Square. That means just two of the ten available pedestrian paths through or around Farragut Square are ever even possibly crowded by consumers frequenting mobile food vendors—and then only for a few hours each day at most.

Third, the proposed regulations still contain some of the same defects that plagued previous proposals by DCRA to amend existing mobile food vending regulations. For example, the proposed regulations still include an ambiguous scheme to create approved vending areas. These arbitrary vending areas can serve no other purpose than to limit consumer access to foods sold by mobile vendors so as to protect—in an illegal and unconstitutional manner—the business interests of brick-and-mortar restaurants in the District. Keep Food Legal opposes any designated vending zones, areas, parking spaces, or other similar restrictions in the strongest terms.

In closing, Keep Food Legal **OPPOSES** adoption of the proposed regulations because our members and supporters feel they would represent a severe step backwards for the District’s mobile food vendors and their tens of thousands of consumers and supporters. The proposed regulations would appear to be yet another attempt by the District to prohibit mobile food vendors from parking and vending in many areas where District consumers count on them most. In this manner, the proposed regulations appear to be just another attempt by the District to crack down on the city’s vibrant and still growing food truck culture in order to illegally and unconstitutionally protect the interests of a small but powerful segment of the District’s brick-and-mortar restaurant community. It is for these reasons that Keep Food Legal and our members and supporters **OPPOSE** the *Notice of Third Proposed Rulemaking; Adoption of New Chapter 5 (Vendors) of Title 24 (Public Space and Safety) of DC Municipal Regulations* in their current iteration.

Thank you for accepting and considering these comments of Keep Food Legal and our members and supporters. I would be happy to speak further about our comments at your request.