



DC MAP

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

Re: Comments to new DCMA Title 24, Chapter 5 Rulemaking

Dear Mr. Gill:

These comments and related documents are in response to the published *Notice of Proposed Rulemaking*, DCR, Vol. 59 – No. 3, January 20, 2012 in DCMR Title 24, chapter 5, and supplement our comments in response to the *Notice of Proposed Rulemaking*, DCR, Vol. 57 – No. 26, June 25, 2010 pp. 005469 regarding vending regulation.

On February 9, 2012 the DC MAP board of directors held a special meeting. The board approved a motion that DC MAP files a response to this rulemaking. The board requested that our previous comments dated July 23, 2010 filed along with all attachments be considered a part of this rulemaking.

We have the following general comments:

1. Mobile Roadway Vending as set forth in the draft regulations is inconsistent with the permanent vending statute. We therefore request that any and all proposals related to this type of vending be removed from this rulemaking until the public has had the opportunity to address it in the appropriate forum the legislative branch, the DC Council. Until there is a legislative direction on mobile roadway vending it should not be part of this rulemaking. No DC government document related to vending going back to 2005 has even discussed this type of vending. The current law requires ALL vending permits be tied to a vending site permit for a specific location. In fact, Councilwoman Bowser stated at a recent public hearing on vending that her committee never considered how to address

mobile roadway vending. She said that the topic of how mobile food trucks would use public space did not come up and was not addressed by the committee report or legislation. At that time the statute was being developed “On the Fly” was the only mobile vending food truck and it parked on private property not public space.

2. **Parking meters:** The concept of allowing commercial activity at a parking meter is inconstant with the public policy that parking meters are for customers, not commercial activity or employees. Parking meters are not appropriate locations for vending or any commercial activity. To allow a commercial activity there will directly compete with the business needs of the traditional inline businesses for parking for its customers. Additionally, in business corridors bordering residential areas the use of parking meters for commercial activities will encourage customers to park on residential blocks. This will decrease residential parking and increase the tension between residents and businesses.
3. **Demonstration Zones:** The section regarding demonstration/development zones needs further discussion with the public, BIDs, ANC's, and other community organizations. As set out it will become a significant financial and personnel drain on an entity that desires to establish one. Demonstration/development zones should not exempt a vendor from obtaining a vending site permit. To allow such exemption does not address one of the underpinnings of the statute. To allow such exemption will limit the use of public space and cause conflict. It is apparent that the initial permission to not require site permits has allowed the operating mobile roadway vendors to compete for customers outside of the Downtown demonstration zone.
We concur with the concerns expressed by the DC BID Council that it is not clear how the vending development zone would dovetail with the other regulations and zoning overlay districts. If mobile roadway vendors can use any legal parking location than it would not be possible to limit locations or number in a vending development zone or in Ward 2 as required by the statute. There are many unresolved regulatory questions created by the draft regulations and the process for developing one is onerous and lacks a meaningful enforcement mechanism. It is unlikely that any BID would be interested in establishing a demonstration/development zone. Also, it is not clear if the mechanism to establish one is an “opt-out” or “opt-in”. A demonstration/development zone must be an “opt-in” mechanism including not only BID participation but ANC participation as set forth in the DC Home Rule Charter. The current illegal activity has already had a significant financial impact on our inline lunch businesses.
4. The section that gives the Downtown BID the authority of PSPMC should be removed until the Council and public have had an opportunity to have an appropriate discussion. The proposal to allow it to reshape its boundary needs to be limited to the Downtown BID area.

5. The regulations need to include the role of the ANC in reviewing each proposed vending site permit as the Home Rule law requires ANC participation in other uses of public space such as sidewalk cafes. A vending site permit theoretically will have a longer term impact on public space than a sidewalk café regardless whether the proposed vending site location is on a sidewalk or roadway.

We respectfully request that the documents set out below which were submitted as part of the prior rulemaking also be included and considered with our comments as part of the official documents for this rule making and addressed prior to promulgating the final rule:

October 28, 2005: Committee on Consumer and Regulatory Affairs Committee Report
June 1, 2006: DCRA Report to Council – Lifting the Moratorium
July 11, 2006: PSPMC Vending Demonstration Program Report
November, 06, 2006: Vending FAQs
December 04, 2006
December 05, 2006: Letter to Council
January 16, 2007: Vending Location Initiative Phase II
October 23, 2008: Comments to DCRA re: proposed vending regulations
October 23, 2008: Testimony on The Vending Licensing Moratorium Act of 2005
November 7, 2008: Letter to DCRA Director Argo
June 09, 2009: Testimony on B18-257
June 23, 2009: Committee on Public Services and Consumer Affairs Report, 18-257
February 22, 2010: Vending Task Force Report to Council
July 23, 2010: Comments to DCRA re: proposed vending regulations

Thank you for this opportunity to submit our concerns and documents.

Respectfully,

Edward S. Grandis

Edward S. Grandis
Executive Director and Legal Counsel
DC MAP