

# Holland & Knight

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November 6, 2012

Mr. Helder Gil  
Legislative Affairs Specialist  
DC Department of Consumer and Regulatory Affairs  
1100 4<sup>th</sup> Street, SW  
Room 5164  
Washington, DC 20024

Re: Notice of Third Proposed Rulemaking -- Chapter 5 (Vendors and Solicitors) of Title 24 (Public Space and Safety) of the DCMR

Dear Mr. Gil:

By letter dated March 1, 2012, this office on behalf of Open Top Sightseeing of Washington, LLC had submitted comments regarding the then proposed regulations regarding vending in the District of Columbia.

We appreciate in the most recent publication referred to above the modification of the text of §567.5 to recognize that the sales of tickets on a sidewalk, etc. would be permissible provided a party obtained a Class D Vending Business License. As noted earlier Open Top, one of the principal sightseeing touring operations in the District, desires to have its employees sell excursion tickets from handheld PDAs at various stop locations throughout the District, a system it uses in multiple locations throughout the world in its operations.

While this insertion in §567.5 is helpful, the provisions of §503.1(d), regarding Class D Licenses, do not recognize specifically the sale of tickets as the vending of a "service" or identify the basis upon which a service would be designated by the Director as a service that could be conducted on public space and for which issuance of a Class D License would be appropriate. Since there is the reference in §567.5 to sales of tickets, it would seem reasonable and maybe prudent to include in §503.1(d) those sales as one of the enumerated services.

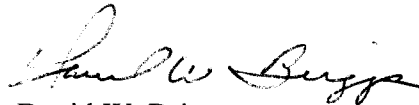
We had also previously suggested provisions that would pertain to the sale of tickets recognizing that those sales would be associated with sites identified and posted by DDOT as excursion bus stops where there might be multiple tour bus users. Presently the propose

regulations would appear to preclude multiple vendors from the sales of tickets at a single location if we understand the revised proposed regulations. That would seem contrary to the desires of DDOT to congregate stop operations of the various sightseeing companies at appropriate locations in the District to facilitate traffic flow and tourist convenience.

For your information I am supplying with this letter our earlier comments on the Second Notice of Proposed Rulemaking that was issued in February of this year. I have adjusted these comments to codification of the proposed regulations in the notice referred to above. We would still strongly suggest that these comments if accepted would facilitate the unique vending situation of the operations of sightseeing companies such as our client and provide clear direction to DCRA staff regarding the licensing of these types of operations in the District.

We would be pleased to meet with you at your convenience to discuss our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Briggs", written in a cursive style.

David W. Briggs

Encl.

cc: Ruth Best (w/encl.)

**I. Suggested Revisions to Proposed Vending Regulations to Permit Sales of Excursion Tickets in Public Space for Sightseeing Operations**

**A. Current Text of Proposed Vending Regulations Regarding Sales of Tickets in Public Space :**

563.5 No person shall sell or offer to sell tickets from the sidewalks, street, or public spaces anywhere in the District of Columbia for any excursions, theatrical performances, opera, sporting event, or any entertainment of any kind, except in locations specifically designated for that purpose.

**B. Suggested Additional New Section 563.6 to address sales of tickets for sightseeing excursion operations:**

Section ~~563.6~~567.6. With regard to the sales of tickets in public space for sightseeing excursion operations identified in Section ~~563.5~~567.5 of these Regulations, the following provisions shall apply. Where there is an inconsistency between the provisions of this Section ~~563.6~~567.6 and other provisions of these Regulations the provisions of this Section ~~563.6~~567.6 shall apply.

- (a) The locations specifically designated for the purposes specified in this Section ~~563.6~~567.6 shall be those areas identified by the District of Columbia Department of Transportation, or successor agency thereto.
- (b) The locations designated pursuant to Section ~~563.6~~567.6(a) shall be deemed a Vending Location specifically for the purpose of sales of tickets only.
- (c) Multiple vendors, if duly licensed pursuant to these Regulations, may occupy a single Vending Location that is approved for the purpose of sales of tickets for sightseeing excursion operations.
- (d) Subject to the provisions of Section ~~502.3~~502.4(a2) and this Section ~~563.6~~567.6(d) of these Regulations, a person selling or offering to sell tickets identified in Section ~~563.6~~567.6 shall be required to obtain and maintain a Vending Business License provided for in Section 502 of these Regulations, subject to the provisions of Sections 503 through 507 of these Regulations; provided that only a single Vending Business License shall be required to permit a person selling or offering to sell tickets at multiple locations approved in accordance with the provisions of Section ~~563.6~~567.6(a), but where multiple locations are covered by that Vending Business License, the person shall pay a license fee based upon the number of approved locations at which tickets would be sold or offered for sale.

- (e) Persons selling or offering to sell tickets who are required to obtain a Vending Business License pursuant to Section ~~563.6~~567.6(c) shall procure and maintain a Class D License as provided for in Section 503.1 of these Regulations.
- (f) Where persons selling or offering to sell tickets identified in Section ~~563.6~~567.6 are employees or agents of a party that holds a Vending Business License, then such employee or agent shall not be required to apply for or hold a separate Vending Business License, but shall at all times display a Vendor Employee Identification Badge, as provided for in Section ~~502.3~~502.4(a) and Section ~~553~~558 of these Regulations.

**C. Conforming additions to other text of the proposed Vending Regulations to permit sale of tickets at selected locations in Public Space.**

Section 501.2

Insert the following additional subsections:

- "(e) Designate the locations in public space where tickets are sold or offered for sale pursuant to and as permitted by Section ~~563.5~~567.5 and, as applicable, Section ~~563.6~~567.6 of these Regulations.
- (f) Designate the types of tickets that may be offered for sale or sold at any designated location.
- (g) Designate the perimeter of the locations in public space where tickets may be offered for sale or sold, provided that such area at any designated location may be no less that 6 feet by 6 feet, measured from and extending inward from the curb of the right of way."

Section ~~502.3~~502.4(a)

- (a) Insert ", but such employees shall be required to obtain and display at all times a Vendor Employee Identification Badge pursuant to Section 553.1 of this Regulations" after the words "licensed vendors".

Section 503.1(d)

- (d) Insert as covered services for a Class D License, "the sale of tickets subject to Section ~~563.5~~567.5 and, as applicable, Section ~~563.6~~567.6" after the words "shoe shining".

Section 504.2(d)

- (d) Insert "and Class D" in the parenthetical after the words "Class C".

#### Section 504.5

Insert a provision as follows: "provided that such age restriction shall not preclude a person from becoming an employee of a duly licensed Vendor and being issued a Vendor Employee Identification Badge pursuant to Section ~~553~~558 of these Regulations."

#### Section 505.7

Insert at the end of this Section the phrase by "the Director or by the Department of Transportation in the case of sales of tickets permitted pursuant to Section ~~563.5~~567.5 and, as applicable, Section ~~563.6~~567.6 of these Regulations".

#### Section 508.1

Insert and the end of this Section "and sales of tickets permitted pursuant to Section ~~563.5~~567.5 and, as applicable, Section ~~563.6~~567.6 of these Regulations".

#### Section 508.4

Insert the following at the end of this section ", except that any employee of a duly licensed Vendor may vend at any Vending Location for which the Vendor has been issued a Vending Site Permit."

#### Section 510.1(c)

Should the conjunction "and" not be "or" as to subsections (1), (2) and (3) -- and our proposed fourth one? Was it intended that every one the three proposed condition be satisfied (we would certainly not intend it to apply to the fourth one suggested below)?

Remove "and" at the end of proposed (2), end proposed (3) with ", or," and insert new (4) as follows:

"(4) The applicant is a person permitted to sell tickets at designated sites pursuant to Section ~~563.5~~567.5 and, as applicable, Section ~~563.6~~567.6 of these Regulations."

#### Section ~~538.4~~543.4

The foregoing shall not prevent the Vendor or its employees from wearing clothing depicting the logo and name of the Vendor in and around the Vending Location.

Section ~~542.1~~547.1

Insert "or the Department of Transportation with sites designated with regard to the sale of tickets pursuant to Section ~~563.5~~567.5 and, as applicable, Section ~~563.6~~567.6 of these Regulations."

Section ~~553.3~~558.3

Insert "or a Class D vending business" after the words "vendor's Class A vending business" in this section.

Section ~~563.4~~567.1

Remove the "or" at the end of proposed (b), end proposed (c) with "; or" and insert a new (d) as follows:

"(d) Sale of tickets as provided for in Section ~~563.5~~567.5 and Section ~~563.6~~567.6 of these Regulations."

Section ~~599.1~~

~~Public Space—all publicly owned property.... Query: Does this mean these Regulations are intended to control **all** "public" space including property not under the ownership or control of District or the federal government? Does this include property controlled by WMATA or quasi-international instrumentalities? There are well-known Federal properties ranging from the White House (and its grounds) to the Capitol and (its grounds) to the National Mall and many other properties overseen by the National Park Service. There are also other public properties such as those owned and managed by the Washington Metropolitan Area Transit Authority ("WMATA"), the Department of Defense, Smithsonian Institution, and so on. Are these regulations intended to cover these areas?~~

~~We would assume that other vendors, like Open Top who wish to locate on any public space not under the jurisdiction of the District may do so only if and as allowed by the authority having jurisdiction for that space, but may not have to comply with these regulations at the same time.~~