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**VIA E-MAIL AND**  
**HAND-DELIVERY**

July 26, 2010

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

**RE: Request Additions and Amendments to the New Chapter 5 (Vendors) of Title 24 of the District of Columbia Municipal Regulations.**

Dear Helder Gil:

This office represents the D.C. Roadway Vendors Association, Inc. (hereinafter, "DCRVA"), a nonprofit association incorporated in the District of Columbia, advocating the common interests of roadway vendors operating in Washington, D.C.

Upon reviewing the proposed new Chapter 5 (Vendors) of Title 24 of the District of Columbia Municipal Regulations (hereinafter, "Proposed New Vending Regulations"), which were published in the District of Columbia Registry on June 25, 2010, DCRVA requests that DCRA and the D.C. Council to adopt the following additions and/or amendments to the Proposed New Vending Regulations:

***(1) An Addition To the Proposed New Vending Regulations of A Provision  
Whereby Lottery Selection Process Shall Be Conducted in Public and Be Open  
for Public Viewing***

Section 530 of the Proposed New Vending Regulations establishes the assignment of roadway vending locations to licensed D.C. roadway vendors. Section 530 provides for the establishment of a monthly lottery system to fairly allocate roadway vending sites to

roadway vendors licensed to conduct business in the District. The lottery system under the Proposed New Vending Regulations incorporates, for the most part, the existing system under Current Vending Regulations.

To ensure the fairness of the lottery process, DCRVA requests that DCRA and the D.C. Council to add an additional provision to the Proposed New Vending Regulations specifically set forth that the monthly lottery drawing shall be conducted in public so that all registered vendors can view the selection process. The public viewing of the lottery selection process would ensure the integrity of the lottery system and prevent any potential fraud.

By way of illustration, this past June, Sergeant Zachary Scott of the Metropolitan Police Department (hereinafter, "MPD") was not able to conduct the monthly lottery.<sup>1</sup> Sergeant Scott then assigned the responsibility of conducting the lottery to Officer Steinbach, a junior MPD officer. Rather than conducting the lottery in public so that all participating vendors can view the selection process, Officer Steinbach decided unilaterally to conduct the lottery selection in his office and outside the presence of all vendors.

When Officer Steinbach posted what he claimed to be the results of his self-conducted lottery selection, there were several instances where vending sites were awarded to vending trucks and vendors who have not been working in the vending industry for more than five (5) years. This result was troublesome because some of the vendors that were awarded vending sites no longer hold a license to do business in the District. These non-licensed vendors, therefore, should not have been included in the lottery drawing let alone being awarded specific vending sites.

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<sup>1</sup> The current vending lottery system (as conducted by the MPD) is described as follows:

- (A) The MPD official begins by checking to ensure all participating vendors are properly licensed and has paid the necessary fees. Each licensed vendor would have a vending truck with an assigned number from 1 to approximately 200 based upon the order in which the vending trucks were registered with DCRA.
- (B) The MPD official then takes out approximately 200 poker chips numbering from 1-200, representing vending trucks registered in D.C. The MPD official then calls out numbers 1-200 to see which vendors (based on their truck numbers) are present to participate in the lottery drawing.
- (C) Next, the MPD official then places chips containing numbers belonging to vendors who are present for the lottery drawing into one bucket and those containing numbers belonging to those who are not present for the drawing into another.
- (D) The MPD official then shuffles and draws approximately 76 chips from the bucket containing chips belonging to vendors who are present for the lottery drawing, one by one.
- (E) The MPD official then writes the numbers on the 76 chips selected onto a pre-printed piece of paper with boxes numbering 1 to 76 (this pre-printed piece of paper contains 6 columns and 13 rows, numbering 1-76) in accordance to the order in which they were selected from the bucket. These 76 chips represent vendors who are "winners" of the vending lottery for that particular month.
- (F) Next, to determine a particular day and specific location in which a lottery winner would be permitted to sell their products, MPD officials would call out "Wednesday," and then select 38 chips from the lottery winner bucket, one by one, and write down the chip number on a pre-printed sheet of paper with a column marked "Wed, Thurs, Fri, Sat, Sun, Mon, Tues" and rows with even numbers 2-76 on the left hand margin and odd numbers, 1-75 on the right hand margin.
- (G) The MPD official then puts all 76 winning chips back into a bucket and selects 38 chips, one by one, for "Thursday," and marks it down on the same piece of paper described in the above paragraph.
- (H) The MPD official goes through the same selection process for Friday, Saturday, Sunday, Monday, and Tuesday until the pre-printed piece of paper with days of the week as columns and numbers 1-76 as rows is completed.

In addition, rather than conducting the lottery to allocate vending sites for the month of June only, as is required under the current regulations, Officer Steinbach selected vending sites for July and August as well with a similar defective results. When a participating vendor asked Officer Steinbach about how he chooses vending sites and why she was not awarded any sites for three months, Officer Steinbach merely responded that “well, you have bad luck!”

In contrast, a vendor who is known throughout the D.C. vending community to be a good friend with Officer Steinbach (who possesses six registered vending trucks by using her family members as straw venders in name only) was awarded favorable vending locations on favorable days of a week for June, July, and August.

In response to the unexplained irregularities that occurred in this past June lottery, DCRVA collected the following signatures from participating vendors for the purpose of demanding a redrawing. Signatures obtained by DCRVA from vendors who support DCRVA’s initiative to make the lottery process more transparent and open to the public are attached as Exhibit 1. Fortunately, the MPD recognized the various problems that occurred the June lottery drawing and had a redrawing held in public.

The severe irregularities that occurred at this past June lottery drawing (where it was conducted in private by this MPD officer without any public viewing), therefore, support DCRVA’s position that the lottery selection process should be open to the public and be conducted at a public location to prevent any potential fraud, real or perceived, that may occur from unscrupulous vendors bribing vending lottery officials.

Although the Proposed New Vending Regulations have yet to go into effect, Mr. Sam Williamson, who heads up vending at DCRA, already suggested that the lottery should be conducted in vending lottery officials’ office, because it is too inconvenient to hold the lottery in a public setting. If Mr. Williamson’s suggestion is followed by DCRA, there would be no public verification of the lottery selection to prevent potential fraud, irregularities, and abuse.

**(2) *Maintaining The Restriction Under the Current Vending Regulations That “No Vendor May Be Assigned More than One Site Per Month”***

Section 515.28 of the Current Vending Regulations, Chapter 5, Title 24 of the District of Columbia Municipal Regulations states in pertinent parts the following:

“No vendor may be assigned more than ***one site per month***, and only one (1) vendor may occupy an assigned site.” (Emphasis added).

However, Section 530.2(d) of the Proposed New Vending Regulations changed this restriction to two vending sites per month. Section 530.2(d) of the Proposed New Vending Regulations states the following:

“No vendor shall be issued Roadway Vending Site Permits for more than *two (2) Roadway Vending Sites.*” (Emphasis added).

DCRVA requests that the current restriction under Section 515.28 of the Current Vending Regulations limiting a vendor’s site assignment to one site per month to remain the same. Currently, the monthly vending lottery is being held for food vendors who hold a Class A License and souvenir vendors who hold a Class B License.

Among the current registered vendors, there are some who hold both a Class A License as well as a Class B License, and possess more than two vending trucks. During current monthly lottery drawings, these vendors with multiple vending trucks would register for both Class A lottery and Class B lottery. These vendors would then choose either to sell food (under Class A License) or to sell souvenir (under Class B License) during a particular month depending on the date and location awarded through the lottery. Generally, weekend dates are more preferred than weekdays and certain location in the city is more desirable than others. Because vendors having both Class A and Class B License cannot sell at two places at the same time, he/she would sell at only one location while leaving the other location empty.

Additionally, there are instances where vendors with multiple trucks who participated in both Class A lottery and Class B lottery hired non-licensed individuals to sell at the less desirable location. This leads to an inequitable result to a vendor who participated in the lottery process yet was not selected for any vending site assignment during particular month as well as vendors who only possess one vending truck and one Class of license.

One of the main goals behind D.C. vending legislation/regulations is to provide business opportunities for “[w]omen, minorities, veterans and individuals who have been displaced or denial entry into the formal economy”<sup>2</sup> so that they can “generate income and pursue entrepreneurial opportunities.”<sup>3</sup> By permitting wealthy vendors with multiple vending trucks the opportunity to pick the more favorable vending site and discard a less favorable vending site while leaving vendors (who only possess one vending truck) who were not awarded any sites empty handed violated one of the main goals of the legislation (i.e. to provide economically disadvantaged individuals with business opportunities in the District) itself.

DCRVA, therefore, urges that DCRA and the D.C. Council to maintain the restriction in the Current Vending Regulations that no vendor (regardless of how many different Classes of licenses and vending trucks that he/she possess) may be assigned more than one vending site per month. In order to prevent vendors with multiple vending trucks from taking unfair advantage of the lottery process (by entering multiple trucks to increase their odds of winning the lottery), DCRA and the D.C. Council should adopt regulations whereby a vendor holding both a Class A License and Class B License must choose beforehand to participate in either the Class A lottery or Class B lottery but not both.

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<sup>2</sup> DCRA’s Report to Council for Lifting the Vendor Moratorium-June 1, 2006, p. 5.

<sup>3</sup> *Id.*

Alternatively, DCRA and D.C. Council should enact additional regulations mandating that vendors with both Class A and Class B Licenses who were awarded two vending locations in the same month must choose either the Class A vending site assignment or Class B vending site assignment, but not both, and relinquishing the second vending site assignment back into the lottery pool so that non-selected vendors will have an additional opportunity to work during a particular month. In sum, DCRA and D.C. Council should adopt regulations that would increase work opportunities for more vendors rather than reducing them to further the goals and legislative purposes of the vending legislation/regulations.

**(3) *Maintaining The Requirement In Current Vending Regulations That The Vendor That Holds The Vending License Must Be Present On-Site While Either Food or Merchandise Are Being Sold to Customers***

Section 502.2 of the Current Vending Regulations, Chapter 5, Title 24 of the District of Columbia Municipal Regulations states that:

“No person shall vend any article, merchandise, or food from public space in the District of Columbia without first obtaining from the Mayor a license to do so...”

Section 515.29 of the Current Vending Regulations then states that:

“No lottery registration or site assignment made through the site assignment lottery is transferable.”

When read Section 502.2 and 515.29 of the Current Vending Regulations, it then becomes a requirement that the licensed vendor who was awarded a site assignment through the monthly lottery must appear himself/herself while food or merchandises are being sold. He/She cannot be absent from the vending site while food or merchandises are being sold by employees or independent contractors.

Section 553.1 of the Proposed New Vending Regulations, however, seeks to change this requirement. Section 553.1 of the Proposed New Vending Regulations states the following:

“No person shall work a vending business unless the person is licensed vendor of the vending business *or is an employee or independent contractor of the vendor holding a valid Vendor Employee Identification Badge.*”  
(Emphasis added).

Section 553.3 of the Proposed New Vending Regulations then establishes a mechanism whereby an employee or independent contractor of the vendor of the vending business can work without the licensed vendor being present. Section 553.3 states the following:

“An employee or independent contractor of a vendor may operate the vendor’s Class A vending business without the vendor being present; provided, that the employee or independent contractor holds a valid food protection manager certificate and a DOH-issued certified food protection manager identification card.”

Under the new regime proposed by the Proposed New Vending Regulations, a vendor who is no longer working in the industry will be permitted to maintain his/her preference in the lottery system by simply hiring an employee to work on his/her behalf (even though he/she no longer physically work in the industry) while preventing vendors who hold new vending licenses issued after the 2006 (when the vending moratorium was lifted) to ever enter the industry. This, on its face, is anticompetitive.

There is yet another problem with adopting a provision permitting employees or independent contractors to work without requiring the licensed vendor to be present on sight. There are vendors who are known in the D.C. vending community as being vendors in name only. They have not physically work as vendors for more than five (5) years. They actually possess outside employment as computer scientists/information system analysts and other jobs within the private sector but nevertheless maintain their vending license so that they can receive additional/supplemental income from the vending business by hiring others to sell on their behalf.

By permitting vendors to have employees or independent contractors while not requiring them to be present on-sight when food and merchandises are being sold, the new regulations takes away business opportunities from vendors who are dependent on vending assignments for their livelihood. As indicated above, the goals of the vending legislation/regulations are to provide business opportunities for “[w]omen, minorities, veterans and individuals who have been displaced or denial entry into the formal economy” so that they can “generate income and pursue entrepreneurial opportunities.” Any vending regulations that prevent competition and establish barrier to entry into the industry against new vendors while favoring wealthy vendors or vendors who no longer require economic assistance, therefore, should not be adopted since they directly violate the legislative purpose and spirit of the vending legislation itself.

In addition to the anti-competitive nature of Section 553.1 and Section 553.3 of the Proposed New Vending Regulations, these new provisions also have another negative, unintended effect. Under both the Current Vending Regulations and the Proposed New Vending Regulations, there is a provision whereby vendors are not permitted transfer their site assignment received through the lottery. Section 515.29 of the Current Vending Regulations states “[n]o lottery registration or site assignment made through the site assignment lottery is transferable.” Similarly, Section 530.9 of the Proposed New Vending Regulations states that “[n]o lottery registration or Roadway vending Location assignment or permits may be transferred from a vendor to any other person.”

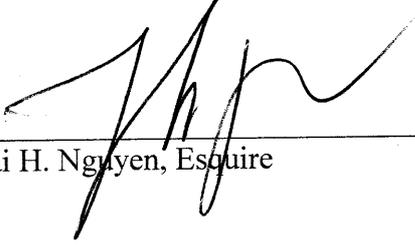
The purpose of these provisions and restrictions are to ensure that only vendors who actually work in the vending industry receive site assignments through the lottery process.

Regulations should dissuade and prevent vendors who do not actually work in the industry but nevertheless exist by name only from participating in the lottery process and selling off (or otherwise transfer) site assignments for money. If Section 553.1 and Section 553.3 of the Proposed New Vending Regulations are adopted, the limitations on transferability of site assignments under both the Current Vending Regulations and the Proposed New Vending Regulations would be frustrated. Vendors who are currently in the vending industry by name only or vendors who are in the process of leaving the industry simply maintain their business licenses, participate in the lottery process, registered other individuals or vendors as employees or independent contractors, and then sell off site assignments that they were awarded through the lottery to other individuals thereby circumventing the non-assignment provision.

In sum, Sections 553.1 and 553.3 of the Proposed New Vending Regulations would permit non-working vendors to go through the back door where they were not permitted to go through the front door in terms of transferring their lottery site assignments. Based on the above, DCRVA urges DCRA and D.C. Council to reconsider their positions and keep the requirement that licensed vendors who were awarded site assignments must be present on-sight when foods or merchandises are being sold.

DCRVA members and representatives would like the opportunity to meet further with DCRA and the D.C. Council to discuss the requested changes/amendments stated above. Thank you for your assistance in this matter.

Very truly yours,



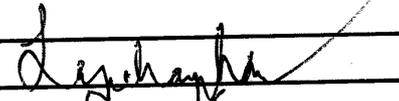
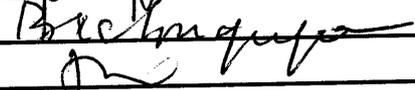
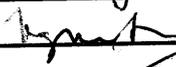
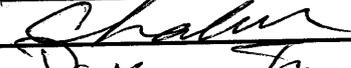
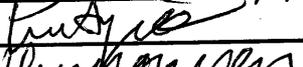
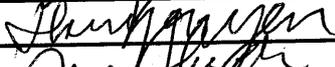
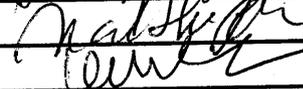
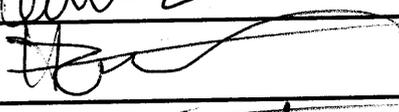
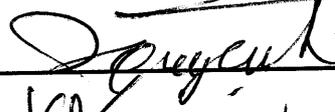
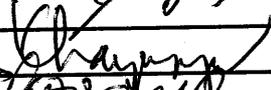
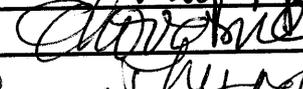
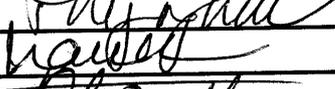
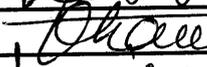
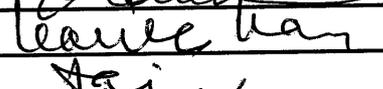
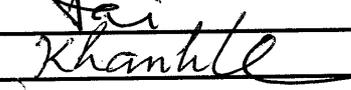
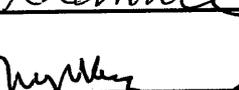
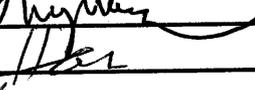
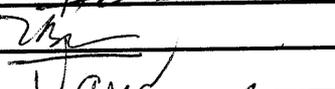
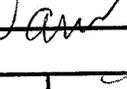
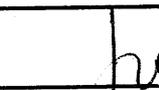
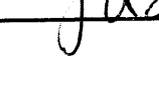
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Thai H. Nguyen, Esquire

Enclosures.

# **EXHIBIT 1**

I/WE, by signing my/our name to this PETITION, hereby demand that the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") and the Metropolitan Police Department ("MPD") to make the vending lottery selection process transparent by permitting participating street vendors to view, in person, the monthly vending lottery selection by DCRA/MPD representatives.

Name	Signature
LAP PHAN	
Bich Thi Nguyen	
VINH NGUYEN	
HABUI P NGUYEN	
CHAU LUU	
DUKE TRAN	
TRUC NGO	
AN NGUYEN	
Ha Thanh Do GILE	
Hao Nguyen	
TRINH NGUYEN	
KHANG NGUYEN	
CHIA VO	
Phu Nguyen VO	
KHIM TICH TRAN	
MY TUYET TRAN	
Luan Binh Le	
Jai Nguyen	
KHANH T LE	
DUNG VUONG	
Quach Hai	
BE TRAN	
Jam Nguyen	
DUONG HOANG	
HOANG NGUYEN	



