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Dennis A. Corkery

Senior Counsel,

Washington Lawyers' Committee for Civil Rights and Urban Affairs

Street vending is an economic lifeline for many District residents of color who are cut off from traditional jobs. Street vending is a part of the cultural fabric of this city. Street vending is also nearly impossible to do while in compliance with the District's overly complicated and expensive regulatory scheme. The fines are too high and there are too few spots in this City for vendors to vend. This Council has already taken action to remove criminal penalties for not adhering to that complicated scheme – but it will be years before that goes into effect. The Council needs to remove those penalties now and to make vending easier and more accessible. It has the opportunity to do that before 2022 ends. And it should do so because this is a matter of racial justice.

My name is Dennis Corkery. I am a Senior Counsel at the Washington Lawyers' Committee for Civil Rights and Urban Affairs ("the WLC"). I am also a resident of the Mt. Pleasant neighborhood. Street vendors are my neighbors. They are fixtures in the community that I see every day and are part of why I am proud to live and work in the District. The WLC supports the passage of both the Street Vending Decriminalization Act of 2021 and the Sidewalk Vending Zones Amendment Act of 2021, and we urge the DC Council to act on these bills before the year's end.

Street vendors in the District are overwhelmingly Black and Brown individuals.¹ Many of them are immigrants, and many of them do not have legal status.² These vendors sell traditional El Salvadorian food as the Spanish speaking-mass gets out at Sacred Heart Church, hot dogs to hungry attorneys rushing into Superior Court, and beautiful artwork to the leisurely shoppers on 14th Street.³ During the holiday rushes, street vendors have Valentine's Day and Mothers' Day bouquets ready for the last minute shopper catching the train at Columbia Heights Metro station. Immigrant vendors share their traditions and culture with all of us in the District. They also support the DC economy by purchasing supplies and ingredients from wholesalers and driving foot traffic to other shopping areas.⁴ These members of the community deserve better.

¹ *Where the Sidewalk Ends Part II*, Beloved Community Incubator, 4.

² *See Where the Sidewalk Ends*, Beloved Community Incubator, generally.

³ *Where the Sidewalk Ends Part II*, Beloved Community Incubator, generally.

⁴ Indeed a study by the institute of Justice estimated that in the year 2012 alone, street vendors added \$292.7 million dollars to the New York City Economy through wages and spending. *See* Carpenter, Dick M. *Upwardly Mobile: Street Vending and the American Dream*. September, 2015. 28-30.

A. Current DC Law Creates Draconian Barriers to Legally Street Vending

Despite the positive cultural and economic benefits that street vendors provide to the District, they face plenty of obstacles to successfully sell their wares without fear and in compliance with the law as it currently stands. They encounter the same barriers that other workers of color face in doing their jobs such as discrimination from law enforcement, creditors, and DC Government officials unwilling to speak to them in a language other than English. They are also subject to byzantine regulations and restrictions that even seasoned attorneys would have trouble following. For example, a street vendor needs both a basic business license and a vending permit.⁵ Such business license requires a tax ID and corporate registration.⁶ For those selling food, it requires additional certifications.⁷ Vending site permits are only issued for a few designated locations in the city,⁸ which limits their availability and the ability of a vendor to move to where foot traffic and business might be more profitable.⁹ There are fees involved with each of these processes, which can total in the thousands of dollars.¹⁰ The law requires vendors to interact with three different DC agencies: the Office of Tax and Revenue, the Department of Health, and the Department of Licensing, which was formerly the highly troubled and ineffective Department of Consumer and Regulatory Affairs.¹¹ Once the vendor makes it through the complicated licensing process, there are a labyrinth of confusing regulations mandating everything from the size of a vending cart, its position on the sidewalk, and the amount of water a vendor must have on hand.¹² These complicated and expensive processes are why many vendors chose to do their jobs without a license. There should not be a criminal penalty for being unable to jump through excessive regulatory hoops.

The current civil penalties for DC's complicated licensing scheme are substantial. Civil penalties can start at \$50 for a first time offense of something as simple as having an umbrella that is nine foot and one inch in diameter¹³ to \$2000 for the first time vending after a license has expired.¹⁴ These fines can escalate for multiple offenses.¹⁵ These financial penalties can be a heavy lift to pay, especially when vending is the only source of income that these vendors have. The effects of the civil penalties are

⁵ D.C. Mun. Regs. tit. 24 § 599.1.

⁶ *Id.* at § 502-04.

⁷ *Id.*

⁸ *Id.* at §§ 524.1-524.4

⁹ *Id.* at § 502-04.

¹⁰ *Id.* at § 502 DCMR 502; *Vending Handbook*, Department of Consumer & Regulatory Affairs, 2013 Edition,

<<https://dlcp.dc.gov/sites/default/files/dc/sites/DLCP/publication/attachments/Vending%20Handbook.pdf>>

¹¹ D.C. Mun. Regs. tit. 24 § 502-04.

¹² *Vending Handbook*, Department of Consumer & Regulatory Affairs, 2013 Edition,

<<https://dlcp.dc.gov/sites/default/files/dc/sites/DLCP/publication/attachments/Vending%20Handbook.pdf>>

¹³ D.C. Mun. Regs. tit. 24 § 545.2(a); tit 33 §§ 3313.4(g) & 33-3201.1(e)(1)

¹⁴ D.C. Mun. Regs. tit. 33 §§ 3313.1(j) & 3201.1(a)(1).

¹⁵ *Id.* at 3201.1.

compounded by DC’s “Clean Hands Law,” which prevents the District from issuing a license to anyone who owes more than one hundred dollars to the DC government.¹⁶ As a result, individuals who have incurred penalties may be trapped in a Dickensian cycle of poverty, whereby they are shut off from their livelihood and, finding themselves deprived of an income stream, lose any ability to pay off the penalties they owe.

B. Supporting Street Vending Supports Racial Equity

District leaders should remove unnecessary barriers to vending because street vending is a perfect opportunity to earn a living for people of color who are often closed off from traditional employment. Immigrants without status can struggle to find an income because they are cut off from jobs elsewhere. Even those who have work authorization can face difficulty in finding good paying jobs near where they live. Street vending does not have a citizenship test and can be a chance to earn a living.

For individuals who have completed their criminal sentences, finding work can be just as difficult.¹⁷ According to a report from the United States Commission on Civil Rights, a person with a criminal record is fifty percent less likely to receive a call back for an interview or job offer – a figure that increases to sixty percent if the applicant is Black.¹⁸ The lack of a job when coming home can lead to cycles of poverty and recidivism.¹⁹

For these DC residents trying to start a new life, street vending could be a path to economic stability after incarceration. With no boss or overly broad background check to discriminate against them, vendors can open up shop on the street corner and work for themselves. They can earn money to build a new future and help them heal from their convictions. Street vending is also a way for returning citizens to interact with their community and become recognizable faces on the street, which can mean more support from that same community to keep them from reoffending.²⁰

C. The Council Should Act to Protect Vendors This Year

Because they will advance racial equity in the District of Columbia, the WLC strongly supports the Street Vending Decriminalization Act of 2021 and the removal of criminal penalties for the misdemeanor of vending without a license. The sentence for

¹⁷ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, United States Commission on Civil Rights, June 2019, at 35.

¹⁸ *Id.* at 35-36.

¹⁹ *Id.* at 36.

²⁰ *See Former prisoners who believed they could legally vote land back behind bars in Florida*, PBS News Hour, Oct. 24, 2022 < <https://www.pbs.org/newshour/show/former-prisoners-who-believed-they-could-legally-vote-land-back-behind-bars-in-florida>>.

that conviction can be up to a \$500 fine and/or six months in jail.²¹ The WLC also supports the broad overhaul of DC’s criminal code, which includes decriminalizing vending without a license, and we are grateful for the Council’s first vote on that legislation. Nevertheless, under that legislation vending without a license would remain a crime until 2025. The bill that the Council is considering today would remove this misdemeanor from the code as soon as the Congressional review period ends. It is straightforward with no need for a new agency, regulatory scheme or funding: it simply removes vending without a license from the criminal code. There is no reason in delaying a vote on this simple yet vital piece of legislation while that larger statutory fix makes its way to passage and goes into effect.

The Street Vending Decriminalization Act of 2021 will have many positive impacts. First, it will reduce the unnecessary physical and economic burden that a criminal charge and conviction can place on vendors. Incarceration, even for a short period of time, can have a heavy toll on a person. The conditions at the Jail are horrendous: mold, sewage over flows, and a lack of medical care are just some examples of the inhumane conditions that incarcerated people face at our jail.²² Time in the jail means a burden on the vendor’s family and children and lost income to support them. Even a trip to Superior Court to answer the charge is time away from making money and an economic hardship. Is that the right response for selling a hot dog without filing out the correct paper work?

The consequences of a conviction have long reaching effects beyond just a fine or jail time. Because the District of Columbia does not currently have an effective mechanism for expungement, a conviction can be part of a criminal background check forever. It can raise red flags to potential employers,²³ landlords,²⁴ and lenders.²⁵ For undocumented residents, the criminal violation can have even more serious consequences such as being placed in ICE’s custody and even deportation.²⁶ For returning citizens, criminal penalties mean a risk of a return to the carceral system and a disruption on the process of reintegrating into society.

Second, decriminalizing street vending is a matter of racial justice. The criminal system already disproportionately affects Black and Brown people.²⁷ Indeed, NEAR Act Data released by MPD in 2021 showed that even though Black people only make up just

²¹ D.C. Code § 37-131.08(2).

²² Hsu, Spencer & Paul Duggan, “Unacceptable conditions at D.C. jail lead to plan to transfer about 400 inmates, officials say. *The Washington Post*. Nov. 2, 2021.

²³ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, United States Commission on Civil Rights, June 2019, at 35.

²⁴ *Id.* at 60

²⁵ Bushway, Shawn D., Brian G. Vegetabile, Nidhi Kalra, Lee Remi, & Greg Bauman, *Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks*, 2022 at v.

²⁶ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, United States Commission on Civil Rights, June 2019, at 27-28.

²⁷ *Id.* at 19.

half of the District’s population, seventy percent of stops by MPD officers were of Black people.²⁸ The statistic for street vending without a license are even worse: recent data from the D.C. Sentencing Commission shows that from January 1, 2018 until September 30, 2022, 81 percent of those arrested for vending without a license were Black, and over ninety-five percent were people of color.²⁹ Because street vendors are nearly all people of color, criminalizing their livelihood only exacerbates these racial disparities

Third, decriminalizing vending decreases negative interactions between the community of vendors and the police. Even if no unlicensed vendor is ever prosecuted, fined, or jailed for their violation, vendors will always be in opposition to the police as long as their activity remains criminalized. MPD officers will always have the power to arrest a vendor. That decision is entirely at their discretion, which can lead officers to harass, threaten and abuse their power – as they did with the Lemus family, who was violently harassed by an MPD officer.³⁰ It also means vendors cannot report crimes against them to the police. If a vendor is assaulted or robbed, they have no recourse and cannot ask MPD for help. Especially for undocumented vendors, there is a real risk in reporting police abuse if that could only lead to an arrest and then ICE custody. MPD cannot participate in it’s stated goal of “community policing” when regular fixtures in the community, people who are at the same corner day in and day out are constantly under the threat of police abuse.

Fourth, the current criminal penalties of fine or jail time are duplicative of the civil penalties that are already on the books and are enforced by DC officials. To be sure, these civil penalties are extreme and should be readjusted to better focus on creating an achievable path to compliance than punishing vendors. Yet the severe financial penalty of the existing civil fines, which can go as high as \$16,000 for repeated offenses, are a harsh deterrent and punishment that do not carry the same moral condemnation and collateral consequences of a criminal penalty.

Decriminalizing street vending without a license supports race equity because it allows more economic paths for immigrants and people of color while putting fewer of them into the dangerous criminal system. Vendors are earning their livelihoods and supporting their families. Paying rent and buying groceries should be supported, not punished. If DC values its urban diversity, then it should support street vendors. If it’s commitment to being a sanctuary city is more than lip service, than it should make sure that immigrant street vendors can thrive without threats from MPD.

²⁸ Asutermuhle, Martin. D.C. Police Release Long-Delayed Stop-And-Frisk Data, Showing Racial Disparities in Stops. *WAMU*. Sept 10, 2019. < <https://wamu.org/story/19/09/10/d-c-police-release-long-delayed-stop-and-frisk-data-showing-racial-disparities-in-stops/>>.

²⁹ October 1, 2022 Letter from Emily Blume of District of Columbia Sentencing Commission to Geoff Gilbert, Beloved Community Incubators.

³⁰ *Where the Sidewalk Ends*, Beloved Community Incubator, 1.

The WLC also supports the Sidewalk Vending Zones Amendment Act of 2021 that would allow the District to expand areas in the City in which vendors could legally vend and create a “sidewalk manger license,” which could be held by nonprofits and cooperatives that could take on the administrative burden and responsibility of compliance with regulations. This law would make it easier and more accessible for vendors to safely sell their goods. This legislation will open up legal vending because it will allow those with manager licenses to take on the complicated task of dealing with the regulatory requirements and opening up more vending sites.

D. The Council and District Officials Need to Do More in 2023

Although the two bills the Council is currently considering are important first steps to support vendors, the WLC strongly urges the Council and District leaders to take more steps in 2023 to make vending more accessible. The Sidewalk Vending Zones Amendment Act of 2021 expands street vending sites, but it does not go far enough. The confusing regulatory and fine structure remains in place and should be fixed.

The District should ensure that vendors are able to access the support and resources that other entrepreneurs in the District receive. A more just regulatory scheme and support for vendors will not only benefit the vendors but consumers as well. There are important health and safety regulations that the District should have in place to ensure that the food vendors sell is safe to eat. Bringing down barriers to accessing a license and also working with vendors to focus on the safety of their wares will have the dual impact of bringing more vendors into compliance while keeping customers healthy.

We support the solutions that have been put forth by collectives of directly impacted vendors to make vending more accessible with the same access to support and resources that other entrepreneurs in the District receive.³¹ For example, The District should invest in outreach and financing strategies for street vendors. It should invest in navigators to help vendors sell their goods in line with common sense health and safety and tax regulations. There should be new laws and regulations that increase where in the City vendors can vend and focus on getting vendors in compliance instead of fining them. The District should pay more than lip service to the DC Language Access Act so that immigrant vendors can more easily interact with the relevant agencies. The District should rethink how it evaluates past criminal convictions in how it allocates licenses to broaden opportunities to returning citizens. Above all the focus should be on supporting these community members instead of punishing them. In the next legislative session, we are hopeful that the Council will be open to more legislation that will support vending.

For over half of a century, the Washington Lawyers Committee has advocated to make the DC region a more equitable place to live, work, and raise a family by fighting

³¹ *Where the Sidewalk Ends Part II*, Beloved Community Incubator, 6-8.

to dismantle the legacies of slavery and systemic racism. Since its founding, the WLC has worked to reduce interactions between the criminal system and people of color and to increase access to jobs that can provide economic security for members of marginalized groups. We are mindful that what is generally referred to as “the March on Washington” that occurred a few blocks from here and changed the course of the civil rights movement was fully titled the “March on Washington for Jobs and Freedom,” and believe that justice and economic opportunity go hand in hand.

Street vendors seek the same jobs and freedom as all District residents do and the WLC is proud to stand with them in their fight for justice. The WLC urges the Council to lift up these workers of color who are making the District the thriving place that it is and pass the Sidewalk Vending Zones Amendment Act of 2021 and the Street Vending Decriminalization Act of 2021.