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Washington, DC vs. Entrepreneurs

DC's Monumental Regulations Stifle Small Businesses



Cover Photos

Top—D.C. forces tour guides, like Bill Main and Tonia Edwards, to first pass a government-mandated test before they may speak. This is unconstitutional, and the District government does not possess the power to decide who may or may not speak.

Bottom—Washington, D.C.'s vending laws strangle creativity by micromanaging the size of vendors' carts, where they may operate, and even what kind of food they may serve. D.C. should start over, replace the existing vending rules with narrow regulations that protect public health and safety, and then get out of the way.

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Introduction

The District of Columbia is not only our nation's capital; it is a city of great history, one which people from all across the world have made their home. But, perhaps because Washington, D.C. is the center of federal power, it has for too long clung to the idea that there is no problem that government cannot fix. As a result, the District government has enacted one rule after another, over time creating a thicket of regulations that stifle the ingenuity and entrepreneurial drive of countless Washingtonians.

The lack of entrepreneurship in the District can be laid directly at the feet of its government. Twenty years ago, the Washington Monthly magazine called the D.C. government "[t]he worst city government in America."¹ Although it noted that corruption was dramatic, the article also explained how the everyday incompetence of city officials hurt the District's residents, particularly its poor.

Little has changed since then. Year in and year out, Washington, D.C. is at the very bottom of the Small Business & Enterprise Council's Small Business Survival Index. If anything, the District's last-place ranking understates how bad it is in the city: The Council each year notes "that the District of Columbia was not included in the studies on the states' liability systems, eminent domain legislation and highway cost efficiency, so D.C.'s last place score actually should be even worse."²

Entrepreneurship is the foundation of economic growth in this nation and the root of the American Dream. Arbitrary and excessive government regulations, however, create roadblocks to economic self-sufficiency. For those who are trying to take their first step up the economic ladder, these barriers can be insurmountable. Rather than pursuing their dreams, too many District residents move to more hospitable jurisdictions, take their businesses underground or simply give up. Here are just a few of the ways the District stifles entrepreneurship:

- Washington, D.C.'s vending laws strangle creativity by micromanaging the size of vendors' carts, where they may operate, and even what kind of food they may serve. Although the District has proposed new regulations, many



of the worst practices from the past continue to stifle consumer choice. The District should start over, replace the existing vending rules with narrow regulations that protect public health and safety, and then get out of the way.

- D.C.'s open taxicab model has been a success story, but the District has been doing its best to turn that success into failure. The government has no business deciding who may compete or how much competition is "enough." The District should rescind its moratorium on new taxi driver licenses, let new taxicab companies open, and stop unfairly punishing independent cabbies who live outside the District.
- Human-powered pedicabs are a fun and exciting new transportation option in the District. And because of their novelty, the Washington, D.C. government has yet to regulate them despite requests by major pedicab companies. To avoid killing this industry before it has even really begun, the District should only require that pedicab operators have a driver's license and insurance.
- Permitting in Washington, D.C. is an absolute mess. Although stories of corruption get the headlines,

it is the complex permitting process and District bureaucrats' indifference that crushes too many entrepreneurs' dreams. Too often, what should be a simple task turns into an expensive and time-consuming ordeal because of confusing rules and contradictory orders given by different officials.

- D.C. has the dubious distinction of being one of only a few jurisdictions nationwide that forces interior designers to get the government's permission before they practice. When the Obamas redecorated the White House, they hired a world-renowned designer who wasn't licensed in the District. What is good enough for the President is good enough for all District residents. D.C. should repeal its interior design licensing law and let consumers decide for

themselves who to get interior-design advice from.

- D.C. forces tour guides to first pass a government-mandated test before they may speak. This is both wrong as a matter of policy and flatly unconstitutional. The District government does not possess the power to decide who may or may not speak.
- The District's confusing and complex regulations force too many entrepreneurs who would like to operate as a home-based business to either give up or operate in secret. No one should have to get a license before they write a book or paint a picture in their home.

This dreadful state of affairs for entrepreneurs in our nation's capital needs to change. This is particularly true given the District's financial woes: In June 2009, the city reported that it faced a \$340 million budget shortfall during the next two years. This report reviews many of the rules and red tape that Washington, D.C. entrepreneurs and small businesses struggle with

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every day. Time and again, the problem facing would-be entrepreneurs in the District is a combination of a complex set of policies and a bureaucracy whose indifference can often make a bad situation worse.

In a few areas, the District has largely gotten things right. Its open model of taxicab regulations, for instance, makes getting a ride both inexpensive and convenient. But even here, some groups have employed various methods—some legal, others less so—to try to get the District to say who may and may not compete. Thankfully, these efforts have been largely unsuccessful so far.

Rather than try to shut down one of the District's few success stories, Washingtonians should learn from it. The keys to success are simple: provide would-be entrepreneurs with clear and simple rules that legitimately protect public health and safety, keep fees low and give civil servants an incentive to provide solid customer service. And then the government needs to do one more thing: stay out of the way. By pruning away the complex and confusing regulations that stifle economic creativity, the D.C. government can let flourish the many flowers of entrepreneurship and economic growth.

To succeed, the District needs to reform and simplify its muddled bureaucracy, and then stand aside as energetic and vibrant entrepreneurs expand services, employ themselves and put many other District residents to work. Laws preventing entrepreneurship foster an overall attitude that people are not allowed to create or innovate, that everything is forbidden without government permission. These barriers do not just suppress the freedom of entrepreneurs, but everyone's freedom. They eliminate consumer choice and destroy the sense of possibility and innovation that is vital to our nation.

Street Vending

Street vending is a quick, convenient and cheap way to get food to consumers on the go. And, because a food cart can have much lower startup costs than a brick-and-mortar restaurant, opening a food cart can often be someone's first foray into business. But outside of a narrow geographic area, the District enforces draconian regulations that stifle entrepreneurial drive and restrict consumers' food choices.



Street vending can have much lower startup costs than a brick-and-mortar restaurant. Opening a food cart can often be someone's first foray into business.

The District government should learn its lesson from the success of vending carts and expand its “demonstration zone” to encompass the entire city. By establishing clear and simple rules, D.C. can provide both economic opportunity and a wide variety of tasty and inexpensive dining options to District residents.

The District has historically been guilty of putting punishing restrictions in the way of its culinary entrepreneurs. In 1998, the City Council enacted the Omnibus Regulatory Reform Act, which imposed a moratorium on new vending licenses. The Act caused the number of District food vendors to fall from 1,200 to only 200 when D.C. finally lifted the moratorium in 2006.³

In addition to the moratorium, the District has also been very strict about the size of carts, what they could cook and where they could be stored. These restrictions stifled many entrepreneurs. One person they nearly put out of work is James Tiu, a former D.C. lawyer who opened the Honest to Goodness Burritos food cart in 1994. Tiu offered only meatless burritos due to the District's regulations.⁴ But regulators in 1997 forced Tiu to shut down his cart after telling him that the rice in his burritos was not on the approved list of vending foods.⁵

A year and a half of letter-writing, lobbying and testifying could not move the District government. Only after Tiu drafted amendments to the regulations and had a food-safety expert test his meatless burritos was he ultimately able to resume pursuing his livelihood.⁶ As Tiu notes, many vendors “are the smallest and most vulnerable businesses in D.C.”⁷ Tiu readily admits that “I couldn't have done it without the help of a lawyer. And I was the attorney.”⁸

This restrictive regulation sharply limited the District's mobile food offerings. For years, nearly every food cart offered two of the few items the regulations explicitly permitted: hot dogs and half-smokes. Of the 200 or so carts operating in 2006, only three served something other than hot dogs or half-smokes. Tiu succeeded in getting meatless burritos added to the list of approved foods, but the regulations did not expand any further.

Not surprisingly, the street-food scene in the District has been consistently criticized. Local bloggers, for instance, complained about the lack of variety and quality in food carts.⁹ The executive chef of the D.C. Central Kitchen called it “an embarrassment.”¹⁰ And a survey the D.C. government conducted in 2006 revealed that almost two-thirds of respondents thought the variety of food offered by District vendors was poor.¹¹

Recent changes, though, have expanded competition and increased the District's mobile food options. First, the City Council in 2005 lifted the vending moratorium that it put in place back in 1998. Then, in 2006, the District established a 32-block “demonstration” zone where it relaxed

requirements about where carts may be located and what foods they may serve. The Department of Health, for instance, amended the District's Food Code to let vendors sell all kinds of food, not just hot dogs and half-smokes. The reforms led to a tremendous expansion in the number and variety of food carts in the area. By fall 2007, the District approved 21 new licenses—but only in the demonstration zone.¹² Where there had once been only hot dogs, there is now shawarma, bulgogi, and the local organic and health-conscious offerings served by On The Fly's quirky green mobile carts.

Not everyone, however, was happy. The Department of Health requires all food carts, when not in use, to be garaged at an approved storage depot. Larger operations with both a fixed restaurant and a mobile food truck use the restaurant as the depot. But many small vendors with no affiliated restaurant must garage their carts in one of the few commercial depots in the District.

Depot owners make their money both by charging rent to vendors and by selling them hot dogs and other supplies. The rent that vendors paid often depended on how much food they bought: Although someone who bought exclusively from the depot may pay only \$75 to \$100 per month, others paid much more. As one of the depot owners said, "There are no contracts to buy our food, but to keep us in business, there's an unwritten rule."¹³ The garages have expressed concern both about the growing diversity in what food vendors sell—because a vendor selling

shawarma won't be buying Utz chips and half-smokes—and about the fact that the District has exempted some vendors from having to garage their carts at the depots at all.¹⁴

Some existing vendors also complained about the increased competition the new laws have brought. A few even retaliated by scoping out their new competition in order to catch them violating some regulation. When new vendors do slip up, others will call the cops so that "[t]he police take them far away."¹⁵ But the established industry's loss is the consumer's gain. The District, rather than retrenching, should continue in its efforts to spread entrepreneurship.

Although the District lifted the moratorium on new vending licenses in 2006, the Department of Consumer and Regulatory Affairs did not follow that up with new vending regulations. For those outside of the demonstration zone, that meant dealing with an antiquated regime that effectively kept many entrepreneurs from starting their businesses. Vendors outside the zone, for instance, had to continue to comply with the restrictive regulations that limited the size and location of their carts. The small carts, according to Gabe Klein, former owner and CEO of On The Fly, give entrepreneurs insufficient space to prepare most kinds of foods. As a result, said Klein, "You can only do hot dogs . . . unless you're very innovative."¹⁶

The slow pace of the District's reforms has benefitted its closest neighbors. In 2008, a new food cart appeared in Arlington, Virginia. Selling delicious Neapolitan pizza and crepes, the bright red Papatella cart was quickly recognized as one of the best new food-service businesses in the area. How did Arlington score such a great cart? Through the District's indifference. When co-owners Anastasiya Laufenberg and Enzo Algarme started out, they planned to open in the District. But when they first tried to apply for a license, they were met with silence. "[The District] basically never returned our phone calls," said Laufenberg. After getting nowhere in D.C., the two brought Papatella to Arlington.

Others have not been as fortunate. When Vinnie Rotondaro wanted to open a cart selling Italian baked goods, he approached the District for a vending license. But he became discouraged after dealing with the city. Rotondaro says that District bureaucrats were indifferent to his dreams and often misinformed him about what steps he needed to take.



Entrepreneurs like John Rider, who operates Pedro and Vinny's burrito truck, are often afraid to pose for photos for fear of Washington, D.C. regulators shutting them down.

More of a bar was the District's requirement that Rotondaro purchase a cart before being allowed to apply for a license. D.C. Department of Health regulations require that all carts must "first be inspected by and receive a certificate from the Mayor" before they can go into operation.¹⁷ But as Rotondaro notes, "[m]ost carts cost at least a couple of thousand dollars. Some cost as much as \$10,000."¹⁸

Rather than fighting, Rotondaro instead chose to attend graduate school. But for many, the only alternative they have to entrepreneurship is a subsistence-level job. Asking an under-financed entrepreneur to spend thousands of dollars on a cart, before she even knows if she will get permission to use it, is a trap that most would-be vendors will avoid.

Entrepreneur James Tiu, who sold meatless burritos in the District, moved out of D.C. and gave fellow vendor John Rider a couple of burrito recipes. Rider then opened his own vending cart, which he dubbed Pedro and Vinny's. The cart is a fan favorite. To expand on their success, John's daughter Kristin obtained a vending license so she could open a second Pedro and Vinny's cart a few blocks away.¹⁹ Within weeks, though, District regulators forced her to close in the middle of a lunch rush. Why? Supposedly she had to get a public-space permit from the Department of Transportation. But when Kristin called the Department, they told her she didn't need a permit. Subsequent visits by regulators created even more difficulties, with one saying that DCRA shouldn't have given her a license in the first place. Kristin had to shut down her cart to sort out all these issues.

After years of controversy and paralysis, the District has finally proposed new vending regulations. Some of the proposed changes make sense: For instance, the regulations let successful vendors hire employees who can run the stands on their behalf. The regulations also acknowledge the contribution that food trucks make to Washington, D.C.'s food scene. Rather than staying in one fixed location, these trucks drive around the District and let their customers know where they will be via Facebook and Twitter. Because of the trucks' mobility, the District wisely recognized that it made no sense to require them to get a vending site permit for each and every place where they might operate.

A year and a half of letter-writing, lobbying and testifying could not move the District government. Only after Tiu drafted amendments to the regulations and had a food-safety expert test his meatless burritos was he ultimately able to resume pursuing his livelihood.⁶

But associations that represent many existing brick-and-mortar restaurants have complained and asked District regulators to shut the trucks down. What began as a small issue became a firestorm after news leaked out: More than 1,000 consumers and residents wrote to District regulators in August 2010 to support the food trucks. The District should listen to its citizens and let these vibrant entrepreneurs run without hamstringing them with inane and anticompetitive restrictions.

But although the new regulations do some things right, they do many other things wrong. A would-be food vendor, for example, must obtain a health-inspection certificate from the Department of Health before he can get a vending business license or site permit. But as Rotondaro's experience above shows, few entrepreneurs can shell out thousands of dollars for a cart before knowing if they can open.

The proposed regulations also reflect the District's continued impulse to prescribe every aspect of a vendor's business. The regulations, for instance, detail the size of the carts, how they may be adorned and what messages they may carry. As one commenter pointed out, "The

entire [set of proposed design regulations] is antiquated and attempts to micromanage vendors down to the material from which shade umbrellas are made to the amount of varnish on a vending stand (2, no more, no less)."²⁰ The regulations also specify, in excruciating detail, where vendors may set up shop. Rather than just let vendors open wherever foot traffic allows, the District's proposed regulations use more than 16 pages to lay out where vendors may and may not operate. And, in a bizarre attempt to punish success, the District's regulations prevent a vendor from owning more than five vending site permits. This artificial cap restricts growth by stopping successful vendors from growing their business beyond a certain point. Not only does this rule hurt entrepreneurs, it prevents consumers from getting the food and goods that they want the most.

These proposed regulations seem more focused on continuing the failed command-and-control techniques the District used in the past than on addressing any actual health and safety concerns. The District should go back to the drawing board and draw up a simple set of rules that give entrepreneurs the freedom to bring their wares to the public. By setting clear guidelines and getting out of the way, the District government can let competition flower and help entrepreneurs improve the quality and variety of food available throughout the city.

- Specifically, the District should promulgate new food-vending regulations that take a hands-off approach in dictating what size vendors' food carts can be or where they may operate.
- The District should exempt self-contained carts from the storage requirements.
- The District should let food carts operate anywhere that they don't block the sidewalk.
- To reduce the time and cost of getting up and running, the District should simplify its complex and confusing vending approval process.

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The District has barred many new entrants from becoming taxicab drivers or starting their own company. The regulators oversee a system rife with bribes, backroom deals and corruption.

Taxicabs

Taxicabs have historically been a District success story. The open model of competition has benefitted both independent cab drivers as well as consumers. But for the past several years, the city has been desperately trying to turn this success into a failure. Chipping away piece by piece at drivers' entrepreneurial freedom, the District has barred many new entrants from becoming taxicab drivers or starting their own company. Unsurprisingly, these roadblocks often are not the result of high-minded civic virtue, but were instead the product of bribes, backroom deals and corruption.

For decades, Washington, D.C. has been one of the few U.S. cities with an open taxicab market. Under this system, anyone who passed a test could register his cab and strike out as a new businessman. This model has been a boon for immigrants and minorities. One of the most successful trades available to African-Americans in the District during the early 19th century was working as a hack driver.²¹ And during the 1950s, many African-Americans moved from the South to the District, got a hack license, and began to drive a taxicab for a living. In recent years, many new drivers have been immigrants from east Africa and India who have come to America for a better life.

Because of the open model, the number of taxicabs in D.C. is much larger than in comparably sized cities. For instance, in 1996 the District of Columbia had one taxicab for every 75 citizens, while in New York City that number was one cab for every 600 residents.²² Likewise, D.C. residents take

far more taxi rides than residents of other cities. As the U.S. Department of Transportation explained, "The number of taxi rides per capita in Washington, D.C., where entry is not restricted and fares are low, is over four times as high as in San Francisco, a comparable size city where entry is restricted and fares are higher."²³

In other words, freer entry into the taxi business is good for consumers, while artificial restrictions on the number of taxicabs hurt consumers by giving would-be riders fewer choices and forcing them to pay higher fares. Unlike many other U.S. cities, taxicabs in the District are abundant and one can usually hail a ride in short order.

Artificial limits on the number of taxicabs hurt consumers. But do they make drivers better off? The

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answer, surprisingly, is no. Drivers in a closed market have to buy or rent a “medallion” in order to operate. In New York City the average rate for a corporate-licensed taxi medallion in July 2009 was \$766,000.²⁴ Renting a medallion means paying \$140 for every twelve hours.²⁵ As a result, those who originally owned the medallions, not the drivers, are the ones who benefit from a closed system. And because District cabbies don’t have to shell out hundreds of thousands of dollars in order to work, D.C.’s open model makes the District one of the few cities where most drivers independently own and operate their vehicles.

The District’s model of open competition works for both consumers and the average cabbie and should be copied nationwide. But some people would profit by replacing the District’s independent cabs with a closed system like that in New York. A number of disturbing developments show how forces have tried numerous tacks, some legal, some illegal, to reshape the face of the D.C. taxicab industry.

Licensure

Almost all cities require would-be drivers to first take a hack license exam. D.C. went further, though, by requiring that all applicants take and complete a taxicab examination preparation course before taking the exam.

The idea that the District forced people to spend \$375 on a government-run course was bad enough. But for many, the exam became an insurmountable obstacle. Why? Because several years ago D.C. stopped offering the exam after allegations of cheating surfaced. But it didn’t simply write a new test; instead, it let people continue to take the course while refusing to let them take the test.

The District finally resumed testing in March 2009 and about half of the several thousand examinees passed. This rate was lower than before, but many wanted even fewer people to pass. At a Taxicab Commission meeting, one person said that Jim Graham, the city councilman responsible for taxicab oversight, was “concerned about too many people taking the test and passing it.” The solution? As one Commissioner said, “[M]ake the test harder.”

Changing a test’s difficulty based on how many people pass undercuts the idea that its purpose is to protect health and

safety. Indeed, many see the exam as a way to limit the number of new entrants. Rather than recognize the economic opportunity created when cabbies are free to enter the marketplace, Graham, for instance, said that the District has too many cabs and that “the boat is going to sink by its own weight.”²⁶

The District has tried to reduce this dangerous “oversupply” by refusing to offer the course or the test. After the 2009 testing, the Committee on Public Works and Transportation urged the City Council to stop offering the course. As Chairman Graham stated, “We really need a breathing space to figure out . . . something to regulate the size of our taxicab [system].”²⁷

Soon afterwards, the Taxicab Commission said that it was “indefinitely” stopping the Hack License Exam. The Commission said that it had to close the exam in order to process the 3,000 applicants that had been backlogged. But more than one year has gone by, and any backlog has long since dissipated. Neither the exam nor the licensing course has returned.

Medallions

Stopping new entrants from getting a hack license is one way to reduce competition. But a more direct route is to impose a medallion system like the one in New York City. On June 30, 2009, Councilman Jim Graham tried to do just that when he introduced the “Taxicab Medallion System or Vehicle Certificate System Establishment Act of 2009.” That bill would have

required all taxicabs to be outfitted with a medallion or taxicab vehicle certificate. The goal was to reduce the number of taxis operating in D.C. over time.

The bill was instantly controversial. Those who support economic opportunity were unsurprisingly critical of the measure,²⁸ and many taxi drivers, too, took a similarly dismal view of the legislation. About 1,000 taxi drivers went on strike in September 2009 to protest the medallion bill.²⁹ Larry Frankel, vice president for the Dominion of Cab Drivers, an association that advocates for independent taxicab operators, said that medallions would raise the cost of operating a taxi in the District and hurt independent operators' ability to compete with larger taxicab companies. According to Frankel, the District's ultimate goal is to legislate independent operators out of existence.

As those for and against medallions began to marshal their forces, an unexpected scandal broke. One day after the strike, federal prosecutors arrested Jim Graham's chief of staff, Ted G. Loza, for bribery. According to the indictments, Loza allegedly accepted more than \$30,000 in exchange for his efforts in helping to introduce moratoria and other legislation such as the Taxicab Medallion Act.

Government regulation is too frequently a way for established companies to raise barriers and prevent new entrants.

Any hope of moving the medallion bill quickly ground to a halt. A public hearing at which the Institute for Justice was scheduled to testify was cancelled. Councilman Graham withdrew the Taxicab Medallion Act from consideration on the following day. And on October 18, 2009, the Chairman of the D.C. City Council took over all oversight of taxicab issues.

This scandal demonstrates how giving the government power to decide who can compete and who cannot is inherently corrupting. Over the years, officials from the Taxicab Commission and other District agencies have been arrested, tried and convicted of accepting bribes and extorting money from those who wanted only to earn an honest living.³⁰

If the goal is to reduce corruption, then the best approach is to limit what goodies government officials can give out. That means that the government should not artificially limit how many people may compete. Instead, it should let anyone who wants to enter the market do so as long as they satisfy certain narrow, well-defined public health and safety measures. By getting out of the way, the District government can improve the lot of both its residents and countless entrepreneurs.

Pedicabs

Pedicabs are a new form of transportation in the District. Unlike motorized vehicles, pedicabs are human-powered bicycle carts that can transport two or three riders across town. While slower than a taxicab, a pedicab is an open-air experience that lets one leisurely view the city while going to one's destination. In January 2009, Mayor Adrian Fenty declared pedicabs the official vehicle for the inauguration, and local bloggers estimated more than 100 pedicabs helped ferry weary revelers about.

There are fewer pedicabs now, but, as of summer 2010, several major companies were operating in the District. Each operates in a similar fashion: The company leases out its vehicles for a fee. The lessees, who usually work near tourist attractions, can be hired in advance or hailed from the street. Unlike taxis, however, pedicabs have no set rates; instead, they work solely on tips.



Government regulation is frequently a way for established companies to create barriers and prevent new entrants. D.C. should require only that pedicab operators have a driver's license and insurance. Anything more will stop competition and hurt D.C. tourists and residents.

Currently, the District does not license pedicabs. Although D.C. has recently proposed regulations that require pedicabs to have seatbelts, headlights and taillights, and to follow certain basic rules of the road, existing pedicab companies want more. The head of Capitol Pedicabs, Martin Ramani, has suggested that the District require that would-be operators should attend some sort of training program and pass a written test before receiving a pedicab license. As taxicab drivers know all too well, a required course and exam can quickly become a way for the District to suppress competition and entrepreneurship.

None of what Ramani calls for is necessary. Government regulation is too frequently a way for established companies to raise barriers and prevent new entrants. The District should require only that pedicab operators have a driver's license and liability insurance. Anything more will freeze competition in this nascent industry and hurt both D.C. tourists and residents.

Business Licenses & Permits: The Kafkaesque Nightmare Known as the DCRA

The Department of Consumer and Regulatory Affairs, the clearinghouse for almost every business license and building permit in Washington, D.C. is a sore spot for many District residents. The DCRA has had a checkered past, and many critics have accused the agency of systemic corruption.

Recent events have done little to belie these charges: In 2008, a DCRA official was found guilty of extortion and receiving a bribe after she demanded thousands of dollars in cash before she would grant various business permits.³¹ And several months before that, an FBI agent accused the DCRA Chief Inspector of demanding \$20,000 in order to resolve a stop-work order placed on a housing renovation.³²

Corruption is dramatic. The idea of a public official explicitly calling for cash before granting some official license or permit can get the blood boiling. Far more pedestrian, but perhaps even more insidious, is the confusion and aggravation that incompetent and uncaring public officials can cause. For those District residents who want to start a new business or expand an existing one, the Department of Consumer and Regulatory Affairs is a labyrinth of confusion, frustration and red tape. And when getting the government's permission becomes an exercise in futility, many will do without. They

will either choose to let the government grind their projects to a halt, or they will follow their calling outside of the system. But no matter which path they choose, our entrepreneurs suffer due to the government's inefficiency and indifference.

The situation is so bad that an entire cottage industry has popped up to help mere mortals navigate safely through the DCRA morass. They are the "expeditors" who, for a fee, will help you acquire the necessary permits. Many expeditors are former DCRA employees, and they will troll through DCRA offices looking for the weary and forlorn expression of those who are ready to hire someone, anyone, who can help them get their project up and running. As one person put it, the expeditors at DCRA "will walk around like ambulance chasers waiting for people to need help." And given the glacial pace of reforms at DCRA, there is little hope that expediting will be made obsolete anytime in the near future.

The complex thicket of regulations and contradictory information given by DCRA employees can frustrate even the best laid plans of entrepreneurs. One company that the DCRA thwarted is Columbia Heights Coffee, a popular and well-regarded coffee shop on 11th Street NW between Park and Monroe. Always crowded, Columbia Heights Coffee

wanted to increase its seating by expanding into the adjoining space. To do so, though, meant having to secure a series of permits for both the demolition and subsequent renovations. The project, first conceived of in late 2006 and begun in early 2007, required Nadew and Tsege Delnesaw, the new owners of Columbia Heights Coffee, to get a series of permits from the Department of Consumer and Regulatory Affairs. Although they were able to secure one permit to renovate the facade, Columbia Heights Coffee needed an entirely different set of permits before they could begin the extensive interior gutting and renovation that the expansion called for. The continued delays at the DCRA, however, had taken their toll. By February 2009, almost two years after the project had begun, Columbia Heights Coffee threw in the towel. The result was that the Delnesaws had paid for two years of rent on a building they will never use, a thriving coffee shop could not expand to satisfy its growing number of thirsty fans, and the rundown storefront next door remained empty. As one commentator exclaimed, "Sadly typical. The bureaucratic holdover from Mayor Barry's city-jobs-as-workfare program is still choking entrepreneurs and potential entrepreneurs out of D.C."³³

Another business that just barely made it through the permitting process is the Fireside Restaurant. A Jamaican restaurant in Anacostia that opened back in 2006, Fireside sits down the street from "the world's biggest chair," a 19-foot dinner chair made of mahogany wood that the Bassett Furniture company made for an Anacostia-based retailer in 1959. Inside, Edward Lobban cooks up meat patties, goat curry and cocoa bread. But thanks to government misinformation and unneeded complexity in the permitting process, this community fixture almost didn't open its doors.

Lobban first hatched the idea of opening Fireside in May 2003. Two years later, after talking about the project and getting financial help from his friends and family, Lobban rented a storefront on Martin Luther King Avenue in Southeast D.C. He then started to renovate the space and get the permits that his restaurant would need before it opened. What happened next was an 18-month ordeal that nearly destroyed Lobban's credit and his dreams.

Between ordering equipment, promoting the business and hiring staff, opening a restaurant is always complicated. Part of the difficulty arises due to the permitting process:

The bureaucratic holdover from Mayor Barry's city-jobs-as-workfare program is still choking entrepreneurs and potential entrepreneurs out of D.C.



Edward Lobban, who runs Fireside Restaurant in Southeast D.C., was frustrated with the entire DCRA process to which he said, “If it was my money alone, I would have given it up.”

Several different District agencies are involved, multiple permits must be obtained, and all of it has to take place in a precise order. It gets even worse, though, when the agencies give incorrect and often contradictory commands. Lobban says that when he spoke with officials at DCRA, the District agency responsible for both business licensing and building permits, the instructions he received too often depended on whom he spoke with. He would follow their advice, only to then return and discover that he had inadvertently been led to undertake step four before getting approval on step two. That often meant having to start completely over.

Other times, DCRA officials gave Lobban information that was either substantively incorrect or simply refused to answer his questions. One time he went down to the DCRA and was told that he would have to come back later to meet with a specific DCRA employee. But when he returned, that bureaucrat told Lobban that anyone at DCRA, in fact, could have helped him. On another occasion, Lobban wanted to replace the rotting floor in the restaurant. The DCRA first told Lobban that he needed to get a permit before he could proceed. So he put his project on hold. But Lobban said he later learned that the District actually did not require him to get a permit at all.

One such incident is an annoyance, but the constant misinformation that DCRA employees gave to Lobban forced him to spend far more time and money on the project than he had expected. And because Lobban was leasing the space while the permitting process slowly rolled along, the delays meant that he had to pay out almost \$30,000 in rent while trying to open Fireside. In the end, Lobban kept going forward because it wasn't just his money that was at stake: Many of his friends and family had lent him money so he could get his business off

the ground. He said, “If it was my money alone, I would have given it up.”

Rather than enduring this gauntlet, some businesses choose to operate under the radar. Robin (a pseudonym to protect her identity and business) is a young professional who recently opened a personal-services company in the District. By all accounts, her new business has been successful, but she is skittish about doing anything that would draw too much attention. Why? Well, the building where her business is located has, for several decades, hosted a series of different commercial operations. It's known in the area as a commercial storefront, and no one in the neighborhood has expressed any concerns.

A look at the zoning records, though, shows that the building is zoned residential. Now one might think that since the building has been used commercially for years, with

The constant misinformation that DCRA employees gave to Lobban forced him to spend far more time and money on the project than he had expected.

Bill and Tonia find it nothing short of flabbergasting that they are criminals for describing things to people as they ride through the District.



no ill effects on the community, it should be easy to get its zoning classification changed. But that is far from the case. Getting a building's zoning changed is an incredibly difficult process. Merely trying would cost thousands of dollars and take months if not years of time, with no guarantee that the change would be successful. So, instead, Robin has chosen to pursue her passion while hiding in plain sight.

So although Robin's business is booming, she is wary about advertising or doing anything that might raise the chances that she will be found out. She only recently put up signs for her business, a decision that she says took months and upon which she agonized. Even an innocuous visit by the District Office of Tax and Revenue can be rattling. The more difficult it is to successfully maneuver through the government's regulatory maze, the more likely it is that entrepreneurs will instead choose to go forward without the government's blessing. But in forcing these entrepreneurs into hiding, the District makes it less likely that they will advertise, less likely that they will try to grow their businesses and employ other people, and less likely that they will succeed.

All of the entrepreneurs interviewed for this report sang a common refrain: The DCRA's conflicting rules and instructions make it almost impossible to navigate the regulatory maze. Owners repeatedly lament how the DCRA will tell them to do X, only to later inform them that they instead should have done Y first. In the words of one District entrepreneur, dealing with the DCRA "is Chutes & Ladders."

The District has taken some initial steps to improve its permitting process. The DCRA website, for instance, has recently been overhauled. People can now go online and see all of the requirements that they have to meet before receiving a specific business license. In addition, the DCRA has recently set up a "postcard" system that the government claims will reduce how much time it takes to get many simple building permits.

Despite these minor improvements, far more needs to be done. The culture at too many District agencies is one of antagonistic disengagement. This needs to change. District employees should always strive to make the licensing and permitting process as simple and quick as possible. Additionally, different District agencies should

coordinate when they share licensing responsibilities. Getting the various regulatory agencies to talk with one another will help speed up the permitting process and reduce costs.

The most important thing, though, is simplicity and clarity. Most entrepreneurs are willing to play by the rules. When they cannot get a clear answer, though, or when they get stuck in a regulatory maze, they will choose to either give up or operate underground. But this hurts the entrepreneur, the consumer, and the District as a whole. As Jennifer Odess, owner of Fresh Confections catering, said, "Just tell me the rules and get out of the way."

Tour Guides

The District is one of only a few cities in the country that forces people to get a government-issued license before they tell other people about their city. Under a century-old D.C. law, "No person shall, for hire, guide or escort any person through or about the District of Columbia, or any part thereof, unless he shall have first secured a license."³⁴ The code itself does not define what "guide" and "escort" mean, but the District's regulations provide some explanation. They say that no one may "describe[], explain[], or lecture[] concerning any place or point of interest in the District to any person" in connection with any paid tour without first getting the District's permission.³⁵ Furthermore, Washington, D.C. does not require that all of its transit providers get a guide



Washington, D.C. does not require that all of its transit providers get a guide license. The statute thus applies solely to people like Tonia Edwards and Bill Main who talk for money to others about Washington, D.C.

license. The statute thus applies solely to people who talk for money to others about Washington, D.C.

In order to get a license to speak, would-be tour guides must pay \$200 in fees to the District, fill out a five-page application that asks them to list all of their schooling and work experience and get a certified copy of their police report.³⁶ Still, it could be worse: In the past, applicants had to turn in six character references as well as a notarized doctor's note to prove that they were not a "drunkard" or suffered from epilepsy, heart disease or vertigo. Furthermore, until July 2010, only American citizens who had lived in the D.C. metropolitan area for two years could apply. Relaxing that last requirements has angered some long-time D.C. tour guides who fear competition. Maricar Donato, for

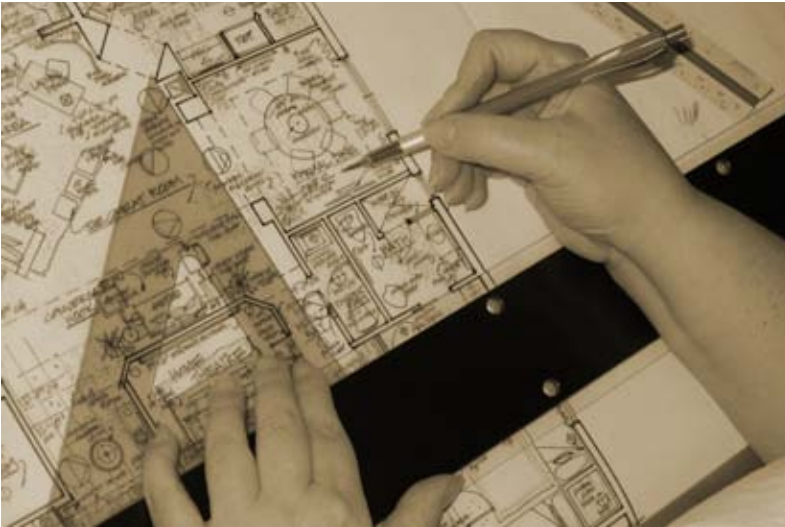
instance, said, "They're going to remove that law about the U.S. citizenship. That's not good, because they're stealing my job!"³⁷

After all of this paperwork has been turned in, applicants must take and pass (with a score of at least 70 percent) the District's tour guide exam, which tests the applicant's knowledge of public buildings, historical events and points of interest in and around the District of Columbia.³⁸ Although applicants need not take a city-mandated guide course to prepare for the exam (unlike the taxicab examination discussed earlier), at least five different private organizations in the D.C. area offer exam preparation courses.³⁹

Given that the D.C. tour guide law has been on the books for more than 100 years, it is unlikely that the District is about to voluntarily end its mandatory licensing scheme anytime soon. Therefore, in order to vindicate the right to earn an honest living by speaking, the Institute for Justice has brought a federal lawsuit on behalf of two D.C. area tour guides. Bill Main and Tonia Edwards run "Segs in the City," which provides fun and informative Segway⁴⁰ tours in Baltimore, Annapolis and Washington, D.C. During their busy season, Tonia and Bill's small business operates five tours a day in D.C., seven days a week. Bill and Tonia still lead at least half the tours themselves, charming tourists with stories about the District, jokes and their hard-earned expertise.

Bill and Tonia find it nothing short of flabbergasting that they are criminals for describing things to people as they ride through the District. Segs in the City abides

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by all of the District's health and safety regulations. For example, people must be at least 16 years old to ride a Segway in Washington, D.C. And when the National Park Service enacted a temporary moratorium on Segways on the National Mall to investigate if Segways harmed the turf (they don't), Bill and Tonia obeyed that as well. What they rightfully object to is having to obtain a government-issued license just to talk about our nation's capital.

Washington, D.C.'s rule that people must get its permission to speak should be consigned to the dustbin of history. Freedom of speech means that the government has no business deciding who may or may not speak. No one would suggest, for instance, that the District could force people to get licensed in order to write a book about the city or put together a series of podcasts about Washington, D.C. area attractions. Nor does it matter that tour guides charge for their services. After all, the fact that *The Washington Post* sells its newspapers in no way diminishes its First Amendment rights. The District of Columbia should recognize that the First Amendment protects all speakers, even those who speak face to face, and get rid of this unconstitutional law once and for all.

Interior Designers

D.C. is one of only five jurisdictions in the United States that force people to get the government's permission before telling people where they should put their sofas, paintings and pillows. These laws have been the brainchild of a well-organized trade group called the American Society of Interior

Designers (ASID), which has lobbied governments across the nation in an attempt to turn the competitive interior design industry into a state-sanctioned cartel.

When the City Council passed the interior design law in 1986, the only major group lobbying for it was the ASID. Even District officials came out against the law. Former DCRA Director Carol B. Thompson said that the law was duplicative, while Valerie Barry, head of the now-defunct Occupational and Professional Licensure Administration, called the act "unnecessary government intervention."⁴¹ The District passed the law anyway. The Federal Trade Commission likewise one year later came out against regulating the practice of interior design on similar grounds.⁴²

Before nearly anyone may work as an interior designer in D.C., the law requires that they pass a 13.5-hour test that is written and administered by the National Council for Interior Design Qualification (NCIDQ)—a group created by ASID.⁴³ Those who were already interior designers when the law was

passed, however, were automatically grandfathered in. This huge loophole shows that the law's purpose is to drive up profits for the cartel's members by putting their competitors out of work rather than to protect the public. The goal, in fact, is not to protect the public but, rather, to use government power to protect industry insiders from competition.

This exclusionary law hurts both consumers and entrepreneurs. If you want to hire an interior designer in the District, expect to pay more and have fewer choices than you would have in the 47 states that do not require licensing. These laws also cost people real jobs because the arbitrary hoops keep many would-be designers from entering the profession. As the Institute for Justice has demonstrated in other research reports, these restrictions disproportionately hurt minorities and older individuals who are changing careers.⁴⁴

Finally, underscoring yet again the uselessness of these government-imposed barriers to entering this field, when the Obamas moved into the White House, they hired a well-regarded but unlicensed interior designer to renovate their personal quarters.⁴⁵

In sum, these laws are all costs and no benefits. That's why the Institute for Justice has fought against them in

state after state. The District of Columbia should repeal this protectionist law and let the market—not industry insiders—decide who should practice interior design.

Home-Based Businesses

Home-based businesses are a low-cost way for entrepreneurs to start climbing the economic ladder. After all, many of America's largest companies had their start in someone's basement or garage. Apple Computers, for example, assembled its first computers in Steve Jobs' garage. Likewise, Hewlett-Packard began in a shed. And the Model T? It came into being only because Henry Ford's neighbor first let him use his coal shed as an improvised work station.⁴⁶

What the next generation of entrepreneurs may dream up is anyone's guess. But no matter what they come up with, chances are that those dreams will take their first tentative steps toward reality in basements, attics and garages. Unfortunately, the District of Columbia has an overly complex, burdensome and unnecessary system of home-business regulations that has driven some entrepreneurs underground and forced others to give up on their dreams.

One problem is that the District's code has a fixed list of all the occupations that can take place in the home, a list that has not been updated in almost a decade. Over time, these regulations will block many entrepreneurs from working at home, not because their occupation poses any real cause for concern, but because they are not on the list.⁴⁷ For instance, many people make a living by selling products on eBay. But although engaging in sales is a permitted home occupation, the regulations specify how one can sell items, which does not include the Internet.⁴⁸

Furthermore, in describing what jobs require a home-occupation permit, the District has painted with far too broad a brush. The purported reason for these regulations is to protect against serious threats to the health and safety of community residents. But many jobs listed in the District's rules pose no risk whatsoever. If a person chooses to write a book in her study, for instance, or paint or compose a piece of music in the quiet of her own home, how is that anyone's concern? But despite the completely innocuous nature of these activities, Washington, D.C. requires all of its authors, painters and

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Despite the completely innocuous nature of these activities, Washington, D.C., requires all of its authors, painters and composers to get a permit before they work from home.

composers to get a permit before they work from home. The District's regulations are so over-inclusive in who they burden that their real focus seems to be more about collecting revenue than protecting the public.

The regulations pose other problems. For instance, a home-based business may use only 25 percent of the residential floor space in pursuit of the occupation.⁴⁹ And the regulations also stifle growing businesses. Under the restrictions, only one person who does not live at the home may work in the home occupation⁵⁰ and the home occupation cannot use more than two vehicles in service of the business, regardless of whether they have any impact on the neighborhood as a whole.⁵¹

These rules make it incredibly difficult for new businesses to expand. Hiring a new employee can be a trying decision for a D.C. home-based business. After all, the D.C. regulations forbid a home-based entrepreneur from hiring two employees who do not also live with her. So to expand legally would mean having to leave the home and renting a commercial or industrial space. That could cost thousands of extra dollars per year, which is prohibitive for many small businesses.

Perhaps unsurprisingly, many entrepreneurs have chosen to ignore the rules and operate their businesses underground. Robin, our successful professional from earlier in the report, has a friend who runs a small apparel company from his home. His business is completely innocuous, quiet and unobtrusive, and poses no health or safety hazard to the larger neighborhood. But he remains in the economic underground, partially because D.C. government employees said that he

would have to let them root around his home in order to get a home-occupation license. His concern about being found out is such that he did not want to have his company featured in this report. And, like Robin, working outside the system means he constantly must look over his shoulder for fear that a chance event could bring unwanted attention. This is no way to treat the next Henry Ford or Steve Jobs. The District should repeal its home-based business rules to reduce the burdens on these budding entrepreneurs and to make it easier for anyone to turn his or her dreams into reality. Small businesses are the engine that drives our nation's economic growth. The government should not needlessly limit the ability of entrepreneurs to create jobs not only for themselves, but for others, too.

The District should repeal its home-based business rules to reduce the burdens on these budding entrepreneurs and to make it easier for anyone to turn his or her dreams into reality.



The District Discriminates Against Outsiders

A disturbing trend in the District of Columbia's laws is how often they are explicitly written to eliminate competition by those who do not live within the city's borders. Two of the occupations discussed in this report—vending and taxicabs—have provisions that disadvantage those who live outside of either Washington, D.C. proper or the D.C. metropolitan area.

Vending Locations

As with many things in life, whether a vendor is successful or not is often based on location, location, location. How much business a food cart or stand can do largely depends on how much foot traffic comes by where they set up. Because prime vending spaces are such a valuable commodity, the fight between vendors for the best spots in the past sometimes ended in violence.

To avoid the “might makes right” problem and ensure a more equitable distribution, the District designed a lottery system to assign the order in which vendors chose between new vending spots. But would-be vendors who did not reside in the city faced a distinct disadvantage. Washington, D.C. vendors who apply and are designated

as a Local Small Disadvantaged Business Enterprise (LSDBE) are eligible for a LSDBE-preferred Sidewalk Vendor Site Lottery that takes place before the first general lottery for all other applicants.⁵² The practical effect is that those entrepreneurs whose businesses are not based in the District were less likely to get the most coveted locations.

This kind of economic favoritism is bad policy. And even worse, it is against the law. The Constitution says that regulators cannot treat outsiders differently than District residents, but that is precisely what this policy does. With the new Vending Regulation Act just passed, it is not clear if the Mayor's office will choose to favor District residents in future lotteries. It should refrain from doing so as everyone, regardless of where they live, should have an equal chance to compete.

Taxicab Registration

One of the many ways D.C. has been working to destroy its taxi market is by gradually shutting out Virginia and Maryland-based independent drivers. In 2001, the City Council passed a law that let only D.C. residents register a vehicle in the District.⁵³ Although many independent taxicab operators do not live in Washington, D.C., any car being used as a taxicab must be registered in the District and bear a special “H” class license plate. Vehicles without the tags cannot pick up customers in the District.

For several years, the District's Department of Motor Vehicles continued to issue the tags to all legally licensed taxicab drivers no matter where they lived.⁵⁴ In March 2006, however, the Department of Motor Vehicles stopped issuing new tags to non-residents. Outraged, many non-resident cabbies sued and complained to local officials.⁵⁵ In response, the City Council passed the “Non-Resident Taxi Drivers Registration Amendment Act.”⁵⁶ That law lets the Department of Motor Vehicles continue to register the taxicabs of non-residents so long as 1) the driver lived outside the District on March 1, 2006; 2) had registered a cab with the DMV before



March 1, 2006; 3) was licensed to operate a taxicab at some point between 2001 and 2006; and 4) paid an additional \$100 annual registration fee to the Department of Motor Vehicles.

The Act's practical effect is to let cabbies whose cars were registered before 2006 continue to register their car. New independent cab drivers who live outside the District, however, are flatly banned from registering their vehicles. As a result, new cabbies who live in Maryland or Virginia may not operate their own cars; instead, they must rent a car from a taxicab company that is currently operating in the District. For many new cabbies who recently passed the taxicab exam, this ban makes it impossible to buy their own cab and strike out on their own. The government should stop penalizing those people who live outside the District and enact a vehicle registration system that lets everyone, not just D.C. residents, compete.

Conclusion

As the center of the federal government, Washington, D.C. should serve as an example for the rest of the nation. But unfortunately, as this study shows, the District of Columbia has put up innumerable roadblocks that stop entrepreneurs and small businesses from succeeding. Rather than bailouts and one government program after another, the best way for the District to encourage entrepreneurship is to provide clear and easy to follow rules and then get out of the way.

Specifically, the District should:

- Eliminate nitpicking regulations that have the District deciding the size of vendor's carts and the types of food they offer;
- Take the lesson that it learned from its vending demonstration zone and apply it to all of its licensing and regulations;
- Scrap the outdated, contradictory and confusing rules that make it nearly impossible to open up a business in the District;

- Get rid of protectionist laws that dictate who may or may not compete.
- Protect the District's few success stories, such as its taxicab industry, from regulations that would benefit insiders and harm the general public.

By opening up all of its economy to competition, the District will not only benefit entrepreneurs and encourage economic growth, but provide its citizens with lower prices and higher quality goods and services. City governments like D.C. are blocking entrepreneurship just when people are suffering economically and need to be able to start low-cost businesses. Home-based businesses, street vending and taxicab driving are vital because they ordinarily have low startup costs and allow people to not only put themselves to work, but, with a little sweat equity, hire others thereby growing the economic pie. Entrepreneurs are courageous and creative people who form the backbone of our nation, yet government agents, like those in Washington, D.C., seem bent on making life as difficult as possible for these small businessmen and women.

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Robert was lead counsel in *Kalish v. Milliken*, a case challenging a Virginia law that forced schools to pay thousands of dollars and fill out dozens of hours of forms just to talk with their students. Robert also litigates on behalf of SpeechNow.org, a group formed to independently speak out about candidates but which first had to challenge laws that restrict how much anyone can give to the group. Robert also represents a small businessman in Texas in a civil-forfeiture proceeding that will both strengthen protections for innocent owners and end the perverse incentive structure under which law-enforcement agencies profit from what they seize and forfeit. Robert's views have been published in a number of print and on-line newspapers and journals, including *The Washington Times* and PajamasMedia.com.

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