

MEMORANDUM

TO: RASHAD YOUNG
CITY MANAGER

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 Deputy City Manager

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DATE: APRIL 15, 2014

SUBJECT: LEGAL CONSIDERATIONS RE: REGULATION OF THE LOCATION OF
FOOD TRUCKS

This memorandum sets forth the legal considerations that you must consider with regard to the City's regulation of the location of food trucks.

I. Constitutional Requirements:

A. Any City regulation regarding the location (i.e., vending sites) of food trucks must comply with the United States and Virginia constitutions. When addressing street vending the most common constitutional considerations are equal protection, commerce clause and due process considerations.

1. Equal Protection: The Equal Protection clause requires that any regulation be rationally related to a legitimate governmental interest and therefore, any such regulation cannot be based on inherently suspect distinctions such as race, religion or national origin.

2. Commerce Clause: The commerce clause prohibits regulations from affirmatively or incidentally discriminating against interstate transactions. A regulation will not violate the commerce clause unless the burden imposed by the regulation is clearly excessive compared to the governmental interest being addressed. Many food trucks cross state lines and vend in Maryland and the District of Columbia as well as Virginia and are therefore protected by the Commerce Clause. The City's regulations must be based on a governmental interest to protect the health, safety and welfare of the public and cannot place an excessive burden on the food truck as compared to the governmental interest being addressed.

3. Due Process: The due process clause requires that regulations not be arbitrary or lead to inconsistent enforcement. The due process clause will not be violated as long as the regulations are clearly stated, enforced evenly and clearly address the stated governmental interests.

II. State Requirements:

A: Virginia is a Dillon Rule state and as such a locality only has the power to regulate that which has granted to it through the General Assembly through a charter specific for the city. Alexandria's charter authorizes the City, among other things, to adopt ordinances for "the preservation of the safety, health, peace, good order, comfort, convenience, morals, and welfare of its inhabitant." (Charter, Section 2.04). The City has the authority to regulate for its citizens' general welfare and has the burden to ensure the regulation addresses legitimate, stated, governmental interests and then to enforce the regulations consistently. The City has some latitude within these constraints to decide what governmental interest it is attempting to address and how to draft regulations that address that governmental interest.

III. City Regulation of Specific Location of Food Truck

A comprehensive Food Truck program addresses food trucks located on public streets and Food Trucks located on public and private off street properties. Each type of area has separate considerations and are addressed separately below.

A. Food Trucks Located on/or Vending From City's Public Right-of-Ways

Generally, if Food Trucks are allowed on any public streets, then they need to be allowed on all public streets unless a governmental interest that needs to be addressed has been identified that justifies the additional regulation. In reviewing a proposed program, staff has suggested two types of areas where additional regulation is necessary including certain designated Street Vending zones and Residential Permit Parking Districts

Given the discussion that has taken place thus far, we think it is important to note that without some legitimate governmental interest as, described herein, the City cannot restrict food trucks from parking in front of established restaurants, as protection of business competition is not a legitimate governmental interest.

1. Food Truck Vending Zones

The City Manager has the authority to restrict Vending from Food Trucks on Public right-of-ways by establishing Street Vending Zones. Legally, the City can regulate the location and number of Food Trucks on its streets if the following factors are present:

- a. Vehicular congestion
- b. Pedestrian congestion and safe access to the Food Truck (which would include consideration by City Manager of the density dining on City sidewalks)
- c. Parking considerations
- d. Other factors that affect the health, safety and general welfare of the public.

Rather than including the specific Street Vending Zones directly in the Code, we recommend including a provision in the Code that would allow the City Manager to designate

Rashad Young
April 15, 2014
Legal Considerations RE: Food Trucks

these zones administratively. This allows the flexibility to change the zones as the factors that are considered change.

In recognition of the above factors and traffic congestion and the availability of legal parking in some areas of the City, Richard Baier Director of Transportation and Environmental Services has recommended certain areas that meet these factors. These areas are as follows:

A. King Street Vending Zone: The King Street Vending Zone includes the King Street corridor from the Potomac River to the intersection of King Street and Dangerfield Road, and along all streets intersecting therewith, north to include all of Cameron Street and south to include all of Prince Street.

Food trucks within this vending zone may be located in three areas:

1. On east side of the 100 block of N. Royal Street abutting City Hall;
2. In front of Alexandria Courthouse and
3. In front of King Street Gardens

B. Mount Vernon Avenue Street Vending Zone. The Mount Vernon Avenue Vending Zone includes Mt. Vernon Avenue and vending was proposed to be restricted to parking spaces in front of the Department of Community and Human Services Building located in the 2500 block of Mt. Vernon Avenue. The boundaries of this street vending zone need to be defined.

C. Carlyle Street Vending Zone. The boundaries of this zone need to be defined. There has been discussion about the designated spaces in this area being located on Eisenhower Avenue, however it is unclear whether the factors are present within Carlyle to create the vending zone. The spaces can only be designated if there is a vending zone.

D. Washington Street. The boundaries of this zone need to be defined. There has been discussion about potentially restricting vending on Washington Street due to congestion and lack of parking, however it is unclear whether this has been established and if so what the boundaries of the zone would be and where the designated spaces would be.

The proposed ordinance includes language that would give the City Manager the authority to review and renew the zones in order to ensure that the factors are still met. Under this authority, the City Manager could remove or alter any Street Vending Zone by any change in the conditions of the existing zone or based on such factors that may affect the health, safety and general welfare of the public. When considering the proposed vending zone, or any new vending zones, the vending zones need to have delineated boundaries where the vending is restricted

Rashad Young
April 15, 2014
Legal Considerations RE: Food Trucks

except in the locations designated in order to separate the area from the other public streets and to define the justification for additional regulation.

2. Residential Permit Parking Districts

Staff has proposed to prohibit Food Trucks on any public right of way that has been signed as a Residential Permit Parking District. The legal justification for restricting Food Trucks on streets signed for Residential Permit Parking (RPP) only has already been established by the legal justification for the Residential Permit Parking District code. The RPP code was established to protect parking in certain areas that have a high parking demand and are prone to non-resident parkers. We believe this justification for protected parking can extend to prohibiting Food Trucks from using those spaces.

B. Food Trucks Located On/Vending on Off Street Property

This program will also address Food Trucks located on public and private property off the street. While this is a matter typically addressed in a zoning ordinance, since the food trucks are a temporary use and are considered accessory to the main zoning use, we believe they can be addressed in the City Code in order to keep the Food Truck program together in one place in the Code.

The current staff proposal is reflected in the draft ordinance and would allow Food trucks in the following locations:

- private property (office buildings, churches, apartment buildings, shopping centers, etc) so long as the vendor has the written permission of the property owner;
- Private residential property (driveways of private residences) if the Food Truck is serving a private party and not vending to the public;
- City Property and/or School Property including City parking lots, parks and other City property with permission of the City or ACPS.
- farmer's markets with the permission of the market manager.