

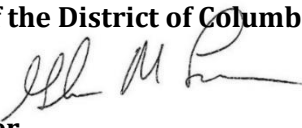
Government of the District of Columbia
Office of the Chief Financial Officer



Glen Lee
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Glen Lee
Chief Financial Officer 

DATE: March 7, 2023

SUBJECT: Fiscal Impact Statement – Street Vendor Advancement Amendment Act of 2023

REFERENCE: Bill 25-68, Draft Committee Print as provided to the Office of Revenue Analysis on March 2, 2023

Conclusion

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill's implementation will cost \$764,000 in fiscal year 2023 and approximately \$2.4 million over the four-year financial plan period.

Background

The District regulates street-based food sales through its cottage food regulations and mobile vending regulations. Cottage foods are a category of non-potentially hazardous foods specifically identified¹ by the Department of Health (DOH) that can be produced and packaged in a home kitchen and sold at places such as farmers' markets. Additionally, DOH works with the Department of Licensing and Consumer Protection (DLCP) to regulate mobile food vendors, such as food trucks and street vendors. This regulation includes reviews of food preparation and storage methods and overall vending cart or truck designs.

The bill makes some broad changes to cottage food regulations in the District and creates new opportunities for certain types of sidewalk vending.

¹ Approved Food Product List, effective December 29, 2017 (25 DCMR K103; 64 DCR 113555).

The bill expands the definition of cottage foods to include any food prepared, processed, or packaged by a cottage food business.² In expanding the definition, the bill eliminates the reference to the current DOH approved list of food products and prohibits uncooked or raw meat products and raw dairy products from being considered cottage foods. The bill also provides labeling guidance to vending cart operators that sell cottage foods that are difficult to label, package, or are not packaged. A vending cart operator selling cottage foods must include on a receipt, sign, or placard the same information³ that is required to be printed on pre-packaged cottage foods.

The bill creates a new opportunity for mobile vendors using a vending cart on sidewalks and gives the Mayor the ability to establish sidewalk vending zones throughout the District. The bill defines a vending cart as a wheeled, non-motorized, self-contained apparatus designed to be pulled by a vehicle or pushed by hand and operated on a sidewalk. The bill requires DOH and DLCP to issue regulations regarding vending cart designs, makes certain restrictions from regulation for certain types of vending carts, and requires DOH and DLCP to set up a process to approve submitted vendor cart designs. Specifically, the bill prohibits regulators from requiring freshwater tanks and food, ware, or handwashing sinks if the cart is selling uncut fruits and vegetables⁴ and potentially hazardous pre-packaged foods. The bill requires DOH to consider the types of food sold, the preparation and packaging locations, and whether existing requirements are appropriate when considering a submitted vendor cart design for approval. The bill also details the options for storage locations⁵ for a vending cart, the number of vending carts that can be stored at a particular location, and the requirements those facilities must meet to ensure safe storage of the vending cart and the safe preparation and disposal of food materials as needed.

The bill authorizes the Mayor to establish sidewalk vending zones⁶ across the District. The bill establishes the groups and organizations⁷ that can apply to the Mayor requesting a sidewalk vending zone be established. The bill requires the Mayor to contract with a District-based nonprofit organization⁸ to act as a sidewalk vending zone manager (manager) for each established sidewalk vending zone. The manager must submit, and have approved by DLCP, a vending site plan (plan) that diagrams the locations of vending carts,⁹ the owners of those carts, the cart dimensions, and allows vendors to alternate between locations within the zone. The manager must also maintain a list of the vendors in the zone, log daily oversight activities, develop dispute resolution procedures, provide technical support, and ensure all vendors comply with relevant laws and regulations.

² A cottage food business is defined as one located in a residential kitchen, that sells approved cottage foods, and has an appropriate DLCP occupancy license.

³ Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.02(c)(2)).

⁴ For vending carts that only sell non-potentially hazardous uncut fruits and vegetables, the bill also prohibits DOH and DLCP from requiring wastewater tanks.

⁵ Authorized locations include a vending depot, shared kitchen or support facility, existing brick and mortar food establishment, community center, or cottage food business.

⁶ The bill defines a sidewalk vending zone as a defined geographical area with three or more vending locations managed by a nonprofit sidewalk vending zone manager.

⁷ Groups include affected Advisory Neighborhood Commissions, an organization whose members are sidewalk vendors, relevant nonprofits, a citizens' association, or a business improvement district.

⁸ The bill outlines the necessary experience and other requirements for an organization to be eligible to act as a sidewalk vending zone manager.

⁹ The bill outlines prohibited locations, such as within certain distances of transit or public safety infrastructure.

The bill establishes the Columbia Heights-Mount Pleasant Sidewalk Vending Zone. The zone includes both sides of 14th Street, N.W. from Newton Street, N.W. to Spring Road, N.W.; the area bounded by 14th Street, N.W., Newton Street, N.W., Holmead Place, N.W., and Park Road, N.W.; and the area roughly bounded by 17th Street, N.W., Mount Pleasant Street, N.W., and Harvard Street, N.W. on the west, Park Road, N.W. on the north, 13th Street, N.W. on the east, and Fuller Street, N.W. and Girard Street, N.W. on the south. The bill also identifies specific locations within and adjacent to the zone that are eligible for the siting of sidewalk vending locations. Within those specific locations, the Mayor should work with the manager to locate vending carts that are compliant with broader sidewalk vending zone siting requirements. The bill requires the Mayor to issue an RFP within 60-days of the bill's effective date to contract with a manager for the Columbia Heights-Mount Pleasant Sidewalk Vending Zone. The Mayor must execute the contract within 120 days of the bill's effective date; however, if the contract is not executed, the bill allows sidewalk vendors to vend from the bill's designated vending areas.

The bill requires the Mayor to commission a study of the area in and around the Columbia Heights-Mount Pleasant Sidewalk Vending Zone. The study should identify areas around the zone for the storage and servicing of sidewalk vending carts, potential locations for public restrooms, capital improvements to improve vending, and a location for a potential indoor market. The study should include any costs to acquire or improve space related to any of these zone enhancements. The Mayor must issue the study within one year of the bill's effective date.

The bill also changes fees and amends requirements related to vending licenses. The bill prohibits DLCP from running or requiring the production of a criminal background check for any applicant for a basic business license, vending site permit, or any other licenses or permits required to vend from a sidewalk. The bill decreases the fees for a vendor's two-year vending business license from approximately \$476.30¹⁰ to \$99 and eliminates the basic business license endorsement that is required to vend on a sidewalk, street, or other public space. The bill also reduces the annual sidewalk vending site permit from \$600 to \$75, the annual mobile roadway vending site permit from \$300 to \$150, the monthly Nationals Park Vending Zone permit from \$125 to \$65, and the monthly stationary roadway vending permit from \$450 to \$225. The bill expands vendor Sunday through Thursday operating hours, which currently conclude at 10:00 p.m., until 12:00 a.m.¹¹ The bill eliminates criminal penalties for violations of vending laws and allows DLCP to issue Class 1 through 5 civil infractions¹² or verbal warnings prior to the issuance of a notice of violation. The bill requires any individual who is to receive a notice of violation to produce, upon request, reasonable identification stating the individual's true name and address.¹³

¹⁰ This fee varies based on the type of vendor. This fee is inclusive of the basic business license, food vendor endorsement, and other fees.

¹¹ The bill maintains the Friday and Saturday operating hours of 5:00 a.m. to 1:00 a.m. the next day and the limit in residential zones to 10:00 p.m. every day of the week.

¹² Title 16-32: Civil Infractions: Schedule of Fines.

¹³ The bill allows an enforcement officer, excluding a Metropolitan Police Department officer, to temporarily detain an individual who refuses to produce reasonable identification until the individual can be properly identified for the purposes of issuing a notice of violation.

The bill establishes an amnesty program for any street vendor¹⁴ who has delinquent fines¹⁵ or minimum sales tax¹⁶ payments that were due anytime from 2010 through the bill's effective date. The bill details the information a person must provide in its application to the Mayor to receive fine forgiveness. Vendors must apply and be approved for forgiveness within five years. The bill's language does not explicitly require the Office of Tax and Revenue to forgive delinquent tax, interest, and penalty amounts due.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill's implementation will cost \$764,000 in fiscal year 2023 and approximately \$2.4 million over the four-year financial plan period.

The bill's changes to the cottage food industry expand the foods that can be considered cottage foods from a DOH approved list to any food prepared, processed, or packed at a cottage food business, with limited exceptions. This definition increases the possibility that a cottage food business may produce and sell potentially hazardous foods, but to qualify as a cottage food, the food must still be processed in a residential kitchen and DOH still requires registration with the agency (including completion of a Certified Food Protection Manager Course). DOH also maintains the authority to inspect a cottage food business and can inspect a business in response to a complaint. DOH does not currently inspect cottage food businesses because it has the authority to restrict the types of foods that qualify. With the bill's new cottage food definition, DOH will need to inspect new cottage food businesses that seek to sell potentially hazardous foods or businesses that transfer from a mobile vending business into a cottage food business. The population of new or recategorized food businesses is unknown, but DOH will need at least one food inspector immediately to perform cottage food business inspections and a second inspector beginning in fiscal year 2025, as more businesses understand the new cottage food rules and consider conversions from traditional food vendors. The initial inspector will cost \$71,000 in fiscal year 2023 and the total cost of inspection employees will be \$442,000 over the four-year financial plan period.

The bill requires DOH and DLCP to issue regulations regarding sidewalk vendor cart designs and prohibits the agencies from including certain elements in those designs depending on the type of food being sold. Standards do not presently exist for vending carts, so DOH will need one program staff member to oversee the establishment of standards and to perform reviews of vending carts. The DOH staff member will cost \$98,000 in fiscal year 2023 and \$413,000 over the four-year financial plan period.

The bill authorizes the Mayor to establish sidewalk vending zones generally and requires the Mayor to establish the Columbia Heights-Mount Pleasant Sidewalk Vending Zone. The Mayor is currently authorized to implement vending development zones that have very similar characteristics to the bill's proposed sidewalk vending zones. DLCP will need to update regulations and guidance to ensure sidewalk vending opportunities are consistent with the bill's requirements. DLCP will also need to review and approve vending site plans submitted by managers and ensure compliance with those plans. DLCP requires one program staff member at a cost of \$109,000 in fiscal year 2023 and

¹⁴ The bill defines a street vendor as any vendor licensed to sell from a sidewalk, roadway, or other public space.

¹⁵ The amnesty applies to fines issued for any violation of vending laws.

¹⁶ D.C. Official Code § 47-2002.01.

The Honorable Phil Mendelson

FIS: Bill 25-68, "Street Vendor Advancement Amendment Act of 2023," Draft Committee Print as provided to the Office of Revenue Analysis on March 2, 2023

\$458,000 over the four-year financial plan period to both work with DOH on program oversight and oversee the manager contracts and related activities. Current vending zones also do not require the Mayor to contract with a nonprofit to act as a manager for the sidewalk vending zones. The Mayor will need to contract for a manager for the Columbia Heights-Mount Pleasant Sidewalk Vending Zone at a cost of \$125,000 annually. DLCP is unable to absorb the cost of the manager within the agency's existing budgeted resources. DLCP does not currently have plans to establish any additional sidewalk vending zones, but if it does, the Mayor will need an additional \$125,000 annually for each new zone.

The bill requires the Mayor to conduct a study of the Columbia Heights-Mount Pleasant Sidewalk Vending Zone that explores enhancing vending opportunities and other amenities within the zone. The study will cost approximately \$125,000 and this cost cannot be absorbed within the District's existing budgeted resources.

The bill's changes to vending licensing fees will reduce annual fee revenue from sidewalk, mobile, and other street vendors. According to information provided by DLCP, there are approximately 160 vendors, including mobile and sidewalk vendors, that would pay reduced fees. The bill's changes will reduce fee revenue by approximately \$70,000 annually. These fees are deposited into the Vending Regulation Fund (Fund) and the lost revenues will impact DLCP's ability to support the programs funded through the Fund.

The bill creates an amnesty program for street vendor applicants who owe delinquent vending fines or minimum sales taxes to the District. The Mayor can waive delinquent vending fines, but this will reduce projected DLCP fine revenues by approximately \$307,000 in fiscal year 2023, which is the year delinquent payers are expected to come into compliance to receive their licenses. The bill's language does not explicitly authorize the Office of Tax and Revenue to waive delinquent taxes, penalties, and interest and therefore there is presently no cost associated with lost tax revenues. There would be a cost in the future if the language were updated.

Bill 25-68, Street Vendor Advancement Amendment Act of 2023					
Implementation Costs					
Fiscal Year 2023 – Fiscal Year 2026					
(\$ thousands)					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
DOH Costs					
Cottage Food Inspectors ^a	\$71	\$74	\$147	\$150	\$442
Program Staff	\$98	\$101	\$105	\$108	\$413
Total DOH Costs	\$169	\$175	\$252	\$258	\$855
DLCP Costs					
Sidewalk Zone Program Staff	\$109	\$112	\$116	\$120	\$458
Inspector	\$109	\$112	\$116	\$120	\$458
Lost Licensing Revenues ^b	\$70	\$70	\$70	\$70	\$280
Total DLCP Costs	\$288	\$294	\$302	\$310	\$1,196
Amnesty Program ^c	\$307	\$0	\$0	\$0	\$307
TOTAL BILL COSTS	\$764	\$469	\$554	\$568	\$2,358

Table Notes

^a Includes DOH hiring one inspector in fiscal year 2023 and one in fiscal year 2025.

^b Includes lost revenues for all the bill's reduced fees and accounts for some vendors transitioning from standard food vending licenses through DOH to less expensive cottage food certificates.

^c The amnesty program only accounts for lost revenues at DLCP and not OTR at this time.