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BZA Appeal No. 16701

Submission From

Office of the Corporation Counsel

BZA
Case No. 16701
Exhibit No. 29

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.29

DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF DECEMBER 31, 1994, AND NOTES TO DECISIONS THROUGH MARCH 1, 1995

VOLUME 4

1995 REPLACEMENT

TITLE 6—HEALTH AND SAFETY

Prepared and Published Under Authority of the Council of the District of Columbia as supervised by the Office of the General Counsel,
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1995

BZA
Case No. 16701
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(d) The Mayor may seize any cleaning agent held for sale in violation of this subchapter. Cleaning agents seized under this subsection shall be forfeited to the District of Columbia.

(e) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 27 of this title. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 27 of this title. (Mar. 25, 1986, D.C. Law 6-98, § 5, 33 DCR 723; Mar. 8, 1991, D.C. Law 8-237, § 17, 38 DCR 314.)

Legislative history of Law 6-98. — See note to § 6-971.

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to Law 6-98. — See Mayor's Order 87-48, February 17, 1987.

Subchapter VI. Environmental Impact Statements.

§ 6-981. Purpose.

The purpose of this subchapter is to promote the health, safety and welfare of District of Columbia ("District") residents, to afford the fullest possible preservation and protection of the environment through a requirement that the environmental impact of proposed District government and privately initiated actions be examined before implementation and to require the Mayor, board, commission, or authority to substitute or require an applicant to substitute an alternative action or mitigating measures for a proposed action, if the alternative action or mitigating measures will accomplish the same purposes as the proposed action with minimized or no adverse environmental effects. (Oct. 18, 1989, D.C. Law 8-36, § 2, 36 DCR 5741.)

Legislative history of Law 8-36. — Law 8-36, the "District of Columbia Environmental Policy Act of 1989," was introduced in Council and assigned Bill No. 8-8, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on July 27, 1989, it was assigned Act No. 8-65 and transmitted to both Houses of Congress for its review.

Delegation of Authority Pursuant to D.C. Law 8-36. — See Mayor's Order 92-151, December 1, 1992.

Cited in Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 605 A.2d 22 (1992).

§ 6-982. Definitions.

For the purposes of this subchapter, the term:

(1) "Action" means (A) a new project or activity directly undertaken by the Mayor or a board, commission, or authority of the District government or (B) a project or activity that involves the issuance of a lease, permit, license, certificate, other entitlement, or permission to act by an agency of the District government.

(2) "Major action" means any action that costs over $1,000,000 and that may have a significant impact on the environment, except that, subject to the exemptions in § 6-986, the Mayor, pursuant to rules issued in accordance with § 6-989, shall classify any action that costs less than $1,000,000 as a major action, if the action imminently and substantially affects the public health, safety, or welfare. The cost level of $1,000,000 shall be based on 1989 dollars adjusted annually according to the Consumer Price Index.

(3) "Environment" means the physical conditions that will be affected by a proposed action, including but not limited to, the land, air, water, minerals, flora and fauna.

(4) "Hazardous substance" means any solid, liquid, gaseous, or semisolid form or combination that, because of its nature, concentration, physical, chemical, or infectious characteristic, as established by the Mayor, may:

(A) Cause or significantly contribute to an increase in mortality or an increase in a serious, irreversible or incapacitating reversible illness; or

(B) Pose a substantial hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed, including substances that are toxic, carcinogenic, flammable, irritants, strong sensitizers, or that generate pressure through decomposition, heat, or other means and containers and receptacles previously used in the transportation, storage, use, or application of hazardous substances.

(5) "Lead agency" means the District agency designated by the Mayor to have primary responsibility for the preparation of an Environmental Impact Statement ("EIS").

(6) "Functional equivalent" means the full and adequate description and analysis of the environmental impact of a proposed action by an agency, board, commission, or authority of the District government that examines or imposes environmental controls under procedures that provide for notice, opportunity for public comment, and the creation of a reviewable record. (Oct. 18, 1989, D.C. Law 8-36, § 3, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-983. Environmental Impact Statement requirements.

(a) Whenever the Mayor or a board, commission, authority, or person proposes or approves a major action that is likely to have substantial negative impact on the environment, if implemented, the Mayor, board, commission, authority, or person shall prepare or cause to be prepared, and transmit, in accordance with subsection (b) of this section, a detailed EIS at least 60 days prior to implementation of the proposed major action, unless the Mayor determines that the proposed major action has been or is subject to the functional equivalent of an EIS. The EIS shall be written in a concise manner. The EIS shall describe and, where appropriate, analyze:

(1) The goals and nature of the proposed major action and its environment;

(2) The relationship of the proposed major action to the goals of the adopted Comprehensive Plan, requirements as promulgated by the Zoning Commission, and any District or federal environmental standards;

(3) Any adverse environmental impact that cannot be avoided if the proposed major action is implemented;

(4) Alternatives to the proposed major action, including alternative locations and the adverse and beneficial effects of the alternatives;

(5) Any irreversible and irretrievable commitment of resources involved in the implementation of the proposed major action;

(6) Mitigation measures proposed to minimize any adverse environmental impact;

(7) The impact of the proposed major action on the use and conservation of energy resources, if applicable and significant;

(8) The cumulative impact of the major action when considered in conjunction with other proposed actions;

(9) The environmental effect of future expansion or action, if expansion or action is a reasonably foreseeable consequence of the initial major action and the future expansion or action will likely change the scope or nature of the initial major action or its environmental effects;

(10) Responses to comments provided by the Council, any affected Advisory Neighborhood Commission, and interested members of the public; and

(11) Any additional information that the Mayor or a board, commission, or authority determines to be helpful in assessing the environmental impact of any proposed major action and the suggested alternatives.

(b) The Mayor, board, commission, or authority shall transmit a copy of any EIS prepared pursuant to subsection (a) of this section to the Council, any District agency that has responsibility for implementing the major action or special expertise with respect to any environmental impact involved, and any affected Advisory Neighborhood Commission. A copy of the EIS shall be made available for review by the public in the main office of the agency primarily responsible for implementing or permitting the proposed major action. The Mayor, board, commission, or authority shall provide a reasonable period consistent with subchapter I of Chapter 15 of Title 1, for comment on any EIS required to be prepared pursuant to subsection (a) of this section. If 25 registered voters in an affected single member district request a public hearing on an EIS or supplemental EIS or there is significant public interest, the Mayor, board, commission, or authority shall conduct a public hearing pursuant to the rules issued in accordance with § 6-989(a).

(c)(1) The Mayor, board, agency, commission, or authority of the District government shall determine within 30 days, excluding Saturdays, Sundays, and legal holidays, of receipt of an application for a proposed major action whether an EIS is required, if the action involves the grant or issuance of a lease, permit, license, certificate, or other entitlement by a District agency.

(2) If the Mayor, or a board, commission, or authority of the District government determines that an EIS is not required for a major action that is likely to involve the creation, use, transportation, storage, or disposal of a hazardous substance, the Mayor shall prepare, make available for public

inspection, and transmit to the Council a written determination that describes why an EIS is not required prior to the grant or issuance of any applicable lease, permit, license, certificate, entitlement, or permission to act.

(3) If the major action involves the grant or issuance to an applicant of a lease, permit, license, certificate, or other entitlement by a District agency:

(A) The agency shall notify the applicant, in writing, if a determination has been made that an EIS is required. Notice of the determination and the findings that support the determination shall be kept on file by the Mayor.

(B) The Mayor, board, commission, or authority may require an applicant to prepare an EIS. A nongovernmental applicant shall be charged a fee to cover the cost of agency review of the EIS. No lease, permit, license, certificate, or other entitlement shall be issued, unless the applicant required to prepare an EIS has completed the EIS in compliance with this subchapter and paid any fee charged pursuant to this paragraph.

(C) The applicant shall assist the Mayor, or the board, commission, or authority at any stage of the review of the proposed major action by timely submitting all relevant information concerning impact, costs, benefits, and alternatives. The Mayor, board, commission, or authority shall deny a proposed action, if the applicant fails to submit relevant information as specified in rules promulgated pursuant to § 6-989. (Oct. 18, 1989, D.C. Law 8-36, § 4, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

Impact statement not necessary. — An environmental impact statement assessing the applicant's proposed use of the property was not needed because the applicant's appeal to the Board of Zoning Adjustment sought only a ruling that the proposed use could occur as a matter of right. Concerned Citizens v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 634 A.2d 1234 (1993).

§ 6-984. Adverse impact findings.

If the EIS identifies an adverse effect from a proposed major action and contains a finding that the public health, safety, or welfare is imminently and substantially endangered by the action, the Mayor, board, commission, or authority of the District government shall disapprove the action, unless the applicant proposes mitigating measures or substitutes a reasonable alternative to avoid the danger. (Oct. 18, 1989, D.C. Law 8-36, § 5, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-985. Supplemental EIS.

(a) The Mayor, or a board, commission, authority, or person shall prepare a supplemental EIS if:

(1) The agency or applicant makes or proposes a substantial change in the proposed action that is relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns that affect the proposed action or the impact of the proposed action.

(b) The supplemental EIS shall be prepared, transmitted, and funded in accordance with the requirements of § 6-983. (Oct. 18, 1989, D.C. Law 8-36, § 6, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-986. Exemptions.

(a) No EIS shall be required by this subchapter with respect to an action:

(1) For which an EIS has been prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) ("NEPA"), and its implementing regulations, or a determination has been made under NEPA and its implementing regulations that no impact statement is required due to a finding of no significant impact or a finding that the proposed action is categorically excluded from consideration;

(2) For which a request has been made for the authorization or allocation of funds for a project that involves only a feasibility or planning study for a possible future action that has not been approved, adopted, or funded. The study, however, shall include consideration of environmental factors;

(3) Whose impact on the environment has been considered in the functional equivalent of an EIS;

(4) That has reached a critical stage of completion prior to October 18, 1989 and the cost of altering or abandoning the action for environmental reasons outweighs the benefits derived from the action;

(5) Of an environmentally protective regulatory nature;

(6) Exempted by rules approved pursuant to § 6-989(a);

(7) Within the Central Employment Area as defined in the Zoning Regulations of the District of Columbia; or

(8) For which a lease, permit, certificate, or any other entitlement or permission to act by a District government agency has been approved before December 31, 1989.

(b) The Mayor or a board, commission, authority, or person shall prepare a supplemental EIS for any action exempted pursuant to subsection (a)(1) or (a)(3) of this section, if a substantial and relevant question remains with regard to the impact of the action on the environment that would otherwise be addressed in an EIS prepared in accordance with this subchapter. (Oct. 18, 1989, D.C. Law 8-36, § 7, 36 DCR 5741.)

Temporary amendment of section. — Section 12 of D.C. Law 10-251 added an (a)(9) to read as follows:

"(a) No EIS shall be required by this subchapter with respect to an action:

* * * * *

"(9) Granting an interim operating permit to an existing solid waste facility pursuant to section 4(b) of the Solid Waste Facility Permit Emergency Amendment Act of 1994 and section 4(b) of the Solid Waste Permit Temporary Act of 1994."

Section 16(b) of D.C. Law 10-251 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Solid Waste Facility Permit Amendment Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 12 of the Solid Waste Facility Permit Emergency Act of 1994 (D.C. Act 10-384, December 28, 1994, 42 DCR 45).

Legislative history of Law 8-36. — See note to § 6-981.

Legislative history of Law 10-251. — Law 10-251, the "Solid Waste Facility Permit Temporary Act of 1994," was introduced in Council and assigned Bill No. 10-835. The Bill was adopted on first and second readings on December 6, 1994, and January 3, 1995, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-398 and transmitted to both Houses of Congress for its review. D.C. Law 10-251 became effective on March 23, 1995.

Cited in Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment, App. D.C., 605 A.2d 22 (1992).

§ 6-987. Lead agencies; files.

(a) The Mayor shall designate a lead agency to prepare an EIS or supplemental EIS when the preparation of the EIS requires the input of more than 1 agency. The lead agency shall, if necessary, oversee the preparation of a single, omnibus EIS, ensure reasoned consideration of and distinction among any inconsistent conclusions, and promote coordination with public and private organizations and individuals with a special expertise or recognized interest.

(b) The Mayor shall maintain a file of all EIS's and supplemental EIS's for public review. (Oct. 18, 1989, D.C. Law 8-36, § 8, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-988. Judicial review.

Where an EIS is prepared in connection with the issuance or approval of a lease, permit, license, certificate, or any other entitlement or permission to act by a District government agency that is subject to administrative or judicial review under applicable laws or regulations, the administrative or judicial review shall be governed by the applicable laws and regulations. (Oct. 18, 1989, D.C. Law 8-36, § 9, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-989. Rules.

(a) Within 180 days of October 18, 1989, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this subchapter, including rules that establish categorical exemptions for major actions that would have no significant impact on the environment. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) Within 180 days of October 18, 1989, the Department of Consumer and Regulatory Affairs shall issue rules to assist District agencies in the preparation of an EIS, pursuant to subchapter I of Chapter 15 of Title 1. (Oct. 18, 1989, D.C. Law 8-36, § 10, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

Approval and disapproval of proposed Environmental Policy Act rules. — Pursuant to Resolution 8-314, the "District of Columbia Environmental Policy Act of 1989 Proposed Rulemaking Approval & Disapproval Resolution of 1990," effective December 21, 1990, the Council approved, in part, and disapproved, in part, the proposed rules to implement the District of Columbia Environmental Policy Act of 1989.

§ 6-990. Construction.

Nothing in this subchapter shall be construed to supercede the requirements of District government zoning statutes and regulations or federal and District government environmental statutes or regulations. (Oct. 18, 1989, D.C. Law 8-36, § 11, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

Subchapter VII. Asbestos Licensing and Control.

§ 6-991.1. Definitions.

For purposes of this subchapter, the term:

(1) "Asbestos" means any material that contains more than 1% by weight of an asbestiform variety of serpentinite or chrysotile, riebackite or crocidolite, cummingtanite, grunerite, anthophyllite, or tremolite.

(2) "Asbestos abatement" means the removal, encapsulation, enclosure, disposal, or transportation of asbestos or material that contains asbestos.

(3) "Business entity" means a partnership, firm, association, corporation, or sole proprietorship that is engaged in asbestos abatement.

(4) "Asbestos worker" means a person who is engaged in asbestos abatement.

(5) "Demolition" means to wreck or remove a load-supporting structural member of a facility or handling operation.

(6) "Encapsulate" means to coat, bind, or resurface a wall, ceiling, pipe, or other structure to prevent friable asbestos or material that contains asbestos from becoming airborne.

(7) "Friable asbestos material" means any material that can be crumbled, pulverized, reduced to powder by hand pressure, or that emits or can be expected to emit fibers into the air under normal use or maintenance.

(8) "Mayor" means the Mayor of the District of Columbia.

(9) "Person" means an individual or nonbusiness entity, including a District of Columbia ("District") government employee.

(10) "Structural member" means a load-supporting member, including a beam or load-supporting wall, or any non-supporting member, including a ceiling or nonload-supporting wall. (May 1, 1990, D.C. Law 8-116, § 2, 37 DCR 1641.)

Legislative history of Law 8-116. — Law 8-116, the "Asbestos Licensing and Control Act of 1990," was introduced in Council and assigned Bill No. 8-131, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Signed by the Mayor on

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ANNOTATED

1981 EDITION

1999 SUPPLEMENT

UPDATING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE OR FINALLY ADOPTED IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF APRIL 27, 1999, NOTES TO EMERGENCY LEGISLATION ADOPTED AS OF MARCH 31, 1999, REORGANIZATION PLANS NOT DISAPPROVED AS OF DECEMBER 31, 1998, AND NOTES TO DECISIONS REPORTED AS OF MARCH 1, 1999

VOLUME 4

1995 REPLACEMENT

Prepared and Published Under Authority of the Council of the District of Columbia as supervised by the Office of the General Counsel,
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Edited and Annotated by the Editorial Staff of the Publishers.

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1999

(c) Any person who violates any provision of this subchapter or the rules issued pursuant to this subchapter shall be liable to the District for all expenses, losses, or damages incurred by the District by reason of the violation. (Jan. 25, 1986, D.C. Law 6-76, § 15, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 15, 33 DCR 577; May 8, 1998, D.C. Law 12-106, § 2(i), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 rewrote (a) and (b).

Legislative history of Law 12-106. — See note to § 6-952.

§ 6-965. Authority to issue regulations.

The Board of Directors of WASA is authorized to issue regulations consistent with the authority granted to it by this subchapter, in order to implement the provisions of this subchapter. (Mar. 12, 1986, D.C. Law 6-95, § 16, as added May 8, 1998, D.C. Law 12-106, § 2(j), 45 DCR 1724.)

Effect of amendments. — D.C. Law 12-106 added this section.

Legislative history of Law 12-106. — See note to § 6-952.

Subchapter VI. Environmental Impact Statements.

§ 6-981. Purpose.

Delegation of Authority Pursuant to D.C. Law 8-116, the "Asbestos Licensing and Control Act of 1990." — See Mayor's Order 98-51, April 15, 1998 (45 DCR 2697).

Delegation of Authority Pursuant to D.C. Law 8-36, the "District of Columbia Environmental Policy Act of 1989." — See Mayor's Order 98-86, May 29, 1998 (45 DCR 3980).

Cited in Tri-County Indus. v. District of Columbia, 932 F. Supp. 4 (D.D.C. 1996), aff'd, in part and vacated in part, Tri-County Indus. v. District of Columbia (D.C. Cir. 1997).

§ 6-982. Definitions.

Section references. — This section is referred to in § 6-3451.

§ 6-983. Environmental Impact Statement requirements.

Cited in United States v. Dudley, 104 F.3d 442 (D.C. Cir. 1997).

§ 6-986. Exemptions.

(a) No EIS shall be required by this subchapter with respect to an action:

* * * * *

(7) Within the Central Employment Area as defined in the Zoning Regulations of the District of Columbia;

(8) For which a lease, permit, certificate, or any other entitlement or permission to act by a District government agency has been approved before December 31, 1989; or

(9) Granting an interim operating permit to an existing solid waste facility pursuant to § 6-3453.

* * * * *

(Feb. 27, 1996, D.C. Law 11-94, § 12, 42 DCR 7172; Apr. 9, 1997, D.C. Law 11-255, § 13, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-94 added (a)(9).

D.C. Law 11-255 validated previously made stylistic changes in (a)(7) and (8).

Temporary amendment of section.

D.C. Law 11-80 added (a)(9).

Section 17(b) of D.C. Law 11-80 provided that the act shall expire after the 225th day of its having taken effect or on the effective date of the Solid Waste Facility Permit Act of 1995, whichever occurs first.

Emergency act amendments.

For temporary amendment of section, see § 12 of the Solid Waste Facility Permit Emergency Act of 1995 (D.C. Act 11-144, October 23, 1995, 42 DCR 6044).

Legislative history of Law 11-80. — Law 11-80, the "Solid Waste Facility Permit Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-456. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 22, 1995, it was assigned Act No. 11-156 and transmitted to both Houses of Congress for its review. D.C. Law 11-80 became effective on February 6, 1996.

Legislative history of Law 11-94. — Law 11-94, the "Solid Waste Facility Permit Act of 1995," was introduced in Council and assigned Bill No. 11-036, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-177 and transmitted to both Houses of Congress for its review. D.C. Law 11-94 became effective on February 27, 1996.

Legislative history of Law 11-255. — See note to § 6-906.

§ 6-989. Rules.

District of Columbia Environmental Policy Act Proposed Rulemaking Approval Resolution of 1994. — Pursuant to Proposed Resolution 11-25, deemed approved February 18, 1995, Council approved the proposed rulemaking adopting Chapter 72 (Environmental Policy Act Regulations) of Title 20, DCMR, issued pursuant to the "District of Columbia Environmental Policy Act of 1989."

§ 6-990.1. Required Environmental Impact Statements.

Notwithstanding any other provision of this subchapter, a full EIS shall be required for the construction of any new solid waste facility or the substantial modification of an existing structure presently used as, or intended to be used as, a solid waste facility, as the term "solid waste facility" is defined in Chapter 34 of Title 6, regardless of the cost of construction or modification. (Oct. 18, 1989, D.C. Law 8-36, § 11a, as added Apr. 29, 1998, D.C. Law 12-86, § 802, 45 DCR 1172.)

Effect of amendments. — D.C. Law 12-86 added this section.

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatroy Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committe on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 26, 1997, and December 19, 1997, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

20 DCMR 72

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to § 10 of the District of Columbia Environmental Policy Act of 1989, D.C. Law 8-36, effective October 18, 1989, D.C. Code § 6-989,and Mayor's Order 92-151 (December 1, 1992) hereby gives notice of the adoption of the following new Chapter 72 ("Environmental Policy Act Regulations") of Title 20 DCMR, ("Environment"). These rules were adopted on July 11, 1995 and will implement the Environmental Policy Act.

On April 22, 1994, the Director of the Department of Consumer and Regulatory Affairs ("DCRA") published in the District of Columbia Register ("D.C. Register") for notice and comment proposed rules to implement the District of Columbia Environmental Policy Act of 1989, D.C. Law 8-36 (41 DCR 2251 (April 22, 1994))

Section 10 of Law 8-36 requires the Mayor to submit the proposed rules to the District of Columbia Council (the "Council") for review during a review period consisting of 45 days, excluding Saturdays, Sundays, legal holidays, and days of Council recess. (D.C. Code § 6-989(a) (1995)). In accordance with that requirement, the Mayor and DCRA submitted the proposed rules to the Council on October 15, 1994. Also submitted to the Council with the proposed rules was a report responding to citizens comments received in response to the April 22, 1994 Notice of Proposed Rulemaking. This report recommended several changes in the proposed rules, including changes to Sections 7201, 7202, 7203, 7205, 7206, 7209, and 7212. Section 10 of the Act further provides that "if the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved."

The Council took no action on the proposed rules or the recommended changes to the proposed rules, and by letter dated March 2, 1995, Council Chairman Clarke stated that by virtue of the Council having taken no action to disapprove it, Proposed Resolution PR10-724, entitled "District of Columbia Environmental Policy Act Proposed Rulemaking Approval Resolution of 1994", was deemed approved on February 18, 1995.

These final rules take effect immediately upon publication of this notice in the D.C. Register.

At the same time as the publication of this Notice of Final Rulemaking, DCRA is also publishing a Notice of Proposed Rulemaking which addresses citizen comments on the April 22, 1994 Proposed Rulemaking and proposes amendments to the sections listed above.

CHAPTER 72 ENVIRONMENTAL POLICY ACT REGULATIONS

7200 GENERAL PROVISIONS

7200.1 Before an agency, board, commission, or authority of the District of Columbia government shall approve any major action, or issue any lease, permit, license, certificate, or other entitlement or permission to act for a proposed major action, the environmental impact of the action must be adequately considered and reviewed by the District government, as provided in these regulations.

7200.2 Agencies, boards, and commissions under the Mayor's authority shall integrate, and agencies, boards and commissions not under the Mayor's authority shall be requested to integrate the Environmental Impact Statement (EIS) process with other planning processes at the earliest stages of their planning for major actions they intend to propose, when the widest range of feasible alternatives is open for consideration, and before there has been any irretrievable commitment of resources, in order to ensure that planning and decisions reflect environmental values, in order to avoid delays later in the process, and to head off potential conflicts.

7201 MAJOR ACTIONS FOR WHICH ENVIRONMENTAL IMPACT SCREENING FORMS ARE REQUIRED

7201.1 An Environmental Impact Screening Form (EISF) shall be prepared for any action that would cost over one million dollars ($1,000,000) based on 1989 dollars adjusted annually according to the Consumer Price Index and that may have a significant impact on the environment.

7201.2 An action costing $1 million or more may have significant impact on the environment and, thus, may be a major action subject to the EISF requirement of § 7201.1 if any of the following conditions are met:

(a) The action might have a significant adverse effect on a rare or endangered species of animal or plant, or the habitat of the species;

(b) The action might violate published national or local standards relating to hazardous waste, solid waste or litter control;

(c) The action might significantly deplete or degrade ground water resources;

(d) The action might significantly interfere with ground water recharge;

(e) The action might induce significant growth or concentration of population;

(f) The action might cause significant flooding, erosion or sedimentation;

(g) The action might extend a sewer trunk line with capacity to serve new development;

(h) The action might significantly diminish habitat for fish, wildlife or plants;

(i) The action might disrupt or divide the physical arrangement of an existing community;

(j) The action might create a potential public health hazard or would involve the use, production or disposal of materials that pose a hazard to people, animal or plant populations in the area;

(k) The action might violate any ambient air quality standard, contribute significantly to an existing or projected air quality violation, or expose sensitive receptors to significant pollutant concentration;

(l) The action might cause significant adverse change in existing surface water quality or quantity;

(m) The action might cause a significant adverse change in the use and conservation of energy resources, including an adverse impact on quantity or type of energy used;

(n) The action might cause significant adverse change in the existing level of noise in the vicinity of the action;

(o) The action might result in the exceedance of any Federal or District standards regarding electric and magnetic fields (EMF), if and when such standards are promulgated.

(p) The action, together with other actions proposed concurrently by the applicant, might have a cumulative impact that would be significant under the criteria described in § 7201.2(a)-(o).

7201.3 An EISF shall be prepared for any action that would cost less than 1 million dollars ($1,000,000) based on 1989 dollars adjusted annually according to the Consumer Price Index, if the action imminently and substantially affects the public health, safety, or welfare.

7201.4 A project imminently and substantially affects the public health, safety, or welfare if any of the following conditions are met:

(a) The action would violate Federal or District standards relating to hazardous waste, energy resources, air pollution, surface and ground water pollution, soil erosion, storm water, and flooding;

(b) The action would negatively affect a rare or endangered species of animal or plant, or the habitat of that species;

(c) The action would contaminate a public water supply;

(d) The action would create a public health hazard under applicable District regulations; or

(e) The action would involve the use, production or disposal in the affected area of hazardous substances as defined in § 7299.1 of these regulations in violation of federal or District environmental regulations.

7202 ACTIONS FOR WHICH NO ENVIRONMENTAL IMPACT SCREENING FORM IS REQUIRED

7202.1 No agency shall require that an EISF or an EIS be prepared for the following actions:

(a) Any action that costs less than 1 million dollars ($1,000,000) based on 1989 dollars adjusted annually according to the Consumer Price Index, unless that action meets the criteria of §§ 7201.3 and 7201.4 of these rules;

(b) Any action for which an Environmental Impact Statement ("EIS") has been prepared in accordance with the National Environmental Policy Act of 1969, approved January 1, 1970 (83 Stat.852; 42 U.S.C. § 4321 et seq.) (NEPA) and its implementing regulations, or a determination has been made under NEPA and its implementing regulations that

no impact statement is required due to a finding of no significant impact or a finding that the proposed action is categorically excluded from consideration;

(c) Any action for which a request has been made for the authorization or allocation of funding that involves only a feasibility or a planning study for a possible future action that has not been approved, adopted or funded. The study, however, shall include consideration of environmental factors;

(d) Any action whose impact on the environment has been or is considered in the functional equivalent of an EIS, where equivalency is determined by the lead agency;

(e) Any action that reached a critical stage of completion prior to October 18, 1989, and the cost of altering or abandoning the action for environmental reasons outweighs the benefits derived from the action;

(f) Any action of an environmentally protective regulatory nature;

(g) Any action within the Central Employment Area as defined in the Zoning Regulations of the District of Columbia; and

(h) Any action for which a lease, permit, certificate, or any other entitlement or permission to act by a District government agency has been approved before December 31, 1989.

7202.2 In addition to the actions listed in § 7202.1, no agency shall require that an EISF or EIS be prepared for the following classes of actions:

(a) Class 1. Operation, repair, maintenance, or minor alteration of existing public structures, facilities, mechanical equipment, or topographical features, including replacement of roofs, HVAC, electrical, plumbing, elevator, sprinkler or other systems, plus interior work to common areas and individual units, involving negligible or no expansion of use beyond that previously existing;

(b) Class 2. Replacement, renovation, or reconstruction of existing structures and facilities, where the new or renovated structure

meets the requirements of the Zoning Regulations, is located on the same site as the structure replaced, renovated, or reconstructed, will have substantially the same purpose and capacity as the structure replaced, renovated, or reconstructed, and will not exceed the density of that structure;

(c) Class 3. Construction and location of limited numbers of small facilities or structures; installation of new equipment in small structures, including replacement of HVAC, electrical, plumbing, elevator, sprinkler or other systems; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. This class includes, but is not limited to:

(1) Single family residences not in conjunction with the building of two or more such units;

(2) Small commercial structures not involving the use of significant amounts of hazardous substances;

(3) Water main, sewage, electrical, and other utility extensions of reasonable length to serve such construction; and

(4) Accessory structures such as garages, patios, swimming pools, and fences;

(d) Class 4. Minor public or private alterations in the condition of land, water, or vegetation which do not involve the removal of mature, healthy trees. This class includes, but is not limited to:

(1) Grading on land with a slope of less than ten percent (10%), except in waterways, wetlands, or officially designated scenic areas;

(2) New gardening, landscaping or planting of trees or other vegetation;

(3) Temporary use of land having negligible permanent effects, such as carnivals, fairs, and sales of Christmas trees; and

(4) The creation of bicycle lanes on existing rights-of-way;

(e) Class 5. Minor alterations in land use limitation in areas with an average slope of less than twenty percent (20%), which do not result in any changes in land use or density. This class includes, but is not limited to:

(1) Minor lot line adjustments, side yard and set back variances; and

(2) Issuance of minor encroachment permits;

(f) Class 6. Actions taken by District agencies as authorized by law or regulation to assure the maintenance, restoration, or enhancement of a natural resource or the environment, where the regulatory process involves procedures for protection of the environment. This includes basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to the environment and activities limited entirely to inspections to check for performance of an operation, or the quality, health or safety of a project;

(g) Class 7. Construction or placement of minor structures accessory to existing commercial, industrial, or institutional facilities. This class includes, but is not limited to:

(1) On-premise signs;

(2) Small parking lots (fewer than 50 vehicles); and

(3) Placement of seasonal or temporary use items such as mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use;

(h) Class 8. Action in the nature of a response to an emergency as determined by the Mayor;

(i) Class 9. Action in the nature of remedial actions related to leaking underground storage tanks, removal of PCB equipment, hazardous substances, or other environmental contaminants pursuant to all lawfully required and issued permits;

(j) Class 10. Actions related to the removal of asbestos pursuant to all lawfully required and issued permits;

(k) Class 11. Residential structure projects, or portions of projects, within the R-1 through R-5-A zoning districts, as defined under Chapters 2 and 3 of Title 11, DCMR (Zoning);

(l) Class 12. Actions within Development Zones as defined pursuant to the District of Columbia Economic Development Zone Incentives Act of 1988 (D.C. Law 7-177).

7202.3 An applicant may submit an existing environmental description and analysis of a proposed action to the lead agency, which must make a written determination within thirty (30) days of receipt of the document as to whether or not (i) the environmental description and analysis qualifies as a functional equivalent of an EIS, and (ii) the action is exempt under § 7202.1.

7203 DESIGNATION AND RESPONSIBILITIES OF LEAD AND REVIEW AGENCIES

7203.1 The lead agency responsible for the coordination of the preparation and review of the EISF, and the EIS if necessary, shall be as follows:

(a) For any major action proposed by an applicant that would require any license, permit, certificate of occupancy or other approval from a District Agency prior to implementation, the District agency responsible for the first District government authorization of the project shall be the lead agency;

(b) For any major action proposed by the District government, the agency proposing the project shall be the lead agency.

7203.2 For any public or private major action for which the lead agency is an agency other than DCRA, the lead agency shall submit any EISF and EIS to the DCRA, as review agency, for review, and shall consider the recommendations of DCRA in determining whether to request additional information on environmental impacts pursuant to § 7203.4 and in decisions concerning the major action that is the subject of the EISF or EIS.

7203.3 DCRA shall submit its recommendations concerning the need for an EIS to the lead agency within fourteen (14)

days of receipt of the submission of the EISF from the lead agency. DCRA shall submit its recommendations concerning any EIS to the lead agency by the end of the period for public comment on the EIS.

7203.4 The lead agency may request relevant information from the applicant concerning impact, costs, benefits, and alternatives that it reasonably determines to be necessary in evaluating the proposed major action. If the lead agency has not received any response to the request for information within ninety (90) calendar days, the lead agency shall deny approval of the project.

7203.5 For District government projects, DCRA may request relevant information from the lead agency concerning impact, costs, benefits, and alternatives that it reasonably determines to be necessary in evaluating the proposed major action. If DCRA has not received any response to the request for information within ninety (90) calendar days, DCRA shall deny approval of the project.

7203.6 No agency shall issue any license, permit, certificate, or authorization until completion of the environmental impact review process by the lead agency.

7204 PREPARATION OF ENVIRONMENTAL IMPACT SCREENING FORM

7204.1 The lead agency or the applicant shall complete an EISF for major actions that are not exempted by § 7202.1 or § 7202.2.

7204.2 The applicant for a permit for a major action shall file an EISF and five (5) copies with the lead agency for review and determination of whether an EIS is required.

7204.3 Along with the EISF, the applicant shall submit a project description and any other available information relative to the environmental impacts of the proposed major action, including, but not limited to, environmental assessments, traffic analyses, computer analyses and any other reports which will assist the lead agency in making its determination.

7204.4 Upon the request of the lead agency, the applicant shall provide any additional information requested to complete or clarify the description of the proposed major action and potential environmental impacts. If the applicant has not responded to the request for

information within ninety (90) calendar days, the lead agency shall deny approval of the project.

7205 REVIEW OF ENVIRONMENTAL IMPACT SCREENING FORM

7205.1 The lead agency shall make a written determination, within thirty (30) working days of the submission by an applicant of a complete EISF pursuant to §§ 7204.2 and 7204.3 for a major action that is not exempt under § 7202.1 or 7202.2, whether or not the action is likely to have substantial negative impact on the environment, and whether an EIS is required.

7205.2 If the lead agency determines that an EIS is required, no lease, permit, license, certificate, or other entitlement shall be issued by the District government until the EIS has been prepared consistent with these regulations and the Environmental Policy Act, has been reviewed and approved by the District government, and all applicable fees have been paid.

7205.3 If the lead agency determines that an EIS is not required for a major action that is likely to involve the creation, use, storage, transportation, or disposal of a hazardous substance, the lead agency shall prepare within ten (10) days of such determination, a written explanation of why an EIS is not required.

7205.4 The lead agency shall make the written determination required by § 7205.3 available to the public by publishing a notice in the D.C. Register and transmit a copy to the Council of the District of Columbia prior to granting or issuing of any applicable lease, permit, license, certificate, entitlement, or permission to act.

7206 PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT

7206.1 For major actions proposed by an applicant, the applicant shall be responsible for the preparation of the EIS.

7206.2 The EIS shall include the following information and will describe and, where appropriate, analyze the following:

(a) The goals and nature of the proposed major action and its environment;

(b) The relationship of the proposed major action to the goals of the adopted Comprehensive Plan, requirements as promulgated by the Zoning

Commission, and any District or federal environmental standards;

(c) Any adverse environmental impact that cannot be avoided if the proposed major action is implemented;

(d) Alternatives to the proposed major action, including alternative locations and the adverse and beneficial effects of the alternatives;

(e) Any irreversible or irretrievable commitment of resources involved in the implementation of the proposed major action;

(f) Mitigation measures proposed to minimize any adverse environmental impact;

(g) The impact of the proposed major action on the use of energy resources, if applicable and significant;

(h) The cumulative impact of the major action when considered in conjunction with other proposed actions;

(i) The environmental effect of future expansion or action, if expansion or action is a reasonably foreseeable consequence of the initial major action and the future expansion or action will likely change the scope or nature of the initial major action or its environmental effects;

(j) Responses to comments on the EIS provided by the Council, any affected Advisory Neighborhood Commission, and interested members of the public; and

(k) Any additional information that the Mayor or a board, commission, or authority determines to be helpful in assessing the environmental impact of any proposed major action and the suggested alternatives.

7206.3 For any given major action covered by this Chapter, only one EIS shall be required.

7207 RESERVED

7208 PUBLIC REVIEW OF ENVIRONMENTAL IMPACT STATEMENTS

7208.1 The lead agency shall transmit a copy of the completed EIS to the Council of the District of Columbia, any District agency that has responsibility for implementing the major action or that has special expertise with respect to any environmental impact involved, and any affected Advisory Neighborhood Commission.

7208.2 The lead agency shall publish in the D.C. Register a notice of the availability of the EIS for a forty-five day (45) public comment period.

7208.3 The lead agency shall make available to the public for inspection a copy of the EIS, by providing a copy of the EIS in its main office and in the M.L. King Public Library.

7209 PUBLIC HEARING REQUIREMENT

7209.1 The lead agency shall hold a public hearing on an EIS within forty-five (45) calendar days of any request made during the public comment period by twenty-five (25) registered voters in a single member district, or it there is significant public interest in the action that is the subject of the EIS.

7209.2 The hearing shall provide an opportunity for the citizens affected by the environmental impacts of the proposed major action and other interested parties to present written and oral comments.

7209.3 The applicant shall be given an opportunity to respond to all verbal or written public comments. Comments shall be addressed both individually and collectively and shall be responded to by:

(a) Supplementing, improving or modifying the analyses in the original EIS;

(b) Making factual corrections to the original EIS;

(c) Explaining why the comments do not warrant further response, by citing the sources, authorities, or reasons which support the position, and if appropriate, indicating those circumstances which would trigger agency reappraisal or further response; and

(d) By attaching to the response all comments received, whether or not the comment is thought to merit individual discussion and response.

7209.4 All written and oral comments, and responses to those comments, become part of the record and shall be considered by the lead agency in deciding whether the EIS identifies an adverse effect and that the public health, safety or welfare is imminently and substantially endangered by the action.

7210 FINDING AS TO ENVIRONMENTAL IMPACT

7210.1 The lead agency shall make a written finding, taking into account written and oral public comments, and the responses to those comments, that the EIS either:

(a) Identifies no adverse effect;

(b) Identifies an adverse effect, but the public health, safety, or welfare is not imminently and substantially endangered; or

(c) Identifies an adverse effect and the public health, safety, or welfare is imminently and substantially endangered.

7210.2 The lead agency shall make a finding as to the environmental impact of the proposed major action within thirty (30) working days after completion of a public hearing, if one is required, or within thirty (30) working days of the close of the public comment period, if no public hearing is required.

7210.3 If the lead agency makes a finding that the EIS identifies an adverse effect and that the public health, safety, or welfare is imminently and substantially endangered, the lead agency shall disapprove the project unless the lead agency or applicant submits mitigating measures or substitutes a reasonable alternative to avoid the danger.

7210.4 If the lead agency makes a finding that the final EIS identifies no adverse effect, or identifies an adverse effect and the public health safety or welfare is not imminently and substantially endangered, the proposed action shall be approved with respect to the requirements of Law 8-36.

7210.5 The lead agency's written finding shall be published in the D.C. Register.

7211 REQUIREMENTS FOR A SUPPLEMENTAL EIS

7211.1 The lead agency or applicant shall prepare a supplemental EIS if:

(a) The lead agency or applicant makes or proposes a substantial change in the proposed major action that is relevant to environmental concerns and not addressed in the EIS;

(b) There are significant new circumstances or information relevant to environmental concerns that affect the proposed action or the impact of the proposed action; or

(c) The lead agency determines for any action exempted from the EIS process pursuant to § 7202.1(b) (an action subject to the federal EIS requirements under NEPA), or § 7202.1(d) (an action for which a EIS functional equivalent has been prepared), that a substantial and relevant question remains with regard to the impact of the action on the environment that would otherwise be addressed in an EIS prepared in accordance with these regulations.

7211.2 The supplemental EIS shall be prepared, transmitted, funded and reviewed in accordance with the requirements of §§ 7206.1, 7206.3, 7208, 7209 and 7210.

7212 FEES

7212.1 The lead agency shall charge the applicant a fee for the review of the EIS.

7212.2 The EIS review fee is forty dollars ($40) per hour.

7212.3 For any EIS, the total review fee shall not exceed one percent (1.0%) of the total project cost of the proposed major action.

7213 PROJECT COSTS

7213.1 The total project cost of a proposed action shall include the cost of supplying utility service to the project, the cost of site preparation, the cost of labor and material, the cost of any process equipment required by the project, and the cost of installation of any process equipment.

7213.2 The cost of site preparation shall include both pre- and post-construction site work, including clearing of trees and vegetation, grading and excavation, implementation of soil erosion and sedimentation control plans, installation of storm water management facilities, and the post-construction replacement of trees and vegetation and other landscaping.

7213.3 Site preparation costs shall not include the costs of any remediation actions taken to remove contaminated soils or to treat contaminated soils or ground water on site.

7299 DEFINITIONS

7299.1 When used in this chapter of this title, the following terms shall have the meanings ascribed:

Act - The District of Columbia Environmental Policy Act of 1989 (34 DCMR 5741).

Action - (i) a new project or activity directly undertaken by an agency, board, commission, or authority of the District government, or (ii) a project or activity that involves the issuance of a lease, permit, license, certificate, or other entitlement, or permission to act by an agency of the District government.

Adverse effects - any effect from a proposed action which has a significant negative environmental impact on the public health, safety, or welfare.

Affected ANC - the ANC within which the proposed action will be implemented and ANCs directly adjacent to that ANC.

ANC - Advisory Neighborhood Commission

Applicant - non-governmental party, institution, or corporation which applies to the District of Columbia government for a lease, permit, license, certificate, or other entitlement or permission to act.

Council - the Council of the District of Columbia

Critical stage - that phase of a proposed action where the cost of altering or abandoning the action outweighs the benefits to the environment.

DCRA - the District of Columbia Department of Consumer and Regulatory Affairs.

EISF - Environmental Impact Screening Form

EIS - Environmental Impact Statement

Emergency - any immediate threat to the public health, safety, or welfare, or the quality of the environment for which an immediate response is required by the public or private sector.

Environment - the physical conditions that will be affected by a proposed action, including but not limited to, the land, air, water, minerals, flora, and fauna.

Functional Equivalent - the full and adequate description and analysis of the environmental impact of a proposed action by an agency, board, commission, or authority of the District government that examines or imposes environmental controls under procedures that provide for notice, opportunity for public comment, and the creation of a reviewable record, where the description and analysis discusses impacts on the environment, as defined in these regulations, and includes information concerning, at a minimum, (1) the relationship of the proposed action to any applicable District or federal environmental standards; (2) any potential unavoidable adverse environmental impact from the project, if implemented; (3) any irreversible and irretrievable commitment of resources involved in the implementation of the project; (4) any significant impact on the use and conservation of energy resources; and (5) the cumulative impact of the project on the environment when considered in conjunction with other actions proposed concurrently by the applicant.

Hazardous substance - any solid, liquid, gaseous, or semisolid form or combination that, because of its nature, concentration, physical, chemical, or infectious characteristic, as established by the agency, may:

(a) Cause or significantly contribute to an increase in mortality or an increase in a serious irreversible or incapacitating reversible illness; or

(b) Pose a substantial hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed, including substances that are toxic, carcinogenic, flammable, irritants, strong sensitizers, or that

generate pressure through decomposition, heat, or other means, and containers and receptacles previously used in the transportation, storage, use, or application of hazardous substances.

Lead agency - the District government agency designated by the Mayor to have primary responsibility for coordinating the preparation of an Environmental Impact Statement.

Major Action - any action that costs over 1 million dollars and that under § 7201.2 may have a significant impact on the environment, or any action that costs less than 1 million dollars and that under § 7201.4 imminently and substantially affects the public health, safety, or welfare.

Public Structure - any government-owned building, roadway, bridge, alley, sidewalk, curb, gutter, or utility, including structures and equipment related to the pumping or distribution of water, sanitary sewage, storm water, or combination of storm water and sanitary sewage.

Review Agency - the Department of Consumer and Regulatory Affairs (DCRA).

Significant - the degree to which an action has a major impact on public health, safety, or welfare, or the quality of the environment.

Significant Negative Impact - any impact, which when considered in its entirety will result in a significant degradation of the environment.

ENROLLED ORIGINAL

New ANC LAW - Notice PROVISIONS

vacancy. Prior to the special Advisory Neighborhood Commission meeting, the Advisory Neighborhood Commission shall make a good faith effort to notify, in writing, the Commissioner who is the subject of the resolution. Notice of the meeting shall be sent by certified mail, return receipt requested, to the Commissioner no later than 15 days prior to the meeting , and shall provide that the Commissioner shall have an opportunity to rebut the alleged vacancy. The resolution, accompanied by minutes of the meeting at which the resolution was adopted and a list of those attending the meeting, shall be sent to:

"(A) The Board of Elections and Ethics;

"(B) The Council;

"(C) The Mayor; and

"(D) The Commissioner, whenever the vacancy is due to removal or failure to continue the qualifications for office under section 6.".

(3) Subsection (h) is amended to read as follows:

"(h)(1) The Board shall maintain a list of the names, a current telephone number, and home addresses of all members of the Advisory Neighborhood Commissions, and shall share that list on a monthly basis with the Office of Advisory Neighborhood Commissions established in section 18.

"(2) The Board shall not release the social security numbers of Commissioners.

"(3) This list shall be published at least semiannually in the District of Columbia Register. This list shall also be provided by the Office of Advisory Neighborhood Commissions established in section 18, to the Alcohol Beverage Control Board, the Historic Preservation Review Board, the Redevelopment Land Agency, the Zoning Commission and the Board of Zoning Adjustment, and to any other District government entity that requests it.

"(4) Any change, which may be due to resignation, election, moving, or for any other reason, shall be reported when it occurs by the Office of Advisory Neighborhood Commissions to the Alcohol Beverage Control Board, the Historic Preservation Review Board, the Redevelopment Land Agency, the Zoning Commission, the Board of Zoning Adjustment, and to any other District government entity that requests it.".

Sec. 3. The Advisory Neighborhood Commissions Act of 1975 is amended as follows:

(a) Section 13 is amended to read as follows:

"Sec. 13. Advisory Neighborhood Commissions-Duties and responsibilities; notice; great weight; access to documents; reports; contributions.

"(a) Each Advisory Neighborhood Commission ("Commission") may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area. For the purposes of this act, proposed actions of

District government policy shall be the same as those for which prior notice of proposed rulemaking is required pursuant to section 6(a) of the District of Columbia Administrative Procedure Act or as pertains to the Council of the District of Columbia.

"(b) Thirty days written notice, excluding Saturdays, Sundays and legal holidays of such District government actions or proposed actions shall be given by first-class mail to the Office of Advisory Neighborhood Commissions, each affected Commission, the Commissioner representing a single-member district affected by said actions, and to each affected Ward Councilmember, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. In cases in which the 30-day written notice requirement is not satisfied, notification of such proposed government action or actions to the Commissioner representing the affected single-member district shall be made by mail. The Register shall be made available, without cost, to each Commission. A central record of all such notices shall be held by the Office of Advisory Neighborhood Commissions.

"(c)(1) Proposed District government actions covered by this act shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agencies, boards, and commissions. In addition to those notices required in subsection (a) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia government entity shall maintain a record of the notices sent to each Commission pursuant to subsection (b) of this section.

"(2)(A) The Alcoholic Beverage Control Board ("ABC Board") or its designee shall give notice to Advisory Neighborhood Commissions, the Office of Advisory Neighborhood Commissions, the Commission representing the area in which the applicant's establishment is located, and the Commissioner representing an affected single-member district at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location. The ABC Board or its designee party shall give notice by first-class mail, posted not less than 5 calendar days prior to the first day of the 45-calendar-day notice period, and addressed to:

"(i) The Commission office, with sufficient copies of the notice for distribution to each Commissioner;

"(ii) The Chairperson of the Commission at his or her home address of record; and

"(iii) The Commissioner in whose single-member district the establishment is located at his or her home address of record.

"(B) In addition, the ABC Board shall provide to each Commission office, on a quarterly basis, a printed list of all Alcohol Beverage Control licenses due to expire in the ensuing 6 months. An Advisory Neighborhood Commission may object to the application in the manner set forth in sections 14(c) and (e) of the District of Columbia Alcoholic Beverage Control Act.

"(3) The Department of Consumer and Regulatory Affairs shall ensure that each Advisory Neighborhood Commission is provided at least twice a month by first-class mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission. All notices shall also be provided to the Office of Advisory Neighborhood Commissions. Each Commission and the affected ward Councilmember shall also be provided at least twice a month with a current list of applications for public space permits.

"(d)(1) Each Commission so notified pursuant to subsections (b) and (c) of this section of the proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with section 14(c) which is open to the public in accordance with section 14(g). The recommendations of the Commission, if any, shall be in writing and articulate the basis for its decision.

"(2) At the close of business of the day after which the notice period concludes as provided in subsection (b) or (c) of this section, the affected District government entity may proceed to make its decision.

"(3)(A) The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns.

"(B) In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

"(C) The government entity shall promptly send to the Commission and the respective ward Councilmember a copy of its written decision.

"(4) Oral testimony shall be followed as if provided in advance in writing as required by paragraph (1) of this subsection when accompanied within 7 days by written documentation approved by the respective Commission, which supports the testimony.

"(e) Reserved.

"(f) Each Commission may present its views to any federal or District agency.

year in which elections for Advisory Neighborhood Commissions are to be held. Such petitions must be signed by at least 5 percent of the registered qualified electors of such Advisory Neighborhood Commission area.

(b) Upon certification by the Board to the Chairman of the Council that 5 percent of the registered qualified electors of an Advisory Neighborhood Commission have signed such a petition, the Council shall, after public hearing, accept or reject such petition.

(c) The Council shall accept or reject such a petition within 3 months after its receipt. (1973 Ed., § 1-171g; Oct. 10, 1975, D.C. Law 1-21, § 10, 22 DCR 2071; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952.)

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-27. — See note to § 1-251.

Legislative history of Law 5-111. — See note to § 1-252.

§ 1-260. Conduct of elections.

(a) The Board is authorized to conduct the elections provided for in this act and to adopt, amend, repeal, and enforce such regulations as are deemed necessary to carry out the provisions of this act. The Board shall conduct such elections in the same manner as elections held under Chapter 13 of this title.

(b) For the purposes of this act, the term "registered qualified elector" means a qualified elector, as defined in § 1-1302, registered under § 1-1311. (1973 Ed., § 1-171h; Oct. 10, 1975, D.C. Law 1-21, § 11, 22 DCR 2072; June 19, 1976, D.C. Law 1-72, § 7, 23 DCR 578.)

Legislative history of Law 1-21. — See note to § 1-252.

Legislative history of Law 1-72. — See note to § 1-265.

References in text. — "This act," referred to in this section, is the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21.

Notice was reasonably calculated to apprise petitioner of date of election result certification. — District of Columbia Board of Elections and Ethics provided notice reasonably calculated to apprise petitioner of the date when the Board certified the election results. White v. District of Columbia Bd. of Elections & Ethics, App. D.C., 537 A.2d 1133 (1988).

§ 1-261. Advisory Neighborhood Commissions — Duties and responsibilities.

(a) Each Advisory Neighborhood Commission (hereinafter in §§ 1-261 to 1-264 the "Commission") may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social services programs, education, health, safety and sanitation which affect that Commission area. For the purposes of this act, proposed actions of District government policy shall be the same as those for which prior notice of proposed rulemaking is required pursuant to § 1-1506(a) or as pertains to the Council of the District of Columbia.

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(b) Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. The Register shall be made available, without cost, to each Commission.

(c)(1) Proposed District government actions covered by this act shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agency. In addition to those notices required in subsection (a) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals, and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia agency shall maintain a record of such notices sent to each Commission.

(2) The Alcoholic Beverage Control Board shall give notice to Advisory Neighborhood Commissions at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location. The notice shall be given to the Advisory Neighborhood Commission representing the area in which the applicant's establishment is located. The Board shall give notice by first-class mail, posted not less than 5 calendar days prior to the first day of the 45-calendar-day notice period, and addressed to the Commission office, with sufficient copies of the notice for distribution to each Commission member, the Chairperson of the Commission at his or her home address of record, and the Commission member in whose single-member district the establishment is located at his or her home address of record. In addition, the Board shall provide to each Commission office, on a quarterly basis, a printed list of all ABC licenses due to expire in the ensuing 6 months. An Advisory Neighborhood Commission may object to the application in the manner set forth in § 25-115(c) and (e).

(3) The Department of Licenses, Investigation and Inspections shall ensure that each affected Advisory Neighborhood Commission is provided regularly by mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission.

(d) Each Commission so notified pursuant to subsections (b) and (c) of this section of proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with § 1-262(c) which is open to the public in accordance with § 1-262(g). At the close of business of the 31st day from mailing of such written notice or earlier