

AGENDA

ANC 6A Economic Development & Zoning Committee
Tuesday, September 27, 2005, 7-9 PM
Capitol Hill Towers (900 G St, NE)
Community Room

1. Community comment
2. Committee Introductions
3. Update on Appeal to BZA on Cluck-U Certificate of Occupancy
4. DCRA Report on H Street NE Eating Establishments
5. Research into Business Improvement District Expansion
6. Council Oversight Hearing on Noise Issues and Enforcement in Residential/Commercial Neighborhoods
7. DCRA Rental Unit Licensing Requirements (Basic Business License)
8. Community comment (time permitting)

Everyone is welcome! Call Commissioner Rice with questions at 544-3734.

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listserv at <http://groups.yahoo.com/group/anc-6a/>

ITEM 3

Update on Appeal to BZA on Cluck-U Certificate of Occupancy

Before the

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:)
)
Advisory Neighborhood Commission 6A from the)
Administrative Decision of DCRA on) BZA Appeal No. _____
Certificate of Occupancy Permit No. CO-102037)

Statement of the Appellant

Advisory Neighborhood Commission 6A (“ANC 6A”) hereby requests that the Board of Zoning Adjustment (“Board”) GRANT its Appeal from the Administrative Decision of DCRA on Certificate of Occupancy Permit No. CO-102037, and in support of its appeal states as follows:¹

SUMMARY OF APPEAL

The Department of Consumer and Regulator Affairs (“DCRA”) erred in its decision to grant Certificate of Occupancy Permit No. CO-102037 to Gibson Investments, Inc., trading as Cluck-U-Chicken, (“Cluck-U-Chicken”) for three reasons. First, the Certificate of Occupancy allows use of the premises as a “restaurant,” but Cluck-U-Chicken is in fact a “fast food restaurant” as defined by 11 D.C.M.R. § 199.1 (2003). Second, DCRA granted a Certificate of Occupancy to Cluck-U-Chicken, a fast food restaurant in a C-2-A District, without a special exception as required by 11

¹ The Board of Zoning Adjustment has jurisdiction to hear and decide this appeal pursuant to 11 D.C.M.R. § 3100.2 and D.C. Code § 6-641.07(g)(4).

D.C.M.R. § 733. Third, DCRA granted Cluck-U-Chicken a Certificate of Occupancy for a lot that does not correspond to the lot in which Cluck-U-Chicken is actually located.

DISCUSSION

On July 27, 2005, DCRA, through Acting Zoning Administrator Neil Stanley, issued Certificate of Occupancy Permit No. CO-102037 to Cluck-U-Chicken, a Maryland corporation and franchisee of Cluck-U, Corp. The Certificate of Occupancy allows Cluck-U-Chicken to operate a 49-seat “restaurant.” Cluck-U-Chicken is located at 1123 H Street, Northeast. Cluck-U-Chicken is in a C-2-A District and directly abuts residential property in an R-4 District.

I. DCRA erred in deciding that Cluck-U-Chicken is a “restaurant” and not a “fast food restaurant.”

DCRA granted a Certificate of Occupancy for Cluck-U-Chicken to operate a “restaurant” as defined by 11 D.C.M.R. § 199.1. However, residents have observed that Cluck-U-Chicken in fact satisfies the definition of a “fast food restaurant” under 11 D.C.M.R. § 199.1 and Board Order No. 17214 (July 15, 2005). D.C. Municipal

Regulations state that:

A restaurant will be considered a fast food restaurant if the floor space allocated and used for customer queuing for self-service for carry-out and on-premises consumption is greater than ten percent (10%) of the total floor space on any one (1) floor that is accessible to the public, and it exhibits one of the two following characteristics:

(a) at least sixty percent (60%) of the food items are already prepared or packaged before the customer places and order; and/or

(b) The establishment primarily serves its food and beverages in disposable containers and provides disposable tableware.

11 D.C.M.R. § 199.1. Moreover, a “fast food restaurant” is not a “restaurant.” See 11 DCMR § 199.1; Board, Order No. 17214 at 3. Therefore, a food establishment is necessarily a “fast food restaurant” and not a “restaurant” if it satisfies the floor space requirement and either the prepared/prepackaged food requirement or the disposable-container-and-tableware requirement.

Cluck-U-Chicken satisfies the floor space requirement. The Board has interpreted the floor space requirement to mean that “if the total floor space for either customer queuing or on-premise consumption, or both, is more than ten percent of the total floor space that is available to the public on a particular floor, . . . then the establishment in question is a fast food restaurant.” Board, Order No. 17214 at 5 (vote in favor of order was unanimous). At Cluck-U-Chicken, the floor space for customer queuing alone is substantially more than 10% of the publicly accessible floor space. Moreover, at Cluck-U-Chicken, the sum of the floor space for customer queuing and the floor space for on-premises consumption exceeds the 10% threshold by a substantial amount. Any other calculation fails to comply with D.C.M.R. § 199.1. Cf. Board, Order No. 17214 at 5. Therefore, DCRA’s decision to grant the Certificate of Occupancy was erroneous. The Appellant will establish these facts with plans provided by DCRA, photographs, and statements from residents who have visited and/or observed Cluck-U-Chicken.

Moreover, Cluck-U-Chicken satisfies the disposable-container-and-tableware requirement. Cluck-U-Chicken serves its food and beverages to customers primarily in disposable containers with disposable tableware. The Appellant will establish this fact

through statements and photographs from residents who have visited and/or observed Cluck-U-Chicken.

Also, Cluck-U-Chicken satisfies the prepared/prepackaged food requirement. Cluck-U-Chicken serves a substantial portion of food items that are prepared or packaged before customers place their orders. The Appellant will establish this fact through statements from both residents who have visited and/or observed Cluck-U-Chicken and Cluck-U-Chicken's franchisor.

II. DCRA erred in granting a certificate of occupancy to a fast food restaurant without a special exception.

Cluck-U-Chicken is a fast food restaurant in a C-2-A District. Fast food restaurants are permitted in C-2-A Districts only by special exception. 11 D.C.M.R. § 733. However, DCRA granted Cluck-U-Chicken a certificate of occupancy without a special exception. Therefore, DCRA erred in granting Cluck-U-Chicken a Certificate of Occupancy.

III. DCRA granted Cluck-U-Chicken a Certificate of Occupancy for a lot that does not correspond to the lot in which Cluck-U-Chicken is actually located.

Cluck-U-Chicken's Certificate of Occupancy is erroneous on its face. Certificate of Occupancy Permit No. CO-102037 permits a "restaurant" at square 982, lot 803, which corresponds to 1120 G Street, Northeast. However, Cluck-U-Chicken is at square 982, lot 823, which corresponds to 1123 H Street, Northeast. Therefore, the Certificate of Occupancy allows a "restaurant" where Cluck-U-Chicken is not actually located.

REQUEST FOR RELIEF

The Appellant requests that the Board ORDER the Department of Consumer and Regulatory Affairs to:

1. revoke Certificate of Occupancy Permit No. CO-102037;
2. treat Cluck-U-Chicken's Application for a Certificate of Occupancy for a "restaurant" as one for a "fast food restaurant";
3. amend Cluck-U-Chicken's Application for a Certificate of Occupancy to reflect the square and lot that Cluck-U-Chicken actually occupies; and
4. Initiate the special exception process pursuant to 11 D.C.M.R. § 733 within thirty (30) days of the date of the final order issuing from this appeal.

Respectfully submitted,

Richard Luna
1230 Linden Place, NE
Washington, DC 20002-4455

Commissioner Cody Rice (ANC 6A-03)
310 9th Street, NE
Washington, DC 20002

as authorized agents for
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington, DC 20013

ITEM 4
DCRA Report on H Street NE Eating Establishments
(PENDING)

ITEM 5
Research into Business Improvement District Expansion

From: Patty Brosmer, Capitol Hill BID Executive Director

Thank you for your interest in the Capitol Hill BID services. As you may, or may not know, BID's are funded by a tax on commercial properties and are generally formed when a majority of property owners in a specified area elect (through a petition process) to form a nonprofit entity and self tax to provide enhanced services to their area. It is all legislated by the District of Columbia and must be approved by the Mayor.

From: George A Didden, III, Capitol Hill BID Board President

Expansion of the CHBID is hard but not impossible. The DC Statutes provide for it. The problem is how to accomplish it without having to subsidize it.

You need to complete a thorough analysis of the assessed values for the area you're considering. You can obtain costs from Patty Brosmer or Ray Cammas. The last time we looked at it for the whole of H Street, a subsidy of about \$150k was required just for clean and safe services. The CHBID is unable to have one district subsidize another, and setting aside a limited area is fraught with problems of all kinds. After you are satisfied with the financial analysis, you would need to conduct your own campaign and get 51% of the assessed value and 25% of the number of commercial owners to sign a consent petition. We would then need at least 2 pieces of legislation. We would be happy to talk at any time.

From: George A Didden, III, Capitol Hill BID Board President

I had it at one time, but I don't think I saved it and it is too old to use. Things have changed a great deal. Look up the assessments as of today and get the costs from CHBID. There is no use meeting unless your analysis shows that the BID taxes will at least cover costs.

From: Patty Brosmer, Capitol Hill BID Executive Director

The math went something like this:

Using FY05 assessments there's around \$96 million in property value on H Street. That would yield an annual BID revenue of \$144k (.15 of every 100 in value). It costs us roughly \$9400 per year per block-front to provide services. H Street would be 30 block-fronts and services would cost \$282k. That would net a loss of \$138k/year.

The BID taxes from the commercial properties on the 8th Street/MD Avenue corridor couldn't support that sort of service cost because of their lack of density.

I got the numbers from the person I deal with at Office of Tax & Revenue. Her name is Zhanna Makarova but she's on vacation this week. Her email address is:

Zhanna.Makarova@dc.gov

DC ST § 2-1215.09
DISTRICT OF COLUMBIA OFFICIAL CODE 2001 EDITION
DIVISION I. GOVERNMENT OF DISTRICT.
TITLE 2. GOVERNMENT ADMINISTRATION.
CHAPTER 12. BUSINESS AND ECONOMIC DEVELOPMENT.
SUBCHAPTER VIII. BUSINESS IMPROVEMENT DISTRICTS.
PART A. GENERAL.
§ 2-1215.09. Expanding the geographic area of a BID.

(a) An established BID may only expand its geographic area if:

(1)(A) Owners of at least 51% interest in the assessed value of the nonexempt real properties and at least 25% in number of individual properties of record in a geographic area petition the existing BID to join the BID; or

(B) With respect to areas outside of the central employment area, Georgetown, and Capitol Hill, owners who own at least a 51% interest in the most recent assessed value of the nonexempt real properties, owners who own at least 51% of the individual nonexempt real properties, and at least 51% of the number of commercial tenants occupying nonexempt real properties in a geographic area petition the existing BID to join the BID;

(2) The BID meets the definition set forth in §2-1215.02(7) in relation to the existing BID borders;

(3) Such petition is accepted by a majority vote of the existing BID Board; and

(3A) The petition is submitted to the Mayor with: <blah, blah, blah paperwork>

§ 2-1215.02(7)

"Business Improvement District" or "BID" means a defined geographic area in the District in which the preponderance of activity carried out is commercial or industrial in nature, which does not include any part of an existing BID previously established pursuant to this subchapter, and which area consists of not less than 5 contiguous blocks (or the maximum number of contiguous blocks in cases where there are fewer than 5 contiguous blocks), or noncontiguous commercial blocks within a generally recognized single neighborhood; provided, that noncontiguous blocks are not wholly located in an area that is not part of the general BID area.

Subject: Potential H St NE BID Revenue
From: Cody Rice <rice6A03@verizon.net>
Date: Tue, 20 Sep 2005
To: Joe Fengler <fengler6a02@yahoo.com>

Joe,

We may be closer to break-even on H St NE than expected. These numbers are sort of back-of-the-envelope, so the numbers aren't quite ready for prime time. This is all based on my VERY crude first cut at the data using 2006 Assessments from dcgis.dc.gov.

Not accounting for exempt properties, the total assessed value for H St addresses between 2nd and 15th is roughly \$142 million from about 260 properties. This doesn't include CVS (\$3.9M) or Hechinger Mall (\$16.2M) beyond the Starburst plaza.

At FY06 assessment levels, H St would produce about \$213,000 in BID income (or need at least a \$69,000 annual subsidy). Instead of a subsidy, may we could think of it as a possible "Great Streets" investment. Clean-and-safe services could lead to even quicker increases in assessed values if they spur additional or quicker investment.

If assessments increase on H St at the same rate they did last year (>30%), H St would be at roughly \$190 million in FY07. This would produce a total of \$285,000 in BID revenue, or more than the \$282,000 needed for BID services. (Apart from general rises in assessment levels, note that the BP parcels are currently assessed at only \$735,000!)

The current heaviest hitters in terms of assessed value are:

- 1) 601-645 H St (the office bldg leased to DC): \$38.7M
- 2) 1313-1333 H St (Atlas PAC): \$18M
- 3) 225 I St (Abdo/Children's Museum): \$17.5M
- 4) 901 H St NE (H St Connection): \$6.5M

These alone account for almost 60% of total assessed value. Some of these (Abdo, Atlas) might be officially exempt*, but perhaps willing to make voluntary contributions.

Derrick Woody at DMPED asked OCFO to help with data indicating exempt properties. I also plan to see if I can get someone on the EDZ committee to help me clean up the data by looking at properties that are on H St, but don't have H St addresses and looking at exempt properties.

-Cody

* For the purposes of a BID, "Nonexempt real property" means real property that is not exempt from paying real property taxes pursuant to Chapter 10 of Title 47, is not residential property, and is not the residential portion of a property used for both residential and nonresidential purposes.

ITEM 6
Council Oversight Hearing on Noise Issues and Enforcement in
Residential/Commercial Neighborhoods

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

August 10, 2005

Cody Rice
Commissioner, ANC 6A03
310 9th Street, NE
Washington, D.C. 20002

Re: Whether District noise regulations apply to churches

Dear Commissioner Rice:

This responds to your letter of May 10, 2005 regarding the District's noise control regulations. In your letter you ask: (1) what the statutory and/or legal basis is for Title 20, § 2704.10 of the District of Columbia Municipal Regulations (DCMR), which partially exempts churches from noise regulations; (2) whether this exemption can be reconciled with the stated purpose of District noise regulations to protect residents from detrimental noise levels; and (3) whether the exemption for churches contained in the Noise Control Act of 1977 is overridden by the provision against certain noises over 60 dB(A) within the Noise Control Amendment Act of 1996. As you have not provided us with any facts, this letter will only provide a general interpretation of the relevant statutes and regulations.

1. "What is the statutory and/or legal basis for [20 DCMR] § 2704.10 which states that 'Church bells or music connected with worship or official church ceremonies shall be exempt?' Is this an exemption that was specifically required through the enabling legislation? Would this exemption cover a choir practice?"

The legal basis for 20 DCMR § 2704.10 comes from section 5(b)(11) of the District of Columbia Noise Control Act of 1977 (Noise Control Act), effective December 9, 1977, which states in relevant part that "[c]hurch bells or music connected with worship or official church ceremonies shall be exempt." The language in the statute is identical to the language in the regulation. The Noise Control Act itself is codified in this portion of the DCMR, not in the D.C. Official Code as most other statutes are.¹ In other words, though its codification is in the DCMR rather than the D.C. Official Code, the church

¹ In addition to its absence in the D.C. Official Code, a later amendment to the Noise Control Act actually references the DCMR codification as it also amends the organic law.

exemption nevertheless is statutory in nature and accordingly carries the full weight of Council-enacted law.² It serves as its own enabling legislation.

As to the regulation's application, choir practice would certainly be exempted from the noise regulations because it is "music connected with worship."

2. "How can this exemption, which is not limited by hours or maximum levels, be reconciled with the general purpose of the regulation to protect residents from noise levels that are detrimental to life, health, and enjoyment of property?"

There is no legal conflict between the exemption and the general purpose of the regulation or statute. In your letter you correctly quote the purpose of the regulation as follows: "It is the declared public policy of the District that every person is entitled to ambient noise levels that are not detrimental to life, health, and enjoyment of his or her property." 20 DCMR § 2700.1. Section 2 of the Noise Control Act outlines the purpose of the statute in similar terms: "to control noise levels in the District of Columbia so as to preserve, protect and promote the public health, safety and welfare, and the peace and comfort of the inhabitants of the city...."

Similar general-purpose policy statements are frequently found at the beginning of legislation and it is a basic principle of statutory interpretation that specific statutory requirements override general statements of policy. See *First Nat'l City Bank v. Compania De Aguaceros, S. A.*, 398 F.2d 779, 785 (5th Cir., 1968), *Kimbrell v. Fischer*, 15 F.3d 175 (Fed. Cir., 1994) and *Cuyahoga Metropolitan Housing Authority v. Cleveland*, 342 F. Supp. 250, 254 (D. Ohio, 1972). The Council of the District of Columbia evidently made the legislative determination that the typical noises emitted from churches do not endanger the public health, safety, and welfare. In any event if the exemption for churches is arguably inconsistent with the Noise Control Act's purpose, the specific provisions of that statute, including the exemption for churches, override any general policy goals described in the statute.

3. "Is it correct that the exemption [for churches] would not include 'Noise resulting from the musical instruments, loudspeakers, amplifiers, and unamplified voices' as described in [20 DCMR] § 2800.1 and subject to the maximum noise levels [of] '60 db(A) at a distance of not less than one meter from outside the establishment' at any time per § 2800.4?"

The second regulation that you cite, 20 DCMR § 2800.4, is no longer included in the DCMR. The subsection was erroneously included in an earlier edition of the DCMR and has since been removed per the publication of the Erratum Notice at 48 DCR 11747 by the Office of Documents and Administrative Issuances. 48 DCR 11747 (Dec. 28, 2001). Therefore, we will not further address this subsection.

² While the legal authority for the church exemption is clear, the entirety of the noise regulations contained in 20 DCMR §§ 2700 – 2899 derive their legal authority from numerous sources including statutes and rulemakings. A complete list of authority for the regulations not discussed herein can be found at the end of 20 DCMR § 2700 and the end of 20 DCMR § 2800.

Turning to the remainder of your question, Title 20, § 2800.1 of the DCMR, is authorized by the Mayor's inherent power to adopt implementing rules under the Noise Control Act and section 442 of the Home Rule Act, approved Dec. 24, 1973, Pub. Law 93-198, 87 Stat. 801, D.C. Official Code § 1-204.22 (2004 Supp.). You suggest that § 2800.1 might conflict with the church exemption were a church, for instance, to use musical instruments or loudspeakers.

As noted above, the church exemption, 20 DCMR § 2704.10, derives directly from the Noise Control Act, while § 2800.1 is a rule promulgated by the Mayor. The mandate of a statute is generally superior to the mandate of executive rulemaking if there is a conflict, with certain exceptions that are not relevant here. Thus, the church exemption limits § 2800.1, not, as you suggest, the other way around.³

If you have any questions with regard to this memorandum, please do not hesitate to contact Darrin P. Sobin, Assistant Attorney General, Legal Counsel Division, at 724-5560.

Sincerely,

ROBERT J. SPAGNOLETTI
Attorney General



By: DARRIN P. SOBIN
Assistant Attorney General
Legal Counsel Division

RJS/dps

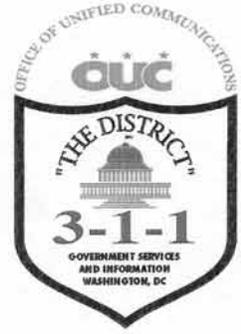
(AL-05-325)

³ It should be noted that 20 DCMR § 2800.2 similarly restricts the use of "any musical instrument or device, loud speaker, sound amplifier, or other similar device, or unamplified voice." Unlike § 2800.1, however, § 2800.2 is contained in Section 2(e) of the Noise Control Act, as amended by the Noise Control Amendment Act of 1996 (Noise Control Amendment Act), effective July 19, 1996, D.C. Law 11-161, 20 DCMR § 2800.2, and therefore carries the weight of Council-enacted law. Accordingly, a different interpretative analysis is necessary.

To begin, section 2(e) (20 DCMR § 2800.2) is an amendatory act and, as such, it is presumed to not "change existing law further than is expressly declared or necessarily implied." Norman J. Singer, Statutes and Statutory Construction, § 22:30 (6th ed. 2002). Though the Noise Control Amendment Act prohibits "any noise disturbance by the operation or use or playing of any musical instrument or device...or unamplified voice," the key phrase is "noise disturbance." According to the exemptions already written into the Noise Control Act, "church bells or music connected with worship," do not constitute a "noise disturbance." Further, the inclusion of musical instruments, loud speakers, amplifiers and unamplified voices within the Noise Control Amendment Act was likely intended to regulate the use of this equipment for entertainment purposes and was not intended to overrule the exemption for churches.

This conclusion is reinforced by the principle of statutory construction that repeals by implication are disfavored and that all parts of a statute should be construed in harmony in order to give all the maximum possible effect. See, e.g., *Luck v. D.C.*, 617 A.2d 509, 514 (D.C. 1992). Therefore, like § 2800.1, § 2800.2 does not override the exemption for churches.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Unified Communications



August 22, 2005

Mr. Cody Rice
Advisory Neighborhood Commissioner, 6A03

Dear Commissioner Rice:

The Office of Unified Communications (OUC) is in receipt of your email dated May 24, 2005, to Inspector Solberg of the First District of the Metropolitan Police Department (MPD). Inspector Solberg forwarded your complaint letter to us for a response regarding the call you placed to 311 to report loud noise from the Way of the Cross Church, Inc. A detailed investigative report of your complaint is described below.

On Sunday, May 15, 2005, at approximately 9:28 p.m. you called 311 and made a complaint about the loud noise coming from the church located on the corner of 9th & D Streets, NE. You then asked the call taker if she could hear the noise in the background and the call taker responded that she could. Next, you asked if the call was being recorded because you wanted an audible record of both the noise and your complaint. You then asked for the call taker's number, which she gave you. You then explained to the call taker that the disturbance created by the noise at the church is a persistent problem and that you wanted a unit to respond.

The call taker then prepared a complaint event record for a "disorderly," noting in the remarks section that the loud noise was coming from the Way of the Cross Church. The call was then routed to the First District radio zone for dispatch to the next available police unit. You were then advised by the call taker that the first available unit would be responding to the scene. However, the call taker failed to ask you for your full name or whether you wanted to be interviewed.

At 9:29 p.m. we received another call to 311 concerning a loud noise coming from the church located at 9th & G Streets, NE. This time the caller was a female and she was informed by the call taker that a separate call had already been received about the noise and that a police unit would be dispatched. The call taker then retrieved the original complaint event record and noted the second call, the caller's name, and the caller's telephone number.

At approximately 9:29 p.m. the dispatcher assigned Patrol Service Area (PSA) unit 1024 to the call for a "disorderly," loud noise from a speaker at 9th & D Streets, NE, at the Way of the Cross Church. PSA unit 1024 then called the dispatcher back at 9:37 p.m. and advised the dispatcher

Mr. Cody Rice
Page Two
August 22, 2005

that the church was not using loud speaker equipment; instead, the church was having regular church services. The police officer then asked the dispatcher if the complainant wanted to be interviewed. The dispatcher informed the responding officer that due to the call taker's failure to obtain the first caller's name and telephone number, there was no record of whom to interview. Also, at this time the dispatcher failed to retrieve the complaint event record for the second caller's information which would have allowed the officers to interview the second caller regarding the subject complaint. For this reason, the responding police officers had no choice but to clear the event with a disposition of "No Report."

Thankfully, the call taker's failure to gather call back information had no affect on the expeditious arrival of a police unit. However, due to the call taker's failure to follow procedure, it is recommended that the responsible call taker be informally counseled and that a memorandum be placed in her personnel folder indicating that she was counseled.

In closing, I appreciate your efforts to raise this incident to my attention so that our agency can continue to provide the fast, professional, and cost-effective service that you and other residents of the District of Columbia expect from us. If I can be of further assistance to you in the future, please feel free to give me a call at (202) 671-3349.

Sincerely,



Everett D. Lott
Deputy Director
Office of Unified Communications

EDL:sp

Cc: Edward D. Reiskin, Deputy Mayor for Public Safety and Justice
Inspector A. Solberg, Metropolitan Police Department

CHAPTER 27 NOISE CONTROL

seta.	
2700	General Provisions
2701	Maximum Sound levels
2702	Exemptions: Pre-Existing Sources
2703	Exemptions: Vehicles Using Only Rails and Tracks
2704	Exemptions: Miscellaneous
2705	Variances and Temporary Exemptions
27013	Variance Procedures
2707	Temporary Exemption Procedures
270&2709	[Reserved]
2710	Notice of Violations
2711	Emergency Procedures
2712	interference with Measurement
2713	Enforcement: Penalties
2714	Civil Enforcement
2799	Definitions
2700	

GENERAL PROVISIONS

- 2700.1 It is the declared public policy of the District that every person is entitled to ambient noise levels that are not detrimental to life to life, health, and enjoyment of his or her property. It is hereby declared that excessive or unnecessary noises within the District are a menace to the welfare and prosperity of the residents and businesses of the District. It is the declared public policy of the District to reduce the ambient noise level in the District to promote public health, safety, welfare, and the peace and quiet of the inhabitants of the District, and to facilitate the enjoyment of the natural attraction of the District.
- 2700.2 It is the intent of the Council of the District of Columbia that D.C. Law 2-53 (the "Act") be liberally construed to carry out its general purpose.
- 2700.3 Certain noise-producing activities are subject to limitations other than the general decibel limitations pursuant to §2701. The activities set forth in §§2702 through 2704, and §§2800 through 2807 are subject to the noise disturbance standard or other specific limitations and include, among others, the use of musical instruments, loud speakers, amplifiers, or unamplified speech, construction (which is subject to specific decibel limitations), and use of vehicle-mounted loud speakers or amplifiers (which are subject to the noise disturbance standard during permitted hours). All other noise-producing activities are subject to the general decibel limitations set forth in §§2701 and 2810.
- 2700.4 The agency that administers the noise control program shall conduct programs of public education regarding the following:
- (a) The causes, effects, and general methods of abatement and control of noise and vibration;
 - (b) The actions prohibited by the Act; and
 - (c) The procedures for reporting violations.

Title 20

District of Columbia Municipal Regulations

- 2700.5 The agency that administers the noise control program shall encourage the participation of public interest groups in related public information efforts.
- 2700.6 The agency that administers the noise control program shall request any other department or agency responsible For any proposed or final standard, regulation, or similar action to consult with it on the advisability of revising the action, if there is reason to believe that the action is not consistent with Chapters 27 and 28 of this subtitle.
- 2700.7 The agency that administers the noise control program shall establish and publish on or before November 15, 1978, the test procedures to be used for measuring sound levels to determine compliance with Chapters 27 and 28 of this subtitle.
- 2700.8 The test procedures for measuring sound levels, as required by §2700.7, shall be revised periodically, as necessary.
- 2700.9 The public shall be given thirty (30) days to comment on all proposed test procedures before they are made final.
- 2700.10 On or before May 15, 1979, the agency that administers the noise control program shall establish noise assessment guidelines for the evaluation of proposed projects for the capital improvements budget and program.
- 2700.11 The guidelines required by §2700.10 may be used in the determination of the relative priority of each project in terms of noise impact.
- 2700.12 The agency that administers the noise control program shall evaluate and report to the Council of the District of Columbia every year on the effectiveness of the noise control program, and shall make recommendations for any legislative or budgetary changes necessary to improve the program.
- 2700.13 Noise of safety signals, emergency pressure relief valves, and warning or alarm devices shall be exempt (including horns when necessary as a danger warning); Provided, that no person shall knowingly permit the noise to be made or to continue beyond that necessary for the emergency safety purpose, or necessary testing.
- 2700.14 Unless specifically provided otherwise by the Act, a sound that constitutes a noise disturbance shall be considered a violation of the Act.
- 2700.15 The Mayor shall consult with the Administrator of the Federal Aviation Administration to recommend changes in airport operations to minimize noise disturbances resulting from the landing and the taking off of planes at the Washington National Airport.
- 2700.16 The Mayor shall require all departments responsible for a capital improvements budget and program to prepare an analysis of the noise impact of any proposed capital projects in accordance with noise assessment guidelines established by the administering agency pursuant to §§2700.3 through 2700.12 of this chapter.
- 2700.17 For the purposes of this section, the term "proposed capital projects" includes land acquisition, building construction, highway improvements, and fixed equipment installation. '

- 2700.18 All contracts signed by the District for capital projects shall contain provisions requiring compliance with the Act:
- 2700.19 The Mayor shall ensure that any written contract, agreement, purchase order, or other instrument by which the District is committed to the expenditure of monies in return for goods or services shall contain provisions requiring compliance with the Act.
- 2700.20 Noise levels under the Act may be measured by any official designated by the Mayor or by any person who is a qualified acoustical engineer who holds a certificate of registration as a professional engineer issued by the District. The measurements shall be admissible as evidence in any civil, criminal, or administrative proceeding relating to the enforcement of any provision of the Act.
- 2700.21 Nothing in this act shall be construed as repealing or limiting the effectiveness of noise limiting provisions contained in the D.C. Harbor Regulations (DCMR Title 19).
- 2700.22 Each separate provision of Chapters 28 and 29 of this subtitle shall be considered independent of any other provision of those chapters and, if all or part of any provision, sentence, clause, or section is held illegal, invalid, unconstitutional, or inapplicable, to any person or circumstance, the illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of those chapters or their application to other parts or circumstances.
- 2700.23 It is the legislative intent that the Act would have been enacted if an illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included in the Act, and if the person or circumstances to which all or part of the Act is inapplicable had been specifically exempted from the Act.

AUTHORITY: Unless otherwise noted, the authority for this chapter is An Act approved January 26, 1887, 24 Stet. 368, ch. 49, as amended; D.C. Code §1-315 (1992 (Repl. Val.); the §§422(6) and 422(11) of the District of Columbia Self-Government and Governmental Reorganization Act; the District of Columbia Noise Control Act of 1977, D.C. Law 2-53; as amended; Mayors Order 79-28 dated February 5, 1979.

SOURCE: Sections 2, 4, 5, 7, 9, 15, 18 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293 (December 30, 1977); as amended by §2 of the Noise Control Amendment Act of 1996, D.C. Law 11-161, 43 OCR 3727, 3728 and 3730 (July 19, 1996).

EDITOR'S NOTE: Chapter 30, Noise Control was renumbered Chapter 27.

2701 MAXIMUM SOUND LEVELS

- 2701.1 Except for person engaged in the noise-producing activities that are subject §§2702 through 2704, and §§2800 through 2807 of this subtitle, no person shall cause, suffer, or permit any sound that emanates from an operation, activity, or noise source under his or her control to exceed the maximum permissible sound level established in the following table as applicable for the time of day or night and the zoning location where the noise originates. For the purposes of this subsection, The source level shall be measured at the property line of the property on which the noise source is located or as close as is practicable if there is an obstruction. Sound levels shall be measured according to the test procedures prescribed by the administering agency established under §2700:

ZONE	<u>MAXIMUM NOISE LEVEL</u>	
	Daytime	Nighttime
Commercial or light manufacturing zone	65 dB(A)	60 dB(A)
Industrial zone	70 dB(a)	65 dB(a)
Residential, special purpose, or waterfront zone	60 db(A)	55 db(A)

- 2701.2 For the purposes of this section, the sound level shall be measured at the property line of the property on which the noise source is located, or as close as is practicable if there is an obstruction.
- 2701.3 Sound levels shall be measured according to the test procedures prescribed by the administering agency established under 82740.3 of this subtitle.
- 2701.4 If a sound can be measured in a contiguous noise zone that has a more restrictive noise limitation than that from which the noise emanates, the sound level measurement at the zone line shall not exceed that established for the more restrictive zone.
- 2701.5 If the sound emanates from a source within an area for which the maximum permissible sound level has not been established, the maximum level shall be sixty (60) dB(A).
- 2701.6 Unless restricted by another section of Chapters 27 and 28 of this subtitle, sounds emanating from a street or highway shall not exceed the most restrictive sound level established for the property bordering the street or highway.
- 2701.7 Noise emanating from inside a motor vehicle shall be measured at a distance of not less than fifty feet (50 ft.) from the vehicle.

SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 OCR 5293 (December 30,1977); as amended by §2 of the Noise Control Amendment Act of 1996, D.C. Law 2-53, 43 OCR 3727 (July 19, 1998).

2702 EXEMPTIONS: PRE-EXISTING SOURCES

- 2702.1 Sounds emanating from pre-existing sources shall, to the extent indicated, be exempt from the specific noise limitations contained in §2701 of this chapter; Provided, that the exemption shall not preclude enforcement under any other section of Chapters 27 and 28 of this subtitle.
- 2702.2 Pre-existing sources shall be exempt for one hundred and twenty (120) days after May 15, 1978.
- 2702.3 Any owner or person in control of a pre-existing source that exceeds the maximum permissible sound levels as prescribed in §2701 of this chapter shall, within one hundred and twenty (120) days after May 15, 1978, file with the Mayor a written plan for the Mayor's approval for the reduction of dose sound levels to the maximum permissible levels.
- 2702.4 Each plan submitted pursuant to §2702.3 shall include a time schedule for the accomplishment of the reduction of noise levels, and shall provide for periodic increments of progress. The Mayor shall treat the plan as a request for a variance as provided in §2706 of this chapter.

SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5304 (December 30, 1977).

2703 EXEMPTIONS: VEHICLES USING ONLY RAILS AND TRACKS

- 2703:1 Sounds emanating from vehicles using only rails and tracks shall, to the extent indicated, be exempt from the specific noise limitations contained in §2701 of this chapter; Provided, that the exemption shall not preclude enforcement under any other section of Chapters 27 and 28 of this subtitle.
- 2703.2 Vehicles propelled only upon rails and tracks shall be exempt at all times.
- 2703.3 Railroad cars operated by the Washington Metropolitan Area Transit Authority shall be operated in a manner so as not to emit maximum noise levels in excess of those established in the following table when measured at a distance of one hundred feet (100 ft.) from the center line of the track, or at the nearest property line, whichever is the greater distance from the center line of track.

ZONE	MAXIMUM NOISE LEVEL
Residential, special purpose, or waterfront zone	75 dB(A)
Commercial or light manufacturing zone	80 dB(A)
Industrial zone	90 dB(A)

2703.4 In taking a measurement pursuant to §2703.3, the slow meter response of the sound level meter shall be used, and the measurement shall be taken approximately five feet (5 ft.) above grade.

SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 OCR 5293, 5305 (December 30, 1977).

2704 EXEMPTIONS: MISCELLANEOUS

2704.1 Sounds emanating from the sources covered in this section shall, to the extent indicated, be exempt from the specific noise limitations contained in §2701 of this chapter; Provided, that no exemption shall preclude enforcement under any other section of Chapters 27 and 28 of this subtitle.

2704-2 Individual pieces of construction equipment shall be exempt at all times. They shall be operated so as to comply with the noise limits established in §2802 of this subtitle.

2704.3 Noise of safety signals, emergency pressure relief valves, and warning or alarm devices shall be exempt (including horns when necessary as a danger warning); Provided, that no person knowingly shall permit a noise to be made or to continue beyond that necessary for the emergency safety purpose, or necessary testing.

2704.4 Noise resulting from any authorized emergency vehicle, when responding to an emergency call or acting in a time of emergency, shall be exempt: Provided, that this subsection shall not be construed to permit law enforcement, ambulance, fire, or other emergency or official personnel to make excessive noise in the performance of their duties when the noise clearly is unnecessary.

2704.5 Noise resulting from emergency work shall be exempt at all times.

2704.6 The use or operation of portable power tools, home snow removal equipment, power garden excluding leaf blowers devices, and other powered equipment for minor repairs or minor improvements of real or personal residential property shall be exempt on weekdays (excluding Saturdays) during the daytime and from 9:00 a.m. to 9:00 p.m. on Saturdays, Sundays, and legal holidays.

2704.7 Motor vehicles and motorcycles shall be exempt at all times. They shall be properly maintained and operated so as to comply with the noise limits established in Chapter 28 of this subtitle.

2704.8 The unamplified voice shall be exempt at all times.

- 2704.9 Noise resulting from the use of bull-horn amplifiers, permanently installed public address systems, whistles, or other devices, by personnel of the District government, the U.S. government, or other public agencies acting in their official capacities shall be exempt.
- 2704.10 Church bells or music connected with worship or official church ceremonies shall be exempt.
- 2704.11 Noise emanating from solid waste compactors shall be exempt at all times until standards are developed and promulgated by the administering agency pursuant to §2704.13.
- 2704.12 After giving a thirty (30) day notice, and within six (6) months after federal regulations for solid waste compactors are made final, the administering agency shall develop and promulgate standards for solid waste compactors. In developing the standards, the agency shall use the federal regulations for solid waste compactors as a guideline.

SOURCE: Section 5 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293. 5306 (December 30, 1977); as amended by §2 of the District of Columbia Noise Control Amendment Act of 1977, D.C. Law 9-135, 39 DCR 4079 (June 12, 1992).

2705 VARIANCES AND TEMPORARY EXEMPTIONS

- 2705.1 The Mayor, upon application by a person, may grant a variance or a temporary exemption from the maximum permissible noise levels or time limitations established in the Act when strict compliance with these provisions would impose an undue hardship on the applicant, on the community, or on other persons. The decision of the Mayor shall be in writing and shall include a statement of the reasons for the action taken.
- 2705.2 In determining whether or not strict compliance with these provisions would impose an undue hardship, the Mayor shall balance the degree of hardship against the harm that would be caused by the granting of a variance or a temporary exemption. In making this determination, the Mayor shall consider the following:
- (a) The location;
 - (b) The time of day when the noise will occur;
 - (c) The duration of the noise, its magnitude relative to the maximum permissible noise levels permitted under the Act;
 - (d) The possible obstruction or interference with vehicular or pedestrian traffic;
 - (e) The feasibility of bringing the noise into conformity with this act, including economic factors related to the age and useful life of the equipment;
 - (f) The number of people that would be affected by the granting of a variance or temporary exemption;
 - (g) The degree of hardship involved if the variance of temporary exemption is not granted: and

(h) Any other factors as are reasonably related to the impact of the noise on the health, safety, welfare, peace, and quiet of the community.

2705.3 A variance or temporary exemption shall be granted only to the extent necessary to ameliorate the undue hardship, consistent with the purpose and intent of this Act.

2705.4 Nothing in this section shall be construed to permit any operation in violation of the Act during the pendency of a request for a variance or a temporary exemption.

2705.5 Nothing in this section and no variance or temporary exemption shall be construed to prevent or limit the application of the emergency procedures established under §2711. of this chapter.

SOURCE: Section 7 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 OCR 5293. 5319 (December 30, 1977); as amended by §2 of the Noise Control Amendment Act of 1998, D.C. Law 11.181, 43 DCR 3727, 3729 (July 19, 1998).

2706 VARIANCE PROCEDURES

2706.1 Any person seeking a variance shall do so by filing with the Mayor a petition for a variance which shall be accompanied by plans, specifications, and other pertinent data as the Mayor may require, sufficient in scope to allow determination of the noise pollution impact that may result from granting the variance and the hardship involved if it is not granted.

2706.2 If the applicant is required to obtain a building permit (or some other type of permit) from the District government, he or she may include the request for a variance with the application for that permit.

2706.3 The Mayor may, at any time after an applicant files an original application, and before its expiration, require further statements in order to determine the disposition of the petition.

2706.4 Within three (3) months of May 15, 1978, the Mayor shall make available a list of the information to be required under this section.

2706.5 Notice of the variance application shall be given at least thirty (30) days before the . Mayor rules on the request, unless a lesser time is justified for good cause.

2706.6 Notice of the variance application shall be given as follows:

(a) The Mayor shall publish the notice in the D.C. Register;

(b) The applicant shall mail the notice to the owners of all property abutting the property involved in the application; and

(c) The applicant shall mail the notice to the occupants of property situated within two hundred feet (200 ft.) of the property involved in the application.

2706.7 The notice of the variance application shall show the nature of the variance requested and the location for filing an appeal.

2706.8 Within five (5) days after the notice appears in the D.C. Register, the applicant shall file with the Mayor a sworn affidavit demonstrating compliance with this section.

Title 20

District of Columbia Municipal Regulations

- 2706.9 Any person may submit comments on the application for a variance within twenty-five (25) days of the published notice, or within the time specified in the notice.
- 2706.10 The Mayor shall adopt and publish in the *D. C. Register* any additional procedures with regard to Requests for variances.
- 2706.11 The Mayor may, in his or her discretion, hold a hearing; Provided, that a hearing shall be held if any person who may be adversely affected by the grant or denial of a variance, including the applicant, files a written request for a hearing within ten (10) days of the notice appearing in the *D.C. Register*.
- 2706.12 The hearing held pursuant to §2706.11 shall be held in accordance with the contested case provisions of the D.C. Administrative Procedure Act, approved October 21, 1968 (82 *Stat.* 1208; D.C. Code 1-1509 (1991 Repl. Vol.)
- 2706.13 In granting or denying a variance, the Mayor shall file a written opinion stating the facts and reasons . the final decision.
- 2706.14 The Mayor may condition the variance and the terms of the variance on factors that he or she deems appropriate, including a schedule of compliance specifying a definite time period within which full compliance with Chapters 27 and 28 of this subtitle and the rules and regulations adopted under the Act shall be achieved.
- 2706.15 In issuing a variance for construction work, the Mayor may prescribe the conditions, working times, types of construction equipment to be used, and permissible noise emissions as the Mayor considers to be required in the public interest.
- 2706.16 No variance issued pursuant to this section shall be adopted for a period to exceed One (1) year; Provided, that a renewal may be obtained for additional periods not to exceed two (2) years if the Mayor finds that the variance is justifiable and that the intent and purpose of the Act is not impaired.
- 2706.17 No renewal shall be granted except pursuant to the filing of an application.
- 2706.18 An application for the renewal of a variance shall be made at least sixty (60) days prior to the expiration of the variance.
- 2706.19 Notice and hearing requirements for the renewal of variances shall be the same ' as those applying to

SOURCE: Section 8 of the Distract of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5320 (December 30, 1977).

2707 TEMPORARY EXEMPTION PROCEDURES

- 2707.1 A person may apply to the Mayor for a temporary exemption from the maximum permissible noise levels or the time limits established by the Act.
- 2707.2 If the applicant is required to obtain a building permit from the District government, he or she may include the request for a temporary exemption with the application for that permit.
- 2707.3 The decision of the Mayor shall be in writing and shall include a statement of the reasons for the action taken.
- 2707.4 If a temporary exemption is granted, the decision shall include the following information:

- (a) The name of the applicant;
- (b) The noise level to be permitted;
- (c) The period of time during which the exemption shall be in effect: and
- (d) Any other conditions or qualifications necessary for the protection of the public under the standards applicable to the granting of a temporary exemption.

- 2707.5 A temporary exemption shall be granted for as long as is necessary, but shall not exceed forty-five (45) days.
- 2707.6 A notice of the issuance of a temporary exemption shall be published to the D.C. *Register* and shall be posted by the applicant in a conspicuous spot at the location involved for a period of our (4) consecutive days following- the date of issuance.
- 2707.7 Any person adversely affected by the issuance or denial of a temporary exemption may, within ten (10) days of the decision, request a hearing on the matter.
- 2707.8 If the Mayor finds that a sufficient *bona fide* controversy exists regarding the issuance or denial of a temporary exemption, the Mayor may, in his or her discretion, hold a hearing on the matter.
- 2707.9 The hearing shall be held as soon as practicable.
- 2707.10 A decision by the Mayor after a hearing shall be final, subject to a *de novo* review by a court of competent jurisdiction.
- 2707.11 Unless the Mayor orders otherwise, the filing of a request for a hearing shall not affect the issuance of a temporary exemption.

SOURCE: Section 2 of the Noise Control Amendment Act of 1996, D.C. Law 11-161, 43 DCR 3727, 3730 (July 19, 1996).

2708 - 2709 [RESERVED]

2710 NOTICE OF VIOLATIONS

- 2710.1 Whenever the Mayor has reason to believe that a violation of any provision of the Act has occurred, he or she may, in lieu of or in addition to any other enforcement procedure, give notice of the alleged violation to the person or persons responsible, and order the persons to-take corrective measures as are deemed necessary.
- 2710.2 The notice of an alleged violation shall meet the following requirements:
- (a) It shall be in writing;
 - (b) It shall indicate the section or subsections of Chapters 27 and 28 of this subtitle that have been violated; and
 - (c) It shall state the nature of the violation (including, if applicable, any dB(A) readings, the date, and the approximate time and place of their recording).
- 2710.3 The notice of an alleged violation may allow reasonable time for the performance of any act required by the notice.

- 2710.4 The notice of an alleged violation shall be deemed properly served upon the alleged violator when it is served by one (1) of the following methods:
- (a) A copy of the notice is served personally upon the alleged violator, or is left either at the alleged violator's usual place of business or at his or her usual residence with a person over the age of sixteen (16) years who is employed or who resides at that place;
 - (b) A copy of the notice is left with any agent of the person to be notified, or is left at the office of the agent or with any person employed at the office, if the alleged violator's residence or place of business cannot be found in the District by reasonable search;
 - (c) A copy is mailed postage prepaid to the last known address of the person to be notified and is not returned by the Postal Service authorities; or
 - (d) The notice is published on three (3) consecutive days in a daily newspaper published in the District, when one (1) of the following circumstances exists:
 - (1) No address of the person to be served is known or can, with reasonable diligence, be ascertained; or
 - (2) Any notice mailed in accordance with §2710.4(c) is returned undelivered by the Postal Service authorities.
- 2710.5 A notice issued pursuant to this section shall be final unless the person adversely affected requests a hearing within the period specified in the notice of violation, or within fifteen (15) days after the date of service of the notice, whichever is less.
- 2710.6 Upon receipt of a request for a hearing, the Mayor shall provide the petitioner with an opportunity for a hearing in accordance with the contested case provisions of the D.C. Administrative Procedure Act, approved October 21, 1968 (82 Star. 1208; D. C. Code §1-1509 (1981)).
- 2710:7 A decision sustaining, modifying, or vacating a notice shall be final.
- 2710.8 If any person fails to comply with a final notice issued pursuant to this section. the Mayor shall institute action as may be necessary to terminate the violation.
- 2710.9 Any person's failure to comply with a final notice issued pursuant to this section shall constitute a separate violation of the Act.
- 2710.10 Nothing in this section shall be construed to preclude enforcement of the provisions of the Act by recovery of a penalty pursuant to §2713 of this chapter, injunctive relief, or other appropriate remedy.

SOURCE: Section 10 of the District of Columbia None Control Act of 1977, r.C. Law 2-53. 2< OCR 5293, 5326 (December 30, 1977).

2711 EMERGENCY PROCEDURES

- 2711.1 If the Mayor finds that any person is acting in a manner that constitutes a violation of the Act, the Mayor may order the person to cease and desist.

- 2711.2 Failure to comply with the order shall be a violation of the Act; Provided, that failure to comply with a cease and desist order shall not be an independent violation if a court of competent jurisdiction finds that no violation of the Act had occurred.
- 2711.3 Any person aggrieved by an emergency order of the Mayor may, within forty-eight (48) hours of the order, request a hearing by the Mayor.
- 2711.4 Upon receiving a request for a hearing from any person aggrieved by an emergency order, the Mayor shall hold the hearing as soon as is reasonably practical.
- 2711.5 The hearing regarding an emergency order shall be conducted in accordance with the contested case provisions of the D.C. Administrative Procedure Act (D.C. Code §1-1509 (1991 Repl. Vol.)).
- 2711.6 A request for a hearing on an emergency order shall not be grounds for noncompliance with any order issued pursuant to this section.
- 2711.7 After the conclusion of the hearing held pursuant to §§2711.4 and 2711.5, the person shall be notified by the Mayor of the Mayor's decision. This action shall be final; Provided, that an appeal from the action shall not be grounds for noncompliance with any order issued pursuant to this section.
- 2711.8 Nothing contained in this section shall preclude the Mayor from initiating appropriate action for the recovery of a penalty as is provided in Chapters 27 and 28 of this subtitle, nor shall it preclude the Mayor from seeking any other relief or remedy as is provided by law.

SOURCE: Section 11 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5328 (December 30, 1977); as amended by §2 of the Noise Control Amendment Act of 1996, D.C. Law 11-161, 43 DCR 3727, 3730 (July 19, 1998).

2712 INTERFERENCE WITH MEASUREMENT

- 2712.1 It shall be unlawful for any person to refuse, prevent, or interfere with any lawful physical determination or measurement authorized by the Act; Provided, that the provisions of §2712.2 are complied with.
- 2712.2 No District government officer or employee shall enter any privately owned premise for the purpose of making a lawful, physical determination or measurement authorized by the Act without permission of the resident or a person in the premise, or without a valid search warrant.

SOURCE: Section 12 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5330 (December 30, 1977).

2713 ENFORCEMENT: PENALTIES

- 2713.1 Any person who is aggrieved by a violation of any provision of the Act may complain to the Metropolitan Police Department which shall enforce the provisions of this Act.
- 2713.2 Prior to issuing a citation or notice of infraction, the Metropolitan Police Officer or other District government official may give a verbal warning to the violator and allow the violator a reasonable time to cease violating the Act.

- 2713.3 Any person who violates any provision of the Act shall be punished by a fine not to exceed three hundred dollars (\$300) or imprisonment not to exceed ten (10) days, or both. In the event of any violation of or failure to comply with the Act or any section of the Act, each and every day of such violation or failure shall constitute a separate offense, and the penalties described in the Act shall be applicable to each such separate offense.
- 2713.4 Officers of the Metropolitan Police Department are authorized to enforce the provisions of the Act by issuing a notice of civil infraction for a violation of the Act that constitutes a noise disturbance pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Code §6-2701 *et seq.*).
- 2713.5 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of Chapter 27 or 28, pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of Chapter 27 or 28 shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

SOURCE: Section 485 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990, D.C. Law 8-237, 38 DCR 314,318 (January 11, 1991); Section 2 of the Noise Control Amendment Act of 1996, D.C. Law 11-181, 43 DCR 3727, 3731 (July 19, 1996).

2714 - CIVIL ENFORCEMENT

- 2714.1 Any person may commence a civil action in a court of competent jurisdiction on his or her own behalf for injunctive relief, to enforce a requirement, or to order the Mayor to perform a non-discretionary act against any person (including the District government to the extent permitted by the Eleventh Amendment of the U.S. Constitution) who is alleged to be the following:
- (a) In violation of any requirement of the Act;
 - (b) In violation of any order issued by the Mayor with respect to any requirement of the Act; or
 - (c) Engaged in any act prohibited by the Act.
- 2714.2 No action shall be taken under the provisions of this section prior to ten (10) days after the plaintiff has given notice of the violation to the Mayor, and to any alleged violator of the requirements.
- 2714.3 No action shall be taken under the provisions of this section if the Mayor has commenced and is diligently prosecuting a civil action in a court of competent jurisdiction in the District of Columbia to require compliance with the Act.

SOURCE: Section 14 of the District of Columbia Noise Control Act of 1977, D.C. Law 2-53, 24 DCR 5293, 5330 (December 30, 1977); as amended by §2 of the Noise Control Amendment Act of 1996, D.C. Law 11-161, 43 DCR 3727, 3731 (July 19, 1996).

2799 DEFINITIONS

- 2799.1 When used in Chapters 27 through 29 of this subtitle, the following words or abbreviations shall have the meaning ascribed unless the context indicates a different meaning. Where technical words are not defined, or where questions of interpretation arise regarding acoustical terminology, the American National Standard Institute (ANSI) definitions shall be used as a guide.

ANSI - the American National Standard Institute or its successor bodies.

Construction - any site preparation, excavation, assembly, erection, substantial repair, alteration, or similar action (excluding demolition) of public or private rights-of-way, structures, utilities, or similar property.

Daytime - the hours from 7:00 a.m. to 9:00 p.m.

dB(A) - (A-weighted sound level) - a measure of sound pressure level, in decibels, obtained from a sound-level meter using the A-weighting network or filter as specified in ANSI S1.4-1971 or the latest approved revision of that standard.

Decibel - (1/10 of a bel) - a unit (abbreviated "dB") for measuring the magnitude of sound equal to twenty (20) times the logarithm, to the base ten (10), of the ratio of the sound pressure being measured to a reference sound pressure of twenty (20) micropascals.

Emergency work - the work necessary to restore property to a safe condition following a public calamity or act of God, or the work required to protect the health and safety of persons.

Leaf blowers - any portable device or machine that is gasoline or electric powered and which is designed or intended, by generating a concentrated stream of air to blow, dispel, or make airborne, leaves, grass cuttings, paper, trash, or any other type of unattached debris or material. The term includes those devices or machines that accept vacuum attachments. (*D.C. Law 9-135*)

Leg - (Equivalent A-Weighted Sound Level) - the constant sound level that, in a given time period, would convey the same sound energy as the actual, time varying, A-weighted sound. The number in parenthesis immediately following the term "Leg" shall denote the time period in hours.

Maximum sound level - the highest level observed on a sound level meter.

Mayor - the Mayor of the District of Columbia or his or her designated agent.

Motorcycle - any motor vehicle other than a motorized bicycle having either a tandem arrangement of two (2) wheels or a tricycle arrangement of three (3) wheels, and having a seat or saddle for the use of the operator.

Motor vehicle - any vehicle propelled either by an internal combustion engine or by electricity or steam. This term does not include motor boats and traction engines used exclusively for drawing vehicles in fields, road rollers, and vehicles propelled only upon rails and tracks.

Motorized bicycle - any motor vehicle having the following:

(a) Either a tandem arrangement of two (Z) wheels equipped with tires that are sixteen inches (16 in.) or more in diameter, or having a tricycle arrangement of three (3) wheels equipped with tires that are sixteen inches (16 in.) or more in diameter, weighing not more than one hundred and twenty (120) pounds;

(b) An automatic transmission; and

A motor or engine that produces not more than one and five-tenths (1.5) brake horsepower (as rated by the Society of Automatic Engineers), with a piston displacement of not more than fifty (50) cubic centimeters, and that is capable of moving the vehicle at a speed of no more than twenty-five miles per hour (25 mph) on level ground when propelled exclusively by the motor or engine.

Nighttime - the hours from 9:00 p.m. to 7:00 a.m.

Noise - this term shall have the same definition as "sound," in the Act.

Noise disturbance - any sound which is loud and raucous or loud and unseemly and unreasonably disturbs the peace and quiet of a reasonable person of ordinary sensibilities in the vicinity thereof, unless the making and continuing of the noise is necessary for the protection or preservation of the health, safety, life, or limb or some person. In making a determination of a noise disturbance, the Mayor shall consider the location, the time of day when the noise is occurring or will occur, the duration of the noise, its magnitude relative to the maximum permissible noise levels permitted under the Act, the possible obstruction or interference with vehicular or pedestrian traffic, the number of people that are or would be affected, and such other factors as are reasonably related to the impact of the noise on the health, safety, welfare, peace, and quiet of the community. A sound shall not be considered a noise disturbance if during noncommercial public speaking in the Central Employment Area (10 DCMR §1107.2 as shown on Comprehensive Plan Map 2, District of Columbia Generalized Land Use Policies Map) or in an area zoned manufacturing or industrial during the daytime, the sound made by the participants engaging in such activity does not exceed eighty (80) dB(A) when measured inside any nearby occupied building or outside fifty feet (50 ft.) from the source of the sound. (*D.C. Law-161*)

Noise level - this term shall have the same definition as "sound level."

Noise zones - shall be defined according to the following three (3) categories, as shown, defined, and bounded on the zoning map:

(a) Residential, special purpose, or waterfront zone - any district listed under chapters 4, 5, and 9 of the D.C. Zoning Regulations. effective May 12, 1958, as amended;

Commercial or commercial-light manufacturing zone - any district listed under chapter 7 of the D.C. Zoning Regulations, effective May 12, 1958, or classified as a "C-M Commercial-light manufacturing" district under Chapter 8 of the Zoning Regulations; and

(c) General industrial zone - any district classified under Chapter 8 of the Zoning Regulations, effective May 12, 1958, but not classified as a "C-M Commercial-light manufacturing" district.

Person - an individual, partnership, corporation, trust, association, firm, organization, government, or other entity.

Pre-existing source - any noise source either established and in operation or under construction prior to May 15, 1978.

Real property boundary - an imaginary line along the ground surface and its vertical extension, which separates the real property owned by one (1) person from that owned by another.

Sound - an oscillation in pressure, particle displacement, particle velocity, or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of the sound, including duration, intensity, and frequency.

Sound level - the weighted sound pressure level obtained by the use of a sound level meter and frequency weighing network, such as A, B, or C as specified in the ANSI specifications for sound level meters (ANSI S1.4-1971. or the latest approved revision of ANSI S1.4 standard). If the frequency weighing employed is not indicated, the A-weighting shall apply.

Sound-level meter - an instrument to measure the sound pressure level meeting at least either the Type II requirements of the ANSI S 1.4-1971 standard or the latest approved version of the ANSI S1.4 standard. .

Street or highway - any road, street, alley, or way in the District of Columbia, open to the use of the public, as a matter of right, for the purposes of vehicular traffic.

Weekday - any day except Sunday or a legal holiday.

Zoning regulations - the D.C. Zoning Regulations, effective May 12, 1958, as amended (DCMR Title 11).

SOURCE: Section 2 of the District of Columbia Noise Control Act of 1977, D.C. *Law* 2-53, 24 OCR 5293, 5295 (December 30, 1977); so amended by §2 of the District of Columbia Noise Control Amendment Act of 1977, D.C. *Law* 9-135, 39 OCR 4079 (June 12, 1992), and by §2 of the Noise Amendment Act of 1996, D.C. *Law* 11-161, 43 DCR 3727 (July 19, 1996).

ITEM 7
DCRA Rental Unit Licensing Requirements (Basic Business License)

DCRA Notifies Homeowners of Rental Unit Licensing Requirements

The Business and Professional Licensing Administration of D.C.'s Department of Consumer and Regulatory Affairs (DCRA) has launched an information and enforcement campaign designed to bring rental properties into compliance with legislation that requires the licensing of all small family rental units.

The Basic Business License (BBL) law, approved by the D.C. City Council in 2003, effectively requires that all one- and two-family rental units in the District of Columbia be licensed. Under the terms of the legislation, property owners that use their property as a residential rental are required to:

- have a Basic Business License
- register the rental property with DCRA's Rental Accommodation and Conversion Division (RACD), and
- meet the District's housing code compliance standards

DCRA is sending letters to property owners who are renting or intend to rent their property to notify them that they must obtain a Basic Business License and register the property prior to the rental unit being occupied by tenants. The letters inform property owners that they have ten (10) days to respond by submitting a BBL application or notify in writing to the Program Manager of the Basic Business License if owners decide not to use the property as a rental unit.

Property owners are encouraged, if they rent or intend to rent to visit the Basic Business License Center located at 941 North Capitol Street, NE, Suite 1100, Washington, D.C. 20002. If property owners receive a letter that notifies them that they have been identified as having a possible rental unit and decided or have not rented their property, should write a response to the Program Manager of the Basic Business License, Business and Professional Licensing Administration, 941 North Capitol Street, NE, Suite 7300, Washington, D.C. 20002.

For additional information on license requirements for one and two family rentals, please visit the DCRA's website at <http://dcra.dc.gov> (click on Basic Business License) or call the Basic Business License Information Center at (202) 442-4311.



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

FACT SHEET

Basic Business License

NAICS: 531110-2

Two Family Rental Units

NAICS Description: This classification applies to you if you own and rent out an English basement apartment or converted basement apartment, you'll need to apply for a Basic Business License for each rental location and you'll also need to obtain an inspection and approval from the Building and Land Regulation Administration along with a Certificate of Occupancy. This classification does not include Apartment Houses (with three or more units), Rooming House (with six or more units), single-family homes, duplexes, individual condominium units or individual rooms.

Transaction Type: Initial Endorsement Class: Housing - Residential

D.C. Code: 47-2828; 47-2851

DC Municipal Regulation: Title 14 Chapter 2

Table with license details: License Duration: Two (2) Years, License Available Online: NO, Online Processing Fee: N/A, Payment Method: If applying in person you can pay for your Basic Business License (BBL) by cash, check, money order, or credit card... Category License Fee: \$63.00, Application Fee (fixed): \$35.00, Endorsement Fee: \$10.00

Prerequisites: (See requirements below)

Application Requirements: All applicants for a Basic Business License must comply with the following DC Code requirements:

- Basic Business License Application
➤ Certificate of Occupancy / Compliance for Zoning Regulations
➤ Clean Hands Certification
➤ Office of Tax & Revenue (OTR) Registration
➤ Rent Control Registration Form

Special Instructions: If your business falls into one of the following categories, there are additional requirements for your BBL application, as described below.

Two Family Rental Units (Cont.)

➤ **Corporation, Limited Liability Company, or Partnership**

If you're a Corporation, LLC, or Partnership seeking your BBL, your business must be in "Good Standing." This means that your business has filed its required bi-annual reports and paid all applicable fees. If your business is not in "good standing" when you apply for your BBL, your application may be denied and you might have to pay a fine of \$500.00.

➤ **Non-Resident of the District of Columbia (including Foreign Corporations)**

If you are not a resident of the District of Columbia, you'll need to appoint a Resident Agent or an Attorney-in-Fact who lives or works in an office in the District, who will be the official recipient of any financial, process, or legal notices that we need to send to you. If you are not a DC resident, please complete the Certified Resident Agent Appointment Form.

➤ **Corporate Registered Agents**

Every corporation needs to have a registered agent office in the District of Columbia. This office can – but does not need to be – the same as your place of business. Foreign corporations doing business in DC need to certify that their named registered agent is duly authorized to represent that corporation.

➤ **Trade Name Operative (Use of Fictitious Business Name)**

If your business uses a Trade Name, you'll need to register the name with DCRA and indicate both the trade name and the official business name (including its corporation, LLC, or partnership classification) if applicable.

Responsible Agency: The Department of Consumer & Regulatory Affairs, Business and Professional Licensing Administration

Other District or Federal Agencies Involved for this Basic Business License: Building & Land Regulation Administration, Housing Regulation Administration

Additional Business Activities (BBL Endorsements):

If you conduct more than one business activity (endorsement type), you'll need to indicate those activities on your BBL application. You might have any number of additional business activities connected to this particular license endorsement. For example:

➤ **Apartment Houses**

- *Requires a Basic Business License endorsement*

➤ **Offices of Real Estate Agents and Brokers**

➤ **Real Estate Property Managers**

➤ **Residential Property Managers**

➤ **Other Activities Related to Real Estate**

- *Requires an additional Basic Business License endorsement*

Special Notes: If your business includes any of the above endorsement activities, you can get additional fact sheets and application forms by contacting DCRA's BBL InfoCenter by phone at (202) 442-4311, or by email at bbl.infocenter@dc.gov.

If you prefer, you can get additional fact sheets and BBL packets on our website at www.dkra.dc.gov. Simply click on "Documents and Forms" on our main page and download the BBL forms. You will need to have Adobe Acrobat Reader on your computer; but if you don't, a link to this free download is available on our website. Once you've downloaded the forms, simply print, complete, and submit them with the applicable fees.



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

FACT SHEET

Basic Business License

NAICS: 531110-2

One Family Rental Unit

NAICS Description: This classification applies to you if you own and rent out single-family homes, town houses, duplexes, individual condominium units or individual rooms. You'll need to apply for a Basic Business License for each rental location. This classification does not include Apartment Houses (with three or more units) or Rooming House (with six or more occupants).

Transaction Type: Initial

Endorsement Class: Housing - Residential

D.C. Code 47-2828; 47-2851

DC Municipal Regulation Title 14, Chapter 2

Table with license details: License Duration: Two (2) Years; License Available Online: NO; Online Processing Fee: N/A; Payment Method: If applying in person you can pay for your Basic Business License (BBL) by cash, check, money order, or credit card...

Prerequisites: (See requirements below)

Application Requirements: All applicants for a Basic Business License must comply with the following DC Code requirements:

- Basic Business License Application: To make sure you get your BBL as quickly as possible, you must submit a properly completed Basic Business License Application package.
Clean Hands Certification: You'll also need to self-certify that you don't owe more than \$100 to the District of Columbia government...
Office of Tax & Revenue (OTR) Registration: Before applying for your BBL, you'll also need to register your business with OTR...
Rent Control Registration Form: You must register the rental unit(s) as required by the Rental Housing Act of 1985...
DCRA Neighborhood Stabilization Office (NSO): A housing inspection approval is required prior to the issuance of this license...

Special Instructions: If your business falls into one of the following categories, there are additional requirements for your BBL application, as described below.

- Corporation Division Requirements: If you are a corporation, partnership or limited liability company you must be registered in the District and in good standing. For instructions on how to register, please go to www.dkra.dc.gov...

One Family Rental Unit (Cont.)

- **Non-Resident of the District of Columbia (including Foreign Corporations)**
If you are not a resident of the District of Columbia, you'll need to appoint a Resident Agent or an Attorney-in-Fact who lives or works in an office in the District, who will be the official recipient of any financial, process, or legal notices that we need to send to you. If you are not a DC resident, please complete the [Certified Resident Agent Appointment Form](#).
- **Corporate Registered Agents**
Every corporation needs to have a registered agent office in the District of Columbia. This office can – but does not need to be – the same as your place of business. Foreign corporations doing business in DC need to certify that their named registered agent is duly authorized to represent that corporation.
- **Trade Name Operative (Use of Fictitious Business Name)**
If your business uses a [Trade Name](#), you'll need to register the name with DCRA and indicate both the trade name and the official business name (including its corporation, LLC, or partnership classification) if applicable.

Responsible Agency: The Department of Consumer & Regulatory Affairs, Business and Professional Licensing Administration

Other District or Federal Agencies Involved for this Basic Business License: Housing Regulation Administration

Additional Business Activities (BBL Endorsements):

If you conduct more than one business activity (endorsement type), you'll need to indicate those activities on your BBL application. You might have any number of additional business activities connected to this particular license endorsement.

Special Notes: **Owners/lessors of owner-occupied residences with one rental unit are required to have a Home Occupation Permit as well as a Certificate of Occupancy Permit for the rental unit.**

If your business includes any of the above endorsement activities, you can get additional fact sheets and application forms by contacting DCRA's BBL InfoCenter by phone at (202) 442-4311, or by email at bbl.infocenter@dc.gov.

If you prefer, you can get additional fact sheets and BBL packets on our website at www.dkra.dc.gov. Simply click on "Documents and Forms" on our main page and download the BBL forms. You will need to have Adobe Acrobat Reader on your computer; but if you don't, a link to this free download is available on our website. Once you've downloaded the forms, simply print, complete, and submit them with the applicable fees.
