

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in section 10 of the Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409), and Mayor's Order 87-259, dated November 13, 1987, hereby gives notice of the adoption of the following emergency rulemaking. This emergency rulemaking will amend Title 12A, Chapter 3107A, Section 3107.7.6 of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary to address emergency circumstances that threaten the safety and welfare of the District's residents. The circumstances arose, in part, from a recent court challenge to the authority of the Department of Consumer and Regulatory Affairs (DCRA) to enforce certain location restrictions that in 2004 became applicable to billboards erected before 1972. The recent litigation has brought to light ambiguities in the current billboard regulations that create confusion as to whether the location restrictions apply to a pre-1972 billboard, as well as which pre-1972 billboards, if any, can be lawfully maintained and repaired by their owners. Until these regulatory ambiguities are resolved, the District's residential neighborhoods will be forced to endure the blight of old billboards that the District may have no authority to remove and that the billboard owners may have no authority to maintain or repair. Additionally, DCRA has received numerous and vigorous complaints about some of the existing billboards subject to these regulations. These complaints state that the billboards are a haven for criminal activity including illegal drug sales, public intoxication, and other illegal conduct. These conditions are an immediate and continuing threat to the safety and welfare of the residents living near these billboards.

This emergency rule was adopted on December 2, 2009, and became effective immediately. This emergency rule will remain in effect for up to one hundred twenty (120) days, unless earlier superseded by a notice of final rulemaking.

The Director also hereby gives notice of the intent to adopt this rule, in final, in not less than thirty (30) days from the publication of this notice in the *D.C. Register*.

Title 12A, Chapter 3107A, Section 3107.7.6 of the DCMR is amended as follows:

Section 3107.7.6.1 is amended to read as follows:

3107.7.6.1 Authorized list. Only those billboards which were in existence as of January 1, 1972, that were contained in the "Authorized List of Billboards, Three-sheet Poster Boards, and Wall Signs," dated November 30, 1931, as amended through December 31, 1971, are authorized to remain in place, subject to the conditions in Section 3107.7.6.1 through 3107.7.6.7.5; provided, however, that any billboards contained in this authorized list, but located on lots within 200 feet of any Residential District, as defined by the Zoning Regulations shall be removed by the owner in accordance with Section 3107.7.6.8.

Section 3107.7.6.2 is amended to read as follows:

3107.7.6.2 Existing authorized billboards. Any existing billboard authorized pursuant to Section 3107.7.6.1 shall be permitted to be altered or rebuilt under authority of permits issued by the code official pursuant to Sections 3107.7.6.6 through 3107.7.6.7. No change in size or location is authorized and the maintenance and repair requirements of Section 3107.7.6.5 shall be met.

Section 3107.7.6.3 is amended to read as follows:

3107.7.6.3 Unauthorized billboards. Billboards which were not included in the authorized list referred to in Section 3107.7.6.1 are without authority, unless erected in accordance with Sections 3107.7.6.6 through 3107.7.6.7. All such unauthorized billboards shall be removed by the owner within thirty (30) days after the effective date of this Section. Failure by the owner to remove such a billboard shall subject the owner to the provisions of Section 3107.7.6.9.

Section 3107.7.6.4 is amended to read as follows:

3107.7.6.4 Razed billboards. Any billboard which is included in the authorized list referred to in Section 3107.7.6.1 and which is razed, demolished, or obliterated, shall be stricken from the authorized list.

Section 3107.7.6.5 is amended to read as follows:

3107.7.6.5 Maintenance and repair. Whenever the code official finds that any billboard on the authorized list referred to in Section 3107.7.6.1, or erected under a permit issued in accordance with Sections 3107.7.6.6 through 3107.7.6.7, is not maintained in good repair and has not deteriorated more than 50 percent of its replacement value, the code official shall notify the owner thereof and order him to repair the billboard within a specified time but not less than 10 calendar days. If the code official finds that the billboard has deteriorated more than 50 percent of its replacement value, or is not repaired within the time specified in the repair notice, the code official shall notify the owner of the billboard and the owner of the real property on which said billboard is located to remove the billboard from the property within a specified time. Failure to comply shall subject said owners, upon conviction or adjudication, to the fines provided for in section 4 of An Act To regulate the erection, hanging, placing, painting, display and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.23), or to civil fines, penalties, and fees pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*).

Section 3107.7.6.6 is amended to read as follows:

3107.7.6.6 Permit required. No billboards shall be erected, placed, maintained or relocated within the District of Columbia unless an application for permit is approved by the code official.

1. **Permit applications.** Permit applications shall be made upon forms provided by the code official. Permit applications shall be accompanied by four (4) sets of drawings showing details of construction, foundations, lighting, location of the billboard in relation to property lines, and relation to any other billboards located within 500 feet (152 400 mm) of the billboard for which the application is submitted. A separate electrical permit is required for billboards containing any electrical features.
2. **Permit fee.** The permit application must be accompanied by a fee pursuant to Section 108.
3. **Location.** The location of the proposed billboard shall not be approved unless the location was included on the authorized list referred to in Section 3107.7.6.1.
4. **Zoning compliance.** Billboard permit applications shall comply with the *Zoning Regulations*. However, where a billboard is to be located in an area, which, in the judgment of the Zoning Administrator is not permitted, the Zoning Administrator shall notify the applicant in writing that the application for permit is denied for failure to conform to the *Zoning Regulations*, indicating the applicable provisions of the *Zoning Regulations*. The Zoning Administrator's decision may be appealed to the Board of Zoning Adjustment as prescribed by its rules.
5. **Shipstead-Luce Act and Old Georgetown Act areas.** Where a billboard is to be located in an area covered either by the Shipstead-Luce Act or the Old Georgetown Act, the application and supporting material shall be transmitted to the Commission of Fine Arts for review under Sections 6-611.01 and 6-1202 of the D.C. Official Code (2001).
6. **Permit denial.** If the code official denies a billboard permit, the basis for the denial shall be stated in writing, including references to the statutory or regulatory provisions that would be violated if the permit were granted. The code official shall notify the applicant in writing with the reasons for denial of the permit.

A new section 3107.7.6.8 is added to read as follows:

3107.7.6.8 Removal of billboards. Any billboard subject to removal under Section 3107.7.6.1 shall be removed on or before the final date of an amortization period ending ten (10) years after the date that a lawful and completed erection or rebuilding of the billboard was last commenced, except that no amortization period shall end less than thirty (30) days after the effective date of this Section. The code official may extend an amortization period for up to sixty (60) additional days based on a billboard owner's showing of special need or hardship. This Section shall not apply to an unauthorized billboard that is subject to removal under Section 3107.7.6.3 or to any billboard that is subject to removal under Section 3107.7.6.5.

A new section 3107.7.6.9 is added to read as follows:

3107.7.6.9 Failure to remove billboard. Whenever the owner of a billboard fails to remove the billboard in accordance with Sections 3107.7.6.3, 3107.7.6.5, or 3107.7.6.8, or fails to remove the billboard after erecting, placing, maintaining, or relocating it in violation of the permitting requirements of Sections 3107.7.6.6 through 3107.7.6.7, the code official may remove the billboard and assess the cost of correction pursuant to D.C. Official Code § 42-3131.01(a)(1). If a billboard owner claims that required removal of a billboard pursuant this Section entitles the owner to just compensation for a taking under federal or constitutional law, the owner's pursuit of such claim shall not prevent the code official from proceeding to remove the billboard and assessing the cost of correction. The preceding sentence shall not provide an independent basis for a taking claim.

A new section 3107.7.6.10 is added to read as follows:

3107.7.6.10 Billboard inventory. Within thirty (30) days of the effective date of this Section, each owner of one or more existing billboards that were included on the authorized list referred to in Section 3107.7.6.1 shall send a written notice to the code official that provides the following information:

1. Lot and square on which each billboard is located;
2. If more than one billboard is on a lot, the location of each billboard on the lot; and
3. Business address and phone number of each billboard's owner.

All persons desiring to comment on these proposed regulations should submit comments in writing to Helder Gil, Legislative Affairs Specialist, Department of Consumer and Regulatory Affairs, 941 North Capitol Street, NE, Suite 9500, Washington, D.C. 20002, or via e-mail at helder.gil@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at <http://dcra.dc.gov> by going to the "DCRA News" link and then clicking on the "Rulemaking" tab.

THE OFFICE OF CONTRACTING AND PROCUREMENT**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by section 3 of the Excellence in Local Business Contract Grading Act of 2008, effective March 26, 2008 (D.C. Law 17-137; D.C. Official Code § 2-235.05 (2009 Supp.)) (Act) and Mayor's Order 2009-8 (dated January 29, 2009), hereby gives notice of the adoption of the following emergency rules and of the intent to adopt final rulemaking to add a new section to Chapter 22 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). The Act requires the Mayor to issue rules to implement the provisions of the Act. The rulemaking is intended to add a new section 2219 to Chapter 22 concerning procedures for declaring a contractor ineligible to apply for or work on any District contracts because it has received a final evaluation grade of F on a District contract.

Without these emergency rules, the Office of Contracting and Procurement will not be able to declare ineligible those contractors who have already received a final evaluation grade of F on a District contract. Adoption of these emergency rules to amend Chapter 22 is thus necessary for the immediate preservation of the public safety or welfare, in accordance with District law as codified at D. C. Official Code § 2-505(c) (2001). These emergency rules will remain in effect for up to one hundred twenty (120) days from the date of adoption or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. The Chief Procurement Officer gives notice of intent to take final rulemaking action in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Chief Procurement Officer will submit the rules to the Council of the District of Columbia for a forty-five (45) day period of review pursuant to section 3 of the Act, and will not take final rulemaking action until completion of the 45-day review period or Council approval of the rules by resolution before the end of the review period.

Chapter 22 of Title 27 DCMR is amended by adding a new section 2219 to read as follows:

2219 INELIGIBILITY PROCEEDINGS UNDER THE EXCELLENCE IN LOCAL BUSINESS CONTRACT GRADING ACT OF 2008

- 2219.1 This section shall apply to contractor ineligibility proceedings in accordance with the Excellence in Local Business Contract Grading Act of 2008, effective March 26, 2008 (D.C. Law 17-137; D.C. Official Code § 2-325.04 *et seq.* (2009 Supp.)) (Act).
- 2219.2 The Director shall initiate ineligibility proceedings by notifying the contractor by certified mail, return receipt requested, of the following:
- (a) That the contractor has received a grade of F as its evaluation grade on a District contract.

- (b) That, within fifteen (15) days after receipt of the notice, the contractor may request from the Director a final written decision on its grade of F and that, in making its request, the contractor may submit in person, in writing, or through a representative, information and argument in opposition to the proposed ineligibility, including any additional specific information that raises a genuine issue of fact; and
 - (c) That, if the contractor fails to request from the Director a final written decision on its grade of F within fifteen (15) days after receipt of the notice, the contractor will be subject to the same consequences of ineligibility as described in § 2212 for a one (1)-year period which shall commence on the sixteenth (16th) day after the date of the notice.
- 2219.3 The Director shall include a copy of the final evaluation letter and the vendor evaluation for which the contractor received a grade of F with the notice provided pursuant to § 2219.2.
- 2219.4 If the contractor timely requests a final written decision from the Director on its grade of F, the Director shall issue his final decision on the matter within fifteen (15) days after receipt of the contractor's request. The Director shall base his decision on the facts as found together with any information and argument submitted by the contractor.
- 2219.5 If the Director decides not to change the grade of F, the Director shall notify the contractor by certified mail, return receipt requested. The final written decision shall include:
 - (a) A reference to the original notice of proposed ineligibility;
 - (b) Notice to the contractor of its right to appeal the final decision to the Contract Appeals Board (CAB) within thirty (30) days after receipt of the final decision; and
 - (c) A statement that the contractor will be subject to the same consequences of ineligibility as described in § 2212 of this chapter for a one (1)-year period. The ineligibility period shall commence on the earlier of the thirty-first (31st) day after the date of the final written decision if the contractor chooses not to appeal the final decision, or the day after the CAB dismisses or denies the contractor's appeal.
- 2219.6 If the Director decides to change the grade of F, the Director shall notify the contractor of his decision by certified mail, return receipt requested.
- 2219.7 A contractor who has received a grade of F as its final evaluation shall remain eligible to apply for or work on any District contract until the CAB appeal process has been concluded.

2219.8 The Director shall ensure that ineligible contractors are included on the consolidated list of debarred, suspended, and ineligible contractors as provided in § 2211.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to the Chief Procurement Officer, 441 4th Street, 700 South, Washington, D.C. 20001. Comments must be received no later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.