

AN ACT
D.C. ACT 19-447

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
AUGUST 9, 2012

Codification
District of
Columbia
Official Code

2001 Edition

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Supp.

West Group
Publisher

To amend the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008 to permit the application of progressive stormwater standards in the Anacostia Waterfront Development Zone, to provide technical corrections and clarifications, and to permit the sunset of stormwater regulations upon the approval of regulations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Anacostia Waterfront Environmental Standards Amendment Act of 2012”.

Sec. 2. The National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008, effective March 26, 2008 (D.C. Law 17-138; D.C. Official Code § 2-1225.01 *et seq.*), is amended as follows:

(a) Section 404 (D.C. Official Code § 2-1226.04) is amended as follows:

Amend
§ 2-1226.04

(1) Paragraph (1) is amended by striking the phrase “Interstate 95 that is north of D Street, N.W., and N.E.” and inserting the phrase “Interstate 395 that is north of E Street, S.W., or S.E.” in its place.

(2) Paragraph (2) is amended by striking the phrase “south of D Street, N.W., and N.E., and the Washington Channel” and inserting the phrase “south of E Street, S.W., or S.E., and the Anacostia River or Washington Channel” in its place.

(3) Paragraph (3) is amended by striking the phrase “Interstate 395 that is south of D Street, N.W. and N.E.” and inserting the phrase “Interstate 695, and all rights-of-way, that are south of E Street, S.W. or S.E.” in its place.

(4) Paragraph (6) is amended to read as follows:

“(6) The portions of:

“(A) The Anacostia Freeway that are north or east of the intersection of the Anacostia Freeway and Defense Boulevard and all rights-of-way of that portion of the Anacostia Freeway;

“(B) Kenilworth Avenue that extend to the northeast from the Anacostia Freeway to Eastern Avenue; and

“(C) Interstate 295, including its rights-of-way, that are east of the

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Anacostia River and that extend to the southwest from the Anacostia Freeway to Defense Boulevard.”.

(5) Paragraph (7) is amended by striking the phrase “that portion of the Anacostia Freeway described” and inserting the phrase “those portions of the Anacostia Freeway, Kenilworth Avenue, and Interstate 295 described” in its place.

(6) Paragraph (8) is amended as follows:

(A) Subparagraphs (B), (C), and (D) are amended to read as follows:

“(B) East of the Anacostia Freeway, including rights-of-way of the Anacostia Freeway;

“(C) East of the portion of Kenilworth Avenue that extends to the northeast from the Anacostia Freeway to Eastern Avenue;

“(D) East of the portion of Interstate 295, including its rights-of-way, that is east of the Anacostia River and that extends to the southwest from the Anacostia Freeway to Defense Boulevard, but excluding the portion of 295 and its rights-of-way that go to the northwest across the Anacostia River;”.

(B) New subparagraphs (E) and (F) are added to read as follows:

“(E) Contiguous to that portion of the Suitland Parkway that is south of Martin Luther King, Jr. Avenue; or

“(F) South of a line drawn along, and as a continuation both east and west of the center line of the portion of Defense Boulevard between Brookley Avenue, S.W., and Mitscher Road, S.W.;”.

(7) Paragraph (9) is amended as follows:

(A) Subparagraph (A) is amended by striking the number “7” and inserting the number “8” in its place.

(B) Subparagraph (B) is amended by striking the word “or” and inserting the word “and” in its place.

(b) Section 452 (D.C. Official Code § 2-1226.32) is amended as follows:

(1) Paragraph (1A) is redesignated as paragraph (1B).

(2) A new paragraph (1A) is added to read as follows:

“(1A) “Complete stormwater management plan” means a plan, with required supporting documentation, that demonstrates compliance with each applicable stormwater management requirement, as determined by DDOE.”.

(3) New paragraphs (1C), (1D), and (1E) are added to read as follows:

“(1C) “DDOE” means the District Department of the Environment.

“(1D) “District-financed” or “District instrumentality-financed” shall have the same meaning as provided in section 2(10A) of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.01(10A)).

“(1E) “First building permit” shall have the same meaning as provided in section 2(14A) of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C.

Amend
§ 2-1226.32

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Official Code § 6-1451.01(14A).”.

(4) Paragraph (6) is repealed.

(c) Section 453 (D.C. Official Code § 2-1226.33) is amended as follows:

**Amend
§ 2-1226.33**

(1) Subsections (a) and (b) are amended to read as follows:

“(a) This subtitle shall apply to all new construction and substantial improvement projects located within the Anacostia Waterfront Development Zone, as defined in section 404:

“(1) That are District-owned or District instrumentality-owned;

“(2) Where at least 15% of a project's total cost is District-financed or District instrumentality-financed; or

“(3) That include a gift, lease, or sale from District-owned or District instrumentality-owned property to a private entity.

“(b) The requirements of section 456 shall not apply to projects which, as of the effective date of the Anacostia Waterfront Environmental Standards Amendment Act of 2012, passed on 2nd reading on July 10, 2012 (Enrolled version of Bill 19-745), have:

“(1) Applied for a first building permit; or

“(2) Submitted a complete stormwater management plan to DDOE.”.

(2) Subsections (c) and (d) are repealed.

(d) Section 455(a)(1)(D) (D.C. Official Code § 2-1226.35(a)(1)(D)) is amended by striking the phrase “District Department of the Environment (“DDOE”)” and inserting the acronym “DDOE” in its place.

**Amend
§ 2-1226.35**

(e) Section 456 (D.C. Official Code § 2-1226.36) is amended to read as follows:

“Sec. 456. Stormwater control standards.

**Amend
§ 2-1226.36**

“(a) This section shall apply to the new construction and substantial improvement projects identified in section 453 that disturb 5,000 square feet or greater of soil or that have a building footprint of 5,000 square feet or greater.

“(b) Private and public space, including buildings, sidewalks, streets, and lawns, within a project subject to this subtitle that discharge directly to the waters of the District, or to either a separate or combined sewer system, shall be designed, constructed, and maintained to comply with the following:

“(1) Manage stormwater by:

“(A) The reduction of the volume of stormwater run-off created during a 24-hour one-inch storm event following 72 hours of dry conditions, via on-site retention through DDOE-approved practices, including those that incorporate one or more of the following: infiltration, evapo-transpiration, and beneficial reuse; and

“(B) The improvement of stormwater quality by filtering the stormwater from the 95th percentile storm flowing from a project, by passing the flow through a vegetated filtering medium or other on-site controls designed to remove sediment and pollutants of concern as identified in permits by the DDOE or the District of Columbia Water and Sewer Authority so that, according to DDOE’s determination, the discharge will not cause the exceedance of any water-quality standard applicable to the receiving water or cause interference or pass-through of

pollutants at the Blue Plains receiving facility;

“(2) Achieve the required level of stormwater control using the following DDOE-approved methods, in the following order of preference:

“(A) Vegetated controls designed to retain and beneficially use stormwater;

“(B) Where compatible with groundwater protection, non-vegetated controls designed to promote infiltration;

“(C) Other low-impact development practices;

“(D) Collection and reuse of stormwater for on-site irrigation; and

“(E) Other on-site design methods or practices;

“(3) Employ, where feasible, DDOE-approved low-impact development technologies for public spaces regulated by the District Department of Transportation;

“(4) Restrict the on-site use of fertilizers, pesticides, and herbicides, through use of a DDOE-approved integrated pest management plan;

“(5) Design stormwater controls to prevent migration of stormwater into contaminated underlying soils or groundwater;

“(6) Certify that remediation of contaminated soils or groundwater is either completed as part of the development or that properly functioning long-term remedial measures are in place;

“(7) Treat any groundwater produced at a project during construction or after completion of construction to remove sediment and pollutants of concern as required by DDOE or the United States Environmental Protection Agency, depending on which agency has jurisdiction; and

“(8) Provide that any groundwater discharged from the site into the sanitary sewer system conforms to District of Columbia Water and Sewer Authority requirements designed to ensure that the discharge will not cause or contribute to the exceedance of any water quality standard applicable to the receiving water or cause interference or pass-through of pollutants at the Blue Plains receiving facility.

“(c)(1) If DDOE determines that, based on site conditions such as soil or groundwater contamination, local geology, or impacts on surrounding landowners, the substantial weight of the evidence limits the feasibility or appropriateness of the on-site stormwater management required by subsection (b)(1) of this section:

“(A) Either off-site mitigation or payment in lieu of mitigation, or a combination thereof, shall be used to satisfy:

“(i) The difference between the on-site stormwater reduction volume required by subsection (b)(1)(A) of this section and the volume of on-site stormwater reduction achieved; and

“(ii) The difference between the on-site filtration required by subsection (b)(1)(B) of this section, and the volume of filtration achieved;

“(B) Off-site mitigation shall be a reduction of stormwater volume equal to

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the off-site volume and shall be maintained for the life of the primary project; provided, that if the off-site mitigation is located outside the Anacostia Watershed, the volume treated shall equal 1.25 times the volume that would have been required to be treated on site; and

“(C) Payment in lieu of mitigation shall be equal to the cost for DDOE to reduce the off-site volume for the life of the primary project. DDOE shall determine this payment based on DDOE’s fully burdened and inflation-adjusted cost of retention to achieve stormwater volume reduction via infiltration, evapo-transpiration, re-use practices, or other methods or practices approved by DDOE, for a site determined by DDOE.

“(2) For the purposes of this subsection, the term “off-site volume” shall mean the difference between the requirements of subsection (b)(1)(A) or (b)(1)(B) of this section, and the volume of on-site stormwater management achieved.

“(d) A payment in lieu of mitigation shall be:

“(1) Deposited in the Anacostia River Clean Up and Protection Fund, established by section 6 of the Anacostia River Clean Up and Protection Act of 2009, effective September 23, 2009 (D.C. Law 18-55; D.C. Official Code § 8-102.05); and

“(2) Used to achieve stormwater volume reduction in the Anacostia watershed.

“(e) Under circumstances described in subsection (c) of this section, transportation projects, or substantially similar projects undertaken by a public utility, in the existing public right-of-way shall be exempt from the requirement for off-site mitigation or payment in lieu of mitigation.”.

(f) Section 458(7), (8), and (10) (D.C. Official Code § 2-1226.38(7), (8), and (10)) are amended by striking the word “applicants” wherever it appears and inserting the word “projects” in its place.

Amend
§ 2-1226.38

(g) Section 459 (D.C. Official Code § 2-1226.39) is amended as follows:

Amend
§ 2-1226.39

(1) Strike the word “Mayor” wherever it appears and insert the acronym “DDOE” in its place.

(2) Subsection (a)(1) is amended by striking the phrase “There is evidence” and inserting the phrase “The substantial weight of the evidence is” in its place.

(h) New sections 460a and 460b are added to read as follows:

“Sec. 460a. Power and authority.

“With respect to projects that are subject to this subtitle and projects completed for off-site mitigation or payment in lieu of mitigation, DDOE shall have the authority to:

“(1) Monitor, inspect, review, approve, approve with conditions and covenants, and deny approval;

“(2) Require monitoring, sampling, analysis, record-keeping and certification of ongoing compliance;

“(3) Establish provisions, requirements, and penalties for off-site mitigation or payment in lieu of mitigation options, and for projects that fail to comply with their off-site mitigation or payment-in-lieu-of-mitigation requirements; and

“(4) Recover costs, fees and expenses.

“Sec. 460b. Savings and transition.

“(a) If a conflict exists between the existing stormwater control rules of Chapter 5 of Title 21 of the District of Columbia Municipal Regulations (21 DCMR § 500 *et seq.*) and the standards set forth in section 456, the standards in section 456 shall govern; provided, that neither section 456 nor subsection (b) of this section shall apply to projects that have submitted a complete stormwater management plan or first building permit application to the Mayor before the effective date of the Anacostia Waterfront Environmental Standards Amendment Act of 2012, passed on 2nd reading on July 10, 2012 (Enrolled version of Bill 19-745).

“(b) Notwithstanding section 460, if a conflict should arise between section 456 and new stormwater rules promulgated by DDOE, pursuant to section 21 of the Water Pollution Control Act of 1984, as amended, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code § 8-103.20), the new stormwater rules shall supersede section 456, except for the following provisions:

- “(1) Subsections (b)(1)(B), (b)(2), (b)(3), and (b)(5);
- “(2) Subsection (c)(2);
- “(3) Subsection (d)(2); and
- “(4) Subsection (e).

“(c) Notwithstanding subsection (b) of this section, subsection (a) of this section shall continue to govern projects that have submitted a complete stormwater management plan or first building permit application to the Mayor before the effective date of those new stormwater rules.

“(d) DDOE may issue rules specific to the Anacostia Waterfront Development Zone, including special stormwater mitigation measures that benefit the Anacostia River. The rules shall:

“(1) Supersede section 456 upon the effective date of rules specific to the Anacostia Waterfront Development Zone, which shall include special stormwater mitigation measures for the zone; and

“(2) Be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).”

(i) Section 461 (D.C. Official Code § 2-1226.41) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a) The Mayor may issue rules to implement the requirements of this subtitle.”

(2) Subsections (b) and (c) are repealed.

Amend
§ 2-1226.41

Sec. 3. Fiscal impact statement.

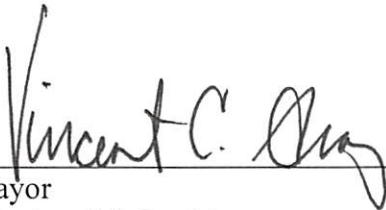
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
August 9, 2012



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

Docket No. **B19-745**

- ITEM ON CONSENT CALENDAR
 ACTION & DATE
 VOICE VOTE
 RECORDED VOTE ON REQUEST

ADOPTED FIRST READING, 06-26-12

APPROVED
BARRY

ABSENT

ROLL CALL VOTE - Result _____ (.....)


Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				Orange	X			
Alexander	X				Cheh	X				Wells	X			
Barry				X	Evans	X								
Bowser	X				Graham	X								
Brown	X				McDuffie	X								

X - Indicate Vote

AB - Absent

NV - Present, Not Voting

CERTIFICATION RECORD



Secretary to the Council

7.31.12

Date

- ITEM ON CONSENT CALENDAR
 ACTION & DATE
 VOICE VOTE
 RECORDED VOTE ON REQUEST

ADOPTED FINAL READING, 07-10-12

APPROVED

ALL PRESENT

ABSENT

ROLL CALL VOTE - Result _____ (.....)

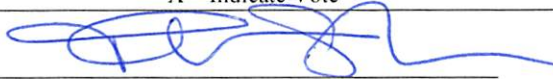
Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				Orange	X			
Alexander	X				Cheh	X				Wells	X			
Barry	X				Evans	X								
Bowser	X				Graham	X								
Brown	X				McDuffie	X								

X - Indicate Vote

AB - Absent

NV - Present, Not Voting

CERTIFICATION RECORD



Secretary to the Council

7.31.12

Date

- ITEM ON CONSENT CALENDAR
 ACTION & DATE
 VOICE VOTE
 RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE - Result _____ (.....)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson					Catania					Orange				
Alexander					Cheh					Wells				
Barry					Evans									
Bowser					Graham									
Brown					McDuffie									

X - Indicate Vote

AB - Absent

NV - Present, Not Voting

CERTIFICATION RECORD



Secretary to the Council

Date