

AN ACT

D.C. ACT 20-503

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 8, 2014

To amend the Department of Transportation Establishment Act of 2002 to authorize the Director of the District Department of Transportation (“DDOT”) to establish and enforce infractions relating to the unauthorized use of public space in the District through the issuance of fines, compliance orders, and abatement; to amend the Office of Administrative Hearings Establishment Act of 2001 to add infractions imposed under DDOT’s jurisdiction to the cases adjudicated by the Office of Administrative Hearings; to amend An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District to enforce and adjudicate infractions under this act pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985; and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Public Space Enforcement Amendment Act of 2014”.

Sec. 2. The Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.01 *et seq.*), is amended as follows:

(a) A new section 2a is added to read as follows:

“Sec. 2a. Definitions.

“For the purposes of this title, the term:

“(1) “Person” means an individual, corporation, firm, agency, company, association, organization, partnership, society, or joint stock company.

“(2) “Property line” means the line of demarcation separating privately owned property fronting or abutting a street or alley from publicly owned property on the other side of the line of demarcation.

“(3) “Public right-of-way” means the surface, air space above the surface, and area below the surface of any public street, highway, bridge, tunnel, alley, or sidewalk.

“(4) “Public space” means all the publicly owned property between property lines shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

“(5) “Respondent” means a person subject to a civil fine, compliance order, or abatement procedure as defined in section 9k.”.

(b) Section 5 (D.C. Official Code § 50-921.04) is amended as follows:

(1) Paragraph (3) is amended as follows:

(A) Subparagraph (D)(iii) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(B) A new subparagraph (D-i) is added to read as follows:

“(D-i) Install and maintain parking meters and other parking control devices and systems on public rights-of-way and other public spaces in the District; and”.

(2) Paragraph (4) is amended as follows:

(A) Subparagraph (A) is amended to read as follows:

“(A) Review, approve, and issue public space permit requests for occupancy, work within, or other use of the public space, including private use and utility work public space requests, and ensure that transportation services are maintained and that the infrastructure is restored after the occupancy, work within, or other use is complete;”

(B) Subparagraph (F) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(C) Subparagraph (G)(iv) is amended by striking the period and inserting the phrase “; and” in its place.

(D) A new subparagraph (H) is added to read as follows:

“(H) Develop, implement, and enforce a comprehensive plan that covers the care, maintenance, and upkeep of public space and federal reservations under the control of DDOT.”.

(c) New sections 9j and 9k are added to read as follows:

“Sec. 9j. Rules.

“(a) The Director, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this title.

“(b) The rules may establish fees as may be necessary or useful for implementation of the title, including permit application fees, fees for the use of public space, and fees for services provided by DDOT or rights or privileges granted by DDOT.

“Sec. 9k. Enforcement.

“(a) The Director may inspect private property located on public space and private work performed within public space and may perform such other inspections necessary to protect the public space or public safety or ensure compliance with this title, the regulations promulgated pursuant to this title, or permits, notices, or orders issued pursuant to this title.

“(b) Civil fines and penalties may be imposed as sanctions for any violation of the provisions of this title or any rules promulgated under the authority of this title, 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. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”). Fines and penalties may be imposed for each day that a violation continues. Enforcement and adjudication of a violation shall be pursuant to the Civil Infractions Act.

“(c)(1) For violations of this title or any rules promulgated under the authority of this title, the Director may issue a notice of infraction, pursuant to the Civil Infractions Act. The

notice of infraction may impose a fine or penalty, may require the respondent to take action to correct a violation of a law or regulation or cease conduct that violates a law or regulation, or may both impose a fine or penalty and require the respondent to take action to correct a violation of a law or regulation or cease conduct that violates a law or regulation.

“(2) If the notice of infraction requires the respondent to take action to correct a violation of a law or regulation or cease conduct that violates a law or regulation, the notice of infraction shall include the following information, in addition to the information required by section 201(b) of the Civil Infractions Act:

“(A) A description of the violation;

“(B) A statement that the respondent’s conduct violating the applicable law or regulation must cease, or a statement the respondent must take action to correct the violation;

“(C) The date and time by which the respondent must cease the violating conduct or take the corrective action; and

“(D) A statement that if the respondent fails to comply with the notice or request a hearing within the stated time, the Director may:

“(i) Remove and dispose of property unlawfully occupying public space and repair any damage to the public space caused by the violation;

“(ii) Take action to protect the public from the effects and potential effects of the violation; and

“(iii) Recover 3 times the cost and expense of removing and disposing of property unlawfully occupying public space, repairing any damage to the public space caused by the violation, and taking action to protect the public from the effects and potential effects of the violation.

“(3) If a respondent does not comply with the notice or request a hearing pursuant to section 201 of the Civil Infractions Act by the date and time stated on the notice of infraction, the notice shall be deemed final. If a respondent does not comply with a notice that has been deemed final, the Director may:

“(A) Remove private property unlawfully occupying public space;

“(B) Repair any damage to the public space caused by the respondent’s violation;

“(C) Take action to protect the public from the effects and potential effects of the violation;

“(D) Recover the costs of the removal and repairs pursuant to subsection (f) of this section and section 203 of the Civil Infractions Act;

“(E) Through the Office of the Attorney General, petition the Superior Court of the District of Columbia to issue an order compelling compliance; or

“(F) Take any other action authorized by law or regulation.

“(4)(A) Whenever the Director takes action under paragraph (3)(A), (B), or (C) of this subsection, the Director shall serve a notice on the respondent describing the action that was taken. If property was removed from the public space, the notice shall describe the method by

which the respondent may recover the property and the deadline by which the respondent must recover the property. The notice shall also state the amount, if any, to be assessed against the respondent pursuant to section 203 of the Civil Infractions Act.

“(B) A respondent may contest the amount assessed pursuant to subparagraph (A) of this paragraph by requesting a hearing pursuant to section 201 of the Civil Infractions Act.

“(d)(1) Where a violation of this title or a rule promulgated under the authority of this title presents an actual or potential hazard to the public, the Director may summarily remove private property unlawfully occupying public space, repair damage to the public space caused by the violation, and take action to protect the public from the effects and potential effects of the violation. If such action is taken by the Director, the Director shall issue a notice of infraction pursuant to the Civil Infractions Act

“(2) In addition to the information required under section 201(b) of the Civil Infractions Act, the notice of infraction shall include the following information:

“(A) A description of the action taken by the Director;

“(B) The amount the respondent must pay pursuant to subsection (f) of this section; provided, that the Director may recover the costs and expenses authorized by subsection (f) of this section, or any portion of those costs and expenses, through a separate notice of infraction;

“(C) A statement that the respondent has a right to request an expedited hearing by making this request in writing within 5 days after service of the notice;

“(D) The method by which the respondent may recover property removed from the public space, if any; and

“(E) The deadline by which the respondent must recover the property.

“(3) If a respondent has requested an expedited hearing, the Office of Administrative Hearings shall conduct the hearing within 72 hours after receipt of the request.

“(e)(1) The Director shall store private property removed from the public space pursuant to subsection (c) or (d) of this section for at least 15 days after the service of the notice.

“(2) If the respondent does not recover the property by the date set forth in the notice, the Director may, in accordance with reasonable business practices, sell or otherwise dispose of the property.

“(3)(A) A respondent who fails to reclaim the property within the time prescribed shall nevertheless be entitled to recover the fair market value of any property disposed of pursuant to this subsection if:

“(i) The respondent timely requests a hearing;

“(ii) The administrative law judge dismisses the notice or order or finds no violation; and

“(iii) The respondent establishes the property’s fair market value by a preponderance of the evidence.

“(B) For the purposes of this subparagraph, if the District has sold the property, the price paid by a good faith purchaser, other than the respondent, shall establish a

rebuttable presumption of the fair market value of the property. In no event, however, shall the respondent be entitled to recover an amount greater than the price paid by the purchaser.

“(f) The Director may recover 3 times the cost and expense of removing and disposing of property unlawfully occupying public space, repairing any damage to the public space caused by the violation, and taking action to protect the public from the effects and potential effects of the violation pursuant to subsections (c) and (d) of this section.”.

Sec. 3. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended as follows:

(a) Subsection (a) is amended as follows:

(1) Paragraph (8) is amended by striking the semicolon and inserting the phrase “; and” in its place.

(2) Paragraph (9) is repealed.

(3) Paragraph (10) is amended by striking the phrase “; and” and inserting a period in its place.

(4) Paragraph (11) is repealed.

(b) A new subsection (b-8) is added to read as follows:

“(b-8) In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), and (b-7), this act shall apply to adjudicated cases under the jurisdiction of the District Department of Transportation.”.

Sec. 4. 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 § 1-303.21 *et seq.*), is amended as follows:

(a) Section 1(b) (D.C. Official Code § 1-303.21(b)) is amended as follows:

(1) Paragraph (8) is amended by striking the semicolon and inserting the phrase “; and” in its place.

(2) Paragraph (9) is amended by striking the phrase “; and” and inserting a period in its place.

(3) Paragraph (10) is repealed.

(b) Section 4(a) (D.C. Official Code § 1-303.23(a)) is amended to read as follows:

“(a) Enforcement and adjudication of infractions of these rules shall be 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. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”), the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.01 *et seq.*) (“DDOT Establishment Act”), and Chapter 1A of Title 12A of the Construction Codes. The Mayor shall enforce the rules applicable to signs on public space, public rights-of-way, public buildings and structures, and other property owned or controlled by the District under the Civil Infractions Act and the DDOT Establishment Act. The

rules applicable to signs on private property shall be enforced under the Civil Infractions Act and Chapter 1A of Title 12A of the Construction Codes. The Mayor shall also establish, by rulemaking, a schedule of fines and penalties for infractions of these rules, which shall be subject to Council review and approval as described in section 1.”.

Sec. 5. Section 3(a)(1) of the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code § 8-802(a)(1)), is amended by striking the phrase “§§ 101, 102, 103, 104, 108, 900.7, 900.8, 900.10, 1000, 1001, 1002, 1005, 1008, 1009, 2000, 2001, 2002, and 2010 of 24 DCMR” and inserting the phrase “§§ 108, 900.7, 900.8, 900.9, 900.10, 1000, 1002, 1008, 1009, 2001.3, 2010 of 24 DCMR” in its place.

Sec. 6. The District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10-1101.01 *et seq.*), is amended as follows:

(a) Section 201 (D.C. Official Code § 10-1102.01) is amended as follows:

(1) Strike the phrase “subject to the provisions of sections 1 and 2 of An Act To regulate, the height, exterior design, and construction of private and semipublic buildings in certain areas of the National Capital, approved May 16, 1930 (46 Stat. 366; D.C. Official Code §§ 6-611.01 and 6-611.02),” and insert the phrase “subject to the provisions of sections 1 and 2 of An Act To regulate, the height, exterior design, and construction of private and semipublic buildings in certain areas of the National Capital, approved May 16, 1930 (46 Stat. 366; D.C. Official Code §§ 6-611.01 and 6-611.02), if the proposed rental of public space entails the erection or alteration of the exterior of a building,” in its place.

(2) Strike the word “him” and insert the phrase “the Mayor” in its place.

(3) Strike the phrase “owner of the real property abutting such space” and insert the phrase “person using such space” in its place.

(b) Section 404 (D.C. Official Code § 10-1104.04) is amended to read as follows:

“Sec. 404. Enforcement; penalties.

“(a) A violation of this act or a rule issued in accordance with this act shall be enforced and adjudicated 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. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”). The Mayor may also enforce a violation of this act or a rule issued in accordance with this act pursuant to section 9k(a), (c), (d), (e), and (f) of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 18, 2014 (Enrolled version of Bill 20-905).

“(b) A person who violates a provision of this act may be punished by a fine not exceeding \$100 or imprisonment for not more than 10 days.”.

(c) Sections 405, 406, 407, and 409 (D.C. Official Code §§ 10-1104.05, 10-1104.06, 10-1104.07, and 10-1104.09) are repealed.

Sec. 7. Section 11 of the District of Columbia Public Space Utilization Act, approved October 17, 1968 (82 Stat. 1166; D.C. Official Code § 10-1121.10), is amended to read as follows:

“Sec. 11. Rules; enforcement.

“(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.

“(b) A violation of this act or a rule issued in accordance with this act may be punished by imprisonment of not more than 90 days.

“(c) The Mayor may maintain an action in the Superior Court of the District of Columbia to enjoin any continuing violation of this act or a rule issued in accordance with this act.

“(d) Civil fines and penalties may be imposed as alternative sanctions for any infraction of the provisions of this act or any rules promulgated under the authority of this act, 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. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

“(e) The Mayor may also enforce this act or a rule issued in accordance with this act pursuant to section 9k(a), (c), (d), (e), and (f) of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 18, 2014 (Enrolled version of Bill 20-905).”.

Sec. 8. Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*), is amended by adding a new section 607 to read as follows:

“Sec. 607. Enforcement.

“(a) Civil fines and penalties may be imposed as sanctions for any infraction of the provisions of this title or any rules issued in accordance with this title, 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. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

“(b) The Mayor may also enforce this title or any rules issued in accordance with this title pursuant to section 9k(a), (c), (d), (e), and (f) of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 18, 2014 (Enrolled version of Bill 20-905).”.

Sec. 9. The Abatement of Dangerous Conditions on Public Space Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code § 10-1181.01 *et seq.*), is amended by adding new sections 6026a and 6026b to read as follows:

“Sec. 6026a. Rules.

“The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this subtitle.

“Sec. 6026b. Enforcement.

“(a) Violations of this subtitle or a rule issued in accordance with this subtitle may be punished by imprisonment of not more than 90 days.

“(b) The Mayor may maintain an action in the Superior Court of the District of Columbia to enjoin any continuing violation of this subtitle or a regulation issued pursuant to this subtitle.

“(c) Civil fines and penalties may be imposed as alternative sanctions for any infraction of the provisions of this subtitle or any rules issued in accordance with this subtitle, 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. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

“(d) The Mayor may also enforce this subtitle or any rules issued in accordance with this subtitle pursuant to section 9k(a), (c), (d), (e), and (f) of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 18, 2014 (Enrolled version of Bill 20-905)(“DDOT Establishment Act”); provided, that references to the Director in section 9k(a), (c), (d), (e), and (f) of the DDOT Establishment Act shall be deemed to be references to the Mayor for the purposes of this subsection.”.

Sec. 10. Section 205 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 § 2-1802.05), is amended as follows:

(a) The existing text is designated as subsection (a).

(b) A new subsection (b) is added to read as follows:

“(b) Where property unlawfully occupies public space, including a public right-of-way, in violation 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 § 1-303.21 *et seq.*), the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10-1101.01 *et seq.*), the District of Columbia Public Space Utilization Act, approved October 17, 1968 (82 Stat. 1166; D.C. Official Code § 10-1121.01 *et seq.*), the Public Space Permitting Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*), the Abatement of Dangerous Conditions on Public Space Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code § 1181.01 *et seq.*), or the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.01 *et seq.*), or another law regulating the occupancy or use of public space, including the public right-of-way, and the identity or location of the property owner is unknown, service may also be made by:

“(1) Conspicuously posting the notice or order on the property alleged to be in violation; and

“(2) Posting the information regarding the notice or order on the website of the agency issuing the notice or order.”.

ENROLLED ORIGINAL

Sec. 11. An Act to authorize the Commissioners of the District of Columbia to provide for the parking of automobiles in the Municipal Center, approved June 6, 1940 (54 Stat. 241; D.C. Official Code § 50-2632), is repealed.

Sec. 12. Applicability.

(a) Section 2(a), 2(b)(1), 2(b)(2)(A), 2(b)(2)(B), 2(b)(2)(C), 2(c), 3, 4, 6, 7, 8, 9, 10, and 11 shall apply as of the effective date of this act.

(b) Section 2(b)(2)(D) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

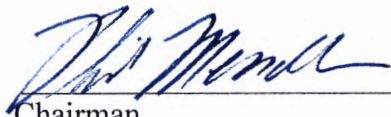
(c) Section 5 shall apply upon the effective date of rules promulgated pursuant to section 9j of the Department of Transportation Establishment Act of 2002, passed on 2nd reading on November 19, 2014 (Enrolled version of Bill 20-905).

Sec. 13. 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)).

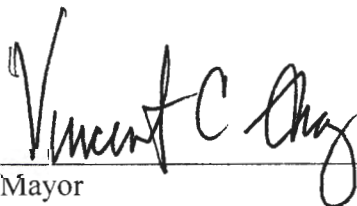
Sec. 14. Effective date.

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

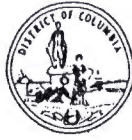
Council of the District of Columbia



Mayor

District of Columbia
APPROVED

December 8, 2014



COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20004

Docket No. **B20-0905**

☐ ITEM ON CONSENT CALENDAR

☒ ACTION & DATE

ADOPTED FIRST READING, 10/28/2014

☒ VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

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				McDuffie	X			
Alexander	X				Cheh	X				Orange	X			
Barry				X	Evans	X				Wells	X			
Bonds	X				Graham	X								
Bowser	X				Grosso	X								
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD


Secretary to the Council

11-25-14
Date

☐ ITEM ON CONSENT CALENDAR

☒ ACTION & DATE

ADOPTED FINAL READING, 11/18/2014

☒ VOICE VOTE

RECORDED VOTE ON REQUEST


APPROVED

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				McDuffie	X			
Alexander	X				Cheh	X				Orange	X			
Barry	X				Evans	X				Wells	X			
Bonds	X				Graham	X								
Bowser	X				Grosso	X								
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD


Secretary to the Council

11-25-14
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					McDuffie				
Alexander					Cheh					Orange				
Barry					Evans					Wells				
Bonds					Graham									
Bowser					Grosso									
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD

 Secretary to the Council

Date