


Council of the District of Columbia

MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: Chairman Phil Mendelson
FROM: Councilmember Charles Allen 
RE: Request to Agendize Measures for the February 4, 2025 Legislative Meeting
DATE: January 30, 2025

I request that the following measures be placed on the agenda for the February 4, 2025 Legislative Meeting:

Emergency Legislation

- Department of Energy and Environment Definitions Congressional Review Emergency Declaration Resolution of 2025; and
- Department of Energy and Environment Definitions Congressional Review Emergency Amendment Act of 2025.

The Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; 47 DCR 1091), currently defines the term “Subscriber organization” as “any for-profit or nonprofit entity permitted by District of Columbia law that owns or operates one or more community renewable energy facilities for the benefit of the subscribers.” A primary function of subscriber organizations is to assign energy credits to subscribers who participate in community renewable energy facilities (“CREFs”). Subscription management is an administratively burdensome activity, and solar developers generally prefer to assign the responsibility for subscription management to another entity. In practice, the Department of Energy and Environment (“DOEE”) has been functioning as a subscriber organization for low- to moderate-income District residents, who are subscribers to CREFs through DOEE’s Solar for All program. Uncertainty regarding whether the definition of “subscriber organization” covers a government entity could adversely impact DOEE’s authority to continue performing these administrative functions, and may inhibit other government entities, including the federal government, from performing these functions for future CREFs.

The Residential Housing Environmental Safety Amendment Act of 2020, effective March 16, 2021 (D.C. Law 23-188; 68 DCR 1227), amended the Lead-Hazard Prevention and Elimination Act of 2008, effective March 31, 2009 (D.C. Law 17-381; 56 DCR 1596), to lower the amount of lead needed in paint or other surface coatings to qualify as a “lead-based paint” from one milligram per square centimeter (1.0mg/cm²) to 0.7 milligrams per square centimeter (0.7mg/cm²). However, the parenthetical within the amended definition erroneously uses microgram symbol (“μ”) instead of the correct abbreviation for milligram (“mg”).

The Zero Waste Omnibus Amendment Act of 2020, effective March 16, 2021 (D.C. Law 23-211; 68 DCR 68), amended the Sustainable Solid Waste Management Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-154; 61 DCR 9971) to define “producer.” Due to a drafting error, the definition uses the phrase “A person who manufacturers [sic] a . . .” when it should instead read “A person who manufactures a . . .”

To prevent the misapplication or misinterpretation of several key definitions in the D.C. Code that DOEE relies on when fulfilling its statutory duties or administering agency programs, the Council passed the Department of Energy and Environment Definitions Clarification Emergency Amendment Act of 2024, effective November 22, 2024 (D.C. Act 25-636; 71 DCR 14470) (“emergency act”). The emergency act is set to expire on February 20, 2025. The Council also passed the Department of Energy and Environment Definitions Clarification Temporary Amendment Act of 2024 (D.C. Act 25-665; 71 DCR 16302) (“temporary legislation”). The projected law date for the temporary legislation is March 6, 2025.

This congressional review emergency legislation is now necessary to prevent a gap in the law between the expiration of the emergency act and the effective date of the temporary legislation. Draft copies of the measures are attached.

- Department of Energy and Environment Rulemaking Clarification Congressional Review Emergency Declaration Resolution of 2025; and
- Department of Energy and Environment Rulemaking Clarification Congressional Review Emergency Amendment Act of 2025

The District Department of the Environment Establishment Act of 2005 (“Act”), effective February 15, 2006 (D.C. Law 16-51; 52 DCR 10812) established the District Department of the Environment as “an agency within the executive branch of the District of Columbia government to consolidate the administration and oversight of environmental laws, regulations, and programs into a single agency.” The Department of the Environment was later renamed the Department of Energy and Environment (“DOEE”). The original language of the Act required that the Mayor promulgate rules and regulations to implement provisions of the Act within 180 days of its effective date. The Act further specified that proposed rules and regulations promulgated pursuant to that provision must be submitted to the Council for a 45-day period of review, and that the proposed rules were to be deemed disapproved if the Council did not approve or disapprove the proposed rules by resolution – that is, active approval. The rationale for requiring active approval of the rules was to ensure that the Council could review the initial rules and regulations promulgated by the newly established agency.

In 2021, the Council passed the Green Food Purchasing Amendment Act of 2021, effective July 29, 2021 (D.C. Law 24-16; 68 DCR 6015) (“GFPAA”). The GFPAA amended D.C. Official Code § 8-151.10 to provide rulemaking authority for purposes of implementing provisions of the GFPAA. Due to a drafting error, the GFPAA unintentionally subjects all new rules and regulations promulgated by DOEE to the 45-day active approval period that had been reserved for rules and regulations promulgated during DOEE’s establishment.

The resulting uncertainty regarding the Executive’s rulemaking authority pursuant to the Act continues to impair the ability of the District of Columbia to promulgate rules and regulations necessary for implementing the District’s environmental laws in a timely manner. To clarify DOEE’s ability to promulgate rules and regulations without those rules and regulations being subjected to a 45-day active approval process, the Council passed the Department of Energy and Environment Rulemaking Clarification Emergency Amendment Act of 2024, effective November 22, 2024 (D.C. Act 25-629; 71 DCR 14456) (“emergency act”). The Council also passed the

Department of Energy and Environment Rulemaking Clarification Temporary Amendment Act of 2024 (D.C. Act 25-639; 71 DCR 14478) (“temporary legislation”).

This congressional review emergency legislation is necessary to prevent a gap in the law between the expiration of the emergency act and the effective date of the temporary legislation. Draft copies of the measures are attached.

Emergency Contract Approval

- Contract No. CW118832 with Modaxo Traffic Management USA, Inc., Approval and Payment Authorization Emergency Act of 2025

On September 30, 2024, the Office of Contracting and Procurement, on behalf of the Department of Motor Vehicles, executed emergency Contract No. CW118832 with Modaxo Traffic Management USA, Inc., to support the provision of ticket processing services for traffic violations for the period from September 30, 2024, through January 28, 2024, in the not-to-exceed amount of \$6,034,831.66. However, under section 451(b)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)(1)), Council approval is necessary as the value of the contract is more than \$1 million during a 12-month period. This emergency legislation is necessary to allow the continuation of these vital services. Without Council approval, Modaxo Traffic Management USA, Inc., cannot be paid for goods and services provided in excess of \$1 million for the period from September 30, 2024 through January 28, 2025. A copy of the legislation is not yet available on LIMS, so I have attached the materials provided by the Executive.

- Modifications to Contract No. CW108950 with Stormwater Maintenance, LLC Payment Authorization Emergency Act of 2025

There exists a need to approve Modification Nos. 7, 8, 9, 11, 12, and 13 to Contract No. CW108950 with Stormwater Maintenance, LLC to perform assessments and routine, restorative, and reconstructive maintenance on just over 3,000 District-owned and installed green stormwater infrastructure, and to authorize payment for the goods and services received and to be received under the modifications. OCP seeks approval for the following modifications:

- By Modification No. 7, dated August 13, 2024, the Office of Contracting and Procurement (“OCP”), on behalf of the Department of Energy and Environment (“DOEE”), partially exercised option period 1 of Contract No. CW108950 for the period from August 14, 2024 through August 13, 2025 in the amount of \$574,819.
- Modification No. 8 was an administrative modification.
- By Modification No. 9, dated October 9, 2024, OCP increased the contract amount to \$415,175.76 to \$989,994.76.
- Modification No. 10 was withdrawn.
- Modification No. 11 was an administrative modification.
- Modification No. 12 was an administrative modification.
- Modification No. 13 is now necessary to increase the total not-to-exceed amount for option period 1 to \$6,429,579.11.

Under section 451(b)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)(1)), Council approval is necessary since the modifications will increase the value of the contract to more than \$1 million during a 12-month period. Approval is necessary to allow the continuation of these vital services. Without this approval, Stormwater Maintenance, LLC cannot be paid for goods and services provided in excess of \$1,000,000 for the contract period August 14, 2024 through August 13, 2025. A copy of the legislation is not yet available on LIMS, so I have attached the materials provided by the Executive.

cc: Members, Council of the District of Columbia
Office of the Budget Director
Office of the General Counsel
Office of the Secretary