

**DISTRICT OF COLUMBIA OFFICIAL CODE
TITLE 2. GOVERNMENT ADMINISTRATION
CHAPTER 5. ADMINISTRATIVE PROCEDURE
SUBCHAPTER I. ADMINISTRATIVE PROCEDURE**

§ 2-502. Definitions

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§ 2-502. Definitions

As used in this subchapter:

(1) (A) The term "Mayor" means the Mayor of the District of Columbia, or his or her designated agent.

(B) The term "Council" means the Council of the District of Columbia established by § 1-204.01(a) unless the term "District of Columbia Council" is used in which event it shall mean the District of Columbia Council established by subsection (a) of § 201 of Reorganization Plan No. 3 of 1967 (81 Stat. 948).

(2) The term "District" means the District of Columbia.

(3) The term "agency" includes both subordinate agency and independent agency.

(4) The term "subordinate agency" means any officer, employee, office, department, division, board, commission, or other agency of the government of the District, other than an independent agency or the Mayor or the Council, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law.

(5) The term "independent agency" means any agency of the government of the District with respect to which the Mayor and the Council are not authorized by law, other than this subchapter, to establish administrative procedures, but does not include the several courts of the District and the Tax Division of the Superior Court.

(6) (A) The term "rule" means the whole or any part of any Mayor's or agency's statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or of any agency.

(B) The term "rule" does not include any statement for guiding, directing or otherwise regulating vehicular or pedestrian traffic, including any statement controlling parking, standing, stopping or a construction detour; provided, that:

(i) The contents of the statement are indicated to the public on one or more signs, signals, meters, markings or other similar devices located on or adjacent to a street, avenue, road, highway or other public space;

(ii) The proposed installation, modification or removal of the statement is based on engineering or other technical considerations;

(iii) The proposed installation, modification or removal of the statement does not involve substantial policy considerations; and

(iv) The Council and the affected Advisory Neighborhood Commissions ("ANC") are provided with 30-days written notice, excluding Saturdays, Sundays and legal holidays, of an agency's intent to install, modify or remove any of these statements, and any ANC recommendation, if provided, is given great weight pursuant to § 1-309.10.

(7) The term "rulemaking" means Mayor's or agency's process for the formulation, amendment, or repeal of a rule.

(8) The term "contested case" means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this subchapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include:

(A) Any matter subject to a subsequent trial of the law and the facts de novo in any court;

(B) The selection or tenure of an officer or employee of the District;

(C) Proceedings in which decisions rest solely on inspections, tests, or elections; and

(D) Cases in which the Mayor or an agency act as an agent for a court of the District.

(9) The term "person" includes individuals, partnerships, corporations, associations, and public or private organizations of any character other than the Mayor, the Council, or an agency.

(10) The term "party" includes the Mayor and any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any proceeding before the Mayor or an agency, but nothing herein shall be construed to prevent the Mayor or an agency from admitting the Mayor or any person or agency as a party for limited purposes

(11) The term "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Mayor or of any agency in any matter other than rulemaking, but including licensing.

(12) The term "license" includes the whole or part of any permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission granted by the Mayor or any agency.

(13) The term "licensing" includes process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license by the Mayor or an agency.

(14) The term "relief" includes the whole or part of any Mayor's or agency's:

(A) Grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) Recognition of any claim, right, immunity, privilege, exemption, or exception; and

(C) Taking of any other action upon the application or petition of, and beneficial to, any person.

(15) The term "proceeding" means any process of the Mayor or an agency as defined in paragraphs (6), (11), and (12) of this section.

(16) The term "sanction" includes the whole or part of any Mayor's or agency's:

(A) Prohibition, requirement, limitation, or other condition affecting the freedom of any person;

(B) Withholding of relief;

(C) Imposition of any form of penalty or fine;

(D) Destruction, taking, seizure, or withholding of property;

(E) Assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees

(F) Requirement, revocation, or suspension of a license; and

(G) Taking of other compulsory or restrictive action.

(17) The term "regulation" means the whole or any part of any District of Columbia Council statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor, District of Columbia Council, or any agency

(18) The term "public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics prepared, owned, used in the possession of, or retained by a public body. Public records include information stored in an electronic format.

(18A) The term "public body" means the Mayor, an agency, or the Council of the District of Columbia.

(19) The term "adjudication" means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order.

§ 2-509. Contested cases.

(a) In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Mayor or the agency determines that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The notice shall also state that if a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, the party or witness may apply to the agency for the appointment of a qualified interpreter. Unless otherwise required by law, other than this subchapter, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default.

(b) In contested cases, except as may otherwise be provided by law, other than this

subchapter, the proponent of a rule or order shall have the burden of proof. Any oral and any documentary evidence may be received, but the Mayor and every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

(c) The Mayor or the agency shall maintain an official record in each contested case, to include testimony and exhibits, but it shall not be necessary to make any transcription unless a copy of such record is timely requested by any party to such case, or transcription is required by law, other than this subchapter. The testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision. No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record, or such lesser portions thereof as may be agreed upon by all the parties to such case. The cost incidental to the preparation of a copy or copies of a record or portion thereof shall be borne equally by all parties requesting the copy or copies.

(d) Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

(e) Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record.

§ 2-510. Judicial review.

(a) Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or

decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this subchapter upon filing in the District of Columbia Court of Appeals a written petition for review. If the jurisdiction of the Mayor or an agency is challenged at any time in any proceeding and the Mayor or the agency, as the case may be, takes jurisdiction, the person challenging jurisdiction shall be entitled to an immediate judicial review of that action, unless the Court shall otherwise hold. The reviewing Court may by rule prescribe the forms and contents of the petition and, subject to this subchapter, regulate generally all matters relating to proceedings on such appeals. A petition for review shall be filed in such Court within such time as such Court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk

of the Court upon the Mayor or upon the agency, as the case may be. Within such time as may be fixed by rule of the Court, the Mayor or such agency shall certify and file in the Court the exclusive record for decision and any supplementary proceedings, and the clerk of the Court shall immediately notify the petitioner of the filing thereof. Upon the filing of a petition for review, the Court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require. Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or the agency, as the case may be. The Mayor or the agency may grant, or the reviewing Court may order, a stay upon appropriate terms. The Court shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency. The review of all administrative orders and decisions by the Court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this subchapter. In all other cases the review by the Court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules shall include, but not be limited to, the power of the Court:

(1) So far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;

(2) To compel agency action unlawfully withheld or unreasonably delayed; and

(3) To hold unlawful and set aside any action or findings and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege, or immunity;

(C) In excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights;

(D) Without observance of procedure required by law, including any applicable

procedure provided by this subchapter; or

(E) Unsupported by substantial evidence in the record of the proceedings before the Court.

(b) In reviewing administrative orders and decisions, the Court shall review such portions of the exclusive record as may be designated by any party. The Court may invoke the rule of prejudicial error.