

# The Committee of 100 on the Federal City



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**MEMO TO:** Alice Kelly, District of Columbia Department of Transportation

**SUBJECT:** Comments on proposed sign regulations

**FROM:** George Clark, Chair

**DATE:** December 7, 2012

*Founded 1923*

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Evelyn Wrin

945 G Street, N.W.

Washington, D.C. 20001

202.681.0225

[info@committeeof100.net](mailto:info@committeeof100.net)

Attached you will please find comments by the Committee of 100 on the Federal City on the currently proposed revision of the District's sign regulations contained in a Notice of Proposed Rulemaking. Our approach has been to work through the proposed regulations section by section, trying to match proposed provisions with existing ones where possible, noting omissions of existing provisions from the proposed draft, and critiquing the proposal from the point of view of both effective user-friendly drafting and substantive content. (I should note that the task of evaluating the proposed provisions would have been greatly facilitated had the draft included information about the origin of each proposed section and the proposals' treatment of existing ones.) We have inserted comments (in redline), including suggestions for changes in the text, directly into the hyperlinked version the Notice of Proposed Rulemaking.

As we note at the outset, you personally and all those who participated in this effort are to be commended for a generally very well done job of rationalizing, organizing and bringing up to date provisions that had accumulated over many decades from disparate sources. The task was a difficult one, and was long overdue.

While most of the draft consists of updating and consolidating existing regulations while remaining generally within the scope of policies reflected in existing regulations, in two areas – the proposed Designated Entertainment Areas and Special Signs – they embody significant and in our view wholly unacceptable departures from existing policy. These changes occur in part in Chapter 9, *Special Signs*, in which we note that controls on Special Signs have been weakened by dropping some five existing provisions, and by expanding the permissible area for location of Special Signs (also found in chapter 8 on DEAs. In the latter connection, any expansion either in the number of Special Signs allowed or the permissible area has been, and we are confident will be, widely opposed as was

made clear when the Mayor unsuccessfully proposed increasing the number in 2010.

The most radical departure from existing policy is found in Chapter 8, *Designated Entertainment Areas*. This chapter is designed to regularize the creation of defined areas – to be called “Designated Entertainment Areas (DEAs) -- within which the various sorts of hi-tech signs presently allowed in the Gallery Place and Verizon Center areas will be permitted, and in the process to create immediately two new DEAs -- -- the Ballpark Area and the Southwest Waterfront Area. It responds to a legislative mandate from the Council to include provisions for DEAs in the executive branch’s re-write of the sign regulations. To this end this Chapter:

- Defines “DEA” as “any location recognized by the Mayor as a destination venue that provides events, performances or activities designed to entertain others.” §9900.1

- Establishes as DEAs (1) the four areas just mentioned, and (2) “Other areas the Mayor designates.” §800.2

- Lists the types of signs permitted DEAs (closely but not exactly tracking the current list for Gallery Place); “banners, digital screens, digital video monitors, theater marquees, and fixed and animated signs for commercial establishments located within in a DEA,” as well as projected images for the Gallery Place, Ballpark and Waterfront areas. §§800.4 and .5

- Establishes common permitting standards and procedures for signs proposed to be displayed in DEAs. §§801-804

- Establishes rules for all DEA signs regarding location, orientation, permissible size, brilliance of illumination, and other characteristics, and special rules governing roof signs. §805

- Establishes special rules regarding permissible signs for each of the four DEAs. For Gallery Place, these are largely identical to those contained in 12A DCRA 3107 now, and for the Verizon Center essentially the same as contained in the addition to 12A DCMR 3107 that has now been enacted into law by the DC Council, which authorized 10 new signs. They spell out in detail the signs that are permitted in each area and their specifications. No such information is provided for the Ballpark or Waterfront areas.

There is at least one omission of provisions in the current regulations on Gallery Place and the Verizon Center from the proposal: namely, the stringent provisions on enforcement of regulations and removal of non-compliant signs, and maintenance and repair, that are found in the current regulations on Gallery Place and in the legislatively enacted addition to the current regulations that deals with the Verizon Center. (Note that the fate of this Council-enacted Verizon Center amendment to the sign regulations in 12A DCMR 3107 is not clear, since the proposed new regulations, if and when they come into effect, will repeal 12A DCMR 3107. Presumably the Council would have to correct this situation in the course of approving the new regulations.)

What is most remarkable about this proposal is the fact that the Mayor could put it forward with an apparently straight face, considering the highly controversial character of proposals to allow the various overwhelmingly intrusive technologies that the outdoor advertising industry has induced

previous mayors to put forward during the last dozen years, beginning with Special Signs in 2000. Understandably, the industry wants to build into DC law the notion that the proliferation of these technologies is no big deal, and this proposal would do that: It would enable the Mayor, by simple fiat on his or her own motion, unencumbered by even the slightest due process afforded to those whose interests are impacted, with no scrutiny by the Council, Zoning Commission, Commission of Fine Arts, HPRB or anyone else, and constrained only by a ludicrously elastic and vacuous definition of “entertainment area”, to set in train radical alteration of the physical and aesthetic character of a District neighborhood, of whatever size the industry has convinced him or her would be profitable. This would be done without advance knowledge of the precise nature of that alteration – i.e., the number, size, location, type and other specifications of the signs for which permits would be sought. Any neighborhood in the District, except for historic districts or historic landmarks -- where the technology is prohibited -- would be vulnerable.

The problem is that the proliferation of these technologies in the nation’s capital *is* a very big deal. It should happen, if at all, only after full and careful scrutiny by all concerned. The law should require affirmative action by the Council on detailed proposals identifying precisely what signs are to be displayed where, and under what special terms and conditions applicable specifically to the area in question. If initiated by the Mayor, any proposal should go to the Council as a proposed rulemaking. And no one should be asked to buy a pig in a poke: neither the Mayor nor the Council should put any proposal on the table until after permit applications meeting the requirements of the proposed regulations (§803.1) for all planned signs have been submitted – beginning with the proposed Ballpark and Waterfront areas. All citizens concerned and property owners affected should be afforded full opportunity to be heard.

The proposal to expand the allowable area for Special Signs to include any DEA (§805.11), on top of whatever hi-tech graphics may be authorized for the area, should be struck. This would free Special Signs from the carefully drawn geographic limits on their location that have been in place since their first authorization in 2001, giving them access immediately to four large additional areas and potentially to areas throughout the whole city. There is no justification for using this as an occasion for yet another effort to relax the restrictions on the giant wall signs.

The restrictions on the location of roof signs in proximity to residential districts, the Mall, national memorials, the Capitol and the White House – now at 500 feet, or approximately one block – should be set at least 1500 feet and expanded to include historic districts and landmarks.

The current provisions for Gallery Place dealing with enforcement of regulations and removal of non-compliant signs as well as maintenance and repair (12A DCMR 3197.18.9 and .10) have been omitted from the proposed regulations. The same is true of the comparable provisions for the just-enacted Verizon Center regulations (12A DCMR 3107.19.13 and .14). These provisions should be reconciled and included in the proposed rulemaking for all DEAs, where they would govern enforcement alongside the general civil infraction provisions invoked by §§1200.1 and .2 of the proposed regulations.

We appreciate the opportunity to comment on the proposed consolidated regulations, and very much hope that our comments will be helpful and taken into account in a revised draft.