

OFFICE OF
MARY M. CHEH

Councilmember, Ward 3 | Chair, Committee on Transportation & the Environment

MEMORANDUM

TO: Chairman Phil Mendelson
FROM: Councilmember Mary M. Cheh
DATE: September 29, 2021
SUBJECT: Requests for the October 5, 2021 Legislative Meeting



I request that the following emergency measures be agendized for the October 5, 2021 Legislative Meeting:

- Post-Public Health Emergency Protections Extension Emergency Declaration Resolution of 2021
- Post-Public Health Emergency Protections Extension Emergency Amendment Act of 2021
- Post-Public Health Emergency Protections Extension Temporary Amendment Act of 2021

On March 11, 2020, the Mayor issued Mayor's Order 2020-45 and 2020-46, declaring a public emergency and a public health emergency in the District due to the imminent threat to the health, safety, and welfare of District residents posed by the spread of COVID-19. In the months following the issuance of this order, the Council passed several pieces of emergency legislation to provide certain benefits, and protections to District residents; for the vast majority of that legislation, the benefits and protections provided were set to expire at the conclusion of the public health emergency.

In early summer 2021, the Mayor informed the Council that she did not intend to extend the public health emergency beyond July 2021. In response, on July 13, 2021, the Council passed the Public Emergency Extension and Eviction and Utility Moratorium Phasing Emergency Amendment Act of 2021, effective July 24, 2021 (D.C. Act 24-125; 68 DCR 7342) ("Public Emergency Extension Act"). That legislation amended several pieces of prior emergency legislation to shift the expiration date for many of the benefits and protections from the end of the public health emergency to, for the majority of items, October 12, 2021; other items were delayed until later in the year. Subsequently, on July 24, 2021, the Mayor issued Mayor's Order 2021-096, extending the District's public emergency, but ending the public health emergency.

As noted by members during the consideration of the Public Emergency Extension Act in July 2021, although the public health emergency is over, many residents are still experiencing significant financial hardship stemming from the pandemic. In turn, a number of residents have family members who cannot receive the vaccine, or they themselves have an underlying condition, and continue to rely on the protections established by the Council. It is clear that the Council must act to extend certain rights, benefits, and protections established during the public health emergency beyond their current expiration date of October 12, 2021.

In addition, because restaurants are operating at limited onsite capacity, they have shifted more of their sales to pickup or delivery. Many pickup and delivery orders are facilitated by third-party food delivery platforms, which operate by listing local restaurants on an online platform where diners can view restaurant menus and place orders from the restaurant through the third-party service. Before the public health emergency, third-party food delivery platforms charged very high fees, typically around 30% of an order total, for this service, cutting into restaurants' already-narrow profit margins. In June 2020, the Council acted to address this practice, passing emergency legislation that temporarily capped commission fees for delivery and pickup at 15%; in a subsequent emergency bill, the Council established a lower 5% commission cap for pickup orders that a third-party food delivery platform processes but does not provide for delivery. Those requirements will expire on November 5, 2021.

- This legislation would continue to require condominium unit owner's associations to allow members to participate remotely, including to vote;
- The legislation also would make several clarifications to the Coronavirus Support Temporary Amendment Act of 2021, effective June 24, 2021 (D.C. Law 24-9; 68 DCR 4824), related to utility customer protections. Specifically, the bill would:
 - o Clarify that utilities are to treat a customer as certified as qualified for utility disconnection relief where the name on the list provided by the Mayor matches the name on the customer's account, where the home address on the Mayor's list matches a customer account with a different name, or where the customer provides the utility with a copy of the Mayor's notice of eligibility for their place of residence. This language will ensure that utilities do not treat households in which a different individual than the account holder filed for relief as eligible for disconnection
 - o Require that the monthly reports issued by utilities include the number of payment plans that have defaulted. This information will provide the Office of the People's Counsel ("OPC"), the Council, and the public with a fuller picture of the number of disconnected households, and the basis for and timing of the disconnection.
 - o Clarify that OPC has 2 business days, rather than 48 hours, to provide notice to a utility provider of a customer's request for OPC to negotiate a payment plan on their behalf, recognizing that OPC could not reasonably provide utilities with

notice of requests made after business hours on a Friday within 48 hours; this language will nevertheless ensure that this notice is provided in a timely fashion.

- With respect to third-party food delivery platforms, this emergency legislation would extend both the 5% and 15% commission fee cap, while allowing third-party delivery platforms to charge additional fees for advertising and special promotions. Restaurants have indicated a need for caps to stay in place to ensure that they can make money on orders placed through these platforms, and this language will extend those protections, while providing needed flexibility to providers to charge additional fees where restaurants are receiving additional promotional services from the platform.
- Finally, the legislation would provide the Department of Public Works with continued authority to administer virtual composting trainings.
 - CleanEnergy DC Omnibus Technical Amendment Emergency Declaration Resolution of 2021
 - CleanEnergy DC Omnibus Technical Amendment Emergency Amendment Act of 2021
 - CleanEnergy DC Omnibus Technical Amendment Temporary Amendment Act of 2021

On October 20, 2020, the Council passed the CleanEnergy DC Omnibus Technical Amendment Emergency Amendment Act of 2020, which expired on February 14, 2021. On November 10, 2020, the Council passed the CleanEnergy DC Omnibus Technical Amendment Temporary Amendment Act of 2020, which will expire on October 27, 2021. This legislation is necessary to prevent a gap in the law following the expiration of the temporary act, and to make additional necessary amendments.

This emergency legislation is substantively identical to the prior emergency act and the temporary act, but for three changes:

- First, the legislation moves the date by which the Department of General Services must develop a final strategic energy management plan from January 1, 2021, to January 1, 2022, to reflect the additional time the Executive needs to complete the plan due to unanticipated delays;
- Second, the legislation strikes language amending the date by which the Department of Motor Vehicles shall issue rules revising the calculation of the vehicle excise tax as those regulations have since been issued;
- Third, the legislation amends language that requires private vehicle-for-hire companies to submit biennial greenhouse gas emission reduction plans to clarify that these plans

are to be submitted to the Department of Energy and Environment (“DOEE”) rather than the Public Service Commission (“PSC”). The PSC’s authority does not extend to regulation or oversight of vehicle-for-hire companies, and the PSC is unable to substantively review or take other action on these plans; DOEE is the District agency best prepared to collect, review, and provide guidance to vehicle-for-hire companies on these plans, both in terms of the agency’s general mandate and given the Mayor granted DOEE responsibility for the transportation electrification program established via the CleanEnergy DC legislation.

- Green Finance Authority Board Quorum Congressional Review Emergency Declaration Resolution of 2021
- Green Finance Authority Board Quorum Congressional Review Emergency Amendment Act of 2021

On July 13, 2021, the Council passed the Green Finance Authority Board Quorum Emergency Amendment Act of 2021, which expires on October 19, 2021. On August 3, 2021, the Council passed the Green Finance Authority Board Quorum Temporary Amendment Act of 2021, which is undergoing congressional review. This 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 act.

On June 5, 2018, the Council passed the District of Columbia Green Finance Authority Establishment Act of 2018, establishing a Green Finance Authority, sometimes referred to as a green bank, for the District. The Green Finance Authority is overseen by the Green Finance Authority Board (“Board”), which consists of 11 members, of which only 7 are voting members. Under District law, a quorum of the Board for the purposes of transacting business is 5 members. The statute does not contemplate reducing the threshold for a quorum where there are fewer than 7 confirmed voting members of the Board.

Due to delays in the nomination and confirmation process, over the summer, the Board only 5 confirmed voting members. As a result, every voting member must be present for the Board to transact business. Should the Board lose any voting members, it would be unable to take any official action. In turn, should a voting member of the Board recuse him or herself from a vote, or be unable to attend a Board meeting, the Board will not have enough voting members to proceed. In addition, on September 28, 2021, the term of 2 of the Board’s current voting members will expire. As the Mayor has yet to file resolutions to renominate these Board members or to nominate their replacements, and Council recess runs through mid-September, it is very likely that these positions will become vacant at that time. When that occurs, the Board will not have sufficient voting members to transact business.

This emergency legislation temporarily lowers the Green Finance Authority Board's quorum to 4 voting members, and extends the holdover period for expired seats from 180 to 270 days. These changes are necessary to allow for the Board to transact business through the fall, while the Council and Executive work to fill current Board vacancies and seats that will become vacant in the near future.

Draft copies of the emergency legislation are attached. Please contact Michael Porcello in my office at 724-8062 or mporcello@dccouncil.us if you have any questions.