
Government of the District of Columbia



Department of Consumer and Regulatory Affairs

Testimony of

Nicholas Majett
Director

on

***The Omnibus Alcoholic Beverage Regulation
Amendment Act of 2012 (Bill 19-824)***

Council of the District of Columbia
Committee on Human Services
Jim Graham, Chair

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John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Good afternoon, Chairperson Graham, members, and staff of the Committee on Human Services. I am Nicholas Majett, Director of the Department of Consumer and Regulatory Affairs. I'm here today to testify on Bill 19-824, the Omnibus Alcoholic Beverage Regulation Amendment Act of 2012, and the two provisions in the bill that would directly affect DCRA.

A. Disclosure Requirements for Real Estate Brokers, Salespersons, and Property Managers.

Section 3(b) of the bill would amend D.C. Official Code § 42-1703, which details the statutory duties of licensed real estate brokers, salespersons, and property managers.

The bill would add a new provision requiring all licensed real estate brokers, salespersons, and property managers to disclose to any potential buyer or tenant their rights under the District's Noise Control Law, including the requirements specific to licensed establishments selling alcohol under D.C. Official Code § 25-725.

The bill also would require licensed real estate brokers, salespersons, and property managers to determine whether the tenant or buyer is entitled to the additional noise control protections "contained in this provision", although it's unclear what that phrase is referring to.

DCRA, through its Occupational and Professional Licensing Administration and the Real Estate Commission, licenses and regulates real estate brokers, salespersons, and property managers operating in the District. If the bill is enacted and this provision remains, then any consumer complaints about real estate brokers, salespersons, and property managers failing to provide the information

related to noise would be referred to the Real Estate Commission for investigation and possible disciplinary action against the licensee.

B. Construction Codes Soundproofing Requirements.

Section 3(c) of the bill would amend D.C. Official Code § 6-1413, which is the Construction Codes statute.

The bill would require all new, mixed-use construction to, as of January 1, 2013, be built with specific minimum sound proofing specifications.

In particular, the bill would require windows with a minimum sound transmission class (STC) rating of 45 for airborne noise. It would also require walls, partitions, and floor ceiling construction separating dwelling and commercial units to have a minimum STC rating of 60.

While the general intent of this provision would appear to be to protect residents of a mixed use building from the noise associated with a ground-floor bar or restaurant, the provision is so broad that it would require every future mixed use building to add in the soundproofing requirements, regardless of whether it will ever contain an alcohol-licensed establishment. For instance, a mixed-use project with a floral shop on the ground floor would have to install soundproofing measures in the entire building even though a floral shop generally is not known for its noise production.

We have three concerns regarding this provision.

First, the mandatory soundproofing requirement will have a direct financial impact on all future mixed use construction in the District, although it is unclear what the extent of that financial cost will be. It is also unclear whether a mixed use project that has obtained all its building permits, but hasn't yet commenced construction, would be subject to the mandatory soundproofing requirements.

Generally, when amending Construction Codes requirements, the practice is to mandate any new requirements be applicable to new building permit submissions, so as to not require the entire plans design process to start all over again.

Second, we have concerns about such a broad provision being inserted into the general Construction Codes statute, rather than through the rulemaking process of the District's Construction Codes themselves. As you may know, we have established a Construction Codes Coordinating Board which is comprised of government and private industry professionals. The Board is currently working on amending the District's Construction Codes with the latest model codes standards and is aiming to publish proposed rulemaking this fall. While we understand the intent of this provision, given its broad applicability, potential financial impact on all future mixed use construction projects (including both District-owned and District-financed projects), and the evolving technologies for sound proofing, we believe a better approach is for the Construction Codes Coordinating Board to review this provision and determine how best to incorporate it into the District's Construction Codes, specifically in the sound transmission provisions of the Building Code.

Third, we have concerns about the specific technical requirements for the sound transmission class ratings. The current District Building Code requires walls and partitions to have a minimum STC rating of 50 on new construction, changes of use, and renovations of existing buildings that exceed 50% of the floor space. Bill 19-824 would increase that minimum rating to 60. In our opinion, this increase may very well prevent residential unit owners and tenants from ever changing their dwelling unit's flooring décor without causing the commercial space below to become non-compliant with the soundproofing requirements. For instance, achieving and maintaining an STC rating of 60 requires multiple layers of gypsum

boards and floor carpeting. If a residential unit owner wanted to remove carpeting and install tile or hardwood floors, they could not do so without putting a commercial occupant below out of compliance with the bill. I should also note that while the bill refers only to the STC ratings for airborne noise, there is also a separate acoustic performance criteria used by the building industry called the Impact Insulation Class (IIC) which may conflict or contradict the STC ratings. This is why I believe the Construction Codes Coordinating Board is best positioned to address these rather technical issues.

C. Conclusion

Because the two issues will directly impact DCRA and the real estate and development industries, we would respectfully request that you separate those two subsections, which are not integral to the overall bill, and introduce them as a free standing bill. That would be the best way to ensure substantial input from the affected industries. We would be happy to work with you and the real estate and development industries to ensure a workable solution is reached that protects residents.

Chairperson Graham, thank you for the opportunity to testify on Bill 19-824 and its impact on DCRA. I would be happy to answer any questions you may have.