

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF SECOND PROPOSED RULEMAKING

The Director of the District Department of Transportation (“Department”), pursuant to the authority set forth in Sections 4(a)(5)(A) (assigning authority to coordinate and manage public space permits and records to the Department Director), 5(4)(A) (assigning duty to review and approve public space permit requests to the Department Director), and 6(b) (transferring the public right-of-way maintenance function previously delegated to the Department of Public Works (“DPW”) under Section III (F) of Reorganization Plan No. 4 of 1983 to the Department) of the Department of Transportation Establishment Act of 2002 (“DDOT Establishment Act”), effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.03(5)(A), 50-921.04(4)(A), and 50-921.05(b) (2014 Repl.)), and Section 604 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.04 (2013 Repl. & 2014 Supp.)), which was delegated to the Director of DPW pursuant to Mayor’s Order 96-175, dated December 9, 1996, and subsequently transferred to the Director of the Department in Section 7 of the DDOT Establishment Act (transferring to the Director of the Department all transportation-related authority previously delegated to the Director of DPW) (D.C. Official Code § 50-921.06 (2014 Repl.)), hereby gives notice of the intent to adopt amendments to Chapter 1 (Occupation and Use of Public Space) and Chapter 33 (Public Right-of-Way Occupancy Permits) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (“DCMR”).

A Notice of Proposed Rulemaking was published in the *D.C. Register* on July 4, 2014, at 61 DCR 6850. In response to public comments received, the proposed rulemaking is revised to: require that, if applicable, the Historic Preservation Office, the Historic Preservation Review Board, and the U.S. Commission of Fine Arts approve park improvements prior to the Director issuing a permit; limit how far a landscaped privacy buffer may extend onto a triangle park from any abutting property; prohibit improvements within eight feet (8 ft.) of an abutting property unless the property owner is the applicant; prohibit the use of fencing as a privacy buffer; include the adjacent property owner in the permit application review process when a triangle park abuts private property; and provide the adjacent property owner thirty (30) days to provide comments.

The rulemaking will also clarify that a permit from the Director is required to make certain changes to existing landscape and hardscape improvements. Additionally, the proposed rulemaking is revised to clarify that any improvements made to a park under this section become the property of the District government; to add a definition of landscape maintenance to resolve several comments that landscape maintenance did not include replacing dead plants, bushes, or small trees; and to add definitions.

Several commentators asked that the Advisory Neighborhood Commission (“ANC”) review period be increased from thirty (30) days to sixty (60) days, but the review period was not increased. Thirty (30) days is the standard time period set forth in law and the public space permit office may grant an extension to an ANC if it is requested. A number of commentators wanted the definition of a triangle park to specify the configuration the park had when it was transferred to the District. The current park configurations are already as they were at the time

they were transferred, so no change was made in response to these comments. Also, a number of commentators suggested including provisions pertaining to the District government maintenance of the U.S. reservations under District control, but no changes were made because the scope of this rulemaking is limited to the permitting of private improvements. Finally, a number of commentators suggested revisions that conflict with the Department's policy regarding public accessibility to triangle parks under its jurisdiction, so no revisions were made to accommodate these comments.

Final rulemaking action to adopt these amendments shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 24, PUBLIC SPACE AND SAFETY, is amended as follows:

Chapter 1, OCCUPATION AND USE OF PUBLIC SPACE, is amended as follows:

Section 102, PUBLIC PARKING: UPKEEP AND PLANTINGS, is amended by repealing Subsection 102.8.

Section 199, DEFINITIONS, is amended by adding a new definition after the definition of "Personalized Marker", to read as follows:

Public parking - the area of public space devoted to open space, greenery, parks, or parking that lies between the property line, which may or may not coincide with the building restriction line, and the edge of the actual or planned sidewalk that is nearer to the property line, as the property line and sidewalk are shown on the records of the District; except the term "public parking" does not include United States reservations.

Chapter 33, PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS, is amended as follows:

A new Section 3314 is added to read as follows:

3314 PRIVATE IMPROVEMENTS TO CERTAIN UNITED STATES RESERVATIONS UNDER THE JURISDICTION OF THE DISTRICT DEPARTMENT OF TRANSPORTATION

3314.1 It is the policy of the Department that the United States reservations that are triangle parks under the Department's jurisdiction should be preserved as publicly accessible neighborhood amenities in addition to maintaining them for the purpose for which the reservation was transferred to the District.

3314.2 No person shall make a landscaping or hardscaping improvement, such as the removal or planting of shrubs or trees or the installation of paving, fencing, benches, park identification signage, or other fixtures, to a United States reservation that is a triangle park under the Department's jurisdiction without first obtaining a public right of way occupancy permit from the Director.

- 3314.3 Notwithstanding § 3314.2, a person may perform landscape maintenance to, or may clean up a United States reservation that is a triangle park under the Department's jurisdiction, without the need to first obtain a public right of way occupancy permit from the Director.
- 3314.4 Without first obtaining a public right of way occupancy permit from the Director pursuant to § 3314.2, no person shall replace more than ten percent (10%) of the shrubs comprising an existing hedge or replace or repair any existing fence or wall that is located on a United States reservation that is a triangle park under the Department's jurisdiction.
- 3314.5 The Director shall issue a public right of way occupancy permit to make a landscaping or hardscaping improvement to a United States reservation that is a triangle park under the Department's jurisdiction if the proposed improvement:
- (a) Does not change the real or implied function of the park as a public open space;
 - (b) Preserves public access to the park;
 - (c) Promotes the public enjoyment and use of the park;
 - (d) Avoids the use of impervious surface coverings to the maximum extent practicable;
 - (e) Limits any proposed privacy buffer to an area extending no further than eight feet (8 ft.) onto the triangle park from the property line of any private property abutting the triangle park;
 - (f) Does not include improvements located within eight feet (8 ft.) of an abutting private property when the person applying for the permit is not the abutting property owner;
 - (g) Avoids the use of fencing that creates the appearance that any of the triangle park is under the ownership or control of an adjacent private property owner; and
 - (h) Has the approval of the Historic Preservation Office, the Historic Preservation Review Board, or the U.S. Commission of Fine Arts when such an approval is required.
- 3314.6 Before issuing a permit for a landscaping or hardscaping improvement to a United States reservation that is a triangle park under the Department's jurisdiction, the Director shall send the permit application to the following:

- (a) The affected Advisory Neighborhood Commission (ANC); and
- (b) The owner of any private property that abuts the triangle park.

- 3314.7 The ANC and the abutting private property owner shall have thirty (30) days to review the application and provide recommendations.
- 3314.8 The recommendations, if any, of the affected ANC shall be given great weight, as that term is described in Section 13(d)(3)(A) of the Advisory Neighborhood Councils Act of 1975, effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.10(d)(3)(A)).
- 3314.9 The recommendations, if any, made by the owner of property abutting the triangle park pursuant to § 3314.6(b) may include proposing alterations to the placement, species and cultivar of landscape elements and the placement and design of any hardscape elements proposed by the applicant.
- 3314.10 Any improvements made under a permit issued pursuant to this section shall become the property of the District government.
- 3314.11 The Director may modify or remove any public or private improvements made to a United States reservation that is a triangle park under the Department’s jurisdiction without approval by, or notice to, the permittee (if any) who implemented the improvements or the adjacent property owner.
- 3314.12 Notwithstanding §§ 3310.3 and 3310.4 of this chapter, the Director may revoke any permit issued pursuant to this section at any time.

Section 3399, DEFINITIONS, is amended as follows:

New definitions are added, after the definition of “Director”, to read as follows:

Hedge - a row of bushes or shrubs planted close together to form a barrier or boundary.

Landscape maintenance – mowing or reseeding existing grass areas; edging, weeding, or cultivating existing planting beds; the in-kind replacement of plants or flowers; minor trimming of shrubs and hedges; and the in-kind replacement of an existing dead shrub or small ornamental tree. Landscape maintenance shall not include the creation of new planting beds, the planting of new trees or shrubs or the replacement of an existing hedge.

A new definition is added, after the definition of “Personalized paver”, to read as follows:

Privacy Buffer – a border of shrubs or combination of shrubs and trees, designed to screen an abutting property from activities at the adjacent triangle park.

A new definition is added, after the definition of “Public bicycle path”, to read as follows:

Public parking -- the area of public space devoted to open space, greenery, parks, or parking that lies between the property line, which may or may not coincide with the building restriction line, and the edge of the actual or planned sidewalk that is nearer to the property line, as the property line and sidewalk are shown on the records of the District; except, the term “public parking” does not include United States reservations.

A new definition is added, after the definition of “Sharrows lane markings”, to read as follows:

Shrub - a woody plant of relatively low height, having several stems arising from the base and lacking a single trunk; a bush.

A new definition is added, after the definition of “Tour bus service”, to read as follows:

Triangle park – an area of open space, generally triangular in shape, that is located at the intersection of two (2) streets (generally, one of which is orthogonal and one of which is diagonal) and that has been set aside for public ownership. Examples of triangle parks include United States Reservations 142 and 143, located at the intersection of New Hampshire Avenue and 20th Street, NW; United States Reservation 230, located at the intersection of Independence Avenue and North Carolina Avenue, SE; and United States Reservation 61, located at the intersection of Massachusetts Avenue and P Street, NW.

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Samuel D. Zimbabwe, Associate Director, District Department of Transportation, 55 M Street, S.E., 5th Floor, Washington, D.C. 20003. An interested person may also send comments electronically to publicspace.policy@dc.gov. Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation’s website at www.ddot.dc.gov.