

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Office of the Deputy Mayor for Public Safety and Justice Establishment Act of 2011 to require that the Office, by January 1, 2022, submit a report to the Mayor and the Council identifying the statutory and regulatory collateral consequences of criminal records and recommendations for their mitigation or elimination; to amend the District of Columbia Health Occupations Revision Act of 1985 to establish as a qualification for a license, registration, or certification that an individual must not have been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought, to create a pre-application petition process for individuals to determine their eligibility based on a criminal conviction and to require the board to respond within 90 days, to allow a board to take action against any applicant for a license, registration, or certification who has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, to prohibit a board from inquiring into or considering an applicant's criminal conviction until after the applicant is found to be otherwise qualified, to prohibit a board from inquiring into or considering a conviction that has been sealed, expunged, vacated, or pardoned, a juvenile adjudication, or non-conviction information, to prohibit a board from considering a conviction of an offense that is not directly related to the occupation for which a license, registration, or certification is sought or held, to enumerate factors that a board must consider in totality to determine whether a conviction of an offense is directly related to the occupation for which a license, registration, or certification is sought or held, to require the Mayor, by January 1 of each year, to submit to the Council a report with data relating to each board regulating health-related occupations, to allow the Mayor to summarily suspend or restrict the health-related license, registration, or certification of a person who has been convicted of an offense that is directly related to the occupation for which a license, registration, or certification is held, to require a board, before holding a hearing, to notify an applicant, licensee, registrant, or person certified, in writing, with information about the conviction that forms the basis for the adverse decision, a copy of the individual's criminal record, a description of information that may be provided to demonstrate rehabilitation and fitness, and information about the hearing process, to allow the applicant, licensee, registrant, or person certified 45 business days to respond, to require the board to issue a final decision within 45 business days after it receives a response, and to require a board to provide information on legal resources along with a hearing notice; and to

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amend Title 47 of the District of Columbia Official Code to establish as a qualification for a license, registration, or certification that an individual must not have been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought, to create a pre-application petition process for individuals to determine their eligibility based on a criminal conviction and to require the board to respond within 90 days, to allow a board to take action against any applicant for a license, registration, or certification who has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, to prohibit a board from inquiring into or considering an applicant's criminal conviction until after the applicant is found to be otherwise qualified, to prohibit a board from inquiring into or considering a conviction that has been sealed, expunged, vacated, or pardoned, a juvenile adjudication, or non-conviction information, to prohibit a board from considering a conviction of an offense that is not directly related to the occupation for which a license, registration, or certification is sought or held, to enumerate factors that a board must consider in totality to determine whether a conviction of an offense is directly related to the occupation for which a license, registration, or certification is sought or held, to require the Mayor, by January 1 of each year, to submit to the Council a report with data relating to each board regulating non-health related occupations, to require a board, before holding a hearing, to notify an applicant, licensee, registrant, or person certified, in writing, with information about the conviction that forms the basis for the adverse decision, a copy of the individual's criminal record, a description of information that may be provided to demonstrate rehabilitation and fitness, and information about the hearing process, to allow the applicant, licensee, registrant, or person certified 45 business days to respond, to require the board to issue a final decision within 45 business days after it receives a response, to require a board to provide information on legal resources along with a hearing notice, and to make conforming changes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2020".

Sec. 2. Section 3022(c) of the Office of the Deputy Mayor for Public Safety and Justice Establishment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 1-301.191(c)), is amended as follows:

(a) Paragraph (6)(G)(viii) is amended by striking the period and inserting the phrase “; and” in its place.

(b) A new paragraph (7) is added to read as follows:

“(7) By January 1, 2022, the Office shall prepare and submit to the Mayor and Council a report identifying the statutory and regulatory collateral consequences of criminal records in the District, along with recommendations for their mitigation or elimination.”.

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Sec. 3. The District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*), is amended as follows:

(a) Section 503 (D.C. Official Code § 3-1205.03) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) The lead-in language is amended by striking the phrase “a license” and inserting the phrase “a license, registration, or certification” in its place.

(B) Paragraph (1) is amended by striking the phrase “offense which bears directly on the fitness of the individual to be licensed” and inserting the phrase “offense that is directly related to the occupation for which the license, registration, or certification is sought, pursuant to a determination made under section 514(f)(2)”.

(2) A new subsection (e) is added to read as follows:

“(e)(1) An individual may petition the board at any time, including before obtaining education or training required for the occupation for which the license, registration, or certification is sought, to determine whether the individual would be disqualified by the board pursuant to section 514(f)(2).

“(2) The board shall render its decision on an individual's petition within 90 days after receipt of the petition.”.

(b) Section 508b (D.C. Official Code § 3-1205.08b) is amended as follows:

(1) Subsection (a)(1) is amended by striking the phrase “Is of good moral character and professionally” and inserting the phrase “Is professionally” in its place.

(2) Subsection (b)(4) is amended by striking the phrase “Is of good moral character and professionally” and inserting the phrase “Is professionally” in its place.

(3) Subsection (d)(3) is amended by striking the phrase “of good moral character and professionally competent” and inserting the phrase “professionally competent” in its place.

(c) Section 509a(d)(10) (D.C. Official Code § 3-1205.09a(d)(10)) is amended to read as follows:

“(10) Has not been convicted of an offense that is directly related to the occupation for which the license is sought, pursuant to a determination made under section 514(f)(2); and”.

(d) Section 514 (D.C. Official Code § 3-1205.14) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) The lead-in language is amended by striking the phrase “the disciplinary actions” and inserting the phrase “the actions” in its place.

(B) Paragraph (4) is amended to read as follows:

“(4) Has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, pursuant to a determination made under subsection (f)(2) of this section;”.

(2) Subsection (c)(6)(D) is amended by striking the period and inserting a semicolon in its place.

(3) New subsections (f) and (g) are added to read as follows:

“(f)(1) A board shall not:

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“(A) Inquire into or consider:

“(i) An applicant’s criminal conviction until after the applicant is found by the board to be otherwise qualified; or

“(ii) For an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District:

“(I) A conviction that has been sealed, expunged, vacated, or pardoned, including a conviction that has been set aside pursuant to the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-901 *et seq.*);

“(II) A juvenile adjudication; or

“(III) Non-conviction information, including information related to a deferred sentencing agreement, participation in a diversion program, or an arrest that did not result in a conviction; or

“(B) Consider a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District that is not directly related to the occupation for which the license, registration, or certification is sought or held.

“(2) Pursuant to paragraph (1)(B) of this subsection, a board shall determine whether a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District is directly related to the occupation for which a license, registration, or certification is sought or held by considering the totality of the following factors:

“(A) Whether the elements of the offense are directly related, by clear and convincing evidence, to the specific duties and responsibilities of the occupation;

“(B) Any evidence produced by the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District concerning their rehabilitation and fitness, including:

“(i) Evidence as to whether the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District has recidivated;

“(ii) Evidence demonstrating compliance with any terms and conditions of probation, supervised release, or parole;

“(iii) The length of time that has elapsed since the offense was committed;

“(iv) The age at which the offense was committed;

“(v) Any circumstances related to the offense, including mitigating circumstances;

“(vi) Evidence of work history, particularly any training or work experience related to the occupation; and

“(vii) Letters of reference; and

“(C) The District’s interest in promoting employment opportunities for individuals with criminal records.

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“(g) By January 1 of each year, the Mayor shall submit a report to the Council that includes the following information from the prior fiscal year for each board regulating a health occupation:

“(1) The number of petitions filed pursuant to section 503(e) and the board’s decisions on those petitions;

“(2) The number of applications filed and, of those, the number that were not pursued by the applicant, granted, or denied, and applicants’ demographic information;

“(3) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District who received a notice of intent to deny, suspend, or revoke based on the person’s criminal conviction, which criminal offenses were used as a basis for the decision, and the number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District who provided additional information in response to the notice, pursuant to section 519(a-1)(1)(D);

“(4) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who proceeded to a hearing, and whether those individuals were represented by counsel;

“(5) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who appealed the board’s final decision, as well as the outcome of each appeal; and

“(6) A description of how each board has facilitated access to licenses, registrations, and certifications for persons with a criminal record in light of the District’s interest in promoting employment opportunities for individuals with criminal records.”.

(e) Section 515 (D.C. Official Code § 3-1205.15) is amended as follows:

(1) Subsection (a)(1)(B) is amended by striking the phrase “a felony” and inserting the phrase “an offense that is directly related to the occupation for which the license, registration, or certification is held, pursuant to a determination made under section 514(f)(2)”.

(2) Subsection (b) is amended by striking the phrase “action, and the right of the licensee, registrant, or person certified to request a hearing” and inserting the phrase “action, the right of the licensee, registrant, person certified, or person permitted by this act to practice in the District to request a hearing, and legal resources available in the District” in its place.

(f) Section 516(a) (D.C. Official Code § 3-1205.16(a)) is amended by striking the phrase “in person” and inserting the phrase “in person, and shall include information on legal resources available in the District” in its place.

(g) Section 519 (D.C. Official Code § 3-1205.19) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1)(1) Before holding a hearing under this section for the denial of an application for or suspension or revocation of a license, registration, or certification due to a determination made under section 514(f)(2), the board shall notify the applicant, licensee, registrant, or person certified, in writing, with the following information:

“(A) The conviction that forms the basis for the potential denial, suspension, or revocation, and the board’s reasoning for determining the offense is directly related to the

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occupation for which the license, registration, or certification is sought or held, pursuant to section 514(f)(2);

“(B) A copy of any criminal history records on which the board relies;

“(C) A statement that the applicant, licensee, registrant, or person certified may provide evidence of inaccuracies within the criminal history records;

“(D) A description of additional information that the applicant, licensee, registrant, or person certified may provide to demonstrate their rehabilitation and fitness; and

“(E) Information about the hearing procedures in this section.

“(2)(A) After receiving notice pursuant to paragraph (1) of this subsection, the applicant, licensee, registrant, or person certified shall have 45 business days to respond.

“(B) The board shall have 45 business days after the response is received to issue its final decision.”.

(2) Subsection (d) is amended by striking the phrase “hearing.” and inserting the phrase “hearing, and shall include information on legal resources available in the District” in its place.

(h) Section 521(b)(1) (D.C. Official Code § 3-1205.21(b)(1)) is amended by striking the phrase “of a crime which bears directly on the fitness of the individual to be licensed, registered, or certified” and inserting the phrase “for an offense that is directly related to the occupation for which the license, registration, or certification was held, pursuant to a determination made under section 514(f)(2)” in its place.

(i) Section 522(a) (D.C. Official Code § 3-1205.22) is amended by striking the phrase “No license” and inserting the phrase “Subject to the limitations in section 514(f), no license” in its place.

(j) Section 523 (D.C. Official Code § 3-1205.23) is amended as follows:

(1) The section heading is amended by striking the phrase “incarceration for felony or misdemeanor conviction.” and inserting the phrase “incarceration.” in its place.

(2) The existing text is amended by striking the phrase “of a felony or misdemeanor” and inserting the phrase “of an offense that is directly related to the occupation for which the license, registration, or certification is held, pursuant to section 514(f)(2)” in its place.

(k) Section 862(a)(3) (D.C. Official Code § 3-1208.62(a)(3)) is amended to read as follows:

“(3) Has not been convicted of an offense that is directly related to the practice of veterinary medicine, pursuant to a determination made under section 514(f)(2).”.

(l) Section 1010(b) (D.C. Official Code § 3-1210.10(b)) is amended by striking the phrase “The Corporation Counsel” and inserting the phrase “The Attorney General” in its place.

Sec. 4. Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-2853.12 is amended as follows:

(1) Subsection (a)(1) is amended to read as follows:

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“(1) Has not been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought, pursuant to a determination made under § 47-2853.17(c-1)(2);”.

(2) A new section (n) is added to read as follows:

“(n)(1) A person may petition a board at any time, including before obtaining education or training required for the occupation for which the license, registration, or certification is sought, to determine whether the person would be disqualified by the board pursuant to § 47-2853.17(c-1)(2).

“(2) The board shall render its decision on a person’s petition within 90 days after receipt of the petition.”.

(b) Section 47-2853.17 is amended as follows:

(1) Subsection (a) is amended as follows:

(A) The lead-in language is amended by striking the phrase “voting may take 1 or more of the disciplinary actions” and inserting the phrase “voting, may take one or more of the actions” in its place.

(B) Paragraph (5) is amended to read as follows:

“(5) Has been convicted of an offense that is directly related to the occupation for which the license, registration, or certification is sought or held, pursuant to a determination made under subsection (c-1)(2) of this section;”.

(2) Subsection (c) is amended as follows:

(A) The lead-in language is amended by striking the phrase “licensee, or person” and inserting the phrase “licensee, registrant, person certified, or person” in its place.

(B) Paragraph (2) is amended by striking the phrase “the license of any licensee or the certificate of a certified person, or may refuse to register a person” and inserting the phrase “the license, registration, or certification of any licensee, registrant, or person certified” in its place.

(C) Paragraph (4) is amended by striking the phrase “any licensee or person” and inserting the phrase “any licensee, registrant, person certified, or person” in its place.

(D) Paragraph (5) is amended by striking the phrase “licensee, or person” and inserting the phrase “licensee, registrant, person certified, or person” in its place.

(3) Subsections (c-1) and (c-2) are amended to read as follows:

“(c-1)(1) A board shall not:

“(A) Inquire into or consider:

“(i) An applicant’s criminal conviction until after the applicant is found by the board to be otherwise qualified; or

“(ii) For an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District:

“(I) A conviction that has been sealed, expunged, vacated, or pardoned, including a conviction that has been set aside pursuant to the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-901 *et seq.*);

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“(II) A juvenile adjudication; or

“(III) Non-conviction information, including information related to a deferred sentencing agreement, participation in a diversion program, or an arrest that did not result in a conviction; or

“(B) Consider a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District that is not directly related to the occupation for which the license, registration, or certification is sought or held.

“(2) Pursuant to paragraph (1)(B) of this subsection, a board shall determine whether a conviction of an offense of an applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District is directly related to the occupation for which a license, registration, or certification is sought or held by considering the totality of the following factors:

“(A) Whether the elements of the offense are directly related, by clear and convincing evidence, to the specific duties and responsibilities of the occupation;

“(B) Any evidence produced by the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District concerning their rehabilitation and fitness, including:

“(i) Evidence as to whether the applicant, licensee, registrant, person certified, or person permitted by this act to practice in the District has recidivated;

“(ii) Evidence demonstrating compliance with any terms and conditions of probation, supervised release, or parole;

“(iii) The length of time that has elapsed since the offense was committed;

“(iv) The age at which the offense was committed;

“(v) Any circumstances related to the offense, including mitigating circumstances;

“(vi) Evidence of work history, particularly any training or work experience related to the occupation; and

“(vii) Letters of reference; and

“(C) The District’s interest in promoting employment opportunities for individuals with criminal records.

“(c-2) By January 1 of each year, the Mayor shall submit a report to the Council that includes the following information from the prior fiscal year for each board:

“(1) The number of petitions filed pursuant to § 47-2853.12(n) and the board’s decisions on those petitions;

“(2) The number of applications filed and, of those, the number that were not pursued by the applicant, granted, or denied, and applicants’ demographic information;

“(3) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District who received a notice of intent to deny, suspend, or revoke based on the person’s criminal conviction, which criminal offenses were used as a basis for the decision, and the number of applicants, licensees, registrants, persons certified, or persons

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permitted by this act to practice in the District who provided additional information in response to the notice, pursuant to § 47-2853.22(a-1)(1)(D);

“(4) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who proceeded to a hearing, and whether those individuals were represented by counsel;

“(5) The number of applicants, licensees, registrants, persons certified, or persons permitted by this act to practice in the District with a criminal conviction who appealed the board’s final decision, as well as the outcome of each appeal; and

“(6) A description of how each board has facilitated access to licenses, registrations, and certifications for persons with a criminal record in light of the District’s interest in promoting employment opportunities for individuals with criminal records.”.

(c) Section 47-2853.18 is amended as follows:

(1) Subsection (a) is amended by striking the phrase “a licensee presents an imminent danger to the health and safety of persons in the District, the Mayor may summarily suspend or restrict, without a hearing, the license to” and inserting the phrase “a licensee, registrant, person certified, or person permitted by this act to practice in the District, presents an imminent danger to the health and safety of persons in the District, the Mayor may summarily suspend or restrict, without a hearing, the license, registration, certification, or permission to” in its place.

(2) Subsection (b) is amended by striking the phrase “action that is being taken, the basis for the action, and the right of the licensee to request a hearing” and inserting the phrase “action that is being taken, the right of the licensee, registrant, person certified, or person permitted by this act to practice in the District to request a hearing, and legal resources available in the District” in its place.

(3) Subsection (c) is amended by striking the phrase “A licensee shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of license” and inserting the phrase “A licensee, registrant, person certified, or person permitted by this act to practice in the District shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of license, registration, certification, or permission” in its place.

(4) Subsection (d) is amended by striking the phrase “adverse to a licensee” and inserting the phrase “adverse to a licensee, registrant, person certified, or person permitted to practice by this act in the District” in its place.

(d) Section 47-2853.22 is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1)(1) Before holding a hearing under this section due to a determination made under § 47-2853.17(c-1)(2), the board shall notify the applicant, licensee, registrant, person certified, or person permitted to practice by this act in the District, in writing, with the following information:

“(A) The conviction that forms the basis for the action, and the board’s reasoning for determining the offense is directly related to the occupation for which the license, registration, or certification is sought or held, pursuant to § 47-2853.17(c-1)(2);

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“(B) A copy of any criminal history records on which the board relies;

“(C) A statement that the applicant, licensee, registrant, person certified, or person permitted to practice by this act in the District may provide evidence of inaccuracies within the criminal history records;

“(D) A description of additional information that the applicant, licensee, registrant, person certified, or person permitted to practice by this act in the District may provide to demonstrate their rehabilitation and fitness; and

“(E) Information about the hearing procedures in this section.

“(2)(A) After receiving notice pursuant to paragraph (1) of this subsection, the applicant, licensee, registrant, person certified, or person permitted to practice shall have 45 business days to respond.

“(B) The board shall have 45 business days after the response is received to issue its final decision.”.

(2) Subsection (d) is amended by striking the phrase “hearing.” and inserting the phrase “hearing, and shall include information on legal resources available in the District.” in its place.

(e) Section 47-2853.24(b)(1) is amended by striking the phrase “of a crime which bears directly on the fitness of the person to be licensed,” and inserting the phrase “of an offense that is directly related to the occupation for which the license, registration, or certification was held, pursuant to a determination made under § 47-2853.17(c-1)(2)” in its place.

(f) Section 47-2853.42(1) is repealed.

(g) Section 47-2853.62(1) is repealed.

(h) Section 47-2853.112(1) is repealed.

(i) Section 47-2853.117(1) is repealed.

(j) Section 47-2853.132(a)(1) is repealed.

(k) Section 47-2885.10(a)(1) is amended to read as follows:

“(1) Conviction of an offense that is directly related to the occupation for which the license is held, pursuant to a determination made under § 47-2853.17(c-1)(2), or a finding by the Mayor that any provision of this part has been violated;”.

(l) Section 47-2887.04(a)(8) is amended by striking the phrase “of a crime that, if committed in the District of Columbia, would be a crime involving moral turpitude or a felony, and identify the crime” and inserting the phrase “of an offense that is directly related to the occupation for which the registration is sought, pursuant to a determination made under § 47-2853.17(c-1)(2)” in its place.

(m) Section 47-2887.05 is amended as follows:

(1) Subsection (b)(1) is amended by striking the phrase “of a crime that, if committed in the District of Columbia, would be a crime involving moral turpitude or a felony” and inserting the phrase “of an offense that is directly related to the occupation for which the registration is sought, pursuant to a determination made under § 47-2853.17(c-1)(2)” in its place.

(2) Subsection (c) is amended by striking the phrase “In making” and inserting the phrase “Except as otherwise provided in § 47-2853.17(c-1), in making” in its place.

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(n) Section 47-2888.04(a) is amended as follows:

(1) Paragraph (1) is amended to read as follows:

“(1) Conviction of an offense that is directly related to the occupation for which the license is sought or held, pursuant to a determination made under § 47-2853.17(c-1)(2);”.

(2) Paragraph (3) is amended by striking the phrase “violated, or that any law or regulation of the District or of the United States relating to animals or drugs has been violated by any person named in the application for a veterinary facility;” and inserting the phrase “violated;” in its place.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia