



MURIEL BOWSER
MAYOR

10/15/2020

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

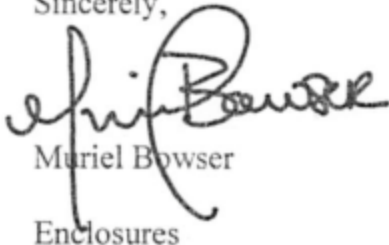
Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is a proposed resolution entitled the "Construction Codes Flood Hazard Amendment Approval Resolution of 2020".

This resolution will approve proposed amendments to Appendix G (Flood-Resistant Construction) of the 2017 District of Columbia Building Code (Title 12-A of the District of Columbia Municipal Regulations). Specifically, the amendments will conform Appendix G to Federal Emergency Management Agency requirements for participation in the National Flood Insurance Program and clarify the application of and relationship between flood-resistant construction rules issued by the Department of Consumer and Regulatory Affairs and flood resilience rules issued by the Department of Energy and Environment.

If you have any questions on this matter, please contact Ernest Chrappah, Director, Department of Consumer and Regulatory Affairs, at (202) 442-8935.

Sincerely,


Muriel Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve proposed rules of the Department of Consumer and Regulatory Affairs Construction Codes Coordinating Board that would amend Title 12 of the District of Columbia Municipal Regulations to improve flood hazard safety.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That
this resolution may be cited as the "Construction Codes Flood Hazard Safety Amendment Approval Resolution of 2020".

Sec. 2. Pursuant to section 10(a) of the Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409(a)), the Council of the District of Columbia approves the proposed rulemaking by the Department of Consumer and Regulatory Affairs ("DCRA"), published in the D.C. Register on August 28, 2020, at 67 DCR 10405, that would amend Appendix G (Flood-Resistant Construction) of the 2017 District of Columbia Building Code (Title 12-A of the District of Columbia Municipal Regulations). Specifically, the rulemaking would amend sections G101.2 and G802 to conform to Federal Emergency Management Agency requirements for participation in the National Flood Insurance Program and clarify the application of and relationship between flood-resistant

27 construction rules issued by DCRA and flood resilience rules issued by the Department
28 of Energy and Environment.

29 Sec. 3. The Secretary to the Council of the District of Columbia shall transmit a
30 copy of this resolution, upon its adoption, to the Mayor, the Director of DCRA, and the
31 Chairperson of the Construction Codes Coordinating Board.

32 Sec. 4. This resolution shall take effect immediately.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chairperson of the Construction Codes Coordinating Board (Chairperson), pursuant to the authority set forth in Section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409) and Mayor's Order 2009-22, dated February 25, 2009, as amended, hereby gives notice of the intent to amend Title 12 (D.C. Construction Codes Supplement of 2017) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking proposes amendments to provisions in the 2017 District of Columbia Building Code (Title 12-A DCMR) to address flood hazard concerns that were raised after conclusion of the code development cycle. Specifically, these amendments will revise the Flood Hazard Rules, set forth in Appendix G of the Building Code, to comply with FEMA and National Flood Insurance Program requirements and to provide consistency and clarity for the regulated community.

This emergency rulemaking is necessary to protect the health, safety, and well-being of the District of Columbia because it is critically important that the District is able to participate in the National Flood Insurance Program (NFIP) to maintain eligibility for federal flood insurance and disaster assistance. In order to continue to qualify for NFIP participation, the District must update its flood hazard regulations in accordance with direction from FEMA.

This emergency rulemaking was adopted on August 12, 2020, to become effective immediately. This emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the date of effectiveness and will expire on December 10, 2020.

To clearly show the changes being made to the Codes, additions are shown in underlined text and deletions are shown in ~~striketrough~~ text.

The process for submitting comments on the proposed rulemaking is detailed on the final page of this Notice.

The Chairperson also hereby gives notice of the intent to take final rulemaking action to adopt this amendment. Pursuant to Section 10(a) of the Act, the proposed amendment will be submitted to the Council of the District of Columbia for a forty-five (45) day period of review, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the *D.C. Register* or Council approval of the amendment.

The 2017 District of Columbia Building Code, Title 12-A DCMR, is amended to revise Appendix G, as follows:

APPENDIX G FLOOD-RESISTANT CONSTRUCTION

Revise Section G101.2 of Appendix G of the 2017 District of Columbia Building Code to read as follows:

G101.2 Floodplain Management Regulations of the District of Columbia. The flood-resistant construction provisions of the *Construction Codes*, including this appendix, in combination with the Department of Energy and Environment (DOEE)'s flood resilience rules, set forth in Title 20, Chapter 31 of the District of Columbia Municipal Regulations (DCMR) ("DOEE Flood Resilience Rules"), and Section 6-502 of the D.C. Official Code (2018 Repl.), comprise the *Floodplain Management Regulations of the District of Columbia*. The *Floodplain Administrator* retains all floodplain management responsibilities that are not assigned to the *code official*.

Insert a new Section G101.2.1 in Appendix G to the 2017 District of Columbia Building Code to read as follows:

G101.2.1 Conflict between DOEE Flood Resilience Rules and Flood-Resistant Construction Provisions of the Construction Codes. The flood-resistant construction provisions of the *Construction Codes*, including but not limited to those set forth in Chapter 1 and Appendix G of the *Building Code*, are intended to meet requirements necessary for the District of Columbia to participate in the National Flood Insurance Program, and shall take precedence over any provisions in Title 20, Chapter 31 of the DCMR that apply to proposed *development of a development site* located wholly or partially within a *flood hazard area* that is within the scope of Appendix G, except to the extent that Appendix G requires the *code official* to seek review, approval and/or involvement by the *Floodplain Administrator*. Floodplain management responsibilities delegated by Appendix G to the *building code official*, include, but are not limited to, permitting of work in flood hazard areas and inspection of work in flood hazard areas for which permits have been issued.

G802 MIXED-USE BUILDINGS

Revise Sections G802.3 & G802.4 of Appendix G of the 2017 District of Columbia Building Code to read as follows:

G802.3 Non-residential portion. The lowest floor of the non-residential portion of any new construction of, or *substantial improvement* to, a mixed-use building located on a *development site* wholly or partially within a *flood hazard area* shall either be at or above the *design flood elevation*, or be designed and constructed to be dry floodproofed during any flood up to the *design flood elevation*.

G802.4 Ancillary residential use portion. The *lowest floor* of the ancillary residential use portion of any new construction of, or *substantial improvement* to, a mixed-use building located on a *development site* wholly or partially within a *flood hazard area* shall ~~either be at or above the design flood elevation, or be designed and constructed to be wet floodproofed during any flood up to the design flood elevation.~~

All persons desiring to comment on these proposed regulations should submit comments in writing to Danielle Gurkin, Chairperson, Construction Codes Coordinating Board, Department of

Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5100, Washington, D.C. 20024, or via e-mail at cccbchair.dkra@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Emergency and Proposed Rulemaking should contact Danielle Gurkin via e-mail at cccbchair.dkra@dc.gov or by telephone at (202) 899-3597. After publication in the *D.C. Register*, free copies of the proposed rules are available on the website of the Office of the Secretary of the District of Columbia, Office of Documents and Administrative Issuances at <https://www.dcregs.dc.gov/> or can be obtained from the e-mail address listed above.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Ronan Gulstone
Director
Office of Legislative Support

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: October 14, 2020

SUBJECT: Legal Sufficiency Review of Draft Approval Resolution for Proposed
Rulemaking to Amend Appendix G (Flood-Resistant Construction) of Title
12-A of the District of Columbia Municipal Regulations
(AR-20-227-B)

This is to Certify that this Office has reviewed the above-referenced legislation and has found it to be legally sufficient. If you have questions regarding this certification, please do not hesitate to contact me at 724-5524.

Brian K. Flowers

Brian K. Flowers