



Government of the District of Columbia
**Advisory Neighborhood
Commission 6C**

September 26, 2017

The Hon. Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue NW
Suite 504
Washington, D.C. 20004

Re: Need for legislation to address DCRA mishandling of after-hours construction permits

Dear Chairman Mendelson:

We write¹ to make you aware of an ongoing problem with DCRA's policies and practices for issuing after-hours construction permits in or near residential neighborhoods. As explained below, ANC 6C believes the Council should adopt legislation to clarify and narrow the circumstances under which DCRA may authorize late-night construction in such residential areas.

As you probably know, DCRA may authorize after-hours construction (*i.e.*, between 7 p.m. and 7 a.m. Monday-Saturday and all day Sunday) in or near a residential zone only in circumstances where "not issuing such permit would pose a threat to public safety, health and welfare." 12A DCMR § 105.1.3. Unfortunately, as we noted in written testimony earlier this year,² DCRA has a longstanding practice of issuing after-hours permits where the required exigency does not exist.

Recently, DCRA issued two after-hours permits affecting ANC 6C that further underscore the agency's maladministration of the regulations:

- **901 H St. NE:** On August 16, DCRA issued permit AH1701175 authorizing construction beginning at 5 a.m. This large worksite extends all the way to 8th St. NE

¹ On September 19, 2017, at a duly noticed, regularly scheduled monthly meeting of ANC 6C, with a quorum of 4 out of 6 commissioners and the public present, the Commission voted 4-0 to adopt the positions set forth in this letter.

² Written testimony of Advisory Neighborhood Commission 6C before the Committee of the Whole on "The Department of Consumer and Regulatory Affairs: What Issues Should the Committee Pursue?" (Feb. 21, 2017).

and thus abuts ANC 6C at its eastern border; it is directly across the street from rowhouses in ANC 6C's residential zone.

When ANC 6C05 Commissioner Christopher Miller learned of this permit and inquired, it became clear that the only justification was the contractor's desire to start work earlier in the day. There was no conceivable "threat to public safety, health and welfare" from requiring the applicant to limit its work to the 12 standard permit hours (and thus to avoid disrupting the sleep of nearby ANC 6C residents). Only after Comm. Miller objected was the permit withdrawn.

- **215 G St. NE:** On July 31, DCRA issued permit AH1701119 authorizing round-the-clock construction (24 hours/day, 7 days/week), along with a blanket exemption from all noise restrictions. This location sits entirely within a residential zone and is surrounded on three sides by rowhouse dwellings.

On the previous day, a Sunday, ANC 6C04 Commissioner Mark Eckenwiler repeatedly observed illegal work being performed at the site, resulting in a case-and-desist order from MPD officers. That same day, the DGS Director stated in writing to Comm. Eckenwiler that "[t]he remaining work will be contained inside the building All outside work [has been] completed. Since the work is contained inside, I see no significant noise issues that would occur with the community during this time."

Despite this obvious lack of need, DCRA nevertheless issued its plenary after-hours permit at 10:28 a.m. the following morning without even consulting with the commissioner. Only after the commissioner filed two separate administrative appeals did DCRA relent and issue a narrowed permit (AH1701145) with more stringent conditions.

We recognize that there will be occasions when overnight construction, including loud and potentially disruptive work, may be unavoidable.³ However, DCRA's cavalier application of the after-hours permit regulation over many years convinces us that legislation is needed.

We therefore urge the Council, in the strongest terms possible, to develop and pass legislation to narrow and clarify the standard in section 105.1.3 for after-hours permit issuance. The health and well-being of District residents—not to mention their right to quiet enjoyment of their homes—demands nothing less. Naturally, we stand ready to assist the Council in crafting legislative text to meet this need.

³ For instance, we have recently seen after-hours permits for large projects on H St. NE where daytime activity would materially interfere with, and potentially endanger, streetcar operations. Upon receiving satisfactory explanations for the need, members of the Commission have worked cooperatively with DCRA and permit applicants to arrive at compromise terms enabling the needed work while protecting the interests of local residents.

Thank you for giving great weight to the views of ANC 6C.

Sincerely,

A handwritten signature in black ink that reads "Karen J. Wirt". The signature is written in a cursive style with a large, prominent "K" and "W".

Karen Wirt
Chair, ANC 6C

Cc: Councilmember Charles Allen
DCRA Director Melinda Bolling