COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT
1350 Pennsylvania Avenue, NW, Washington, DC 20004

DRAFT

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: December 6, 2022

SUBJECT: Report on Bill 24-924, "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022"

The Committee of the Whole, to which Bill 24-924, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022" was sequentially referred, reports favorably thereon with amendments, and recommends approval by the Council.

CONTENTS

I. Background And Need....1
II. Legislative Chronology....5
III. Summary Of Testimony....5
IV. Impact On Existing Law....7
V. Fiscal Impact....7
VI. Racial Equity Impact....7
VII. Section-By-Section Analysis....7
VIII. Committee Action....7
IX. Attachments....7

I. BACKGROUND AND NEED

On July 5, 2022, Bill 24-924, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022" was introduced by Chairman Mendelson at the request of the Mayor. As introduced, Bill 24-924 would amend the Construction Codes Approval and Amendments Act of 1986 to require property owners, contractors, or persons applying for a permit for construction work that requires a neighbor notification to obtain insurance that covers damage or losses to an adjacent property owner's property.

Construction, Damage to Neighboring Properties, and Insurance Requirements

On a Wednesday morning in January, Donald Murphy and a housemate heard a loud cracking noise in the house located at 1614 Good Hope Road, S.E. This was when Murphy noticed that the kitchen window began separating from the frame. He and his housemate decided to get out of the house but could only do so through the front window because the door would no longer open due to significant structural damage. The occupants—all of whom were returning citizens—

were displaced as a result of the damage. How did this happen? According to news reports and a stop work order issued by the Department of Consumer and Regulatory Affairs, the home occupied by Murphy and others sat next to a construction site for an apartment complex, and the contractors on the project failed to protect the home at 1614 Good Hope Road, S.E., from damages.[1]

Unfortunately, the incident at 1614 Good Hope Road, S.E., is not an isolated incident. Other examples include residents on T Street in DuPont face nearly $1 million in damages due to excavation work by Pepco to install a transmission line,[2] families on the 900 Block of Kennedy Street, N.W., who were displaced due to damage from construction work at an adjoining property,[3] homeowners on the 2300 Block of R Street Southeast whose homes have sustained significant damage due to the construction of a school at an adjacent property,[4] and homeowners on the 3600 Block of 13th Street, N.W., like Mamie Preston, whose home sustained an estimated $400,0000 in structural damage due to construction work at a neighboring property.[5]

While the facts of each incident listed in the prior paragraph are different, in each case, the recourse available to these homeowners under our current system is minimal. This is, at least in part, because the District has limited insurance requirements for construction projects. Currently, District law requires certain individuals licensed as home improvement contractors, general contractors, and construction managers to keep a certificate of insurance on file. Additionally, the District requires a certificate of insurance for raze permits.[6] But a standard certificate of insurance form only provides basic information on the insurance policy, such as the policy number, effective date, and policy limits for damage to rented premises, medical expenses, and personal and advertising injury.[7] These forms do not contain any information on what is covered by the policy, and it is not clear what enforcement occurs if a licensed general contractor does not have a current COI on file, for instance. This means homeowners must either hope that the contractor currently has insurance and that the insurance covers any damage to their property as a result of the construction work.

---

[1] Sam Ford, "We don't have a place to stay: Residents worry DC could collapse into a hole," ABC-7, WJLA, January 7, 2022 (https://wjla.com/news/local/we-dont-have-a-place-to-stay-residents-ask-for-help-fear-dc-home-collapsing-into-hole-contruction-housing-washington-district).
[2] Heidi Kirk, "T Street residents face damage to historic homes after construction for Pepco's Capital Grid Project," The Wash, October 19, 2021 (https://thewash.org/2021/10/19/t-street-residents-face-damage-to-historic-homes-after-construction-for-pepcos-capital-grid-project/).
[3] Matthew Torres, "Future remains uncertain for DC family still displaced by building collapse," WUSA-9, January 8, 2021 (https://www.wusa9.com/article/news/local/dc/displaced-family-anxiously-waits-to-return-home-after-building-collapse-forced-them-to-leave/65-d544e81f-4c49-434d-8608-e177d220d5dc).
[4] Delia Goncalves, "After all the damage, now they want to sell?: DC charter school leaving before it opens," WUSA-9, January 10, 2020 (https://www.wusa9.com/article/news/education/eagle-academy-charter-school-built-without-permits-leaving-before-opens/65-c89178db-8bd6-4245-a42a-22d9d6f25179).
[5] Delia Goncalves, "Need to expose these contractors: DC homeowners rally against developers they say destroyed their houses," WUSA-9, October 17, 2022 (https://www.wusa9.com/article/news/local/dc-homeowners-rally-against-developers-they-say-destroyed-their-houses/65-7369d225-0f0a-4586-9d58-a71e5e2ad845).
[6] Department of Buildings, Get a Raze Permit (https://dob.dc.gov/node/1616071).
[7] See, for instance, Acord's Certificate of Liability Insurance, which is widely used for purposes of fulfilling this requirement (https://purchasing.houstontx.gov/forms/ACORD_Certificate_of_Insurance.pdf).

Bill 24-924

Bill 24-924 seeks to rectify this situation. As introduced, Bill 24-924 would require anyone applying for a permit for construction work that requires a neighbor notification to obtain insurance that covers damage or losses to an adjacent property owner's property. The bill would leave it to the Mayor to determine the type and amount of insurance required through rulemaking. While the Committee supports the underlying intent of the introduced bill, the Committee Print makes several substantive changes based on feedback from external stakeholders.

First, the Committee Print amends and clarifies the applicability of the insurance requirement by listing specific permits that would trigger the need to have insurance that covers damage to adjacent or adjoining properties. As introduced, any applicant whose construction work triggers our Building Code's neighbor notification requirement would have to obtain said insurance. The Committee believes this is overly broad, as neighbor notification requirements can be triggered for minor projects such as the replacement of a fence along a shared lot line.[8] As such, the Committee Print applies the insurance requirement to the following permits:

- An addition, alteration, and repair permit in which the applicant will be engaging in construction on the property line or party wall of an adjacent or adjoining property;
- A demolition permit;
- An excavation permit;
- A raze permit; and
- A sheeting and shoring permit.

Second, the bill amends a provision in the bill that would require permit applicants to obtain additional insurance above and beyond homeowners' insurance, builders risk insurance, comprehensive general liability policy, or other commonly used insurance products. The Committee is only aware of one insurance company that currently offers the type of insurance product alluded to by the Director of the Department of Buildings in his testimony before the Committee.[9] The Committee does not believe it would be beneficial to any party—save for the insurance company in question—to force all owners, contractors, or subcontractors to purchase a product for which competition does not currently exist. Additionally, while the cost of the insurance product is minimal for smaller construction projects, it is not clear how much the insurance product would cost for construction projects valued in the millions of dollars.[10] Given these facts, the Committee Print inserts language into the bill that would allow applicants for specific permits to demonstrate that their insurance policy covers damages or losses to adjacent properties arising out of the proposed construction work. Many third-party insurance products, such as comprehensive general liability insurance, cover damage to adjoining or adjacent properties that arise from the construction work, for instance. If an applicant's policy does not meet the requirements of the bill, then the applicant would need to amend their policy *or* obtain

[8] See, for instance, the permit application submittal requirement guideline for repair or installation of a fence (https://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/Building%20Code%20Interpretation%20-%20Fence.pdf).
[9] Shield Indemnity, Inc., Adjoining & Adjacent Property Protection Coverage (https://direct.shieldindemnity.com/).
[10] On Shield Indemnity's website, the APPC Pricing Indicator simply says "Refer to Underwriter" for construction projects valued at $2 million or above.

additional insurance to be compliant. Per the language in the Committee Print, an applicant would submit proof that a policy meets the requirements of the bill on a form promulgated by the Department. This is important for two reasons. First, requiring the Department to promulgate a form will standardize the process, making it easier for permit applicants to submit the required materials. Second, such a form will allow the Department to better understand the scope of coverage for a particular policy. Some policies, for example, may contain exclusions that impact a third party's ability to successfully receive compensation for damage to their property. For instance, in a case in North Carolina, a contractor was drilling and blasting rocks for a construction project. These activities resulted in structural damage to adjacent homes, leading the homeowners to file suit against the contractor. In court, the contractor and their insurer argued that the language of the liability insurance policy's subsidence exclusion applied to *any* shifting, eroding, tilting, or caving of land, even if it was caused by the contractor. The court ultimately ruled that the subsidence exclusion only applied to natural phenomena, but the case nonetheless highlights how exclusions can erect barriers to legitimate third-party claims.[11]

Third, the Committee Print inserts language that would require the permit holder to notify the Department if the insurance expires is canceled, or otherwise terminates. If the policy expires, is canceled, or otherwise terminates while the permit holder is still conducting construction work, the permit holder would be required to submit proof of new or renewed insurance that meets the qualifications of the bill. This ensures that the permit holder does not acquire coverage and then cancel it once permit reviews are done. It also ensures an accurate and complete record of insurance coverage held by the permit holder during the life of the project, which will benefit homeowners who need this information for purposes of filing a claim.

Finally, the Committee Print inserts language that would require the Department to issue a stop work order if, at any time, the Building Code Official determines that the permit holder's insurance does not meet the requirements of the bill or if the Building Code Official finds that the permit holder does not have the required insurance. For the insurance requirements in this bill to be effective, there must be an enforcement mechanism in place. The introduced version of the bill lacked an explicit enforcement mechanism, and the Committee believes the issuance of a stop work order will be an effective mechanism for compliance.

Conclusion

Each year, homeowners throughout the District experience financial and emotional hardship as a result of damage to their property by construction at an adjacent or adjoining property. These homeowners have little recourse because current construction insurance requirements do not explicitly protect adjacent or adjoining homeowners. Bill 24-924 addresses this by requiring insurance coverage that protects adjoining and adjacent homeowners for specific permits, such as an excavation permit or sheeting and shoring permit. This will enable homeowners to file claims and recover damages should their property be damaged. Given this, the Committee recommends Council approval of the Committee Print for Bill 24-924.

[11] *Nat'l Quarry Servs., Inc. v. First Mercury Ins. Co.*, 372 F. Supp. 3d 296 (M.D.N.C. 2019).

II. LEGISLATIVE CHRONOLOGY

July 5, 2022	Bill 24-924, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022" is introduced by Chairman Mendelson at the request of the Mayor.
July 12, 2022	Bill 24-924 is officially read at the regularly scheduled meeting of the Committee of the Whole and referred to the Committee of the Whole.
July 15, 2022	Notice of Intent to Act on Bill 24-924 is published in the *District of Columbia Register.*
August 12, 2022	Notice of a public hearing is published in the *District of Columbia Register*.
September 30, 2022	The Committee of the Whole holds a public hearing on Bill 24-924.
December 6, 2022	The Committee of the Whole marks up Bill 24-924.

III. POSITION OF THE EXECUTIVE

Ernest Chrappah, Director of the Department of Consumer and Regulatory Affairs, testified at the Committee's public hearing on Bill 24-924 on Friday, September 30, 2022. Director Chrappah noted that this bill is necessary, in part, because general liability policies do not always cover damage to adjoining or adjacent property owners arising from construction work. Director Chrappah testified that the additional insurance requirement in the bill is not meant to be burdensome or cost prohibitive and that the cost of the insurance could be as low as $55 to $100 depending on the cost of construction work. Finally, Director Chrappah stated that the Department has been working closely with the Department of Insurance, Securities, and Banking and members of the community to educate residents on insurance products.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

Advisory Neighborhood Commission 6C (Capitol Hill): The Commission submitted testimony stating that they neither support nor oppose the bill. The Commission specifically notes two concerns with the bill. First, they believe the bill as introduced is over-inclusive, as the insurance requirements would be triggered by the neighbor notification requirement. Second, the bill is too onerous, as it would require permit applicants to obtain additional insurance rather than allowing applicants to demonstrate that existing policies meet the requirements of the bill. The Print for Bill 24-924 addresses both of these concerns.

V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on several bills, including Bill 24-924, on Friday, September 30, 2022. The testimony summarized below pertains to Bill 24-924. Copies of written testimony are attached to this report.

Randall Brandt, Public Witness, testified in support of the bill.

Liz DeBarros, CEO of the District of Columbia Building Industry Association, testified in opposition to the bill. Ms. DeBarros requested that the Committee consider defining "adjacent or adjoining property," permit developers the right to inspect properties that they are responsible for insuring, and clarify that standard liability insurance would adequately cover the requirements in the bill.

Eric Jones, Vice President of Government Affairs with the Apartment & Office Building Association of Metropolitan Washington, testified that while AOBA has concerns with the bill, they believe that most of their members carry insurance that meets the requirements of the law.

Francis O'Brien, a representative of the American Property Casualty Insurers Association, did not testify in support or opposition to the bill but sought to clarify the nature of insurance products currently available to owners, contractors, or subcontractors.

Robert Hildum, Public Witness, testified in support of the bill but stated that he believes the bill does not go far enough. Mr. Hildum specifically recommended including a requirement for permit holders to notify the Department and the adjoining property owner if the insurance lapses. The Committee Print includes a provision that would require notification to the Department should an insurance policy lapse.

Thomas Glassic, Executive Director of the District of Columbia Insurance Federation, testified in opposition to the bill as introduced. Mr. Glassic specifically requested that the Committee include a provision requiring consultation with the Department of Insurance, Securities and Banking for the required rules and noted that many existing insurance products cover damage to adjacent or adjoining property owners that arises from construction work.

Ernest Chrappah, Director of the Department of Consumer and Regulatory Affairs, testified on behalf of the Executive in support of the bill. His testimony is summarized in Section III.

In addition to the testimony summarized above, the Committee received comments in writing, including the following:

Griffin Benton, Vice President of Government Affairs with the Maryland Building Industry Association, provided comments in opposition to the bill.

Blair Wunderlich, Public Witness, provided comments in opposition to the bill.

Advisory Neighborhood Commission 6C provided written comments on the bill. The testimony of the Commission is summarized in Section IV.

VI. IMPACT ON EXISTING LAW

Bill 24-924 would amend section 6a of the Construction Codes Approval and Amendments Act of 1986 to require property owners, contractors, or persons applying for specific permits for construction work to demonstrate that his or her insurance will insure adjacent property owners for loss or damage that arises out of the proposed construction work. It would also require the Mayor to issue rules to implement this legislation.

VII. FISCAL IMPACT

The attached December 2, 2022 fiscal impact statement from the District's Chief Financial Officer states that funds are sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan. There are no costs associated with repealing the disclosure requirement.

VIII. RACIAL EQUITY IMPACT

IX. SECTION-BY-SECTION ANALYSIS

Section 2 — Amends section 6a of the Construction Codes Approval and Amendments Act of 1986 to require insurance that covers damages to adjacent or adjoining properties for certain permits.

Section 3 — Standard fiscal impact provision.

Section 4 — Standard effective date provision.

X. COMMITTEE ACTION

XI. ATTACHMENTS

1. Bill 24-924 as introduced.
2. Written testimony.
3. Fiscal Impact Statement for Bill 24-924.
4. Legal Sufficiency Determination for Bill 24-924.
5. Racial Equity Impact Assessment for Bill 24-924.
6. Comparative Print for Bill 24-924.
7. Committee Print for Bill 24-924.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : Nyasha Smith, Secretary to the Council

Date : Monday, July 11, 2022

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Tuesday, July 05, 2022. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022", B24-0924

INTRODUCED BY: Chairman Mendelson, at the request of Mayor

The Chairman is referring this legislation to Committee of the Whole.

Attachment
cc: General Counsel
Budget Director
Legislative Services

MURIEL BOWSER
MAYOR

July 5, 2022

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

Dear Chairman Mendelson:

Enclosed for consideration and enactment by the Council of the District of Columbia is a bill entitled "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022."

This legislation will require property owners, contractors, or persons applying for a permit for construction work to obtain liability insurance to insure adjacent and adjoining property owners for loss or damage arising out of the proposed work. Currently, District law requires general contractors, construction managers and home improvement contractors to furnish certificates of liability insurance before they may be issued a license. While the District of Columbia Building Code requires contractors and building owners to take certain precautions to prevent damage to adjoining buildings during construction and demolition, there are no existing requirements to obtain liability insurance coverage for adjacent or adjoining properties. Requiring liability insurance for damage to these properties will provide additional protection for District residents' life, limb and property during construction projects.

I urge the Council to take prompt and favorable action on the enclosed legislation. If you have any questions, please contact Ernest Chrappah, Director, Department of Consumer and Regulatory Affairs, at ernest.chrappah@dc.gov or (202) 442-8935.

Sincerely,

Muriel Bowser

Enclosures

Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend section 6a of the Construction Codes Approval and Amendments Act of 1986 to require property owners, contractors, or persons applying for a permit for construction work to obtain insurance to insure adjacent property owners for loss or damage that arises out of the proposed construction work.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022".

Sec. 2. Section 6a(a) of the Construction Codes Approval and Amendments Act of 1986, effective April 20, 1999 (D.C. Law 12-261; D.C. Official Code § 6-1405.01(a)) is amended by adding a new paragraph (2A) to read as follows:

"(2A)(i) The Building Code Official shall require, for permits for construction work that requires neighbor notification under the Construction Codes, that the property owner, contractor, or person applying for the permit obtain insurance against claims for injuries to persons or damages to property from all adjacent and adjoining property owners and lawful occupants of the properties for risks of loss, damage to property, or injury to or death of persons arising out of or in connection with the performance of the work proposed to be performed under the permit. The insurance shall be of a kind and in an amount specified by the Mayor by rule.

31 "(ii) The Building Code Official may also require such insurance for a
32 permit for work that does not require neighbor notification under the Construction Codes if the
33 Building Code Official determines there could be a detrimental impact to adjoining or adjacent
34 properties based on the scope or risks associated with the work proposed to be performed under
35 the permit.".

36 "(iii) The applicant for a permit for which insurance is required under
37 subparagraph (i) or (ii) of this paragraph shall submit proof of such insurance to the Department
38 before the issuance of the permit.

39 "(iv) The Mayor may issue rules to implement this section, pursuant to the
40 authority provided in Section 10 of the Construction Codes Approval and Amendments Act of
41 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409).".

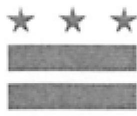
42 Sec. 3. Fiscal impact statement.

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

46 Sec. 4. Effective date.

47 This act shall take effect following approval by the Mayor (or in the event of veto by the
48 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
49 provided in section 602(c)(l) of the District of Columbia Home Rule Act, approved December
50 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(l)), and publication in the District of
51 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Bryan Hum
Interim Director
Office of Policy and Legislative Affairs

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

DATE: May 18, 2022

SUBJECT: Legal Sufficiency Review of Draft Legislation, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022"
(AD-22-141)

This is to Certify that this Office has reviewed the above-referenced proposed 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

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 24-201, Construction Management Agreement Amendment Act of 2021

Bill 24-924, Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022

on

Friday, September 30, 2022 at 11:00 a.m.

Chairman's Website (www.ChairmanMendelson.com/live)
DC Council Website (www.dccouncil.us)
Council Channel 13 (Cable Television Providers)
Office of Cable Television Website (entertainment.dc.gov)

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **Bill 24-201**, the "Construction Management Agreement Amendment Act of 2021" and **Bill 24-924**, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022." The hearing will be held on **11:00 a.m. on Friday, September 30, 2022** via Zoom Video Conference Broadcast**.**

The purpose of Bill 24-201 is to require certain applicants for a construction permit to enter into a voluntary or standard construction management agreement with impacted property owners. The purpose of Bill 24-924 is to require property owners, contractors, or other persons applying for a permit for construction work to obtain liability insurance that would cover any loss or damage to adjacent or adjoining properties arising out of the construction work.

Those who wish to testify must register at http://www.ChairmanMendelson.com/testify by **5:00 p.m. on Wednesday, September 28, 2022**. **Testimony is limited to four minutes**. Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding. We will make every effort to fulfill timely requests, although alternatives may be offered. Requests received in less than five business days may not be fulfilled. If you have additional questions, please contact Blaine Stum, Senior Policy Advisor, at (202) 724-8092.

The hearing will be conducted virtually on the Internet utilizing Zoom video conference technology. Testimony should be submitted in writing to cow@dccouncil.us in advance of the hearing. Written testimony will be posted publicly to http://www.chairmanmendelson.com/testimony. If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Statements for the record should be submitted to cow@dccouncil.us or left by voicemail by calling (202) 430-6948 (up to 3 minutes which will be transcribed). The record will close at 5:00pm on Friday, October 14, 2022.

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 24-201, Construction Management Agreement Amendment Act of 2021

Bill 24-924, Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022

on

Friday, September 30, 2022 at 11:00 a.m.

Chairman's Website (www.ChairmanMendelson.com/live)
DC Council Website (www.dccouncil.us)
Council Channel 13 (Cable Television Providers)
Office of Cable Television Website (entertainment.dc.gov)

PUBLIC WITNESSES

	Name	Affiliation
1.	Randall Brandt	Public Witness
2.	Liz DeBarros	CEO, District of Columbia Building Industry Association
3.	Eric Jones	Vice President of Government Affairs, Apartment and Office Building Association of Metropolitan Washington
4.	Francis O'Brien	American Property Casualty Insurers Association
5.	Robert Hildum	Public Witness
6.	Martin Burligame	One80 Intermediaries
7.	Steven Hoffman	Owner Claims Restoration
8.	Amy Fisher	Co-Owner, Realty Group Inc.

9. Thomas Glassic	Executive Director, District of Columbia Insurance Federation

GOVERNMENT WITNESSES

1. Ernest Chrappah	Director, Department of Consumer and Regulatory Affairs

September 30, 2022

Dear Chairman Mendelson and Members of the Council,

Thank you for your service and the opportunity to speak with you today on behalf of these two pieces of legislation. As someone who has lived in DC for 27 years, I would be pleased to also pontificate on important topics such as better schools and educational opportunity for every child, effective crime reduction strategies, and affordable housing incentives but we can leave that for another day- if we need to ☺. Mostly, I want to thank you for moving forward in this area of protecting existing residents from the negative impacts of large construction projects occurring next to them. This is also a critical topic of fairness and justice for those impacted by it.

As you know homeowner's insurance does not cover damage to your property that occurs from a neighboring construction project. This is an important reason why the combination of the two bills before you will represent an important step forward once passed and implemented. I want to thank the Chairman for this hearing and for cosponsoring the Construction Management Agreement Amendment Act of 2021 legislation and Councilmember Allen for his leadership in sponsoring it and his staff for their assistance. I also want to thank the other members of the council for cosponsoring it including Councilmembers Robert C. White, Jr, Henderson, Nadeau, and Lewis George. It will provide a more fair and balanced approach for residents seeking to problem solve construction related issues and impacts.

These realities impact residents in all parts of the District of Columbia- the only difference is what resources residents may have to protect themselves and their families. Sensible construction protections will be helpful to all impacted residents – renters and homeowners alike- due to excessive noise during the day and nighttime, parking, rodents, and other issues. I would also like to thank Mayor Bowser for recognizing the need for some action related to insurance coverage as part of the solution in "The Protecting Adjacent and Adjoining Property Owners from Construction Damage Act of 2022." I would also encourage Mayor Bowser to see that these provisions are quickly and effectively implemented once passed.

I will try to briefly share our family's story and why these pieces of legislation matter to residents impacted by large construction projects. We were fortunate to purchase a home near 8th and H Street NE more than 20 years ago where we have raised our children who attend and attended DC public schools. One of my sons who can fix things - unlike me - just graduated from McKinley Technology High School this year. We are grateful for the dedicated engineering teachers there.

I can't speak to issues related to all developers, but I can speak to our extensive experience with two large developers operating in the Nation's Capital and the larger region. One is Rappaport (retail management and half owner of what is now AVEC) and the other is W.C. Smith (both its residential management and construction companies). They joined together to build and manage the now 8 story AVEC building at 901 H Street NE with 420 or so expensive rental units. The one thing I know for sure is that if my family's name was on the company as is the case with Gary Rappaport and Chris Smith and his family, I would have taken a different approach than they and their companies have taken and continue to take. This is particularly true since there was and is only one home immediately adjacent to their two-block long construction site/now AVEC building, our home- unlike most large construction projects in the city where multiple homes would be significantly impacted.

Ironically, my father, who passed away this past March, taught me about honor and integrity. He would tell my siblings and I when we left for school in the morning to "remember your last name." My faith also tells me to treat others the way that you want to be treated. While I fall short, this is my goal. In contrast in our experience, **the bottom line is that these individuals and their companies will only do what they are required to do by the DC Government to protect existing residents from the impact of their construction**. Even though best practices in the construction field would better address common issues and realities. Of course, one could also just do what is right. They inflict impacts on nearby residents without proactive mitigation measures in ways that they would never allow to occur in their own neighborhoods or presumably to their own families.

The first time I met the Rappaport organization is when we looked out our window and found a truck pulling a holding tank which had been just used to resurface the adjacent strip mall parking lot with its water and tar mixture contents being poured down the drain in the private alley and into the city storm drain system. We also soon learned that the Rappaport Management company was quite comfortable with their tenants regularly violating local ordinances with trash and delivery trucks operating next to our home in the middle of night – despite this being prohibited next to a residence. We documented this along with some other neighbors impacted by the noise hundreds of times disturbing our sleep with the ANC fully aware as well.

I personally communicated these concerns to Gary Rappaport on multiple occasions through emails to him directly. Nothing meaningful was done to prevent this and it continued until the H Street Connection strip mall was closed for demolition. In our experience, the Rappaport corporate culture is if they are getting their tenant's money they don't care about impacts on neighboring residents. The Rappaport organization has had 20 years to prove this point wrong and have failed to do so- even when they were working to get approval from the city and the ANC for the AVEC project. They and their tenants continued to violate delivery ordinances at night. They knew it was unlikely that the city would hold them accountable - though they should have been fined each time. We were not going to spend any extra resources as a family on suing them, the remaining alternative, at the time and preferred to save for our kids' education.

The night before the first zoning commission meeting to discuss the construction proposal for the new building, Gary Rappaport and his team made a closed-door deal without our input with DDOT to put the retail entrance of the building 20 or so feet from the midpoint of our home. We had attended numerous ANC meetings over the course of a couple years missing evenings with our young children, and this had not been the case. I was also told by a DDOT employee at an ANC meeting that unless the developer put the current use option on the table in their submission DCOT could not consider if it was a better option. (It would have certainly been better or our family).

Gary Rappaport had previously made clear in an ANC meeting that he could make more money with the retail frontage uninterrupted with a garage entrance as was currently the case with parking access-- even though he was already getting an

extra 7 stories for his property. (It is also a bit ironic that half of this ground level retail frontage – the equivalent of one full city block- has yet to be used in the new building to date). When we shared with the zoning commission that we had not been told or included after we heard the new location for the garage entrance for the first time at the zoning meeting– the zoning commission ordered Gary Rappaport and his team to meet with us prior to the next zoning meeting to work on a compromise.

We did not hear from them until a few days before the next meeting deadline and when I was headed out of town for a work trip. They came to our house in the evening when our young kids needed to go to bed and the air conditioning was not working. We told them we would not agree to it being immediately next to our house since our goal was to stay in our home. Gary's response was that he could build right up to our house - despite his obvious need for an alley to service his planned building. Because of the nature of this side deal we eventually received a 5-foot protective strip to prevent the previous contact of delivery trucks with our house. Subsequently Rappaport even narrowed the one accommodation of the strip for part of our property- so more square footage for the building could be achieved and more money could be made. I share these stories to illustrate that without some accountability my developer friends will take whatever they can get. While I respect property rights, including ours, this is one of the places that government can better level the playing field and these legislative proposals can help.

In our case all the construction damage to our home and property that occurred was avoidable and nearly all of the negative impacts of the construction could have been mitigated if desired. One example of a best practice is a dispute resolution clause in case of any damage or disagreement occurring. The construction industry pioneered these clauses decades ago which require mediation and/or arbitration prior to any litigation. The Rappaport organization refused to agree to such a provision or to post a bond in advance of construction and prefers litigation presumably since they think that gives them a stronger negotiating position. Again, we were the only home immediately next to their two-block construction project- going 4 stories down and 8 stories up.

The W.C. Smith organization seems to prefer it as well based on what we've received from them including liability waiver requests that no competent

engineer or attorney that has passed the bar would agree to- including for damage created by trespassing with heavy equipment. We spent 6 months in good faith trying to negotiate workable liability waiver terms to meet their requests- even though they had trespassed on private property and had not overseen the work that was subsequently done without permission in a negligent manner. The result is that we received no follow up settlement offer. This is a bit like the burglar asking for medical expenses for his injury that occurred during his crime.

Ironically, for the purposes of this hearing it seems that these companies can have their insurance companies pay their bills for avoidable mistakes and negligence instead of themselves if they wait to be sued. And of course, many people don't have the time, energy, or resources to do so- including if you are a single parent working two jobs. For anyone, it can feel like David going up against Goliath. We are hoping for a similar successful outcome as well. ☺ Perhaps a smarter person would have given up and moved but unfortunately, I have a strong sense of justice and a stubborn streak in my family. For most of us our greatest strength is also our greatest weakness.

Sometimes these developers, Rappaport and W.C. Smith, did not even do those things that they are already required to by existing laws such as comply with delivery ordinances or legal construction times. If there is no enforcement or fines levied by the relevant DC Government agencies, then there is no accountability. If we are honest, they don't care how many nights of sleep were lost by neighboring residents and have no strategy to reduce nighttime noise impacts during construction because the burden currently falls on neighboring residents rather than on them. We found on several occasions that nighttime work related to the AVEC construction project was being done at night a few feet from our home- simply because it was more convenient for the job site and the developers. Despite being told that the developers had no control over the work being at night. In one case, I learned this directly from the workers who would rather be in bed than working at 3 am.

It would be simple to document the essential need for nighttime work in advance- so it can be verified and then compensate any directly impacted residents for the inconvenience- giving them the option to stay somewhere else or not. Eventually, I started sending the developers bills for hotel nights that they should be paying

for. After months of nighttime noise disruptions, the Rappaport and W.C. Smith organizations reimbursed us for two nights at a hotel since we thought it would be better for our kids to get some sleep before school. We appreciate the legislation addressing this concern which not only interferes with the use and enjoyment of one's home but has negative health impacts as well. Noise impacts should be monitored.

We also found that they did not honor agreements made to the ANC and commissioners volunteering their time for the benefit of the community. Such promises made but not kept include rodent abatement efforts in the first half of construction and limiting impacts on parking, and mitigating neighborhood noise by having dump trucks congregate at RFK Stadium lots prior to the 7am allowed construction time. Instead, dozens of trucks would arrive on the job site as early as 4:00am to avoid DC traffic. The developers would also repeatedly get permission to block off street parking in the 700 block of 8th Street for 6 months or so at a time- despite it not being the actual construction site and construction employees consistently parking there with personal vehicles instead of allowing permit paying residents to park in front of their own residences. I can assure you this is not the general practice at large construction sites in NW DC. We think this is an important contribution of the legislation.

In our case we reached out to the Rappaport organization in advance of the design approval and both organizations in advance of the construction process to propose a series of mitigation measures and took them to the adjacent Ben's Chili Bowl location for lunch. None of the mitigation proposals were agreed to even though Rappaport staff found them all to be reasonable at the time. Eventually after 6 months and support by ANC members they agreed to provide vibration monitoring for our home- since we were the only home immediately adjacent to the construction project. This alone would have cost us more than $30,000 at the time. The reality is that the developers were already committed to spending this money on their site they just didn't want the vibration monitoring located where they may be held accountable for their construction mistakes and negligence.

Moreover, the design of the building did not take into account the presence of our existing home and instead placed immediately next to us a previously mentioned retail garage entrance which includes - if you have travelled out West - "cattle guard like" noisy entrance grates when vehicles pass over, 23 bright lights,

a dedicated dog entrance nearby, 4 noisy ventilation exhaust systems, and an elective large underground water storage tank in the alley immediately adjacent to our home contributing to flooding concerns. While we love dogs- 150 or so of man's best friend using your property as a restroom is not ideal. The AVEC property with 419 units and was a missed opportunity for affordable housing as well. The neighboring 8 story building, Capitol Hill Towers, which the developers used to justify the AVEC building height above the other neighboring one and half story historic buildings already present across the street, is entirely affordable senior housing with lots of well-kept green space and has been so for many years. It is not clear whether the AVEC building has any affordable housing.

Fortunately, because we had already experienced the corporate culture of "we are investors only rather than we are community contributors" for several years and because of the wisdom of my wife, we knew we needed to hire our own engineer to monitor and help protect our home during construction. This essential protective measure is difficult for families to afford. We eventually received some money after a couple years for some of our engineering expenses from Gary Rappaport and Chris Smith but only after several obvious cases of negligence had occurred impacting our property- and ironically resulting in most of the avoidable engineering costs- and when they were asking to dig in the front of our property.

Even though we met directly with Gary Rappaport and Chris Smith int the WC Smith offices and communicated with their senior staff regularly we are still waiting for them to pay for vibration and other damage that they caused to our home and to mitigate ongoing construction impacts. According to the City Paper and research by Georgetown University's McCourt School of Public Policy, the W.C. Smith organization had the largest number of residential evictions in D.C. prior to Covid from 2014 to 2019 - thousands of evictions. As we have told them directly, we think they should pay their bills like they expect their commercial and residential tenants to do**.** One may also be tempted to think they've spent enough of the D.C. Court's time and resources with their plethora of residential eviction processes.

Simple math makes clear that the AVEC building managed by WC Smith alone receives well over a million dollars a month of residential rental income alone and yet they refuse to pay their bills and mitigate the impacts on our home. In our

experience in the 14 years prior to the construction project, the Rappaport organization likes to pretend they are not responsible for their property and their commercial tenants' actions even though it is dramatically easier in DC to evict commercial tenants not in compliance with their leases or local ordinances. This was particularly the case prior to the construction of a high-end building.

After years, we have yet to receive a penny for damage done to our property. One of the most senior employees of the W.C. Smith organization said to us while in our home, "Why should we pay you for damages when you may just sell your home?" It's simple. You are morally and legally required to do so. If we had not been present on several occasions when damage occurred, had not documented it, had not hired our own engineers, and were not now willing to file suit, we would be paying for all these avoidable damage expenses ourselves.

I also want to highlight that many hardworking construction workers who we enjoyed meeting over the years didn't find it difficult to put themselves or their home in our shoes and would have readily provided commonsense protections and noise mitigation measures. In one case, I was speaking with some of them after having raised concerns with the project manager a few minutes earlier about how close they were digging to our foundation without appropriate protections, and I witnessed the unplanned curb collapse along the length of our home due to negligent digging too close to our home. This negligence put the workers themselves and our home at risk and was easily avoidable with proper care and protections. It also resulted in thousands of dollars of avoidable engineering expenses to address and several days of my time. Had we not previously engaged our own engineers the developers would have been content to avoid responsibility- since their own engineers did not "notice" the impacts in their initial on-site assessment. Fortunately, our "emergency" engineer had great experience along with a Ph.D. in Structural Engineering and helped them notice the issues they had caused.

In my professional life it has been my privilege to have spent years negotiating and problem solving for a living in all three branches of government including representing the United States of America and advocating for justice and human rights issues internationally. The last 12 years it has also been my privilege to be a volunteer mediator for the DC Superior Court and the Multi-Door Dispute Resolution Program- working with the parties and residents to resolve hundreds

of disputes. I've also learned through experience that some people refuse to negotiate and just need to hear it from the judge. In my view, these developers, in particular, need to hear it from the D.C. Council in the form of clear legal requirements. Unfortunately, when folks don't use common sense and anything approaching the golden rule more laws are required to help them do the right thing even though they don't want to do so.

The bottom line is that they (Rappaport and W.C. Smith) had no proactive plans to protect our property or to mitigate the impact of construction on our family. At their corporate best they would simply react to avoidable mistakes. This legislation, if properly implemented, should help bring them to the table to proactively negotiate fair protections and mitigations in the future for impacted adjacent residents and homeowners and should ultimately save everyone time and money in the process.

Thank you for helping residents of the District of Columbia in future circumstances like ours. If I had one bumper sticker message for our developer friends Gary Rappaport and Chris Smith it would be "**Pay your bills like you want your tenants to do**." Proactive problem solving would also help (and reduce your own bills if that matters to you).

I would also suggest for the DC Government to create an ombudsman position and role to help existing residents navigate the dynamic between developers and relevant city agencies- perhaps within the relevant replacement organization to DCRA- which I believe starts tomorrow. I have also learned that in addition to vibration monitoring noise levels should be monitored too during construction for nearby properties. I would also respectfully suggest that it be good policy to follow up with projects particularly when one attends a groundbreaking to make sure that they are treating existing neighbors appropriately. The local ANC could likely provide such information as well.

I know of another similar large development about to start a few blocks from us on H Street NE.   Please pass these pieces of legislation quickly, monitor their implementation, and help these many other families about to experience similar circumstances. You may well get some pushback from developers but it's an honorable thing to do the right thing. I have spent a lot of time standing up for my home and family with developers. It is an even more honorable thing to stand up

for others.   I look forward to seeing this step forward and seeing a little justice roll down for similarly impacted DC residents in the future.

Thank you for your time. I welcome the opportunity to speak with any of you further.

Respectfully,

Randall Brandt

Testimony of Liz DeBarros, CEO, District of Columbia Building Industry Association

Before the

Committee of the Whole

Chairman Phil Mendelson, Chair

Public Hearing
on

Bill 24-201, Construction Management Agreement Amendment Act of 2021

Bill 24-924, Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022

September 30, 2022

11:00 AM

Good morning Chairman Mendelson, members of the Committee of the Whole, and staff. My name is Liz DeBarros, and I am the Chief Executive Officer of the District of Columbia Building Industry Association ("DCBIA"). I am also a long-time resident of Ward 7. DCBIA is the leading voice of real estate development in the District of Columbia. Thank you for the opportunity to testify on Bill 24-201, the Construction Management Agreement Amendment Act of 2022 and Bill 24-924, the Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022.

I. Bill 24-201, the Construction Management Agreement Amendment Act of 2022

First, I would like to address the Construction Management Agreement Amendment Act. While we support the intent of this bill, we believe it lacks clear language regarding reimbursements, affords the Advisory Neighborhood Council ("ANC") power beyond the great weight standard, and imposes penalties without any finding of guilt.

As to the standard agreements, they would require a covered applicant to reimburse an impacted property owner for engineering expenses authorized by the Building Code Official. The language is vague as to whether the covered applicant is subject to reimbursement of the full value or fair market value. Since impacted property owners could take advantage of this reimbursement by expending a more

costly construction project or pocketing the amount without engaging an engineer, there must be some limit on the extent to which they are to be reimbursed and the policing of that reimbursement so that it is used as intended. Moreover, as written, the legislation only requires notice of incurred expenses, however the impacted property owner should be required to send more information to substantiate his or her claim for reimbursement, including but not limited to, the actual receipt of expenses incurred. That said, covered applicants should be entitled a process in which they can dispute the amount of reimbursement if the expense clearly exceeds the reasonable price for services performed. These contentions are equally relevant to the provision that requires covered applicants to reimburse impacted property owners for hotel stays under certain circumstances, as well.

Next, the standard agreement requires covered applicants to not seek a public space permit that will impact parking in a public space for more than 4 weeks, unless the covered applicant has received ANC approval. This clearly goes beyond the great weight standard afforded to ANCs. The covered applicant is prohibited from seeking a specific permit as a direct result of ANC disapproval, giving ANC determinations full force, contrary to what they are afforded by law. Since this legislation requires the covered applicant to enter into such an agreement in order to obtain a permit covered by the Construction Code, this means that an

individual is entirely prohibited from obtaining a public space permit of this sort at the full discretion of an ANC.

Finally, section 8a empowers the Mayor to deny a building permit to an applicant for a period of three years after receipt of three or more stop work orders in a 12-month period. This penalty should remain only if the language is amended to apply exclusively to instances where the applicant is found *guilty* of the offense that warrants the stop work order. The legislation does not account for any stop work orders that are challenged but rather focuses solely on receipt, regardless of whether it was a valid, properly issued stop work order. Therefore, to achieve the purpose intended by the legislation, the provision should be amended accordingly.

II. Bill 24-924, the Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022

Now, I'd like to address our concerns with the Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act. While we recognize the value of this bill to property owners, we believe it contains numerous ambiguities and makes developers, especially smaller ones, particularly hesitant to take on projects because of the potential scope of liability.

As you can well imagine, unless a full inspection of abutting and adjacent properties, which needs to be properly defined in the legislation, is allowed it will

make insurance premiums for such policies extremely high if not cost prohibitive as insurance providers will not know the current condition of those properties.

That said, we would specifically like to have the legislation make clear that any claim being brought must be brought by a property owner within a certain foot threshold of the construction, has allowed insurance inspectors the right to inspect their property both inside and outside, and that this is covered under standard liability insurance products already in existence and not a new form of insurance or under builder-risk insurance which would cause immediate work stoppage as no construction project would be able to cover that cost.

Additionally, it should be made clear that the additional insureds on the plans are not to include the adjacent or adjoining property owners. Insofar as the Mayor is to specify the amount of the insurance by rule, we urge further consideration on this point as there is no indication as to the amount for developers to fairly judge whether the passage of this bill will prohibit them from taking on projects in the District.

Without defining adjacent and adjoining property owners, permitting developers the right to inspect the properties for which they are responsible for insuring, and clarifying that this bill falls under standard liability insurance, developers will be, and have already expressed to us that they would be, extremely cautious of taking on projects with this potential scope of liability.

Thank you for the opportunity to testify. We would like to work with you to amend these legislations, if they were to move forward, as many of my members are very concerned about these pieces of legislation and how they would affect their current and future projects. We currently have a small working taskforce regarding these legislations and are happy to meet with you and your staff regarding their concerns beyond which I have stated in this testimony. I am happy to answer any questions you may have.

Testimony of

Eric J. Jones, MSF
VP of Government Affairs, DC - Commercial
Apartment & Office Building Association of Metropolitan Washington (AOBA)

Before the
Committee of the Whole

Public Hearing

On

B24-201, the "Construction Management Agreement Amendment Act of 2021"

And

B24-924, the "Protecting Adjacent & Adjoining Property Owners from Construction Damage Amendment Act of 2022"

Good morning, Chairman Mendelson, and the members of the Committee of the Whole. My name is Eric J. Jones, and I am the Vice President of Government Affairs, DC - Commercial for the Apartment & Office Building Association of Metropolitan Washington also known as AOBA. I am here today to provide comments on B24-201, the Construction Management Agreement Amendment Act of 2021 and B24-924, the Protecting Adjacent & Adjoining Property Owners from Construction Damage Amendment Act of 2022.

B24-201, the Construction Management Agreement Amendment Act of 2021

As an organization AOBA has a great deal of concerns with this legislation as introduced as we believe that it is extremely vague. We would like to raise four issues:

1. The Standard Agreement – within the legislation, it stipulates that impacted parties are to consider the use of a standard agreement in negotiations. Unfortunately, the legislation fails to identify who will design the standard agreement, lay out the mandatory language required in the standard agreement and more importantly, it fails to stipulate that the standard agreement is to serve as the baseline for negation.

2. Construction Monitoring Agreement(s) – Current best practices within the industry require the installation of monitors in addition to clearly defined threshold levels. Within the legislation however there is no explanation of how the Mayor or her designee will set the thresholds required for monitory, including, but not limited to vibration. Moreover, there isn't detailed language on what the monitoring will identify or a mutually agreed upon remedy.

3. Proof if Impact – as the legislation currently reads, upon receiving the project notice, the adjacent and/or adjoining property owner is required to obtain an engineering report. As opposed to following the guidelines of the report, the permit applicant is then required to enter into an agreement irrespective of if the report stipulates that the adjacent and/or adjoining properties are likely to be impacted by the proposed project.

4. Impact of the Advisory Neighborhood Commission (ANC) – ANC's much like the Council are political bodies, which are subject to personal, professional, or political disagreements. Within the legislation, it stipulates that the application for extended parking provisions must be accompanied by an approved resolution from the entire ANC as opposed to the commissioner whose SMD the impacted location resides in. ANC meetings are less frequent and, in some instances, may be delayed due to no fault of the applicant. If a commission is unable to take a vote in a pending month, a project can be delayed as many as 4 to 8 weeks before obtaining approval due to no fault of the applicant.

B24-924, the Protecting Adjacent & Adjoining Property Owners from Construction Damage Amendment Act of 2022

While AOBA has some concerns with this legislation, it is the feeling of the broader membership that the overwhelming majority of our membership already carry insurance that would meet the requirements of this proposed legislation and for that reason that we believe this proposal is redundant and unneeded.

In closing, I thank you for your time and am available to answer any questions you may have.

Written Statement of

American Property Casualty Insurance Association

Bill 24-924, Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022

September 30, 2022, Hearing

Committee of the Whole

Via email: cow@dccouncil.us

Chairman Mendelson,

The American Property Casualty Insurance Association (APCIA) is based at 12th and F Streets in the District of Columbia and represents insurers that have been providing critical financial security and risk management support to the citizens, enterprises and nonprofits of the District of Columbia for many decades. APCIA is the primary national trade association for home, auto, and business insurers. In the District, APCIA member companies provide 70.6% of the property casualty coverage for D.C. consumers. These comments include the talking points provided by Frank O'Brien, VP, State Gov't. Relations at the hearing.

This bill introduced on behalf of the DC Department of Consumer and Regulatory Affairs (DCRA) seeks to address an issue brought to DCRA's attention by District homeowners who had suffered property damage to their building due to construction activity adjacent to theirs. To address this issue, DCRA is proposing a bill that will require property owners, contractors, or persons applying for a permit for construction work to obtain liability insurance to insure adjacent and adjoining property owners for loss or damage arising out of the proposed work. Currently, District law requires general contractors, construction managers and home improvement contractors to furnish certificates of liability insurance before they may be issued a license. While the District of Columbia Building Code requires contractors and building owners to take certain precautions to prevent damage to adjoining buildings during construction and demolition, there are no existing requirements to obtain liability insurance coverage for adjacent or adjoining properties. APCIA wishes to thank DCRA for their efforts and being proactive in this area including setting up an online insurance center to answer questions regarding insurance coverages in this area.

APCIA is generally neutral when insurance is mandated in the permitting process. As pointed out by DCRA, a contractor's general liability (CGL) policy, normally responses to this type of exposure of property damage to others caused by the negligence of the contractor. However, as was stated during the hearing, some policies have exclusions and may not respond to the damage, or the policy limits are exceeded due to multiple claims. By bringing light to this issue, the insurance market is responding to this need represented by this bill and that it's our understanding several companies are or are preparing to offer a product with a dedicated limit. The coverage issued is liability coverage for the project owner

and the contractor with a dedicated limit for adjacent property owners. The District does not make provisions for third parties to make a direct claim against someone's liability insurance. They may instead make a claim with their homeowner's or notify the policyholder of the loss.

During the hearing, there were several questions raised regarding builder's risk insurance and commercial general liability (CGL). Builders risk is a property coverage that covers the structure being built. This policy provides protection for the owner. For example, if a construction project had materials stolen from the job site or other peril damaged or caused loss to the subject of construction, a Builders Risk policy would cover it. A CGL policy purchased by the contractor, or the developer will cover both property damage and bodily injury due to the negligence of the contractor.   The policy does respond to illegal activities.

APCIA looks forward to working with interested stakeholders on this issue and in that regard, we suggest the bill be amended to specifically require DISB be consulted in the regulatory process if the bill moves forward.

Please contact me with any further questions.

Sincerely,

Nancy J. Egan, Esq.

Vice President and Counsel, State Government Relations. Mid-Atlantic

American Property Casualty Insurance Association (APCIA)

Nancy.egan@apci.org | 443-841-4174

September 30, 2022

PUBLIC HEARING COMMITTEE OF THE WHOLE

- Bill 24-201, the "Construction Management Agreement Amendment Act of 2021"
- Bill 24-924, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022."

Testimony:

Rob Hildum
4507 15th Street, NW

Good Morning Chairman Mendelson and Members of the Committee

My name is Rob Hildum and I have lived in the District of Columbia for 20 years. I live in a row house in Ward 4 with my wife and my 9 ½ year old son. We bought our house in 2010. Our house was built in 1915. We share common walls with our neighbors on both sides. We love everything about the District of Columbia, our house and neighborhood.

We appreciate the Construction Management Agreement Amendment as a necessary and good beginning. However, as currently written, it does not apply to us, owners of a single-famly row house. The provisions in the bill would have provided us some protections from renovations to the property abutting ours. No one should have to go through what we have gone through the past nine months and continue to endure.

The row house next to ours, 4505 15th Street, NW, had been neglected for decades and was in desperate need of renovation. In 2021 it was bought at auction by a developer from Florida who incorporated in the District shortly before the purchase.

We welcomed any renovation and development of the property. Unfortunately, the Developer would prove to be not only dishonest but incompetent as well.

At first his plan was to replace the kitchen and paint. Given the long deterioration and run down condition of the property this was simply ridiculous. Eventually he accepted that he would have to do a full renovation.

He obtained permits from DCRA for **interior** renovations and went to work. A large dumpster was rented and work began. The developer did not tent the house or in any way attempt to limit the dirt, garbage and debris that came from the house. The entire block was covered in dirt

and dust for several weeks. We had to tell him that he had that at the very least he had to put a tarp over the dumpster at night to keep garbage from blowing around the neighborhood.

We were all at home during this time. My wife and I were working from home and my son was attending school remotely most days. The noise was difficult but we accepted as a necessary part of the renovation. Several weeks after he started work we received "Neighbor Notification" which consisted a of schematic drawing showing new wiring, plumbing and HVAC. There were no architectural plans or any specifics of any kind.

Saturday January 15, 2022, was particularly loud, but again we accepted it as part of the renovation.

On Sunday January 16, I discovered that the developer had removed the entire back wall of the house and he had destroyed the common wall from our kitchen on the first floor to the second floor bedroom. He exposed the framing and insulation to rain and snow and the only thing between us and the elements was a ½ inch of sheet rock.

When we confronted him about what he had done he was belligerent and told us that we did not understand his business. We told him he need to fix it immediately because a snow storm was coming. I heard him yelling and lots of banging as he put some plywood up on the first floor.

Then I discovered a huge dent in our interior wall that look like it had been done with a hammer. To be clear after I saw the common wall had been breached, I looked at our interior wall and there was no damage. He slammed a hammer into the wall while putting up the plywood. There is no doubt in my mind it was done intentionally. I filed a police report but the developer had left and there was nothing that could be done at that point.

Over the next two days, my wife and I started making phone calls. We reported illegal construction to DCRA and we were able to get the name of a consultant who agreed to help us. We called our Councilmember and anyone else we could think of. We also started looking for an attorney and at the urging of our consultant we hired an architect.

After begging and pleading with everyone and anyone a DCRA inspector showed up on January 18, 2022. The Inspector issued a stop order for exceeding the issued permits and for breaching the common wall. That same day we paid retainers to our consultant, architect and lawyer.

The first priority was to fix the damage to our wall. The price tag was $15,000.

We were led to naively believe that the developer would be unable to proceed until he obtained the proper permits, which would include submitting actual plans for the renovation.

In March another dumpster appeared. We were confused because the stop order was still in place and nothing had been done to obtain the proper permits. DCRA, however had issued a permit for him to "replace the basement slab" in kind. Apparently the "stop order" was specific only to his original permit. We received no "neighbor notification' on the work in the basement.

He started digging out the basement. Our team continued to badger DCRA, but they were told a valid permit had been issued. We watched as he filled the dumpster with concrete and dirt. Then I noticed bricks—which could only mean that he had again breached the common wall.

Another round of phone calls and pleas for help from DCRA. Our architect recognized immediately that beyond the breach to the common wall the foundation was potentially in jeopardy. Once again, a DCRA Inspector came out and issued a stop work order. Our architect and consultant were able to walk through the property and they were concerned about what they saw but they could not do a closer inspection. When they talked to the developer it was very clear that he had no idea that he was potentially damaging the foundation. Our architect recommended underpinning to secure the foundation.

The owner agreed to put our team in touch with his structural engineer. That never happened.

In June signs went up for another dumpster-a clear sign work was going to resume. Apparently, the developer secured another permit from DCRA to lower the basement slab. The application for the permit did not include a structural engineer report or soil sample studies from the basement which would show whether the floor would be supported properly. Once again he started working in the basement. And there was no neighbor notification.

Our architect was able to get the permit application and immediately recognized that the plans required significantly more digging than the permit allowed. Fortunately, DCRA heard him and issued a third stop order on June 21, 2022.

Since that time there has been no other work attempted. Several windows are open and have no framing at all. The windows that have glass or screens are not fully closed. The back wall has a few feet of plywood on the first floor and a tarp. When it rains water freely flows into the basement-which may be damaging the foundation. On September 16, 2022, DCRA issued a

blighted property citation and gave the owner 7 days to remedy the deficiencies. Nothing has been done as of today.

As I testify here today the property is open and unsafe. We already have problems in the neighborhood with rats, mice and racoons. With winter approaching the house is a haven for nesting. Moreover, the wall we repaired is exposed to the elements and may be damaged again. We have no idea as to the condition of the basement although it is clear it is now merely a dirt floor and we have no idea the extent to which the foundation may have damaged and may be eroding further. The concrete slab on the back driveway was broken up by a jack-hammer and is a perfect nesting ground for rats. Construction debris litters the property. In addition to not securing the property there is over $36,000 in unpaid property taxes.

We are not the only ones who have suffered a situation like this-in fact we have been told numerous times that there are row home owners who had to leave their homes because the foundation actually collapsed-and we should feel fortunate.

We refinanced our house and have paid out approximately $30,000 for a consultant, an architect and a lawyer to protect our home. Time and again this dishonest and incompetent developer has threatened the integrity and safety of our home while securing permits from DCRA.

As I sit here today the property is in a dangerous condition and we have no idea of the damage he may have done.

The two bills up for consideration today do not go far enough to protect the resident of the District of Columbia. B-24-0201 applies only to commercial developments and would do nothing to protect a row home from the renovations on the other side of the common wall. It also places a significant burden on the home owner and potential out of pocket expenses. The bill lacks significant detail and leaves it to DCRA to write regulations. Even a homeowner who is a lawyer would be wise to consult a lawyer with expertise in this area. The bill focuses on vibration issues and should also include direct damage to adjoining properties.

B-24-0201 also does not go far enough regarding neighbor notification and the plans that need to shared to obtain a permit and adequately give notice to adjoining property owner. There should be a registry of frequent violators and at a certain point they should be banned from obtaining further permits from DCRA. My understanding is that neighbor notification has recently changed-the neighbor can only ask for reconsideration once the permit is issued. That is simply

too late and it puts the burden on the neighbor to understand the proposed scope of work and the potential damage to their home.

In our case the plans were woefully inadequate and were nothing more than schematic drawings. He was gutting and rebuilding a house and he was not required to submit architectural drawings. To put this in perspective when we wanted to installed a forced air-cooling system in our house DCRA required architectural drawings even though the footprint of the house was completely unchanged. The required plans cost us $2,000. But permits to gut an entire house and rebuild it can be issued without any architectural plans.

B-24-0924 also does not go far enough to protect adjoining property owners. First, I have been told that contractors and developers will often present proof of insurance to obtain permits but they will let the policies lapse. The proposed insurance requirements should include notification to DCRA and the adjoining property owner if they should lapse. Upon lapsing a stop order should be immediately issued and only lifted when the required insurance is re-instated. The legislation should require that adjoining property owners shall be “named insureds” under the required insurance policy.

There are also needs to be a right of inspection for the adjoining property owner to view the construction on the adjoining property.

As I said my situation is not unique and home owners and families throughout the District are virtually unprotected against damaging and invasive construction. The Council and DCRA need to do more to protect us.

I would like to specifically note my appreciation for the DCRA inspectors who responded on 3 occasions to issue Stop Orders. They were professional and very kind.

Thank you for your time and consideration. I am attaching photos of the damage to our wall in January and the current condition of the house.

The damage done in January:

The back wall of the house was completely removed which exceeded the scope of the original permit.

The developer destroyed the common wall and exposed the insulation and our drywall to the elements.

After we told the owner to fix the wall, he damaged the interior wall. I believe he did this purposely. The cost of replacing the wall was $15,000.

Current condition:

The front third floor window is unsecured.

The front second floor window is unsecured.

This is the back deck. There is a gap in the deck that allows water to freely flow to the basement when it rains. The plywood only covers the back wall on the first floor and is not secure. The construction debris on the deck.

This is the tarp that covers the back wall. The second floor is completely open as shown by the hole in the tarp.

Window in the back open and unsecured.

Back windows wide open and unsecured.

Ground floor window open and unsecured. Construction debris littering the ground. Providing nesting to rats and termites.

The back driveway torn up and providing potential nesting to rats in addition to the overgrowth.

I should also mention that the driveway was broken up by someone the owner hired with a jackhammer. He wore no eye or ear protection.

dcra

NOTICE OF VIOLATION

Notice # 22ENF-PM-01393

Order for the Correction of Conditions at (Address): 4504 15th St NW	Square: 2703	Date Notice Issued: 9/16/22 Lot: 0064
Owner/Agent Mailing Address: ☐ Owner ☐ Agent Nexta Construction LLC 5333 Connecticut Ave NW APT 304		Date of Notice Mailed:

Notice: A recent inspection of the property listed above was made by a representative of Department of Consumer and Regulatory Affairs (DRCA). This notice is to inform you that the violations checked below were found on your property. **You are hereby ordered to correct these violations within the time frame specified below.** If you fail to take corrective action within the specified time frame, you will be subject to assessment of the fine stated and abatement of the remaining violations by the District without further notice. If DCRA corrects the violations you will be assessed the cost of the abatement and a lien will be placed against your property in the form of a Special Assessment. If payment is not made for the cost of the DCRA abatement, your property could be sold in a tax sale. A $90.00 re-inspection fee will also be assessed for each re-inspection required.

Violation	Code/Law	Description	Location of Required Corrective Action	Fine Amount[1]
☑	12G DCMR § 302.1	Excessive trash, constituting unsanitary/unhealthy conditions	Entire	$554
Description of violation: Debris				
☑	12G DCMR § 302.4	Prohibitive excessive vegetative growth	entire	$554
Description of violation: Growth / Grass				
☑	DC Official Code § 42-3131.12 (1)	Unsecured vacant property, door, windows, area ways, and other openings are not weather tight	entire	$554
Description of violation: Open window				
☐	12G DCMR § 302.4.2.2	2 or more notices issued for the same condition during the same growing season; the District may summarily abate the nuisance		$554
Description of violation: NA				
☑	DC Official Code § 42-3131.12 (7)	Vacant property exterior walls are not free of graffiti, holes, breaks, or loose...	Rear	$554
Description of violation: Rear wall not secure				

THE VIOLATION(S) CITED ABOVE MUST BE ABATED WITHIN 7 DAYS FROM POSTING OF THIS NOTICE

Inspectors Signature	Inspector Name (Print) GAnderson	Inspectors Badge # 015	Date and Time of Inspection 9/16/22 810
Person Serving Notice (Inspector Above) ☑	Person Serving Notice (Inspector Above) ☑		Date and Time of Service 9/16/22 810
Signature of Person Served	Person Served (Print)		Date

See Reverse Side for Appeal Rights

[1] Fine amounts are increased annually pursuant to DCRA Infraction and Fine Amendment Act of 2017
1100 4th Street SW, 5th Floor Washington, DC 20024
Tel: (202) 442-4332 Fax: (202) 442-9564

Property Address 4505 5th St NW

dcra DCMUR

Blighted Property Citation

GOVERNMENT OF THE DISTRICT OF COLUMBIA

dcra

DIVISION OF ENFORCEMENT AND LEGISLATIVE AFFAIRS

NOTICE OF PENDING ABATEMENT ACTION

Date: 9/16/22	Inspector: Anderson	Lot: 0064
Address: 509 15th St NW	Square: 2703	
Violation (s) to be Abated: Open Growth / Grass / Blighted		

The property identified above on 9/16/22 found to be in violation of District of Columbia Municipal Regulations Title 14, Section 800. It has been referred for abatement pursuant to DC Official Code §42-3131.

You are hereby notified that DCRA intends to correct the conditions previously cited and pass the costs of correction on to you in the form of a tax lien against your property.

If you notify DCRA that you have corrected the conditions after the time prescribed by the Notice of Violation but before DCRA's Grass/Trash Abatement Team visits the property to correct the violation(s), you will not be subject to an administrative fee. However, if you correct the violation(s) and fail to notify DCRA of the correction, you will be assessed a $175 administrative fee.

Failure to pay the costs of abatement can result in your property being sold at a property tax sale conducted by the Office of Tax Revenue.

Further, if you fail to maintain your property in accordance with DCMR 14 Section 800 during the growing season (May 1 – October 31), you may subject to additional abatement activities without prior notification and be responsible for all associated costs.

Should you have any questions regarding this Notice, please contact Vacant Building Enforcement at 202-442-4332 or by email at vacantbuildings@dc.gov.

1100 4TH Street SW, 5TH Floor, Washington, DC 20024

Notice of Pending Abatement Action-nothing has been done as of September 30, 2022

Testimony Regarding the Construction Management Agreement Proposed Legislation
By Amy Fisher Homeowner Ward 6. Sept 30th 2022

I've previously submitted testimony and suggestions about the Neighbor Notice. I have updated it and am providing it, in writing, along with this brief testimony.

I think this is great legislation and I'm whole heartedly behind it however it addresses perhaps items "H & I" in an alphabet soup of issues faced by the adjoining homeowners. I believe this legislation is far too narrow and the entire process needs to be evaluated starting with A: Raze Permits and B: the Neighbor Notice.

DCRA issues Raze permits without the need for the new plans and permits to be in place there-by exposing the adjacent homeowner's interior walls to the elements for months or years on end with only flapping plastic to protect them.

Here is a picture of our house. The developer has been telling us they expected to have approved plans "in two weeks" since January. We are now headed into winter again. The only way we kept warm last winter was to leave the oven on for hours on end to warm that wall. Otherwise it radited the chill back into the house. Heating, for these row houses, was designed to keep exterior wall warm. Our north wall was never an exterior wall. We have 2 tiny radiators on that wall and blessedly the stove. We added an electric heater in the basement. Our heating bill was 30% higher last year. The developer who has the 2 properties on our south side has a raze permit in place and we have no radiators on that wall. They could raze that property at any time and they too have no approved plans. We have zero radiators on the south wall.

As for the Neighbor Notice, it provides the homeowner access to the builder plans (when available) and a copy of the DC housing code and gives them 30 days to present undefined "Technical objections" to DCRA. The process after that is a complete black box. We submitted no fewer than 6 sets of objections and a proposed Construction Management Agreement all of which centered around our not wanting our interior walls exposed to the elements without plans and permits in place. This is what we got. (Photo).

Go ahead and pass this legislation it will help address problems that you probably hear a lot about, but the scope of the problems adjacent homeowners face is way bigger than just parking and noise. As for the insurance portion of the bill proposed, it seems too vague, especially when a developer is allowed to raze an attached property without permits in place to build.

Amy Fisher
202 544-8762
427 13th St NE
Wash. DC. 20002

Exhibit "A" Attached

Exhibit A.

DISTRICT OF COLUMBIA INSURANCE FEDERATION

Bill 24-0924, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022"

Written Testimony of

Thomas M. Glassic, Esq.
Executive Director
District of Columbia Insurance Federation

Before the

Committee of the Whole

Chairman Phil Mendelson

The Council of the District of Columbia

September 30, 2022

11:00 a.m.

The City of Washington,

The District of Columbia

Via Virtual Platform

1455 Pennsylvania Avenue, NW; Suite 400
Washington, DC 20004
202.797.0757
Thomas.Glassic@dcif.org

Good morning, Mr. Chair and Members of the Committee. My name is Tom Glassic and I am the newly appointed Executive Director of the District of Columbia Insurance Federation (DCIF). Mr. Chair, you and the Committee will all remember my predecessor, Wayne E. McOwen, who led the DCIF with great distinction and class for the past sixteen-plus years. Worry not, Mr. Chair, Wayne is watching us from his and his wife, Fran's happy retirement in North Carolina and Wayne sends his kindest regards.

This hearing is my first opportunity to formally represent the DCIF before the full Council of the District of Columbia and my first opportunity as native-born Washingtonian to testify as a public witness before my home State Legislature. On a personal basis, I would like to thank you, Mr. Chair and the Committee for providing me this opportunity to participate actively in the legislative process that benefits our city, our home.

The DCIF represents the overwhelming majority of those insurers who do business in the District. DCIF members provide property, casualty, life and health insurance products and services in the District. DCIF members include primary domestic and foreign insurance carriers, their agents, reinsurers, and most of the national insurance trade associations, whose members collectively represent a

majority, of the insurance marketplace. DCIF is proud that our membership is the most representative of the insurance community doing business in the District.

Before my substantive testimony, a bit of housekeeping – I am honored to be testifying today with Mr. Frank O'Brien representing The American Property Casualty Insurance Association (APCIA), a national insurance trade association that is also a DCIF Member. Mr. O'Brien and I are testifying virtually today, with the understanding that additional written testimony will be accepted until October 14, 2022.

As Mr. O'Brien noted during his oral testimony, a limited number of DCIF and APCIA member companies currently offer or have plans to begin offering coverage that may satisfy the criteria envisioned by B24-0924, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022". As such, DCIF has no objections to the legislative intent; however, we have strong concerns that the legislative text, as introduced, provides no parameters nor an even vaguely detailed description of the scope of coverage to be required. Instead, the text merely states, "[t]he insurance shall be of a kind and in an amount specific by the Mayor by rule." The only D.C. agency properly qualified to develop what could become rather detailed and technical criteria is the Department of Insurance, Securities and Banking (DISB). Should the Council

advance this legislation, DCIF encourages the Council to entertain an amendment requiring that the Mayor either delegate to or consult with DISB (and ideally DCIF) before promulgating any rulemaking as to the kind and amount of insurance to be required.

To assist the Council in its deliberations and further contribute to the collaborative process highlighted by Director Chrappah in his thoughtful testimony, DCIF would makes the following observations:

Coverage for the risk at issue is already available: The Comprehensive General Liability (CGL) is a product created by insurers and sold to contractors, subcontractors and other businesses to provide protection from claims for which the policyholders is judged to have been negligent and, therefore, legally liable for damage. Damages can include bodily injury, property damage and a number of other circumstances for which there are additional protections. Moreover, defense coverage is provided to mitigate legal and court costs to the policyholder related to the claim. The CGL policy form is an industry standard and is sold in virtually every jurisdiction by insurers licensed by the chief regulator in each jurisdiction to provide such coverage.

The regulation of insurance in DC belongs with DISB: Under the supervision of Commissioner Karima Woods, a highly regarded staff of professionals protects

District consumers by monitoring the products, pricing and claims activities and services provided by insurers licensed to do business in the District. With specific regard to claims services, the agency maintains a well-staffed consumer complaints division, which is responsible for tracking the response -- including, specifically, the time-line of that response -- of carriers to claims submitted by policyholders. Permitting the Mayor to establish by rule the kind and amount of insurance that will satisfy the insurance requirement for damage to adjacent landowners property may cause confusion and potentially judicial overreach. The current language may permit the mayor to eliminate select policy provisions and, thus, compromise the integrity of the policy. Doing so causes the District and its insurance regulatory parameters to be out of sync with national standards, potentially jeopardizing the accreditation status as overseen by the National Association of Insurance Commissioners (NAIC).

Legislation already exists to protect claimants: Guiding the regulatory activity are proprietary regulations promulgated by DISB, as well as the protections provided by the Unfair Claims Settlement Practices Act, which sets forth minimum standards for the investigation and disposition of property/casualty claims arising under contracts or certificates to residents of any jurisdiction. Under the provisions of this Act, an "Insured" means the "party named on a policy or certificate [of insurance] as the individual with legal rights to the benefits provided by the policy." Thus,

when a homeowner requests a certificate of insurance from a contractor, and if the contractor is judged to have been negligent and responsible for damages resulting from that work, the certificate holder is entitled to relief, which would be provided by the insurer having issued the certificate.

Current licensing requirements protect stakeholders: We commend the DCRA for the existing licensing requirements for contractors that require proof of the appropriate amount of CGL coverage necessary to satisfy any perceived need for insurance to address damage caused by a contractor to adjacent property.

While DCIF applauds the DCRA's responsible oversight of business practices in the District, and while we recognize the agency's continuing interest in providing the optimum resources to enhance consumer protections, we believe, for all of the reasons expressed above, that the proposed legislation is unneeded and may, in fact, be potentially damaging to the regulatory oversight of insurance by DISB. Rather than seek a legislative initiative for any perceived weakness in the current system, further overture by DCRA to DISB, DCIF and the insurance community seems to us be a more collaborative approach to any concerns regarding insurance issues.

As the representative organization for the overwhelming majority of companies providing insurance products and services to District consumers, we offer our time and expertise toward enabling such collaboration to be achieved.

DCIF appreciates the opportunity to participate in this process. Should the legislation advance further in the Committee's consideration, DCIF looks forward to working with your excellent staff going forward to cleanly and effectively incorporate DISB's unique expertise into the development of any new and novel insurance requirements that impact the vibrant insurance marketplace in the District.

I look forward to your questions and to becoming "that insurance nerd" in the Wilson Building in the months and years to come.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Public Hearing

B24-924, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022"

Testimony of
Ernest Chrappah
Director
Department of Consumer and Regulatory Affairs

Before the Committee of the Whole
Council of the District of Columbia
The Honorable Phil Mendelson, Chairman

September 30, 2022
11:00 a.m.

Via Virtual Platform

Introduction

Good morning, Chairman Mendelson, councilmembers, and staff. I am Ernest Chrappah, Director of the Department of Consumer and Regulatory Affairs (DCRA). I am here today to provide testimony on Bill 24-924, the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022." I am particularly excited to discuss this legislation as it tackles a well-known problem in the District, which is damage done to adjacent and adjoining properties by neighboring construction work, and provides a concrete and action-oriented solution, which is to require those seeking a permit to obtain liability insurance for the project.

Defining the Problem

In the District of Columbia, there is at times a misconception that any damage to adjacent and adjoining properties that occurs during construction work by a neighboring property owner or their contractor is automatically covered under homeowner or general contractor liability insurance. This is to some extent understandable, because insurance contracts can be long, confusing and in some cases, not completely transparent. It also is not reasonable to assume that homeowners can be experts on every detail of their or their contractor's insurance coverage, particularly when the requirements may be ambiguous.

DCRA has received extensive feedback from the community on how, in certain cases, existing coverage under general contractor liability insurance or homeowner insurance is inadequate to make neighboring homeowners whole, given the scope of damage which occurred, and in some situations under unique circumstances. Part of the problem is that when damages occur during construction work, this can lead to multiple lawsuits between insurance companies and other parties, including homeowners, contractors and subcontractors, but no immediate relief

is available for the adjacent or adjoining property owner. Generally speaking, there is nothing specifically dedicated in general contractor liability insurance for adjacent and adjoining property owners, and there are hard limits on general contractor liability insurance. In short, District homeowners and their contractors are simply not always aware of where the coverage ends.

DCRA is cognizant of and sympathetic to these concerns, and we have been diligently researching potential solutions since early this year. Indeed, we even brought in outside consultants to socialize the issue with insurance providers and looked at novel remedies offered by other major cities to get to the root of the problem.

What we ultimately determined is that New York City has a viable regulatory structure that we can use as a model for the District, with certain changes given the particular needs of our city. To provide some context, New York City's model establishes coverage amounts based on the number of stories of the neighboring property. While this is not a proposal that would work in the District since we do not have any skyscrapers, we plan to follow New York City's lead in issuing thorough regulations after the legislation is enacted which clarify the specific coverage requirements for different property owners.

Summary of Legislation

Turning now to the Mayor's legislation, this bill seeks to protect adjacent and adjoining property owners if their neighbor damages their home during a construction project. This legislation will require property owners, contractors, or persons applying for a permit for construction work to obtain liability insurance to insure adjacent and adjoining property owners for loss or damage arising out of the proposed work, for any projects that require neighbor notification or will have a detrimental impact to immediate neighbors.

Notably, the bill puts the onus on the property owner, contractor or person applying for the permit to maintain this insurance coverage, not the adjacent or adjoining property owner. This legislation establishes a straightforward insurance requirement to protect District homeowners. We are not proposing an extensive regime which would add significant budgetary burdens or implementation challenges for DCRA or its successor agency, the Department of Buildings. Our concept is to create a universal requirement that could largely be handled between District property owners and insurance providers, with appropriate government oversight.

Proposed Scope of Coverage

Next, I would like to turn to the proposed scope of coverage. The trigger for the insurance requirement is if the permitted work would require neighbor notification under the Construction Codes. Neighbor notification is required when a permit for construction work may be issued that can impact and/or damage adjoining properties. Under current law, Neighbor Notification Forms must be distributed by the property owners undertaking a project to adjoining property owners prior to approval and issuance of building permits and must include either a copy of the proposed construction documents or instructions to view and download these documents online. The homeowner undertaking the construction project must notify the adjoining homeowner and provide a copy of the notification to the code official not less than 30 days prior to permit issuance. So, it would be in these instances that the insurance requirements would kick in.

I also want to highlight that the legislation is not intended to make this new insurance requirement unaffordable or overly burdensome for property owners, contractors or their agents. Indeed, the thought going into this was to make it something akin to the prototypical fee to add insurance coverage for airport car rentals, which can sometimes be as low as nine dollars, with the understanding that the amount will be higher given the type of car. Similarly, the cost of insurance

coverage here will potentially be as low as in the $55 to $100 dollar range, depending on the cost of the proposed construction work and other factors. Moreover, a relatively minor investment by the party applying for a permit could allow for up to $1 million or more in coverage and this coverage can be added to a contractor's commercial general liability insurance.

As I stated above, this legislation puts the onus on the property owner who is performing construction to secure insurance. Since the District of Columbia is not a direct action jurisdiction, this means that the neighbor of the homeowner performing the construction cannot make a *direct* claim on the property owner doing construction work. Instead, the adjacent or adjoining neighbor can file a claim with their own homeowners insurance, who would then contact the property owner doing the construction work and their insurance carriers to file a claim and seek reimbursement. DCRA, as part of this program, will encourage residents to notify us of claims against contractors and neighbors as part of the complaint process.

DCRA Insurance Education Center

As part of socializing this legislative proposal, and to provide comprehensive information to District homeowners, DCRA has established an Insurance Education Center, located at dcra.gov/insurancecenter. After October 1, when the Department of Buildings is operational, the website will be dob.gov/insurancecenter. The scope of information on this website goes far beyond the proposed new requirements on adjacent and adjoining properties. The Insurance Education Center site provides guidance on current insurance requirements for certain types of licenses and general information on important considerations for homeowners and contractors regarding the issuance of insurance. Our goal was to create a comprehensive insurance information resource for District residents. DCRA and our successor agency, the Department of

Buildings, will continue to update the Insurance Education Center in the coming months to provide the most up-to-date information to homeowners and contractors.

Our Insurance Education Center will continue to be a valuable portal after adjacent and adjoining property insurance requirements are put into place. My team worked expeditiously to stand up this new resource, and we are very pleased to offer it inform District residents. I want to be clear, however, that DCRA's Insurance Education Center does not endorse any particular insurance provider or product. Our intent is only to provide general public information, including answers to Frequently Asked Questions, about coverage options. For example, the site clarifies routine concerns about how disputes arise between contractors and subcontractors, and the impact this can have on residents, among other homeowner concerns.

Insurance Climate and DCRA Outreach

Next, it is important to note that the Mayor's legislative proposal has not been ensconced in a bubble within the agency. DCRA has been working extensively with the D.C. Department of Insurance, Securities and Banking (DISB), as well as local and national insurance providers, over the past several months. DCRA's successor agency, the Department of Buildings, will continue these collaborations. DCRA made a presentation to the Property & Casualty Subcommittee of the Insurance Advisory Committee at DISB and held a Q&A session on July 27, 2022. DCRA also held a webinar with members of the public on August 9, 2022. I'm happy to report that insurance publications and the national insurance industry have taken notice. For example, there has been broad industry outreach to the U.S. Council of Insurance Agents & Brokers regarding the Mayor's proposal, and other cities are contemplating similar models to New York City's legislative requirement and what we are proposing.

I also want to note that our intention from the beginning has never been to create a legislative mandate that the industry would not be able to meet. To the contrary, this has been a very productive and informative process which my team and I are pleased to be a part of. We look forward to continuing this dialogue in conjunction with the passage of the legislation. The Department of Buildings, which will become operational tomorrow, will also be tightly focused on implementing the proposal and providing regular updates to the public.

Understandably, many questions will be raised about how the insurance industry can and will respond to this mandate. I am pleased to report that, due to DCRA's outreach, we already have at least one local provider who is available to issue the coverage in the mold of what we will require once this legislation is enacted. So, our proposal is not just a concept on paper; it is already available as an insurance package for District residents who wish to attain coverage before it becomes a requirement under the legislation.

We are fully aware that for providers to establish new forms of insurance, it generally demands a country-wide demand, and while we have engaged with local providers, we understand that national coverage will eventually need to be provided. This is why we have been working closely with the insurance industry and are confident that after the District of Columbia and other major cities adopt requirements for adjacent and adjoining property coverage, there should be a number of viable policies available for District residents.

I also want to point out that DCRA views the insurance industry as an ally with regard to the problem we are addressing through this legislation. Specifically, we believe that they can provide valuable assistance in highlighting bad actors who are operating in our city and penalize them for the harm posed by negligent contractors. The insurance industry can also work in tandem with District Government to set rates which are affordable for our residents. We look forward to

continuing to engage with the insurance industry as our proposal moves forward to passage and implementation.

Conclusion

Chairman Mendelson and members of the Council, thank you for the opportunity to testify. With that, I am happy to answer any questions you may have.

Written Testimony of Advisory Neighborhood Commission 6C[1] Before the Committee of the Whole on Bill 24-201, The Construction Management Agreement Amendment Act of 2021 and Bill 24-924, The Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022

Public Hearing
September 30, 2022

Mr. Chairman and Members of the Committee,

ANC 6C neither supports nor opposes the two bills under consideration. We believe the proposed legislation attempts to address legitimate concerns, but cannot support it owing to the numerous substantive and technical shortcomings described below.

Bill 24-201

Bill 24-201 would establish a set of procedures requiring construction management agreements (CMAs) in a narrow set of circumstances. Our review identified several problems with the legislation as currently drafted.

First, the bill appears to be poorly tailored in its efforts to protect property owners from the adverse impacts of adjacent construction:

- It protects single-family and two-unit dwellings, but affords no protection to residential properties with three or more units even though the potential adverse impacts are indistinguishable.

- The bill requires notice to, and overnight hotel compensation in some circumstances for, **owners** of impacted residential properties regardless of whether they occupy the property. Conversely, the bill offers no benefits to non-owner occupants who bear the brunt of loud overnight work and other adverse construction impacts.

[1] ANC 6C authorized this testimony at its duly noticed, regularly scheduled monthly meeting on September 14, 2022, with a quorum of 6 out of 6 commissioners and the public present via videoconference, by a vote of 6-0.

- The bill's protections are triggered only by construction projects of four or more dwelling units or 1000sf of commercial space. In our experience, the worst offenders in terms of illegal after-hours construction and other impacts on adjacent dwellings are frequently "flippers" performing work on one- or two-unit row dwellings. The legislation would not cover this frequent problem.

Second, the bill's attempt to establish rules for CMAs suffers from several significant deficiencies:

- The bill requires developers, 30 days before applying for a covered project's permits, to notify any impacted property owner (*i.e.*, of abutting one- or two-unit dwellings) of their ability to enter into a CMA **and** at the same time to have already entered into a CMA. It is unclear to us why these two very different stages in the process would have the same deadline.

- Lines 46-49 require notification of impacted adjacent owners of their ability to enter into a standard CMA, but the cross-referenced provision (starting at line 54) describes a CMA between the developer and the "Building Code Official" (*i.e.*, within the Department of Buildings), not between the developer and adjacent owners.

- If the intent of the bill is to require a CMA between the adjacent impacted owners in all cases, what if one or more adjacent owners simply refuse? And what if an adjacent has multiple owners, not all of whom consent? Will the consent of one owner for a given property suffice in such cases?

- The legislation would require (at line 83-88) a standard CMA to prohibit a developer from obtaining a public-space occupancy permit for curbside parking areas for more than four weeks absent ANC consent.

  ANC 6C believes that is unduly restrictive and improperly grants ANCs a right of absolute veto over such permits. Many construction projects legitimately require curbside dumpsters for periods of more than a month. Although we have observed problems in DDOT's handling of public space permits—for example, issuing permits purporting to reserve curbside spaces for construction workers' private vehicles (as opposed to construction equipment or materials)—we do not consider the bill's proposed language to be an appropriate way to address this narrow issue.

Finally, the bill amends D.C. Official Code § 6-1407.01, which currently allows the Department of Buildings to deny a permit, for a period of up to 3 years, to any applicant who has five or more stop work orders in any 12-month period. The bill would reduce the trigger to three stop work orders.

ANC 6C reiterates the views it expressed in 2016 on B21-689, which proposed an identical change. Our testimony called that bill "commendable," but noted that a

developer can easily evade the penalty by creating separate LLCs for each project. (A copy of 6C's testimony with relevant language highlighted is attached as Exhibit 1.)

<u>Bill 24-924</u>

This bill would require an applicant for any project requiring neighbor notification to obtain liability insurance to protect adjacent owners. Here, too, we see significant shortcomings in the legislation.

First and most importantly, the neighbor-notification requirement under existing rules applies to many extremely minor projects, such as the routine replacement of an existing fence along a shared lot line.[2] We believe the legislation is overinclusive in this respect.

Second, District law already provides for injured parties' ability to recover by imposing a $25,000 bonding requirement on contractors. *See* 16 DCMR § 802.1. However, this law is substantially underenforced: we have encountered cases where a contractor had not, in fact, posted the required bond. We question the value of imposing additional requirements when existing law in this area is not enforced.

Finally, to the extent that insurance is to be required, we urge the Council to clarify that it need not be new, individualized insurance. The Department of Buildings should allow an applicant to demonstrate that an existing policy it holds, such as homeowner's insurance, would cover claims by adjacent owners. (Also, the bill does not require that the duration of coverage be demonstrated. This omission should be cured.)

* * *

We thank you for the opportunity to provide testimony and welcome any followup questions the Committee may have.

---

[2] *See* https://dcra.dc.gov/sites/default/files/dc/sites/dcra/publication/attachments/Building%20Code%20Interpretation%20-%20Fence.pdf

Exhibit 1

Written Testimony of ANC 6C[1]
Before the Committee on Business, Consumer, and Regulatory Affairs
Public Hearing on
B21-291, B21-466, B21-527, B21-598, and B21-689

Hearing Date: July 14, 2016

Presented by Mark Eckenwiler, Commissioner, ANC 6C04

Mr. Chairman and Members of the Committee,

ANC 6C respectfully submits the following comments on four of the bills under consideration. To summarize, we believe that

- two of the bills would substantially improve the District's law governing vacant and blighted buildings
- one has the potential to increase the fines imposed on violators of the zoning regulations and construction code, although more information is needed about DCRA's current practices before the practical impact of the bill can be properly assessed, and
- one bill attempting to address the developer "LLC loophole" and to create a Homeowners Protection Fund requires additional work.

B21-598 (Vacant Property Enforcement)

B21-598 proposes several desirable amendments that would strengthen the law regulating vacant/blighted properties and reduce abuse of the current statutory exemptions. Specifically, the bill would amend the vacant-property exemption for construction permits to limit the duration of the exemption to one year regardless of any extension/renewal. It would also reduce the total period of all exemptions for any one owner of a given property from three years to two.

The bill leaves intact § 42-3131.06(b)(5) allowing for further extensions for one additional year in "extraordinary circumstances." The Council should ask DCRA how many such exemptions have been granted in the past five years; what the specific justification was in each case; whether (and for how long) any extensions were granted past one year; and whether (and if so, when) such exemptions were published in the DC Register as required under the statute, and if not, why such publication was not made.

B21-598 also amends the requirement for the Mayor to identify vacant/blighted buildings, adding an obligation to "investigate" buildings "that have a water meter that is

[1] ANC 6C approved this testimony by a 5-0 vote at its regularly scheduled public meeting on July 13, 2016, with five of six commissioners present and the public in attendance.

either not running or is showing low usage." It is unclear how the Mayor would be able to make this determination, given that water meters are typically not publicly readable.

The bill also increases the criminal penalty for various registration/inspection-related offenses from $1,000 to $5,000. Because it is unclear how often OAG has brought charges under this section, the Council should request that information, as well as determine whether DCRA has, as currently required, provided OAG with a list of violators. The Council should also amend the relevant notice provision to specify the time frame in which DCRA must provide notice to OAG, *e.g.*, 30 days after a filing deadline not met by the owner of vacant property.

Finally, we suggest one technical correction to B21-598: at line 46, strike "(b)(4)".

B21-527 (Vacant & Blighted Buildings Enforcement)

B21-527 proposes several significant improvements to current law that should be adopted. These include

- mandating that the vacant/blighted designation, once made, remain in effect for a property until the owner supplies evidence justifying removal from the list (as opposed to the current system under which all designated properties revert each year, requiring reinspection and redesignation).
- clarifying that an owner seeking the exemption for efforts to rent or sell a property bears the burden of substantiating that claim.

The bill also creates a new DC Code section 42-3131.18 requiring DCRA to publish a semi-annual list of vacant/blighted buildings, including dates of designation and registration, as well as any applied exemptions and the period(s) for them. ANC 6C supports this proposal, and suggests that the statute explicitly specify how the list is to be published. We recommend requiring this to be done "in the manner specified at D.C. Official Code § 2-536(b)." B21-527 should also be revised to require that the list be provided in an electronic format sortable by square and lot at a minimum, and ideally by ANC and SMD as well. (DCRA's current list is published only in PDF image format, meaning that it is not even text-searchable, let alone sortable.)

B21-291 (DCRA Infractions Fine Increases)

This bill amends the DC Municipal Regulations to double the administrative fines for various infractions, including construction and vacant property infractions. While these changes have theoretical appeal, it is unclear to the members of ANC 6C what **practical** effect these amendments would have. The Council should ask DCRA several questions, including these:

- What percentage of NOIs, other than those vacated by OAH, are voluntarily withdrawn by DCRA?

- Of those NOIs not vacated or withdrawn, for what percentage does DCRA lower the fine amount to resolve the matter?
- For NOIs for which DCRA lowers the fine, what is the average percentage of reduction in the fine?

In addition, the Council should ask DCRA how many times it has imposed the higher fines for second/third/fourth offenses, as set forth in 16 DCMR 3201, in the past five years. Anecdotal evidence indicates that DCRA routinely treats successive offenses on the same project as first offenses, in effect ignoring the intent of existing law.

[illegible]21-689 would make building permit denial mandatory ("shall") instead of permissive [illegible]currently "may") in circumstances involving certain prior violations. Among other [illegible]hanges, it

- [illegible] the trigger from five stop work orders (SWOs) in any one year [illegible] three SWOs
- increases the ban from three years to five years following the revocation of a certificate of occupancy or building permit, and
- adds a new five-year ban for misrepresenting the scope of work allowed under a prior permit.

In addition, it establishes minimum $10,000 fine for revocation of a building permit.

[illegible]

[illegible]irst, the bar is against an "applicant"; a bad actor could avoid sanction by pursuing [illegible]ifferent projects thr[illegible] Second, certain provisions are triggered only by "revocation" of a permit. However, DCRA often allows a bad actor to "surrender" a permit instead—*see, e.g.*, BZA 19207—and thereby avoid adverse consequences. The bill should be amended so that it also covers permit "surrender" (except in cases where surrender is required as a result of DCRA administrative error in issuing the permit).

The bill also adds a new section to impose permit bans similar to those above on the "beneficial owner" of an LLC. This provision does not adequately fill the LLC loophole, for two reasons. First, the list of ban-triggering conditions omits 2 of the 5 triggers in existing law (prior permit scope misrepresentation and construction/zoning code violations) for other "applicants." Second, the ban would cover only an LLC whose "beneficial owner" had a disqualifying prior event under that LLC or another LLC, and not any prior violations in his personal capacity. (It also suffers from the revocation/surrender loophole noted above.)

B21-689 also proposes the creation of a new Homeowners Protection Fund funded by permit applicants, who would be required to post 20% of the cost of a project. While motivated by good intentions, this provision has several significant deficiencies:

- It would exclude any permit applicant who is the property owner; this would include an LLC. (This defect might be cured by excluding only those owners who claim the property as their primary residence.)
- It does not define the "Department" responsible for awarding damages from the Fund.
- It does not describe the procedures by which the "Department" is to determine fault & compensation amounts.
- It does not explain when or how the bond may be refunded to the permitholder.

The bill also requires DCRA to study the feasibility of splitting the agency into two separate agencies responsible for a) consumer protection and b) licensing/permitting. ANC 6C welcomes this proposal, which has great potential to provide more robust consumer protections than DCRA's largely nonexistent efforts.

Finally, B21-689 would require DCRA to create an online database "to track the number of construction code and zoning violations committed by an applicant. The database shall be available to the public on DCRA's website." ANC 6C strongly supports this proposal. If implemented properly, this database would be a useful tool.

We recommend that the bill's language be modified to a) strike "the number," so that the database lists the specifics of each violation (date, property address, etc.) and not merely a raw total, and b) insert "at no cost" after "to the public." For similar reasons, the phrase "at no cost" should be inserted into existing DC Official Code § 2-536(b) after "make records available" (setting forth agency obligations to make certain records, such as building permits and supporting file documents, available electronically).[2]

---

[2] It is important to add "at no cost" in both places because DCRA has taken the disturbing and frivolous position that the existing law concerning building permit records does not necessarily require DCRA to make those records available without charge. *See* "D.C. Builders' Plans Supposed to Be Online And Free, But Burden Is on Residents," *Washington Post*, March 19, 2016 (https://www.washingtonpost.com/local/dc-builders-plans-supposed-to-be-online-and-free-but-burden-is-on-residents/2016/03/19/0361d030-eb86-11e5-a6f3-21ccdbc5f74e_story.html), which describes DCRA Public Affairs Officer Matt Orlins as saying that "DCRA 'is committed to trying' to provide the documents for free and was studying whether city laws [*i.e.*, existing DC Official Code § 2-536(b)] require them to do so...."

Government of the District of Columbia
Office of the Chief Financial Officer

Glen Lee
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Phil Mendelson** **Chairman, Council of the District of Columbia**
FROM:	**Glen Lee** **Chief Financial Officer**
DATE:	**December 2, 2022**
SUBJECT:	**Fiscal Impact Statement – Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022**
REFERENCE:	**Bill 24-924, Draft Committee Print as provided to the Office of Revenue Analysis on November 18, 2022**

Conclusion

Funds are sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill.

Background

To obtain a license to operate in the District, contractors, construction managers, and home improvement contractors must have liability insurance and provide general certificates of liability to the Department of Buildings.[1] When applying for a construction or demolition permit, there is no requirement to obtain additional liability insurance to cover potential damage to adjacent and adjoining property.

The bill requires permit applicants for demolition, excavation, razing, and sheeting and shoring to provide proof of liability insurance that covers adjacent or adjoining properties and lawful occupants of the properties for risk of loss arising out of work performed under the permit. The applicant must maintain the required insurance for the duration of the permit. Failure to comply will result in a stop work order for the permit.

Financial Plan Impact

[1] D.C. Official Code § 6-1405.01.

Funds are sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill.

The Department of Buildings (DOB) estimates five percent of construction and demolition permits require neighbor notification, which is a requirement for work that could affect adjacent and adjoining properties. DOB already reviews permit applications for general liability insurance and holds those certificates, and the agency can also review permits for the proof of insurance required by the bill within current resources. DOB indicates the permit application system will need to be modified to require additional fields, but that the changes are minimal and required hours to update it can be absorbed by the agency.

COMMITTEE OF THE WHOLE
COMPARATIVE PRINT
BILL 24-924

D.C. OFFICIAL CODE § 6-1405.01. ADMINISTRATION OF CONSTRUCTION REGULATIONS.

(a)(1) The Building Code Official is authorized to administer and enforce the provisions of this chapter, including provisions regarding the Construction Codes, building permits, and certificates of occupancy, and all regulations issued pursuant to this chapter.

(2) In regulating and enforcing building permits and certificates of occupancy, the Building Code Official shall require an employer, as that term is defined in § 32-1501(10), to produce proof of Workers' Compensation insurance coverage before the issuance of a construction permit.

(2A)(A) The Building Code Official shall require, for permits covered pursuant subparagraph (B) of this paragraph, that the property owner, contractor, or person applying for the permit:

(i) Demonstrate, to the satisfaction of the Building Code Official, that his or her insurance includes coverage against claims for injuries to persons or damages to property from all adjacent and adjoining property owners and lawful occupants of the properties for risks of loss, damage to property, or injury to or death of persons arising out of or in connection with the performance of the work proposed to be performed under the permit. The insurance shall be in an amount per occurrence and in the aggregate as specified by the Mayor through rulemaking pursuant to subparagraph (D) of this paragraph; or

(ii) If his or her insurance is not sufficient to meet the requirements of sub-subparagraph (i) of this subparagraph, then he or she must either amend his or her insurance policy so that the policy complies with sub-subparagraph (i) of this subparagraph, or obtain additional insurance against claims for injuries to persons or damages to property from all adjacent and adjoining property owners and lawful occupants of the properties for risks of loss, damage to property, or injury to or death of persons arising out of or in connection with the performance of the work proposed to be performed under the permit. Additional insurance shall be of a kind and in an amount specified by the Mayor through rulemaking pursuant to subparagraph (D) of this paragraph.

(B) The following permits shall require insurance pursuant to subparagraph (A) of this paragraph no later than 90 days after finals rules are promulgated by the Mayor pursuant to subparagraph (D) of this paragraph:

(i) An addition, alteration, and repair permit in which the applicant will be engaging in construction on the property line or party wall of an adjacent or adjoining property;

(ii) A demolition permit;

(iii) An excavation permit;

(iv) A raze permit; and

(v) A sheeting and shoring permit.

(C)(i) The applicant for a permit for which insurance is required under subparagraph (B) of this paragraph shall:

(I) Submit proof of insurance to the Department before the issuance of the permit;

(II) Demonstrate, on a form promulgated by the Department, that the insurance meets the requirements of sub-paragraph (A) of this paragraph; and

(II) Maintain the required insurance for the duration of the permit and any renewals thereof. In the event that the insurance expires, is cancelled, or otherwise terminates, the applicant shall immediately notify the Department, and, where applicable, provide proof of new or renewed insurance that satisfies the requirements of subparagraph (A) of this paragraph.

(ii) If, at any time, the insurance required under subparagraph (A) of this paragraph is found to be absent or non-compliant by the Building Code Official, the Department shall issue a stop work order relating to the permit for which insurance is required.

(D) The Mayor shall issue rules to implement this paragraph, pursuant to the authority provided in Section 10 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).

(3) The Building Code Official shall seek to assure that all buildings, structures, and premises in the District are in full compliance with the Construction Codes adopted pursuant to this chapter and all zoning provisions in subchapter IV of Chapter 6 of this title, and regulations issued pursuant to those acts.

(4) The Building Code Official shall seek to administer all building permits, certificates of occupancy, and other provisions of this chapter and regulations issued pursuant to this chapter in a manner that is fair, efficient, predictable, readily adaptable to new technologies, consumer-oriented, devoid of unnecessary time delays and other administrative burdens, cost-effective, and directed at enhancing the protection of the public health, welfare, safety, and quality of life.

(b)(1) The Building Code Official may enforce the regulations issued pursuant to this chapter by means of covenants or agreements between the Department of Consumer and Regulatory Affairs and an affected party. All such covenants or agreements shall have the prior approval of the Office of the Attorney General for legal sufficiency and comply with all other applicable District and federal laws.

(2)(A) Where the Office of the Attorney General determines that under District law a covenant or agreement may require the review and approval of other District agencies, it shall notify the agencies and establish an inter-agency process for review, and, if required under District law, approval.

(B) The Building Code Official shall coordinate with the Office of the Attorney General relating to the time required for the review and recommendations by the Office of the Attorney General of any covenant or agreement proposed pursuant to this chapter.

(c) The Building Code Official shall have authority over the approval, installation, design, modification, maintenance, testing, and inspection of all new and existing fire protection systems.

Committee of the Whole
Bill 24-924
Draft Committee Print
November 15, 2022

A BILL

____

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

____

To amend section 6a of the Construction Codes Approval and Amendments Act of 1986 to require property owners, contractors, or persons applying for specific permits for construction work to demonstrate that his or her insurance will insure adjacent property owners for loss or damage that arises out of the proposed construction work.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protecting Adjacent and Adjoining Property Owners from Construction Damage Amendment Act of 2022".

Sec. 2. Section 6a(a) of the Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1405.01(a)) is amended by adding a new paragraph (2A) to read as follows:

"(2A)(A) The Building Code Official shall require, for permits covered pursuant subparagraph (B) of this paragraph, that the property owner, contractor, or person applying for the permit:

"(i) Demonstrate, to the satisfaction of the Building Code Official, that his or her insurance includes coverage against claims for injuries to persons or damages to property from all adjacent and adjoining property owners and lawful occupants of the properties for risks of loss, damage to property, or injury to or death of persons arising out of or in

34 connection with the performance of the work proposed to be performed under the permit. The
35 insurance shall be in an amount per occurrence and in the aggregate as specified by the Mayor
36 through rulemaking pursuant to subparagraph (D) of this paragraph; or
37 "(ii) If his or her insurance is not sufficient to meet the
38 requirements of sub-subparagraph (i) of this subparagraph, then he or she must either amend his
39 or her insurance policy so that the policy complies with sub-subparagraph (i) of this
40 subparagraph, or obtain additional insurance against claims for injuries to persons or damages to
41 property from all adjacent and adjoining property owners and lawful occupants of the properties
42 for risks of loss, damage to property, or injury to or death of persons arising out of or in
43 connection with the performance of the work proposed to be performed under the permit.
44 Additional insurance shall be of a kind and in an amount specified by the Mayor through
45 rulemaking pursuant to subparagraph (D) of this paragraph.
46 "(B) The following permits shall require insurance pursuant to
47 subparagraph (A) of this paragraph no later than 90 days after finals rules are promulgated by the
48 Mayor pursuant to subparagraph (D) of this paragraph:
49 "(i) An addition, alteration, and repair permit in which the
50 applicant will be engaging in construction on the property line or party wall of an adjacent or
51 adjoining property;
52 "(ii) A demolition permit;
53 "(iii) An excavation permit;
54 "(iv) A raze permit; and
55 "(v) A sheeting and shoring permit.

56 “(C)(i) The applicant for a permit for which insurance is required under
57 subparagraph (B) of this paragraph shall:
58 “(I) Submit proof of insurance to the Department before the
59 issuance of the permit;
60 “(II) Demonstrate, on a form promulgated by the
61 Department, that the insurance meets the requirements of sub-paragraph (A) of this paragraph;
62 and
63 “(II) Maintain the required insurance for the duration of the
64 permit and any renewals thereof. In the event that the insurance expires, is cancelled, or
65 otherwise terminates, the applicant shall immediately notify the Department, and, where
66 applicable, provide proof of new or renewed insurance that satisfies the requirements of
67 subparagraph (A) of this paragraph.
68 “(ii) If, at any time, the insurance required under subparagraph (A)
69 of this paragraph is found to be absent or non-compliant by the Building Code Official, the
70 Department shall issue a stop work order relating to the permit for which insurance is required.
71 The stop work order shall remain in place until the permit holder provide proof of new or
72 renewed insurance that satisfies the requirements of subparagraph (A) of this paragraph.
73 “(D) The Mayor shall issue rules to implement this paragraph, pursuant to the authority
74 provided in Section 10 of the Construction Codes Approval and Amendments Act of 1986,
75 effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409).”.
76 Sec. 3. Fiscal impact statement.

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

80 Sec. 4. Effective date.

81 This act shall take effect following approval by the Mayor (or in the event of veto by the
82 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
83 provided in section 602(c)(I) of the District of Columbia Home Rule Act, approved December
84 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
85 Columbia Register.

86