

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Urban Agriculture: Apiculture Regulations

The Director of the District Department of the Environment (Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2013 Repl.)), Sections 211 and 219 of the Sustainable Urban Agriculture Apiculture Act of 2012, effective April 20, 2013 (D.C. Law 19-262; D.C. Official Code §§ 8-1825.01 and 8-1825.09 (2013 Repl.)), as amended by Title IV, Subtitle B of the Sustainable D.C. Omnibus Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-142; 61 DCR 8045 (August 8, 2014)), and Mayor's Order 2015-068, dated February 4, 2015, hereby gives notice to amend Chapter 15 (Fish and Wildlife) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from publication of this notice in the *D.C. Register*.

The purpose of this rulemaking is to require registration of bee colonies kept in the District, and permits for transportation of bees on combs, empty used combs, used hives, or other used apiary equipment into and out of the District. The District has a growing number of beekeepers. Currently, honey bee colonies are only permitted under very limited conditions, although they are allowed in equally dense cities, such as New York City and Chicago. With a wide variety of vegetation grown by residents in their yards and urban green spaces, cities provide an excellent foraging environment for honey bees. As urban agriculture continues to grow, residents can benefit from the keeping of honey bees in the District, as honey bees are beneficial to home garden vegetable and fruit production. This regulation promotes the raising of honey bees and expands the District's authority to regulate beekeeping, refines the responsibilities of beekeepers, manages colony disposition, and regulates the management of colony density and distance from property lines.

Chapter 15, FISH AND WILDLIFE, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended to add new Sections 1520 – 1530, and to amend Section 1599 as follows:

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1520 URBAN APICULTURE: GENERAL PROVISIONS

1520.1 No person shall keep a colony of bees in the District unless the colony is registered annually with the District Department of the Environment (Department).

1520.2 A person may keep a colony in the District if the colony is established and maintained in a manner consistent with the provisions of this chapter.

1520.3 A fee shall be assessed per apiary.

1521 URBAN APICULTURE: COLONY REGISTRATION

1521.1 All colonies shall be registered within thirty (30) days of establishment of a colony.

1521.2 To register a colony, the beekeeper shall provide the Department with the following information:

- (a) The beekeeper's name, street address, phone number, and e-mail address;
- (b) The name, phone number, e-mail address, and address of the owner or manager of the property where the apiary is located;
- (c) Written permission from the property owner or property manager to establish a colony on a multi-unit building or property, if the beekeeper is not the owner of the property where the colony is to be kept;
- (d) The apiary location, including a street address and global positioning system coordinates;
- (e) A photo of the apiary in its entirety;
- (f) An emergency contact name and phone number; and
- (g) Documentation that the conditions of Section 1525 of this chapter (Apiary Density and Distance) have been met.

1521.3 By registering a colony, the beekeeper is agreeing to provide access for the inspection of the apiary by the Department.

1521.4 A beekeeper registering a colony of bees pursuant to this section shall agree to defend and indemnify and hold harmless the District against any and all claims arising out of the keeping of bees and any other activities related to any permit or registration pursuant to this section.

1521.5 A beekeeper shall notify the Department within ten (10) business days of any changes to the information in the colony registration.

1522 URBAN APICULTURE: FEES

1522.1 A fee of \$10.00 per apiary shall be paid annually to the District Department of the Environment.

1523 URBAN APICULTURE: TRANSPORTATION PERMIT

1523.1 No person shall transport into the District, any colony, portion of a colony, bees on combs, empty used combs, used hives, or any other used apiary appliance without first obtaining a permit from the Department.

1523.2 To obtain a permit to transport a colony or portion of a colony, bees on combs, empty used combs, or used hives into the District, the beekeeper shall provide the Department with the following information:

- (a) The name, phone number, e-mail address, and street address of the beekeeper;
- (b) A description of the item(s), quantity, and origin of item(s) to be brought into the District; and
- (c) A certificate of inspection performed by the state of origin within the previous ninety (90) days.

1523.3 No person shall transport out of the District any colony, portion of a colony, bees on combs, empty used combs, or used hives without first notifying the state of destination, and obtaining a Certificate of Apiary Inspection from the Department.

1523.4 To obtain a Certificate of Apiary Inspection, a person shall provide the Department with the following information at least thirty (30) days prior to transport:

- (a) Name, phone number, e-mail address, and street address of beekeeper; and
- (b) Apiary item, quantity leaving the District, destination, date of movement, and reason for movement.

1523.5 The Department shall inspect the colony for disease prior to issuing a Certificate of Apiary Inspection.

1524 URBAN APICULTURE: BEEKEEPER RESPONSIBILITIES

1524.1 All colonies are subject to inspection by the District Department of the Environment (Department).

- 1524.2 The beekeeper shall keep the colony in a Langstroth-type hive, Top Bar hive, or other hive with removable combs.
- 1524.3 The beekeeper shall maintain the hive in sound condition.
- 1524.4 The beekeeper shall maintain adequate space in the hive to prevent overcrowding and to deter swarming.
- 1524.5 The beekeeper shall provide the colony with a convenient, adequate, and constant source of water to prevent the bees from seeking water from sources where they can be considered a nuisance.
- 1524.6 The beekeeper shall be responsible for the remediation of bee swarms and nuisance conditions.
- 1524.7 In the event that a beekeeper fails to remediate the bee swarm or nuisance condition, the owner of the property on which the colony is located shall be responsible for the remediation, and the beekeeper shall reimburse the property owner for the cost incurred by the remediation.

1525 URBAN APICULTURE: APIARY DENSITY AND DISTANCE

- 1525.1 A hive shall be located at least fifteen feet (15 ft) from a property line, unless one of the following applies:
- (a) A flyway barrier is maintained where the hive is at least five feet (5 ft) from the property line;
 - (b) The hive is located eight feet (8 ft) or more above the grade of the property immediately adjacent;
 - (c) The hive is located on a rooftop and is five feet (5 ft) from the side of the building or structure and at least fifteen feet (15 ft) from the nearest occupied structure, including a roof deck or balcony; or
 - (d) Annual written approval is granted from neighbors whose properties are located within thirty feet (30 ft) of the proposed hive.
- 1525.2 Flyway barriers shall:
- (a) Be at least six feet (6 ft) high at all points;
 - (b) Extend ten feet (10 ft) beyond the hive in each direction;
 - (c) Consist of dense vegetation or a solid barrier; and
 - (d) Comply with the requirements of the District of Columbia Building Code.
- 1525.3 A beekeeper shall not keep more than four (4) hives, unless the property is greater than one-quarter acre (10,890 sq. ft.)

- 1525.4 A beekeeper may add an additional four (4) hives for each additional quarter acre (10,980 sq. ft.) of land.
- 1525.5 Upon written request, the Department may grant a beekeeper permission to keep more than four (4) hives, if the beekeeper has at least three (3) years of documented beekeeping experience and one of the following:
- (a) The beekeeper has received written permission from all neighbors with properties located within thirty feet (30 ft) of the proposed hive site;
 - (b) The hives are located on or adjacent to non-residential, agricultural, industrial, or undeveloped land;
 - (c) The hives are used at a school or other institution for educational or research purposes; or
 - (d) The hives are being held temporarily during an emergency or hive relocation for no more than thirty (30) days, unless a written extension is granted by the Department.
- 1525.6 Documented beekeeping experience shall include the following:
- (a) Registration as a beekeeper in the District or another jurisdiction; or
 - (b) An active membership in a regionally recognized beekeeping association.
- 1525.7 If any of the conditions in Subsection 1525.5 change, the Department may rescind approval for more than four (4) hives, giving the beekeeper thirty (30) days to make changes.
- 1526 URBAN APICULTURE: COLONY DISPOSITION**
- 1526.1 A colony shall be selected from honey bee stock bred for gentleness.
- 1526.2 The possession of Africanized bees is prohibited.
- 1526.3 A beekeeper shall promptly re-queen the colony with a marked queen if the colony exhibits unusual aggressive characteristics, such as unprovoked stinging or excessive swarming.
- 1527 URBAN APICULTURE: BEE DISEASE**
- 1527.1 A beekeeper shall take measures to control the spread of bee diseases, including American foulbrood.
- 1527.2 A beekeeper shall quarantine the colony if the colony is suspected of having American foulbrood or other bee disease that may pose a risk to the colony, environment, or public health.

- 1527.3 The beekeeper shall immediately notify the Department of the quarantined colony.
- 1527.4 Bees, colonies, and equipment may not be moved from a quarantined area.
- 1527.5 The quarantine will remain in effect until terminated in writing by the Department.
- 1527.6 The Department may investigate to assess the health of a colony. In assessing colony health, the Department shall:
- (a) Consider all evidence obtained or presented; or
 - (b) Request a test from the United States Department of Agriculture Bee Research Laboratory.
- 1527.7 The Department shall provide the results of the health assessment of the colony to the beekeeper by personal service, posting, or prepaid mail.
- 1527.8 A colony with an untreatable disease, like American foulbrood, shall be destroyed and the hive and equipment incinerated. The beekeeper must contact the District of Columbia Fire and Emergency Medical Services Department (FEMS) Fire Marshal for an open burning permit and instructions prior to incinerating a diseased hive.
- 1527.9 The Department may order a beekeeper to take measures to control the spread of bee diseases.
- 1527.10 The Department shall treat or destroy the bees, hives, and honey of a beekeeper who fails to take measures ordered by the Department to control or eradicate bee disease.
- 1527.11 The Department may require the beekeeper or property owner to reimburse the costs it incurs to eradicate bee disease.
- 1527.12 The beekeeper may contest the health assessment and the measures ordered by the Department to control or eradicate the bee disease by requesting a hearing with the District of Columbia Office of Administrative Hearings (OAH).
- 1528 URBAN APICULTURE: DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION OF REGISTRATION**
- 1528.1 The Department may deny, suspend, modify, or revoke the registration issued pursuant to § 1521, if the beekeeper has:
- (a) Threatened the public health, safety, or welfare, or the environment;

- (b) Violated or threatened violation of law, and the rules set forth in Sections 1520 to 1527 of this chapter, or the terms and conditions of the registration; or
- (a) Made a false statement or misrepresentation material to the issuance, modification, or renewal of a registration.

1528.2 The notice of proposed denial, suspension, modification, or revocation shall be in writing and shall include the following:

- (a) The name and address of the beekeeper and the apiary;
- (b) A statement of the action or proposed action and the effective date or proposed effective date and duration of the denial, suspension, modification, or revocation;
- (c) The grounds upon which the Department is proposing to deny, suspend, modify, or revoke the registration;
- (d) Notice that the beekeeper has a right to request an administrative hearing before the OAH, in accordance with Rules of Practice and Procedure of OAH set forth in Chapter 28 of Title 1 of the District of Columbia Municipal Regulations; and
- (e) Information notifying the respondent of any scheduled hearing date or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the suspension or immediate revocation, if applicable.

1528.3 The beekeeper shall have fifteen (15) calendar days from the date of service of the notice to deny, suspend, modify, or revoke the registration, to request a hearing with the OAH to show cause why the registration should not be denied, suspended, modified, or revoked.

1528.4 The Department may serve a notice of denial, suspension, modification, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.

1528.5 The Department shall not reissue a registration to any person whose registration has been revoked until the applicant has submitted a new application, and complies with the requirements in Sections 1520 to 1527.

1528.6 An appeal to OAH pursuant to this section shall be subject to the requirements of Section 1530.

1529 URBAN APICULTURE: ENFORCEMENT AND PENALTIES

- 1529.1 A person who violates any provision in §§ 1520 to 1529 shall be subject to civil fines and penalties under the schedule of fines for a class 4 infraction, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801, *et seq.*), and the enforcement procedures in this section.
- 1529.2 Each day that a violation occurs is a separate offense.
- 1529.3 Each colony shall constitute a single offense or count.
- 1529.4 The Department may also pursue administrative enforcement through:
- (a) Notices of violation;
 - (b) Compliance orders;
 - (c) Notices of violation combined with an immediate compliance order;
 - (d) Denial, modification, suspension, or revocation of registration;
 - (e) Notices of infraction; or
 - (f) Any other order necessary to protect public health, safety, or welfare or the environment.
- 1529.5 An administrative enforcement action shall:
- (a) Include a statement of the facts and the nature of the alleged violation;
 - (b) Allow a reasonable time for compliance with the order, consistent with the likelihood of any harm and the need to protect the public health, safety, or welfare or the environment;
 - (c) Advise the respondent that the respondent has the right to request an administrative hearing and at the respondent's expense, the right to legal representation at the hearing;
 - (d) Inform the respondent of any scheduled hearing date, or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the compliance order or failure to request a hearing;
 - (e) State the action that the respondent is required to take, or the activity or activities that the respondent is required to cease to comply with the order; and

- (f) State that civil infraction fines, penalties, or costs may be assessed for failure to comply with the order.

1530 URBAN APICULTURE: ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

- 1530.1 A person adversely affected or aggrieved by an enforcement action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing, the OAH, established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; DC official Code §§ 2-1831.01 *et seq.*), or OAH's successor.
- 1530.2 The appeal to OAH shall be filed in writing within the following time period:
 - (a) Within fifteen (15) calendar days of service of the notice of the action; or
 - (b) Another period of time stated specifically in the section for an identified Department action.
- 1530.3 OAH shall:
 - (a) Resolve an appeal or a notice of infraction by:
 - (1) Affirming, modifying, or setting aside the Department's action complained of, in whole or in part;
 - (2) Remanding for Department action or further proceedings, consistent with OAH's order; or
 - (3) Providing such relief as the governing statutes, regulations and rules support.
 - (b) Act with the same jurisdiction, power, and authority as the Department may have for the matter before OAH; and
 - (c) By its final decision, render a final agency action which will be subject to judicial review.
- 1530.4 The filing of an administrative appeal shall not in itself stay enforcement of an action except that a person may request a stay according to the rules of OAH.
- 1530.5 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:

- (a) To the Department when a party challenges the Department's denial, suspension, modification, or revocation of a registration;
- (b) To the party who asserts an affirmative defense; or
- (c) To the party who asserts an exception to the requirements or prohibitions of a statute or rule.

1530.6 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

1530.7 Judicial review of a final OAH decision shall not be done de novo, but shall be a review of the administrative record alone and shall not duplicate agency proceedings or consider additional evidence.

1599 DEFINITIONS

Africanized bee - a hybrid variety of *Apis mellifera* produced by the cross-breeding of the aggressive African honey bee *Apis mellifera scutellata* with a European honey bee subspecies.

American foulbrood – also known as Paenibacillus larvae is a rod-shaped, spore-forming bacterium that affects bee larvae

Apiary - a place where a colony is kept.

Bee disease - an abnormal condition resulting from action by a parasite, predator, or infectious agent.

Beekeeper - a person who maintains a honey bee colony.

Brood - the embryo and egg, larva, and pupa stages of a bee.

Certificate of Apiary Inspection - certification required to transport a colony, portion of a colony, bees on combs, empty used combs, or used hives out of the District.

Colony - a hive and its equipment and appurtenances, including bees, brood, comb, pollen, and honey.

Comb - the assemblage of cells containing a living stage of a bee at a time prior to emergence as an adult.

Department - the District Department of the Environment.

Director - the Director of the District Department of the Environment.

Domestic animal - any animal that is kept by humans for food, work, or as a pet that depends on a human for food, shelter, and water. Including, but not limited to dogs, cats, sheep, chickens, goats, horses, rabbits, and ferrets.

Flway barrier - barrier to encourage bees leaving and entering their colony to fly upward, minimizing unwanted human contact.

Hive - a container used for the housing of a colony.

Honey bee or bee - *Apis mellifera* or another species designated as suitable for an urban environment by the Director of the District Department of the Environment.

Langstroth-type hive - standard bee hive used in beekeeping with removable four-sided frames.

Multi-unit building - a building with at least four (4) separate housing units.

Non-residential property - any property which does not house a residential building, including but not limited to office or retail buildings, shopping centers, industrial parks, churches, hotels, school learning centers, hospitals, sports arenas, retail stores, and transportation terminals.

Nuisance - conditions such as aggressive bee behavior, colony placement or movement that interferes with pedestrian traffic or causes a substantial or unreasonable interference with the right to property, comfort, or safety of persons residing on or adjacent to the hive premises, and overcrowded, deceased, or abandoned hives.

Person - an individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, or any other legal entity.

Property - a parcel of land where an apiary is located.

Quarantine - a period of enforced isolation to contain and prevent the spread of disease. During this time bees, bee colonies, or bee equipment may not be moved from the quarantined property without the permission of the Department.

Resident - a person who resides in the District of Columbia.

Top bar hives - a bee hive that consists of an array of hexagonal cells with bars that honey bees attach and hang wax comb.

Undeveloped land - idle land that has not been improved and is not in the process of being improved, and has no structures, facilities, or improvements intended for human use or occupancy. This includes land used exclusively for streets, highways, or commercial agriculture.

All persons desiring to comment on the proposed District of Columbia Sustainable Urban Agriculture Apiculture regulations should file comments in writing not later than thirty (30) days after the publication of this notice in the *D.C. Register*. All comments will be treated as public documents and will be made available for public viewing on the Department's website at www.ddoe.dc.gov. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. If a comment is sent by e-mail, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Department's website. All comments should be labeled "Sustainable Urban Agriculture Apiculture" and filed with District Department of the Environment, Fisheries and Wildlife Division, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, Attention: Apiculture Comments, or by e-mail to: apiculture.comments@dc.gov.