

APPENDIX 1

CLEAN AIR COMPLIANCE FEE ACT

The following pages contain draft legislation that was prepared by DDOT staff and approved by the District's Office of Attorney General in 2007.

The amount of the fee, \$30 per month, was set to be commensurate with the parking sales tax collected at a typical downtown commercial parking space. This amount should be updated to reflect current parking prices and the higher DC parking sales tax that was enacted after this legislation was drafted.

The legislation was drafted to be introduced by Council Chair Vincent Gray at the request of Mayor Adrian Fenty. These names have been removed, but the remainder of the legislation remains unchanged.

Revenue is difficult to estimate, because the universe of applicable parking spaces is unknown. When this legislation was initially drafted, it was based upon a survey by MWCOG that identified approximately 37,489 free federal parking spaces in 1993.

@ \$30/month x 12 months = \$13,496,040

Typically, state and local mandates do not apply to the federal government. However, the federal Clean Air Act contains a waiver of sovereign immunity and requires that all branches of the federal government comply with state and local clean air requirements in the same manner and to the same extent as any other party.

The number of non-federal free employment parking spaces will not be known until after property owners have completed the required inventory.

Revenue generated will be sufficient to cover the costs of administration and enforcement pursuant to DC Code § 1-2466(e)(3).

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

_____ introduced the following bill, which was referred to the
Committee on _____

To comply with requirements of the Clean Air Act to reduce polluting emissions by discouraging single-occupant vehicle travel and encouraging car pool and transit use through the establishment of a fee at the rate of \$30 per month per space on employment parking spaces that are not subject to collection of parking sales and use taxes for the services of parking and to mitigate parking impacts by funding the transit component of the District's State Implementation Plan for compliance with the federal Clean Air Act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Clean Air Compliance Fee Act of 2013".

Sec. 2. Findings; purpose.

The Council of the District of Columbia finds that:

- (1) Air pollution impairs the health and welfare of the citizens of the District of Columbia;
- (2) Single-occupant motor vehicle traffic is a substantial source of this

pollution and the use of single-occupant motor vehicles for home-to-work travel has been increasing according to data from the Metropolitan Washington Council of Governments;

(3) Despite the general availability of public transit and car pools, many individuals drive to work because free or subsidized parking is available;

(4) Pursuant to the federal Clean Air Act, approved December 17, 1963 (77 Stat. 392; 42 U.S.C. § 7401 et seq.), as amended (the “Clean Air Act”), the District of Columbia has been designated a non-attainment area for ozone and fine particulates (PM 2.5) and the government of the District of Columbia is required to reduce, eliminate, and control sources of these pollutants and their precursors; and

(5) By requiring payment of fees from employment parking that is not subject to the parking sales and use tax and by allocating these fees to fund transit facilities and services to mitigate the impacts of employment parking, the District of Columbia will simultaneously discourage the use of single-occupancy vehicles for home-to-work travel while encouraging the use of car pools and transit, thereby reducing air pollution in compliance with requirements under the Clean Air Act.

Sec. 3. Definitions.

For the purposes of this act, the term:

(1) “Employment parking” means the use of a parking space by a person, including owners, partners, employers, proprietors, employees, and independent contractors to park a motor vehicle to have access to employment, in association with their home-to-work travel.

(2) “Employment parking space” means a parking space, whether or not the

parking space is identified or reserved for employment parking, in which employment parking by a motor vehicle occurs more than two days per week.

Sec. 4. Employment parking fee.

(a) Pursuant to the Clean Air Act, which requires non-attainment jurisdictions such as the District of Columbia to reduce emissions of volatile organic compounds and nitrogen oxides to meet federal ambient air quality standards, there is hereby levied a fee on the use of real property for employment parking in the District of Columbia, at a rate of \$30 per month for each employment parking space for which sales and use tax for the service of parking is not collected pursuant to D.C. Official Code § 47-2002(1) or § 47-2202(1).

(b) Owners of real property subject to the fee imposed by subsection (a) may seek reimbursement of the fee from the users of employment parking spaces.

Sec. 5. Registration of Employment Parking Spaces.

(a) Owners of real property in the District of Columbia shall register employment parking spaces on their property or on public space over which they control access in accordance with procedures established by the Mayor.

(b) (1) The Mayor may require persons referred to in subsection (a) of this section to supply the following information:

(A) The total number of parking spaces owned or controlled;

(B) The total number of employment parking spaces; and

(C) The total number of employment parking spaces for which sales

and use tax for the service of parking is not collected pursuant to D.C. Official Code § 47-2002(1) or § 47-2202(1).

(2) The Mayor may establish procedures to require persons referred to in subsection (a) to produce or maintain records.

(c) Registration shall occur semiannually.

Sec. 6. Exemptions.

The following shall be exempt from the employment parking fee established in section 4 and from the registration requirements in section 5:

(1) Employment parking spaces owned or controlled by the Washington Metropolitan Area Transit Authority and used by its patrons to obtain access to the transit system;

(2) Employment parking spaces regulated by meters owned by the District of Columbia;

(3) Employment parking spaces owned or controlled by foreign governments and used for legation purposes; and

(4) Real property containing not more than 1 employment parking space.

Sec. 7. Rules of construction.

(a) Section 602(a) (1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(a) (1)) shall supersede this Act to the extent of any conflict.

(b) Nothing in this Act shall be construed to impinge upon the President's discretion under section 118(b) of the Clean Air Act Amendments of 1977, approved August 7, 1977 (91 Stat. 711; 42 U.S.C. § 7418 (b)), to exempt any emission source if he determines it to be in the paramount interest of the United States to do so.

Sec. 8. Special agreements with the federal government.

The Mayor is authorized to enter into agreements with the legislative, judicial, and executive branches of the federal government regarding compliance and enforcement where issues of national security would otherwise preclude compliance with this act by the federal government pursuant to section 118 of the Clean Air Act Amendments of 1977, approved August 7, 1977 (91 Stat.711; 42 USC § 7418).

Sec. 9. Payment of the fee.

The fee established in Section 4 shall be due and payable semiannually as prescribed by the Mayor upon the Mayor's completion of an inventory of employment parking spaces and notification of property owners of their liability for the initial 6-month period of fee collection.

Sec. 10. Penalties and enforcement.

(a) Failure to register an employment parking space shall subject the property owner to a penalty of \$360 per employment parking space per 6-month registration period.

(b) If the fee is not paid within the time prescribed by the Mayor, there shall be added to the fee a penalty of 10% of the unpaid amount plus interest of 1% per month or portion of a month until the payment is made. The amount of the unpaid fee plus any penalties and interest due shall constitute a lien against the property from the time it is due and payable, having priority over other liens, secured or otherwise, with the exception of District of Columbia tax liens, and shall also constitute a personal debt of the real property owner.

(c) The Mayor, for purposes of determining the total number of employment parking spaces on or controlled by real property and for determining the amount of fees due from a real

property owners, shall have authority to require a property owner to provide and maintain books and records, may examine any relevant books, papers, records, or memoranda that bear upon the matters to be included in the registration and give testimony or answer interrogatories under oath.

(1) The Mayor may administer the oath to any person summoned to give testimony or answer interrogatories. The summons may be served by any member of the Metropolitan Police Department.

(2) If any person who was personally summoned neglects or refuses to obey the summons, the Mayor may report the fact to the Superior Court of the District of Columbia and the Court may compel obedience to the summons to the same extent that a witness may be compelled to obey a subpoena of that Court.

(d) The Mayor may enforce the provisions of this Act in accordance with the provisions of 20 DCMR § 105.1 promulgated pursuant to section 5(a) of the District of Columbia Air Pollution Control Act of 1984, approved March 15, 1985 (D.C. Law 5-165; D.C. Official Code § 8-101.05(a), against any real property owner who produces or maintains false records, or who fails to pay the fee or maintain and produce records as required by the Mayor and authorized under this Act.

Sec. 11. Allocation of fees

All fees, interest, penalties, and other charges collected pursuant to this Act shall be deposited into a new account within the General Fund for the transit mitigation of employment parking. Funds within this account may be spent by the Mayor on transit projects including, but not limited to facilities and services provided by or for the benefit of the DC Circulator, DC Streetcar, and the Washington Metropolitan Area Transit

Authority. Funds may also be spent by the Mayor for administration of this Act.

Sec. 12. State Implementation Plan.

The Mayor shall amend the District of Columbia State Implementation Plan to ensure that the District receives credit for reductions in volatile organic compounds and nitrogen oxides, in fulfillment of the District's federally mandated requirement to reduce ozone creating pollutants.

Sec. 13. Rulemaking authority.

Pursuant to title 1 of the District of Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), the Mayor is authorized to issue any rules that may be necessary to implement the provisions of this Act.

Sec. 14. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 15. Effective date.

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