

# **Council of the District of Columbia Committee on Public Works and Transportation**

## **Committee Report**

1350 Pennsylvania Avenue, N.W., Washington, DC 20004

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To: Members of the Council of the District of Columbia

From: Tommy Wells, Chairperson  
Committee on Public Works and Transportation

Date: April 12, 2011

Subject: Findings of the Committee's review of the Procurement and Use of DC  
Official Vehicles

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## **I. INTRODUCTION**

In recent weeks procurement and use of District official vehicles has been the subject of considerable public discussion, particularly the luxury-class vehicles procured for the exclusive use of the Chairman of the Council and the Mayor of the District of Columbia.

The Committee on Public Works and Transportation has oversight responsibility for the Department of Public Works (DPW), which is designated the sole authority to establish specifications for and to procure, acquire, maintain, repair, and dispose of non-emergency motor vehicles used by agencies under the direct control of the Mayor.<sup>1</sup>

On February 28, 2011, Councilmember Wells issued preliminary findings, which revealed significant legal concerns surrounding the procurement and use of vehicles, a pattern of noncompliance that spans many years, and a failure by DPW to establish centralized control of the District's fleet functions. The preliminary findings recommended a public roundtable to specifically review in greater detail the decision-making process for official vehicle procurement and stewardship of public funds.

The Committee convened a roundtable on March 17, 2011. The roundtable discussed the preliminary findings, including possible noncompliance with existing law related to (1) purchasing and leasing sports utility vehicles (SUV); (2) required mileage-per-gallon of vehicles purchased or leased for District use; (3) contracting and procurement,

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<sup>1</sup> Mayor's Order 2000-75, 47 D.C. Reg. 4758 (June 2, 2000), paragraph 2. Paragraph 3 allows agency heads of the Metropolitan Police Department, Department of Corrections, and Fire and Emergency Medical Services to execute corresponding functions for their own non-emergency vehicles and paragraph 4 designates them the authority for specialty vehicles within their use. Mayor's Order 2011-46, 58 D.C. Reg. 1663 (March 4, 2011), adds the Office of the State Superintendent of Education (OSSE) to that list.

specifically requests exceeding standard options and advance payments; and (4) the use of District employees as drivers and the use of official vehicles for commuting purposes.

This report summarizes the information and questions arising from this review and subsequent roundtable in these and other categories. For each area of concern the report describes existing law, preliminary findings, and key findings from the roundtable and agency responses. Policy concerns and recommendations for further action follow.

#### Summary of findings:

- District officers and employees are violating requirements on vehicle use, written authorization, and reporting.
- In allowing procurement of luxury-class vehicles with added options, MPD and DPW failed to meet the regulatory requirement of written certification that a non-standard class and extended options were necessary and essential to the user's mission.
- DPW failed to recognize improper billing from Standard Leasing on more than one occasion; in the case of Chairman Brown's Lincoln Navigator, this resulted in prepayment for a vehicle the District subsequently returned.
- The District has procured vehicles expressly prohibited by District law that do not clearly meet exceptions of security, emergency, rescue, or armored vehicles.
- The District has procured vehicles that violate fuel efficiency standards expressly required by District law.
- DPW has failed to develop centralized fleet management, as required by Mayor's Order 2000-75, a failure previously identified by both the Inspector General and the Office of the Auditor.

#### Summary of recommendations<sup>2</sup>:

- The Mayor must ensure that District agencies comply with District Law and Mayoral orders related to fleet management; demand better cooperation between agencies with respect to ticket tracking and fleet procurement, and look for further opportunities to reduce the size of the fleet and enhance efficiency.
- The Department of Public Works must play a more proactive role in centralized management and tracking of the District fleet, including examination of whether agencies are in compliance with the law, review of individual agencies policies.
- The Council should clarify District fleet laws where more explicit guidance is needed; set more aggressive targets for vehicle efficiency and fleet cost reduction; and call for audits where there is evidence that policies have not been followed.

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<sup>2</sup> Full recommendations are found in Section IV.

## II. LEGAL SUFFICIENCY AND REVIEW

### A. RESTRICTIONS ON THE USE OF OFFICIAL VEHICLES

*Finding: District officers and employees are violating requirements on vehicle use, written authorization, and reporting. Confusion also exists on what constitutes a chauffeur.*

District law places express limitations on the use of official vehicles, listing exactly who is allowed to take a public-owned vehicle home and how employees or officials may utilize other employees as drivers.<sup>3</sup>

The preliminary review included only anecdotal information shared by employees at several agencies; in preparation for the March 17 roundtable, however, the Committee contacted 43 executive agencies with a formal request for information related to the use of official vehicles. All but a dozen responded prior to the hearing; the remaining responses were received over the course of the next week.

#### 1. Using public-owned vehicles for travel between residence and work

An officer or employee may be provided with an official vehicle for official duties, however, only the following officers or employees may use an official vehicle for travel between residence and workplace:

- the Chairman of the Council;
- the Mayor;
- an officer or employee of the Fire department or the EMS who resides in the District, on call 24 hour a day, and has permission from the Fire Chief; and
- an officer or employee of the MPD who resides in the District or is otherwise permitted by the Chief of Police.<sup>4</sup>

All other officers and employees are prohibited from using a vehicle to travel between residence and workplace, and must confine use to official duties only.<sup>5</sup>

The preliminary report did not directly address the practice of officials or employees taking public-owned vehicles home. The Committee received anecdotal reports that this has been the practice for a number of officers in different agencies, but official responses did not confirm such activity, except for the Homeland Security and Emergency Management Agency (HSEMA) and the District of Columbia Housing Authority (DCHA).

HSEMA reported that the Director, Operations Chief, Deputy Chief, and Deputy Mayor for Public Safety and Justice utilized public-owned vehicles to drive between residence

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<sup>3</sup> D.C. Official Code § 50-204.

<sup>4</sup> *Id.* at (a).

<sup>5</sup> *Id.*

and workplace.<sup>6</sup> This use is authorized by the Chief of Police of the Metropolitan Police Department, pursuant to §808(1) of the District of Columbia Appropriations Act of 2010.<sup>7</sup>

DCHA also responded that employees regularly use vehicles to drive between their residence and work. By law, DCHA is an independent agency and its employees are not considered employees of the District, but rather employees of DCHA.<sup>8</sup> Section 50-204 expressly applies the use restrictions to officers and employees of the District, making it inapplicable to DCHA as currently written.

## **2. Utilizing a government employee as a chauffeur between residence and work**

District law allows the Mayor to use a District government employee as a chauffeur for travel between residence and work and vice-versa.<sup>9</sup> No other officer or employee of the executive branch is allowed this privilege, unless they first receive written authorization by the Mayor.<sup>10</sup> The law also requires that all such authorizations and the cost thereof shall be reported quarterly to the Council.<sup>11</sup>

The Committee received anecdotal information that several agency directors or program directors utilized agency employees as chauffeurs, but most of this information was not confirmed by official agency responses.<sup>12</sup>

The Department of Employment Services (DOES) response included information that an agency employee was regularly transporting the director to and from her temporary residence:

“Mr. Vernon Lindsay, Support Services Specialist has transported the Department Director to and from temporary residence and to attend all meetings using DC 5896, a 2007 Chevy Impala. As part of his overall duties, Mr. Lindsay also serves as the primary driver for the Director. This practice was done from January 2011 to February 2011. The Director is no longer being transported from or to place of residence.”<sup>13</sup>

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<sup>6</sup> HSEMA written response, dated March 15, 2011.

<sup>7</sup> “Consolidated Appropriations Act, 2010” (P.L. 111-117, 123 Stat. 3034, 3223), approved on December 16, 2009.

<sup>8</sup> The District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-201 *et seq.*) established DCHA as a corporate body with a separate legal existence from the District government and the successor in interest to the earlier housing authority, which went into receivership. Section 16 of the 1999 Act (D.C. Official Code § 6-215(a)) states that “[a]ll employees hired by [DCHA] shall be employees of [DCHA] and not of the District.” (emphasis added).

<sup>9</sup> D.C. Official Code § 50-204(b)(1).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> DCHA also reported two separate vehicles were driven by chauffeurs to transport executives between home and work, but as with use of official vehicles, the phrase “officer or employee of the District” makes this section inapplicable to DCHA as written.

<sup>13</sup> DOES written response to the Committee, dated March 15, 2011.

To date, the Committee has not received any written authorization or report of such expenditures, and is unaware of any reports in recent years.

### **3. Using a driver during the work day**

The Mayor is also allowed to utilize a District government employee as a chauffeur during the work day.<sup>14</sup> No other officer or employee of the executive branch may do so without authorization in writing by the appropriate agency head.<sup>15</sup> As with the previous section, all such authorizations and the cost thereof shall be reported to the Council on a quarterly basis.<sup>16</sup>

The Committee received anecdotal reports that several agencies use employees as drivers. In response to Committee questions, however, only DCHA and the District of Columbia Public Schools (DCPS) reported such use.<sup>17</sup> As indicated above, restrictions on the use of drivers, as currently written, are not applicable to DCHA. DCPS stated in its response that an employee serves as a chauffeur for the Chancellor, a use that is included as one of the Chancellor's contractual benefits.<sup>18</sup> It is unclear whether this contract constitutes the written authority required under Section 50-204(b)(2).

A number of agency responses raised questions about what exactly constitutes use of a district employee as a chauffeur. For example:

- The Department of Human Resources reports that a vehicle is used to transport staff to meetings, but also states that “no employee has been utilized as a driver or chauffeur.”
- The Office of the Chief Financial Officer stated that they use seven of their employees as support service assistants, meaning that any of these employees may be called upon to provide transportation services.
- The Department of Human Services response lists five employees as “motor vehicle operators,” including one car, a Crown Victoria, used for the DHS director. This vehicle is assigned a motor vehicle operator, yet the vehicle is only used for the director.

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<sup>14</sup> D.C. Official Code § 50-204(b)(2).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> DCHA reported four agency vehicles are driven by chauffeurs during the weekday, two specifically used for drives between work and residence; this implies the other two are utilized during the work day.

<sup>18</sup> Chancellor Kaya Henderson, Final Contract (11-01-10), Paragraph 5.5. In its March 14, 2011 response, DCPS stated it would be submitting quarterly reports of cost.

## B. CONTRACTING AND PROCUREMENT REQUIREMENTS

DPW has not complied with vehicle contracting and procurement requirements.

### 1. Restrictions on requesting additional vehicle features

*Finding: In allowing procurement of luxury-class vehicles with added options, MPD and DPW failed to meet the regulatory requirement of written certification that a non-standard class and extended options were necessary and essential to the user's mission.*

District regulations require that before soliciting a lease for a motor vehicle, the contracting officer shall obtain from the requesting agency written certification that the vehicle requested is of maximum fuel efficiency and minimum body size, engine size, and equipment necessary to fulfill operational needs, and meets prescribed fuel economy standards.<sup>19</sup> If the agency is requesting a larger than compact size passenger automobile, the agency head must certify it is essential to the agency's mission.<sup>20</sup>

The Committee requested all written certification related to the procurement of the luxury-class Lincoln Navigators. DPW procured the Chairman's Navigator; MPD procured the Navigator and the luxury-class Lincoln Town Car for the Mayor.

DPW did not provide any certification for the procurement of a "2011 Lincoln Navigator 'L' Series Black, Fully Loaded Six Speed Automatic with Overdrive and 4x4"<sup>21</sup> with "GPS, power moon room [*sic*], rear entertainment system and aluminum wheels."<sup>22</sup> During the March 17 roundtable, Mr. Howland testified that he did not request or obtain such certification. Mr. Howland agreed that written justification is required for non-standard features and conceded that DPW should have required it.<sup>23</sup>

MPD's response did not include whether written justification was submitted prior to procurement; City Administrator Allen Lew testified that he was unaware of any written justification. According to the response, Lieutenant Angela Cousins, commanding officer for the Metropolitan Police Department (MPD) Executive Protection (EPU), in consultation with Assistant Chief Alfred Durham, made the decisions regarding the specifications for the Lincoln Navigator, which MPD stated were consistent with those of the previous Mayors Williams and Fenty vehicles.<sup>24</sup> There was no additional justification

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<sup>19</sup> DCMR § 27-2116.2(a).

<sup>20</sup> DCMR § 27-2116.2(b). This subsection states "passenger automobiles (sedans and station wagons)". The term "passenger automobiles" is not defined in the regulations; accordingly the Committee relied on the definition in the D.C. Official Code on Public-Owned Vehicles, § 50-203(a).

<sup>21</sup> Order No. PO349544 – FY-2011/KTO/DPW/FMA – 2011 Lincoln Navigator (L) Series, issued Dec. 7, 2010.

<sup>22</sup> Dec. 22, 2010 email from Nyasha Smith, incoming Secretary to the Council, to Director Howland, discussing an October request for the Chairman's vehicle.

<sup>23</sup> Mr. Howland stated the only other vehicle procured through DPW with anything other than standard vehicle options was a 2006 Ford Crown Victoria, which he thought was for the City Administrator at the time. No certification was submitted for that vehicle.

<sup>24</sup> MPD written response, dated March 16, 2011.

for requesting a “[f]ully loaded black exterior/charcoal leather interior, navigation system, entertainment system, and power tailgate.”<sup>25</sup>

The response also stated that “Mr. Gregory Harrelson, Department of Public Works, made the decision on the Lincoln Town Car with consideration of MPD’s request for the “L” version due to the additional interior room that the model provides.”<sup>26</sup> No further justification was provided.

## **2. Advance payments**

*Finding: DPW failed to recognize improper billing from Standard Leasing for several years in a row; in the case of the Chairman’s Lincoln Navigator(s), this resulted in prepayment for vehicles the District subsequently returned.*

District regulations governing procurement prohibit advance payments on contracts unless specific criteria exist.<sup>27</sup>

The preliminary review did not include issues surrounding advance payments, but this topic was included in the questions the Committee sent in advance of the roundtable. During the roundtable Mr. Howland testified that an error was made in the payment to Standard Leasing, the company that provided the Chairman’s first Navigator, which the Chairman’s office subsequently rejected. Mr. Howland stated that Standard Leasing invoiced DPW for the remaining months in the fiscal year, rather than one month at a time, and DPW processed the \$17,669 payment in error.

Immediately following the roundtable, Councilmember Mary M. Cheh, Chairperson for the Committee on Government Operations and the Environment, sent a letter to Nancy Hapeman, Interim Chief Procurement Officer. The letter requested an explanation on how such an error could occur and other contracting details.<sup>28</sup> Ms. Hapeman’s March 18, 2011 response stated the prepayment resulted from a payment process issue, not a procurement issue, and were therefore outside the Office of Contracts and Procurement.

Mr. Lew confirmed that the District may not recover portions of the prepayment because the leasing company is claiming breach of contract.<sup>29</sup>

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<sup>25</sup> Order No. PO344690 – Executive Protection Unit Leased 2010 Lincoln Navigator L, issued on Oct. 20, 2010.

<sup>26</sup> MPD response.

<sup>27</sup> DCMR § 27-3205.

<sup>28</sup> March 17, 2011 letter from Councilmember Cheh to Nancy Hapeman.

<sup>29</sup> For the Chairman’s second SUV, the District paid \$1,963 to lease the vehicle, as well as \$1,600 in expedited shipping costs. DPW has since returned the second SUV to the leasing company, but the company has filed a \$12,400 breach-of-contract claim in response. Overall, the cost to the District for both Navigators procured for the Chairman could be as much as \$30,000, according to figures provided by Howland in his roundtable testimony.

## C. RESTRICTIONS ON LEASING OR PURCHASING SUVs

*Finding: The District has procured vehicles expressly prohibited by District law that do not clearly meet the exceptions of security, emergency, rescue, or armored vehicles.*

D.C. Official Code § 50-203(a) states that passenger automobiles<sup>30</sup> purchased or leased by the District government shall not be SUVs.<sup>31</sup> Security, emergency, rescue, and armored vehicles, purchased or leased, are exempt from this rule<sup>32</sup>; additionally, purchased snow removal vehicles are exempt.<sup>33</sup>

DPW purchases. Mr. Howland, in his March 17 testimony, stated that only 10 SUVs have been purchased or leased through DPW since 2004 and that all are in compliance with § 50-203. The following vehicles were included in his testimony:

- UDC – 3 for Security
- HSEMA – 2 Emergency
- DPW – 1 Snow Program
- DDOT – 1 Snow Program
- City Administrator Tangherlini/Albert – 1 Emergency
- Chairman Gray – 1 Emergency
- Chairman Brown – 1 Emergency

“Security vehicle” is not defined in District code or regulations. An evaluation of the context “security, emergency, rescue, or armored vehicles<sup>34</sup>”, along with the plain meaning and common understanding of the word “security,” a protective service or law-enforcement use could be inferred.<sup>35</sup> If the University of the District of Columbia is using the acquired SUVs

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<sup>30</sup> The section states “passenger automobiles” shall be defined as in the Automobile Fuel Efficiency Act of 1980. Under that authority, “passenger automobile” means any automobile (other than an automobile capable of off-highway operation) which the Secretary determines by rule is manufactured primarily for use in the transportation of not more than 10 individuals. The term “automobile capable of off-highway operation” means any automobile which the Secretary determines by rule (A) has a significant feature (other than 4-wheel drive) which is designed to equip such automobile for off-highway operation, and either (i) is a 4-wheel drive automobile, or (ii) is rated at more than 6,000 pounds gross vehicle weight. 49 U.S.C.S 32901(a)(18).

<sup>31</sup> Law 14-231, the “Government Sport Utility Vehicle Purchasing Amendment Act of 2002”, was passed on October 1, 2002 and became effective on March 25, 2003, but was amended to reflect an application date of October 1, 2004. *See* D.C. Law 14-310.

<sup>32</sup> D.C. Official Code § 50-203(a).

<sup>33</sup> D.C. Official Code § 50-203(b).

<sup>34</sup> “Armored vehicle” is not defined in this chapter or title. Such a vehicle is commonly described in the context of a security vehicle, but where a vehicle has been altered to be made more secure, such as by replacing standard windows with bulletproof glass and inserting layers of armor plate into the body panels. Similarly, “rescue vehicle” is not explicitly defined; however, it is mentioned within the definition for “emergency vehicle” found in D.C. Municipal Regulations § 20-999: “Emergency vehicle- any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, including a rescue vehicle, fire truck, or ambulance.”

<sup>35</sup> Absent a contrary definition within the statute, words are uniformly presumed to be used in their ordinary and usual sense, and with the meaning commonly attributed to them. *Caminetti v. United States*, 242 U.S.



for campus security, this would appear to be a qualifying use for the exemption in § 50-203(a).

Mr. Howland indicated that the two SUVs purchased for DDOT and DPW are lawful procurements because they are used for the snow program, however the law specifies “snow removal vehicles” are exempt, not simply vehicles designed for effective driving in snow conditions. While “snow removal vehicle” is not defined in District code or regulations, plain language and common understanding indicates that the vehicle would have capabilities for actual removal of snow, such as those with an attached plow. Mr. Howland confirmed during questioning that neither of these vehicles is equipped for actual snow removal.

Mr. Howland testified that the remaining five SUVs were lawful because they were designated emergency vehicles. “Emergency vehicle” is also not defined in this chapter, but Chapter 7, also within Title 50, does include a definition:

“Emergency vehicle - any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, including a rescue vehicle, fire truck, or ambulance.”<sup>36</sup>

The D.C. Municipal Regulations require emergency vehicles to be equipped with a “siren, exhaust whistle, or bell capable of giving a signal audible under normal conditions from a distance of not less than 500 feet” and “at least one lighted lamp displaying a red light capable of flashing alternately and visible . . . 500 ft.”<sup>37</sup>

During questioning, Mr. Howland stated that he personally made the determination that the SUVs procured for the City Administrator, then-Chairman Gray, and Chairman Brown were to be considered emergency vehicles. With regard to Chairman Brown’s Navigator(s), specifically, Mr. Howland stated:

“I provided the vehicle the Chairman requested. I should have required written justification. I determined that the Chairman, in the event that the Mayor becomes incapacitated, that he is the second leading official. He would become Mayor. And that if necessary, he would need an emergency vehicle. I made the determination that an SUV was warranted.”

In response to questioning, Mr. Howland confirmed that the SUVs he determined were emergency vehicles do not have the requisite equipment mandated by District regulations. He also confirmed that former Chairman Linda Cropp used a sedan.

MPD purchases. The Metropolitan Police Department, as part of its Executive Protection Unit, procured the Mayor’s Lincoln Navigator. In its response, MPD stated it has used two vehicles for transporting the Mayor, a primary vehicle and a backup vehicle for when the

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470 at 485 (1917). The principles of statutory interpretation also provide that if the law does not include a specific definition, a statute shall not be interpreted so as to be inconsistent with other statutes.

<sup>36</sup> D.C. Official Code § 50-702(19). *See also* DCMR § 20-999.

<sup>37</sup> DCMR § 18-712.

primary vehicle is out of service. MPD claims a nationwide movement from sedans to SUVs for “dignitary protection.”

“SUVs are the preferred choice to transport those in executive leadership positions due to: 1) ease and accessibility for ingress and egress in and out of the vehicle; 2) the ability to deploy and conduct emergency operations directly from the vehicle during critical incidents; 3) the ability to serve as a tactical vehicle in cases of emergency (push another vehicle out of the way); 4) vehicle is elevated to allow for clear observations by security personnel; 5) ability to travel during periods of inclement weather (four wheel drive); 6) additional safety for passengers in case vehicle is intentionally struck; 7) transport of lifesaving equipment in vehicle (i.e. defibrillator, mayor’s personal body armor, advanced first aid kit, hazardous material equipment, etc.)”

This description lends itself to a security exemption, rather than emergency, as claimed by DPW for the Chairman’s SUV. MPD uses a Lincoln Town Car as a backup vehicle, however. MPD did not offer an explanation for how a Town Car is adequate for backup use, but not for primary use.

Agency purchases. The preliminary review revealed that in addition to the SUVs leased for the Chairman and the Mayor, several SUVs were purchased or leased in the last few years for agency and executive staff use, including in previous administrations. Responses to the Committee’s March 9 inquiry indicated several agencies have procured vehicles directly, despite DPW’s designation as the sole entity to acquire non-emergency vehicles for the District.

For example, the Department of Mental Health (DMH) has a 2006 Dodge Durango;<sup>38</sup> Mr. Howland testified that DPW did not procure that vehicle and he posited that DMH may have had “a federal government lease of some sort.” Other examples of agencies with SUVs include:

- The Office of Public Education Facilities Modernization (OPEFM) purchased a 2011 Chevrolet Tahoe for then-Director Lew;<sup>39</sup> other SUVs in the OPEFM vehicle inventory include five Ford Escapes assigned to B.O.U. (2), Contracts, Locksmith, and Verification Team;<sup>40</sup>
- DCPS reported two SUVs, a 2006 Ford Explorer, leased to the Office of Food and Nutritional Services, and the 2004 Chevrolet Tahoe purchased for use by the Chancellor;
- DCHA reported 44 SUVs, 37 of which are 2004 models or later. Three appear to meet exemptions: two are used as Police/Security vehicles and another is designated Fire/Safety.<sup>41</sup>

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<sup>38</sup> Agency response to Committee on Health oversight questions, February 8, 2011.

<sup>39</sup> OPEFM written response, dated March 15, 2011.

<sup>40</sup> Agency response to oversight questions, March 2, 2011.

<sup>41</sup> Section 50-203 states a prohibition of the District government generally, not narrowly as 50-204 does when it prohibits “no officer or employee of the District . . .” Accordingly, DCHA is likely bound by the

Other than those specifically mentioned, none of these appear to meet the exemptions allowed under Section 50-203.

Definition of SUV. In addition to the definition of exemptions, the roundtable also revealed disagreement over how to define an SUV. District agencies lease at least 18 Ford SportTrac vehicles, which are classified as SUVs by the manufacturer, Consumer Reports, and two leading vehicle information websites. Mr. Howland stated that the District considers this vehicle to be a pick-up truck based on the U.S. General Services Administration classification.

#### **D. FUEL EFFICIENCY RESTRICTIONS FOR ALL LEASED OR PURCHASED VEHICLES**

*Finding: The District has procured vehicles that violate fuel efficiency standards expressly required by District law.*

For more than a decade, District law has required that all passenger automobiles<sup>42</sup> leased or purchased by the District, except for security, emergency, rescue, or armored vehicles, must have an Environmental Protection Agency estimated miles per gallon (MPG) average of not less than 22 miles per gallon.<sup>43</sup>

During the preliminary review, an evaluation of randomly selected fleet vehicles – all purchased or leased by the District after the MPG requirement took effect – revealed that a majority do not meet this fuel efficiency requirement.<sup>44</sup> At the roundtable, Mr. Howland stated to the Committee that “DPW leases and purchases vehicles in compliance with both federal and District law and regulations.”<sup>45</sup> He acknowledged two laws that apply to DPW when purchasing or leasing vehicles -- D.C. Official Code § 50-203 and DCMR 27-2116.2(b)<sup>46</sup> -- and then testified that “every sedan that has been purchased [since 2004] is in compliance with either the federal requirements and/or both local laws except for one 2006 Ford Crown Victoria” (emphasis added).<sup>47</sup> Despite Mr. Howland’s assertions otherwise, “either” and “and/or” do not qualify as adherence to District law.

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District prohibition on SUV purchases and leases if its vehicles were procured with District dollars and are owned or leased by the District.

<sup>42</sup> See n.30.

<sup>43</sup> D.C. Official Code § 50-203(a).

<sup>44</sup> Committee staff compared vehicle information provided by agencies with the fuel efficiency calculator provided by the U.S. Department of Energy and U.S. Environmental Protection Agency at <http://www.fueleconomy.gov/>.

<sup>45</sup> Testimony of William O. Howland, Jr. Director of Department of Public Works before the Committee on Public Works and Transportation, Tommy Wells, chairperson, March 24, 2011.

<sup>46</sup> Discussed below in Section II, D.

<sup>47</sup> Howland testimony.

DPW's compliance with federal alternative fuel requirements do not relieve the agency of its responsibility to comply with District law. The Energy Policy Act of 1992 ("EPA Act") as amended, requires a participating state to acquire alternative fuel vehicles or to reduce its petroleum use.<sup>48</sup> While DPW's efforts in this area may be noteworthy, nothing in the EPA Act requires, authorizes, or otherwise compels DPW to ignore District law with regard to fuel efficiency. Neither is there any apparent conflict between abiding by EPA Act and the District requirement that all applicable vehicles achieve at least 22 MPG – there are vehicles available that can meet both federal alternative fuel and local MPG requirements.

DPW was aware of the minimum 22 MPG requirement, as it was discussed at length during the public hearing for the "Government Sport Utility Vehicle Purchasing Act of 2002. DPW Fleet Management Administration (FMA) answers at the 2002 hearing revealed that none of the fleet vehicles, including the alternative fuel vehicles, were meeting the minimum MPG requirement.

Based on agency responses to the Committee's questions, the overwhelming majority of DC fleet vehicles regularly failed to meet the 22 mpg standard required in the District of Columbia Code. For example, in the list of fleet vehicles supplied by DPW, only 11% of the vehicles met the 22 mpg<sup>49</sup> threshold, with about 25% of falling under 15 mpg.

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<sup>48</sup> Approved October 24, 1992 (106 stat. 2866; 42 U.S.C. § 13211).

<sup>49</sup> DPW calculated miles per gallon based on the average of EPA city and highway mileage. Given the characteristics of the District's street network and traffic congestion, it may be more suitable to use EPA's city mileage as a standard. Using city mileage as standard for MPG would require more fuel efficient vehicles than those required under the current methodology.

### **III. IMPACT ON ACCOUNTABLE GOVERNMENT**

#### **A. USE OF VEHICLES AND DRIVERS AS EXECUTIVE PERKS**

Review of agency responses, including DPW, did not reveal a clear process for identifying or documenting the need for a particular employee to be assigned a vehicle or a driver, yet several agencies reported vehicles assigned to a specific executive or employee. Mr. Lew testified that the Tahoe purchased by OPEFM in 2010 for his use is “on loan” to the City Administrator’s office, but how such a loan works or is accounted for is unclear. Another example is the DOES director, who had a car and driver assigned to transport her to and from her temporary residence and workplace, both of which are Metro accessible.

This suggests that, at least in some cases, a vehicle and driver is offered as a perquisite for high-level employees. Given the cost, parking, traffic, and pollution impacts associated with additional vehicles, the Committee is concerned that vehicles and drivers are used as employee perks, contrary to District law and policy.

#### **B. TRANSPARENCY PROBLEMS**

In a March 9, 2011 letter to DPW, the Committee requested email correspondence relating to the procurement of Chairman Brown’s vehicle. DPW’s response did not include all relevant emails discussing the procurement of the Chairman’s SUV. Much of the information was received only because of a media FOIA request. The Committee should not need to rely on FOIA requests from media organizations to obtain documents from an agency within the Committee’s oversight.

#### **C. FLEET MANAGEMENT AND ACCOUNTABILITY**

The findings documented above are indicative of a larger problem with fleet management.

##### **1. Centralized Fleet Management Function**

Background. In 2000, the Mayor identified the lack of centralized control of fleet functions as a direct cause of inefficient and unnecessary costs to District taxpayers and stated the need for a “designated single authority to establish, govern and monitor a total management program for the District Government.”<sup>50</sup> The Mayor then designated DPW “the sole authority to establish specifications for and to procure, acquire, maintain, repair, and dispose of non-emergency motor vehicles and motor equipment used by agencies under the direct control of the Mayor.”<sup>51</sup> In the same order, the Mayor authorized and directed the Director of DPW “to establish policies and standards for all phases of motor

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<sup>50</sup> Mayor’s Order 2000-75, 47 D.C. Reg. 4758 (June 2, 2000).

<sup>51</sup> *Id.*

equipment management from initial procurement to ultimate vehicle disposal” within 30 days of the Order’s effective date.<sup>52</sup>

More than a decade has passed and DPW still has not established centralized control of the District’s fleet functions and a detailed database of all vehicles in the District government fleet. In that time, DPW’s fleet management operations have been the subject of at least two audits, both of which found DPW’s management lacking:

- In March 2006, the Office of the Inspector General (OIG) released a report of its audit of DPW’s inventory, usage, and maintenance of District vehicles.<sup>53</sup> The audit revealed that FMA did not maintain an accurate inventory of all vehicles used by District agencies under the authority of the Mayor; subsequently the OIG made 22 recommendations that focused on conducting a physical inventory, generating reliable inventory records, establishing and implementing policies and procedures, and complying with applicable criteria.<sup>54</sup>
- In April 2010, the Office of the D.C. Auditor concluded that DPW’s “failure to obtain, collect, and analyze accurate fleet data jeopardized the ability of the District of Columbia government to make informed fleet management decisions.”<sup>55</sup>

Both audits faulted DPW regarding its lack of compliance with Mayor’s Order 2000-75. Both times DPW’s response argued responsibility belongs with each agency, citing subsequent Mayor’s Orders.<sup>56</sup> DPW’s responses confuse two issues: total fleet management and management of agency-specific daily use. Mayor’s Order 2009-210 is almost exclusively directed at how agencies manage and monitor the use of vehicles on a daily basis within the agency; no authority is given to the agencies to establish, govern or monitor a total management program for the District, as is ordered of DPW in Mayor’s Order 2000-75.<sup>57,58</sup>

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<sup>52</sup> *Id.* at paragraph 5.

<sup>53</sup> Office of the Inspector General, “Audit of the Department of Public Works Inventory, Usage, and Maintenance of District Vehicles,” OIG No. 04-1-21KT (March 20, 2006).

<sup>54</sup> *Id.* at p. iii.

<sup>55</sup> Office of the District of Columbia Auditor, “Audit of the Fleet Management Administration of the Department of Public Works,” April 22, 2010, at p. i.

<sup>56</sup> DPW cites Mayor’s Order 2001-85 (48 D.C. Reg. 5842, June 22, 2001) in response to OIG and then 2009-160 (56 D.C. Reg. 7880, October 2, 2009) to the Auditor. Both have since been superseded entirely by Mayor’s Order 2009-210, “Government and Personal Vehicle Operators Accountability Policy”, 57 D.C. Reg. 6852 (July 30, 2010).

<sup>57</sup> Mayor’s Order 2009-210.

<sup>58</sup> Both DPW’s response and the Auditor’s subsequent rebuttal state that Mayor’s Order 2009-160 rescinded 2000-75. This is incorrect. Both Mayor’s Order 2009-160 and Mayor’s Order 2009-210 specifically state they supersede only paragraph 6 of Mayor’s Order 2000-75 “to the extent of any inconsistency.” Mayor’s Order 2000-75 par. 6 states that “no other Director or agency head under the direct control of the Mayor is authorized to procure, lease or acquire DC motor vehicles and equipment nor establish policies and standards for motor vehicles and equipment management.” The only inconsistency with Mayor’s Orders 2009-160 and 2009-210 is that the later orders grant each agency the authority to implement and maintain a system of managing the use of vehicles for authorized government business. Nothing in either grants any agency authority over a total management program.

Current review. The February preliminary review of fleet information provided by DPW and four randomly selected agencies revealed significant discrepancies between the number of vehicles owned, leased and maintained by the District – 230 vehicles were unaccounted for by DPW’s fleet management.<sup>59</sup> Neither Mr. Lew nor Mr. Howland addressed this discrepancy directly in their testimony, but the City Administrator acknowledged the work to be done on centralized management, stating that, “while agencies need to be responsible for implementing these policies and collecting the relevant data, there also needs to be active engagement and oversight of the agencies to ensure that the policies are implemented and followed.”

The same conclusion has been drawn previously by the Mayor in 2000, the OIG in 2006, and the Auditor in 2010. The District cannot afford to put off centralized management any longer.

As the Auditor noted last year:

“Capturing, monitoring, and reporting vehicle data is the basic foundation of a solid fleet management program. With sound programmatic data, the District government could have made fleet decisions based on fleet utilization data that would have improved efficiency and generated savings.”<sup>60</sup>

The District needs to know how many vehicles it has, how many employees are authorized to drive fleet vehicles, how much the vehicles are being used and for how long and what distances. This data is critical to measuring the true transportation needs of the government so that the District can make informed fleet decisions.

## **2. Lack of Documentation**

Though documentation is not explicitly required in some situations, written justification would demonstrate a stronger fleet management function. The lack of documentation for exemptions from the SUV prohibition is a clear example of this. District residents and the Council have a reasonable expectation that the exemptions to the law are not applied in an arbitrary and capricious manner. The procurement process should require documentation stating the category under which an exemption to the SUV prohibition is being made, and justification for such a qualification. Moreover, the process of documenting exemptions would make clear the need for a better definition of these exemptions, thus strengthening the policy goal of the SUV prohibition.

District regulations already require written certification, prior to procurement, that a vehicle is of maximum fuel efficiency and minimum body size, engine size, and equipment necessary to fulfill operational needs, and meets prescribed fuel economy standards.<sup>61</sup> Requests for any vehicle larger than compact size must include certification

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<sup>59</sup> Agency responses to the Committee’s March inquiry indicates vehicles procured by agency’s directly, which contradicts Mayor’s Order 2000-75.

<sup>60</sup> Auditor’s report, p. 14.

<sup>61</sup> DCMR § 27-2116.2(a).

that it is essential to the agency's mission. This regulation should provide a check against unnecessary perquisites for government officials and employees, as well as track whether the need for a non-compact vehicle truly exists.

### **3. Inadequate Vehicle Use Tracking and Parking Tickets**

Fleet management procedures require agencies to account for which employee has responsibility for a District vehicle at any given time.<sup>62</sup> Such documentation is clearly important for understanding an agency's transportation needs, but also to ensure accountability for parking or traffic tickets received during an employee's use of a government vehicle. Citations that do not qualify for administrative dismissal are to be transferred to the District employee who was operating the vehicle; the employee is then held responsible for the tickets they received.<sup>63</sup>

Responses to Committee questions demonstrated that such accountability is lacking. Many agency vehicles had citations that could not be assigned to a specific employee because it was not clear which employee was using the vehicle when the citation was issued. For example, DCPS identified 43 outstanding tickets, 35 of which could not be linked to any employee. These 35 unpaid tickets totaled \$3,475. Other agencies, such as the Alcohol Beverage Regulation Administration and the Department of Human Resources identified dozens of unpaid tickets as well.

Many agencies stated that they do not receive monthly reports from the Office of Risk Management (ORM) identifying unpaid tickets, as required by Mayor's Order 2009-210.<sup>64</sup> Some responses implied that the absence of timely reports from ORM increased the number of unpaid tickets because the agency could not hold employees accountable.

### **4. Notable improvements**

The Committee would be remiss if it did not note some important strides made in the District's fleet management effort. District agency responses made clear that agencies generally designate specific fleet managers, have fleet management and use policies, and track vehicle usage. In addition, the efforts to make more efficient use of government resources – such as through the Fleetshare program – and parallel efforts to reduce the size of the District fleet are commendable. These successes are documented in the District Auditor's report. The Committee commends DPW and other District agencies for this progress and urges them to continue in this vein.

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<sup>62</sup> Mayor's Order 2009-210, 57 D.C. Reg. 6852 (July 30, 2010).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*



## **IV. RECOMMENDATIONS**

### **A. THE MAYOR OF THE DISTRICT OF COLUMBIA**

1. The Mayor must require DPW to follow and implement centralized fleet management, as required by Mayor's Order 2000-75 and implement the recommendations of the Auditor's report.
2. The Mayor should provide standards for certifying that a larger-than-compact vehicle is "essential to the agency's mission".
3. The Mayor should review the assignment of chauffeurs and ensure that Council receives quarterly reporting for agencies that use chauffeurs.<sup>65</sup>
4. The Mayor should examine coordination between all appropriate agencies including DPW, DMV, and the Office of Risk Management, to ensure agencies receive citation information promptly and subsequently hold employees accountable for citations received while using a District vehicle.
5. The Mayor should examine other opportunities to reduce fleet demand including:
  - a. Publicize existing regulations on reimbursement for use of public transit and taxis for appropriate work travel;
  - b. Evaluate the process for employees to use personal vehicles for work trips; and
  - c. Develop incentives for employees to use Capital Bikeshare for suitable work travel.
6. The Mayor and the Council should consider legislation that allows for some greater flexibility to make the most efficient use of District employees' travel time. There may be situations when taking a District government vehicle home is the most efficient option. There may be other times when it makes the most sense for an employee to function as a chauffeur. Written justification could, in many cases, provide adequate flexibility while maintaining accountability and incentives for prudent behavior.

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<sup>65</sup> Required under D.C. Code § 50-204(b)(2).

## **B. DEPARTMENT OF PUBLIC WORKS**

1. DPW must immediately begin following District law with respect to the SUV prohibition by not leasing or purchasing non-exempt SUVs.
2. DPW must immediately begin following District law with respect to miles per gallon requirements by not leasing or purchasing non-exempt vehicles that fall below EPA estimated 22 mpg.
3. DPW must implement a centralized fleet management policy, as required by Mayor's Order 2000-75, beginning with a comprehensive inventory of all vehicles owned by the District.
4. DPW must establish clear responsibilities and procedures for ensuring that procurement and use of District fleet vehicles comply with District Law.
5. DPW must review individual agency fleet policies to be sure that all restrictions on vehicle procurement are included.

## **C. THE COUNCIL OF THE DISTRICT OF COLUMBIA**

1. The Council should amend the SUV and MPG exceptions to clarify that exceptions must be documented in writing and include the category under which an exception is sought, as well as the reason that the vehicle meets that exception.
2. The Council should amend the MPG requirement to a threshold that challenges the District government to set an example in energy efficiency.<sup>66</sup>
3. The Council should prohibit the purchase or lease of luxury-class vehicles and prohibit the procurement of vehicles with options exceeding those that come standard.
4. The Council should examine opportunities to further enhance efficiency of the District vehicle fleet including expansion of the successful Fleetshare program.
5. The Council should request the Office of the Auditor conduct a comprehensive review of vehicles assigned to one officer or employee, the process for such assignment, and the need for the vehicle to be dedicated to one employee or agency.
6. The Council should request the Office of the Auditor examine DPW's contracts and procurement process, including billing and payment.

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<sup>66</sup> The 22 MPG threshold is not an aggressive target -- manufacturers whose fleet fails to achieve an average fuel economy of 22 MPG fall under EPA's "gas guzzler tax".

## **V. CONCLUSION**

The letter of the law has not been followed in a number of cases as it relates to SUVs, fuel efficiency, authorized use, authorized drivers, and procuring vehicles with non-standard options; this lapse is not limited to the current administration, but spans several years. In that timeframe, DPW has also failed to effectively implement centralized fleet management, which has seriously hampered the District's ability to make informed fleet decisions that could improve efficiency and generate savings.

The spirit of the law has similarly been ignored, which impacts our commitment to good government and significantly undermines this government's credibility with the public.

The Committee recognizes that DPW has made significant progress in certain areas of fleet management. For example, consolidation of fleet vehicles into the fleetshare program has saved the District considerable money each year and has better utilized limited parking resources. In addition, most District agencies have assigned specific fleet managers and developed explicit policies regarding fleet use. Without question, however, further steps are needed to properly manage the District's fleet.

The District government has an obligation to lead by example and properly manage our employees' transportation needs. We should set a high bar for vehicle efficiency and demonstrate how to make use of the District's extraordinary multimodal transportation resources to conduct efficient government business with the lowest possible transportation expense and environmental impact.