

# “Place of Public Accommodation” under the D.C. Human Rights Act

## Factsheet and Guidance on the New Definition



December 16, 2021

This document is a factsheet and guidance provided by the D.C. Office of Human Rights (OHR) regarding legislative changes made to the definition of “place of public accommodation” under the D.C. Human Rights Act of 1977 (DCHRA). This document may be used for educational purposes only and not as legal advice to apply to a particular situation. Any person or entity in need of legal advice should consult an attorney.

### BACKGROUND

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On January 11, 2021, the Mayor signed D.C. Act 23-560, amending the DCHRA to expand the definition of “place of public accommodation” among other things, to include non-physical places of public accommodation.<sup>1</sup>

### THE EXPANDED DEFINITION

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As of October 1, 2021, the new definition of a “place of public accommodation” under the DCHRA now reads, in pertinent part, as follows:

“Place of public accommodation’ means any person or place that provides, to a person in the District, access to an accommodation, service, or good, ***whether or not that person or place maintains a physical location in the District or charges for those goods or services . . .***”

D.C. Code § 2-1401.02(24) (emphasis added). The definition previously included a lengthy list of examples of places of public accommodation, such as hotels, shops, restaurants, taxis, banks, theaters, *etc.* The expanded definition retains this list.

**Effective Date:** October 1, 2021

### OHR GUIDANCE

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The recent legislative amendment made two (2) key changes to the definition of “place of public accommodation”:

1. Physical location in D.C. is not required for an entity to constitute a place of public accommodation.
2. An entity need not necessarily charge for goods or services to constitute a place of public accommodation.

Thus, the primary focus for whether an entity constitutes a place of public accommodation under the new definition is whether the entity makes any kind of accommodation, good, or service publicly available in D.C., regardless of whether the entity is physically located in D.C. and regardless of whether the entity charges money.

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<sup>1</sup> Previously, on May 27, 2020, the D.C. Circuit (the federal appeals court in D.C.) issued an unpublished decision in *Freedom Watch v. Google* (No. 1:18-cv-02030), interpreting a decision of the D.C. Court of Appeals (the D.C. high court for local matters) in *U.S. Jaycees v. Bloomfield*, 434 A.2d 1379 (D.C. 1981), issued prior to the advent of the internet, requiring a physical location in D.C. for an entity to be considered a “place of public accommodation” (emphasis added) under the DCHRA. In response, the Council amended the statute. OHR is also preparing comprehensive public accommodations regulations.

Given the expanded definition, there are two additional considerations to be made when determining whether a person or a place constitutes a “place of public accommodation”:

- With respect to the first expansion, where physical location in the District is no longer necessary to be covered under the DCHRA, an analysis must be made as to whether the entity has sufficient contacts with D.C. to establish jurisdiction, such as having a registered agent or generating revenue from sales or advertising in D.C.
- With respect to the second expansion, if an entity does not charge for goods or services, an analysis must be made as to whether the entity’s operations are public in nature.

## Examples

### *No Physical Location Examples*

1. A D.C. resident purchases an item from an online vendor with a Michigan area code to be shipped to a D.C. address. The entity fits within the new definition of public accommodation, because it is selling goods, and the transaction is likely covered, because the company and its services are accessible in D.C., the transaction occurred in D.C., the company is generating revenue from a D.C. resident and shipping an item to D.C.
2. A D.C. resident is on vacation in California and purchases a prescription drug from an online pharmacy based in Montana to be shipped to the hotel in California. The transaction is not covered, because nothing involving the transaction happened in D.C., and the company appears to have no connections to D.C.
3. A D.C. resident is having trouble accessing an informational website that does not charge for goods or services or have any advertisements. The resident contacts the help desk who appears to be irritated by the complainant’s French accent and refuses to help. The entity that owns the website is registered with an Indiana address, and there is no evidence that the entity has any connection to the District of Columbia beyond its website being available from any place in the world with an internet connection. While the website could conceivably be within the DCHRA definition of a public accommodation, and national origin discrimination is prohibited, the interaction is likely not covered, because there are not substantial contacts between the company and D.C.

### *Not Charging for Goods or Services Examples*

1. A soup kitchen distributes warm food to persons experiencing homelessness, for free, on a first come first serve basis. A Jewish client, who is experiencing homelessness, asks for a double portion of vegetables, because he cannot eat the ham sandwiches due to religious practice. The entity refuses. The interaction is covered, because the entity made food publicly available to individuals in D.C., albeit without charge, and there appears to be a viable claim of failure to provide religious accommodation, because the client was qualified for services by virtue of experiencing homelessness and was denied a reasonable religious accommodation of a double portion of vegetables because he could not eat the meat due to religious practice.