

**DEPARTMENT OF HEALTH**  
**NOTICE OF FINAL RULEMAKING**

The Interim Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 15, 1986, (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 45 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The purpose of this proposed rulemaking is to provide regulations for the random auditing of continuing education credits for renewal applicants as opposed to requiring renewal applicants to submit proof of having completed the required continuing education credits with the renewal applications; clarify that approved continuing education credits must be current and relevant to the practice of nutrition and dietetics, and to add the language “registered” to the term “dietician.”

Proposed Rulemaking was published on June 8 2007 at 54DCR 5606. No written comments were received during the thirty (30) day comment period from the public in connection with the notice. However, after publication the Board of Dietetics and Nutrition voted to adopt the Commission on Dietetic Registration (CDR) exam for applicants who are not licensed in another state and who have not obtained another board recognized certification.

Therefore the proposed rulemaking was amended in § 4505 to reflect this change and was republished on December 14, 2007 at 54 DCR 11994 to provide an additional thirty (30) days to receive comments on the revised rulemaking. No public comments were received in connection with this notice and no additional changes have been made to the proposed rulemaking.

These final rules will be effective upon publication of this notice in the D.C. Register.

**Chapter 45 (Nutrition) of Title 17 (Business, Occupations & Professions)(May 1990) is amended as follows:**

**Section 4502.4(b) is amended to read as follows:**

4502.4 (b) The program was under the direction of a registered dietitian or nutritionist licensed or authorized to practice dietetics or nutrition in the United States;

**Section 4502.4(d) is amended to read as follows:**

4502.4(d) At least one (1) hour per week of experience was under the immediate supervision of a registered dietitian or nutritionist and the remaining experience was under the general supervision of a registered dietitian or nutritionist; and

**The section heading for 4505 is amended to read as follows:**

4505 CDR EXAM

**Section 4505.1 is amended to read as follows:**

4505.1 Except as provided in 4505.2 of this chapter, all applicants for licensure in the District of Columbia shall receive a passing score on the national registration examination for dietitians offered by the Commission on Dietetic Registration (“CDR Exam”).

**Section 4505.2 is amended to read as follows:**

4505.2 The following shall not be required to complete the CDR exam:

- (a) An applicant for licensure by endorsement;
- (b) An applicant who is currently certified as a registered dietitian by the Commission on Dietetic Registration of the American Dietetic Association (CDRADA); or
- (c) An applicant who is currently certified by the Certified Board for Nutrition Specialists as a Certified Nutrition Specialist (CNS).

**Section 4505.3 is repealed.****Section 4505.4 is amended to read as follows:**

4505.4 An applicant who fails the CDR exam on three (3) consecutive attempts may not retake the examination for one (1) year. Thereafter, the applicant may not retake the examination for one (1) year after each failure.

**Section 4505.5 is amended to read as follows:**

4505.5 An applicant who fails the CDR exam three (3) times is not eligible for licensure in the District unless the applicant successfully completes a course or courses in each area of weakness as determined by the CDRADA’s analysis of the previous examination before the applicant may reapply for examination.

**Section 4505.6 is amended to read as follows:**

4505.6 To be eligible to take the CDR exam, an applicant shall submit proof satisfactory to the Board that he or she has met the educational and preprofessional experience training requirements of the Act.

**Section 4506.4 is repealed.****Section 4506.7 is amended to read as follows:**

- 4506.7 To qualify for renewal of a license to practice nutrition in the District an applicant shall:
- (a) Have completed thirty (30) hours of approved continuing education credits (“CEUs”) during the two (2) year period preceding the date the license expires in accordance with this section;
  - (b) Attest to completion of the required continuing education credits on the renewal application form; and
  - (c) Be subject to a random audit for compliance with the continuing education requirement.

**Section 4506.8 is amended to read as follows:**

- 4506.8 Except as provided in § 4506.9, an applicant under this section shall prove completion of required continuing education credits by submitting with the application the following information with respect to each program:
- (a) The name and address of the sponsor of the program;
  - (b) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
  - (c) The dates on which the applicant attended the program;
  - (d) The hours of credit claimed; and
  - (e) Verification by the sponsor of completion, by signature or stamp.

**Section 4506.9 is amended to read as follows:**

- 4506.9 Applicants for renewal of a license shall only be required to prove completion of the required continuing education credits by submitting proof pursuant to § 4506.8 if requested to do so as part of the random audit, or if otherwise requested to do so by the Board.

**Section 4506.10 is amended to read as follows:**

- 4506.10 The Board shall conduct a random audit of continuing education credits at the completion of each renewal period.

**Section 4506.11 is amended to read as follows:**

- 4506.11 An applicant who falsely certifies completion of continuing education credits shall be subject to disciplinary action.

**A new section 4506.12 is added to read as follows:**

4506.12 An applicant for renewal of a license who fails to renew the license by the date the license expires may renew the license for up to sixty (60) days after the date of expiration by completing the application, submitting the required supporting documents, and paying the required late fee. Upon renewal, the licensee shall be deemed to have possessed a valid license during the period between the expiration of the license and the renewal thereof.

**A new section 4506.13 is added to read as follows:**

4506.13 If an applicant for renewal of a license fails to renew the license and pay the late fee within the sixty (60) days after the expiration of the license, the expired license shall be deemed to have lapsed on the date of expiration and the applicant shall thereafter be required to apply for reinstatement of an expired license and meet all requirements and fees for reinstatement.

**A new section 4506.14 is added to read as follows:**

4506.14 If an applicant's license lapses, the applicant shall be subject to disciplinary action, including denial of a license, if the applicant practices as a nutritionist after the date the license lapses.

**A new section 4506.15 is added to read as follows:**

4506.15 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew the license after expiration, if the applicant's failure to renew was for good cause. As used in this section "good cause" includes the following:

- (a) Serious and protracted illness of the applicant; and
- (b) The death or serious and protracted illness of a member of the applicant's immediate family.

**Section 4507.3(a) is amended to read as follows:**

4507.3(a) Be current and relevant to the practice of nutrition and dietetics in its subject matter;

**Section 4508.1 is amended to read as follows:**

4508.1 The Board may grant continuing education credit for whole hours only, with a minimum of fifty (50) minutes constituting one (1) credit hour, which shall equal one (1) continuing education unit (CEU).

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Interim Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 10 of Title 22 of the District of Columbia Municipal Regulations (DCMR).

The purpose of these amendments is to require examination results to be sent directly to the Board; prohibit a person who has failed the examination from practicing as an occupational therapist or occupational therapy assistant; require a person who has been selected for an audit to supply the requested information within ten (10) days; prohibit a person who has an initial application pending from engaging in independent practice; require a person who has submitted an initial application to submit a supervised practice form before engaging in employment; and to limit the period of time under which an applicant for an initial license may practice with a supervised practice form.

A notice of Proposed Rulemaking was published in the *D.C. Register* on October 5, 2007 at 54 DCR 009570. No comments were received and no substantive changes were made. These final rules will be effective upon publication of this notice in the *D.C. Register*

**Chapter 63 (Occupational Therapy ) of Title 17 DCMR (Business, Occupations & Professions) (May 1994) is amended to read as follows:**

**Add a new section 6304.3 to read as follows:**

6304.3           An applicant shall submit a completed application to the Board and arrange for examination results to be sent by NBCOT, directly to the Board.

**Amend section 6304.4 to read as follows:**

6304.4           An applicant who has failed the national examination shall cease working as an occupational therapist or occupational therapy assistant.

**Add a new section 6311 to read as follows:**

**6311               CONTINUING EDUCATION CREDIT AUDIT**

6311.1           The Board may audit up to twenty (20) percent of the number of licensees to determine compliance with the continuing education credit requirements.

6311.2 Upon notification by the Board that a licensee has been selected for an audit, the licensee shall submit the required documentation within ten (10) days of receipt of the notice.

**Add new sections 6312.6, 6312.7, and 6312.8 to read as follows:**

6312.6 An applicant for an initial license whose application is pending shall not engage in unsupervised practice.

6312.7 An applicant for licensure shall not engage in any type of practice until an application for licensure and a supervised practice form have been submitted to the Board.

6312.8 An applicant may practice for no more than sixty (60) days under a supervised practice form. The supervised practice form shall not be renewed.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendment to Chapter 67 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this amendment is to clarify the amount of time given to submit proof of having completed the required continuing education credits for renewal of a license.

A notice of Proposed Rulemaking was published in the *D.C. Register* on August 24, 2007 at 54 DCR 008264. No comments were received and no substantive changes were made. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Chapter 67 (PHYSICAL THERAPY) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended as follows:

**Section 6706.4 is amended to read as follows:**

6706.4        An applicant for renewal of a license shall submit proof pursuant to § 6706.7 of having completed four (4) continuing education units or forty (40) hours of approved continuing education credit during the two-year period preceding the date the license expires. Such proof shall be submitted within ten (10) days after it is requested by the Board.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., SUITE 200, WEST TOWER  
WASHINGTON, DC 20005

NOTICE OF FINAL RULEMAKING

TELEPHONE TARIFF 07-4, IN THE MATTER OF THE APPLICATION OF  
VERIZON WASHINGTON DC, INC FOR AUTHORITY TO AMEND THE  
GENERAL SERVICES TARIFF P.S.C.-D.C.-NO. 203

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Official Code § 2-505,<sup>1</sup> of its final rulemaking action taken in Order No. 14741 issued February 29, 2008, approving the tariff application of Verizon Washington, DC, Inc. ("Verizon DC")<sup>2</sup> to amend the following tariff pages:

**GENERAL SERVICES TARIFF, P.S.C.-D.C.-NO. 203**

**Section 21, 2<sup>nd</sup> Revised Page 7**

**Original Page 7a**

**2<sup>nd</sup> Revised Page 8**

**Original Page 8a**

**2<sup>nd</sup> Revised Page 10**

2. In its application, Verizon DC proposes to revise the terms and conditions associated with the \*69 (Call Return) Centrex Custom Calling System for Residential and Business Dial Tone Line Custom Calling service in its Tariff P.S.C.-D.C.-No. 203. Specifically, Verizon DC's proposed tariff amendments identify situations where system limitations may disallow certain call announcement functions.<sup>3</sup> Verizon DC asserts that the proposed revisions are filed pursuant to § 3(a) of Price Cap Plan 2004.<sup>4</sup>

3. The Commission issued a Notice of Proposed Rulemaking ("NOPR"), which was published in the *D.C. Register* on January 4, 2008, inviting public comment

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<sup>1</sup> D.C. Official Code § 2-505 (2001 Ed.).

<sup>2</sup> *TT07-4, In the Matter of the Application of Verizon Washington DC, Inc For Authority to Amend the General Services Tariff, P.S.C.-D.C. - No. 203 ("TT07-4")*, Letter from J. Henry Ambrose of Verizon Washington, D.C. Inc. to Dorothy Wideman, Commission Secretary, filed December 14, 2007 (hereinafter referred to as "Application") withdrawing the original filing received December 4, 2007, which contained an error in the cover page of the original Application..

<sup>3</sup> See Verizon DC's Application at 1.

<sup>4</sup> See *Formal Case No. 1005, In the Matter of Verizon Washington, DC, Inc.'s Price Cap Plan 2004 for the Provision of Local Telecommunications Services in the District of Columbia*, Order No. 13370, rel. September 9, 2004, ("Price Cap Plan" or "Plan").

on the proposed tariff amendment.<sup>5</sup> No comments were filed in response to the NOPR. The Commission subsequently approved Verizon DC's Application in Order No. 14741, finding that the tariff revision was consistent with the requirements of Section 3(a) of Price Cap Plan 2004. This tariff revision will become effective upon the publication date of the Notice of Final Rulemaking in the *D.C. Register*. A copy of Verizon DC's final tariff amendment may be obtained by contacting Dorothy Wideman, Commission Secretary, Office of the Commission Secretary at 1333 H Street, N.W., West Tower Suite 200 Washington, D.C. 20005 or from the Commission's website at [www.dcpsc.org](http://www.dcpsc.org).

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<sup>5</sup> 55 *D.C. Reg.* 63-64 (January 4, 2008).

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1333 H STREET, N.W., 2<sup>nd</sup> FLOOR, WEST TOWER  
WASHINGTON, D.C. 20005

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 1059, IN THE MATTER OF THE APPLICATION OF VERIZON  
WASHINGTON DC, INC. FOR A CERTIFICATE OF AUTHORITY AUTHORIZING IT  
TO ISSUE DEBT SECURITIES

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of its final rulemaking action, taken in Order No. 14754, issued March 5, 2008, approving the Application filed by Verizon Washington, DC Inc. ("Verizon DC") for authority to issue debt securities.

2. On January 7, 2008, Verizon DC filed an Application with the Commission, requesting authority to issue long-term debt securities in an amount not to exceed \$250,000,000.00.<sup>1</sup> Verizon DC made this filing under the expedited review process pursuant to 15 D.C.M.R. § 3501. A Notice of Proposed Rulemaking ("NOPR") was published in the *D.C. Register* on January 25, 2008.<sup>2</sup> No comments were filed in response to the NOPR. By Commission Order No. 14754, released March 5, 2008, the Commission granted Verizon DC authority to issue up to \$250,000,000.00 in long-term debt securities during a period of three (3) years, effective and commencing upon publication of this Notice in the *D.C. Register*.

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<sup>1</sup> *Formal Case No. 1059, In the Matter of the Application of Verizon Washington, DC Inc. for a Certificate of Authority Authorizing it to Issue Debt Securities, Verizon Washington, DC Inc.'s Application for Certificate of Authority and Request for Expedited Approval, filed Jan. 7, 2008.*

<sup>2</sup> *55 D.C. Register 776 (Jan. 25, 2008).*

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**and**

**Z.C. ORDER NO. 04-33B**

**Z.C. Case No. 04-33B**

**(Text Amendment – Inclusionary Zoning – Addition of R-2 Zones, Standards for Certain  
Overlays, and Clarifying Amendments)**

**September 10, 2007**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01), having held public hearing as required by § 3 of the Act, D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of amendment to Chapters 11, 12, 13, 15, 16, 19, and 26 of the Zoning Regulations (Title 11 DCMR). The adopted amendments subject properties in the R-2 Zone District to the requirements of Chapter 26, Inclusionary Zoning (“IZ”), provide specific FAR, lot occupancy, density, and height flexibility for nine overlays, exempt properties within the Eighth Street (“ES”) Overlay from the requirements of Chapter 26, and make certain clarifications to the existing IZ text.

The clarifying amendments, among other things, specify that a project’s minimum set aside requirement will be based upon the amount of residential gross floor area to be constructed, rather than its entire gross floor area, while its maximum requirement will be based upon the amount of bonus density actually used. The amendments also add a new § 2608.2 to exempt a project approved as a planned unit development from IZ if the approved application was set down for hearing before the date these amendments became effective, *i.e.* the date that this Notice of Final Rulemaking is published in the *D.C. Register*.

Two changes were made to the text contained in the Notice of Proposed Rulemaking published in the August 10, 2007 edition of the *D.C. Register* (54 DCR 7773).

The first is the exemption of properties within the ES Overlay from compliance with IZ. The Notice of Proposed Rulemaking offered for comment the proposal of the Office of Planning (“OP”) to increase the allowed height within the overlay by 10 feet to accommodate the bonus density. However, the Commission concludes that this added height would be incompatible with the neighborhood character and original intent of the ES Overlay. Although the Commission wished to provide additional affordable housing within the ES Overlay, it recognized that the overlay was established to, among other things, “restrict ...heights to a low level so as to respect

**Z.C. NOTICE OF FINAL RULEMAKING AND ORDER NO. 04-33B**  
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the historic scale of buildings and the entrance to the adjacent Navy Yard.” (11 DCMR § 1309.2 (b).) The Commission, therefore, decided not to allow the additional height. However, because this additional height was needed to allow ES Overlay properties to utilize the bonus density provided under IZ, the Commission also voted to entirely exempt ES properties from the IZ provisions.

The second change concerns § 2608.1, which establishes the applicability date for Inclusionary Zoning. The section originally provided that the IZ provisions would apply as of the date that the Mayor publishes the first schedule establishing the maximum rents and purchase prices for IZ Units. The Notice of Proposed rulemaking provided that compliance with IZ begin 90 days after the publication date of the purchase price schedule. However, the Commission agreed with the Office of the Attorney General that the effective date of the program was properly handled through the publication process of the administrative regulations.

No other changes were made to the proposed text.

**Set Down Proceedings and Public Hearings**

OP initiated this case through the filing of a report dated May 4, 2007 in order “to refine and expand the Inclusionary Zoning ... requirements of Chapter 26 of the Zoning Regulations.” The four principal factors leading to OP’s decision to file its petition were:

- Feedback from the development community on certain aspects of Chapter 26;
- The Commission’s request of OP to provide an analysis of expanding IZ to the R-2 Zone District for consideration;
- The need to provide specific guidance on the interaction of IZ bonus density with the building envelope constraints of individual overlays where IZ is applicable; and
- The need for clarification and consistency with the Inclusionary Zoning Implementation Act of 2006 passed by the Council of the District of Columbia on December 19, 2006.

The Commission agreed with OP’s conclusion that the amendments should be set down for public hearing. At set-down the commission expressed specific concerns about certain overlays and asked OP to provide analysis on the impact of changes to building envelope on neighborhood character and/or site lines of four overlays: the Eighth Street (“ES”) Overlay, Woodley Park (“WP”) Overlay; Cleveland Park (“CP”) Overlay and the Fort Totten (“FT”) Overlay. In addition, the Commission asked OP to provide an analysis of the potential impact and benefits of applying IZ to the R-2 Zone District.

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Public Testimony

A public hearing was held on July 26, 2007. The Commission heard testimony from a variety of District residents and others concerned with the impact of the proposed amendments.

Testimony in support of the amendments focused mostly upon the expansion of IZ to R-2 properties. Among the arguments made in favor of the application of IZ to such properties were:

- Concepts of simplicity, equity, and effectiveness suggest IZ should be applied as evenly as possible across the District;
- The success of IZ in other jurisdictions at the same relative density and building type; and.
- The growing need to provide affordable family-style housing.

Opposition to the amendments was expressed by ANC 6B, the National Capital Planning Commission (“NCPC”), the DC Building Industry Association (“DCBIA”) and the Committee of 100. The major concerns expressed were perceptions that:

- The previously approved IZ regulations were adopted when rising prices for market rate housing may have been seen as a way for developers to recover costs incurred for IZ set-asides that would not be covered by density bonuses. The IZ program should be re-considered in light of the current housing market;
- The amendments to §§ 2603.1 and 2603.2 that clarify the IZ minimum set-asides also establish minimums that de-link the concept of connecting IZ set-asides with bonus density, and this could raise “takings” issues;
- IZ set-asides should be tied to net rentable/salable residential area, rather than to residential gross floor area;
- IZ is inappropriate for the ES Overlay, because increasing the maximum permitted height from 45’ to 55’ to accommodate IZ would make buildings incompatible with the surrounding historic area and particularly with the Navy Yard’s historic Eighth Street Gate;
- Property owners in the R-2 Zone District might seek density bonuses above those the amendments propose for including that zone among those covered by IZ;
- The public has lacked input to the crafting of the IZ implementation procedures;
- Inadequate consideration has been given to the application of IZ among different residential building types that can be included in the same zone district; and

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- The IZ regulations should be made effective one year after the issuance of the first purchase/rental schedule.

### Proposed Action

The Commission discussed the merits of the amendments before it and voted to take proposed action on July 30, 2007. The Commission agreed with the recommendations of the OP regarding the clarifying and conforming amendments. Concerns of the Commission centered on three elements of the proposed amendments: the effectiveness of expanding IZ to the R-2 Zone District; the height increases necessary to accommodate the bonus density in the FT Overlay; and the height increases necessary to accommodate the bonus density in the ES Overlay.

The Commission reiterated its belief that IZ should be applied throughout the District, unless a valid reason could be presented for excluding a zone district or area. Based on this, it concluded that there was no reason not to apply IZ to the R-2 Zone District. The Commission agreed with OP's analysis that the proposed increase in height in the FT Overlay would have only a marginal impact beyond that of matter-of-right development, on the site lines from the historic Fort. However, the Commission disagreed with OP regarding the impact of the height and density bonus in the ES Overlay on that area's character. Nevertheless, the Commission voted to offer the additional height for ES Overlay properties for public comment.

As noted, a Notice of Proposed Rulemaking was published in the August 10, 2007 edition of the *D.C. Register* (54 DCR 7773) for a 30-day notice and comment period. The only comment received was from the U.S. Navy, which objected to the height increase given in the ES Overlay, citing security concerns and the affect on the Historic Latrobe Gate of the Navy Yard.

The proposed rulemaking was also referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated September 6, 2007, found that the increase in height for the ES Overlay was contrary to the Federal interest, but that otherwise the proposed text amendment would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

The Office of the Attorney General determined that this rulemaking meets its standards of legal sufficiency.

### Final Rulemaking

The Commission took final action to adopt the text published in the Notice of Proposed Rulemaking, except for the two changes noted at the outset of this Order.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

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In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR.

Title 11 of the DCMR, ZONING, is amended as follows (new language shown in **bold** and underlined; deleted language in strikethrough):

1. Chapter 11. HOTEL-RESIDENTIAL INCENTIVE OVERLAY DISTRICT, is, amended as follows:
  - a. Subsection 1101.7 is amended to read as follows:

**1101.7** ~~In the HR Overlay District, the maximum permitted floor area ratio for hotels and apartment houses shall be eight and one half (8.5).~~ **The following types of bonus density is available in the HR Overlay District:**

	<b><u>IZ Bonus</u></b>		
<b><u>Base Zone</u></b>	<b><u>Maximum Height</u></b>	<b><u>Lot Occupancy</u></b>	<b><u>Bonus FAR</u></b>
<b><u>Hotel Residential</u></b>			
<b><u>C-3-C</u></b>	<b><u>§1101.6(a)</u></b>	<b><u>100%</u></b>	<b><u>20%</u></b>
<b><u>SP-2</u></b>	<b><u>§1101.6(a)</u></b>	<b><u>80%</u></b>	<b><u>20%</u></b>
	<b><u>General Bonus</u></b>		
<b><u>Use</u></b>	<b><u>Maximum Height</u></b>	<b><u>Lot Occupancy</u></b>	<b><u>Bonus FAR</u></b>
<b><u>Hotel and Apartment House</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>2.0</u></b>

- b. By adding new §§ 1101.8 and 1101.9 to read as follows:

**1101.8** **Any use of the bonus density provided for in §1101.7 shall be deemed to first utilize the IZ bonus.**

**1101.9** **Use of the general bonus shall not count towards the set-aside requirements of §2603.**

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2. Chapter 12. CAPITOL INTEREST OVERLAY DISTRICT, is, amended by adding a new § 1204, to read as follows:

**1204**      **INCLUSIONARY ZONING**

**1204.1**      **Notwithstanding the requirements of §1203.1 and §1203.3, developments that are subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the CAP Overlay's height, lot occupancy and FAR:**

- (a)      **In the CAP/R-5-B, CAP/C-2-A, and CAP/SP-1 Overlay Districts:**
- (i)      **The floor area ratio for new construction shall not exceed 2.16 FAR**
- (ii)     **The maximum building height shall not exceed forty (40) feet**
- (b)      **In the CAP/R-5-B, and CAP/C-2-A Overlay Districts:**
- (i)      **The lot occupancy shall not exceed seventy-five percent (75%);**
- (c)      **In the CAP/R-4 base zone:**
- (i)      **The minimum lot size shall be 1,500 square feet; and**
- (ii)     **The minimum lot width shall be fifteen (15) feet.**

3. Chapter 13. COMMERCIAL NEIGHBORHOOD OVERLAY DISTRICT, is, amended as follows:

- a.      Section 1306, Cleveland Park Neighborhood Commercial Overlay District, is amended by adding a new § 1306.8 to read as follows:

**1306.8**      **Notwithstanding the requirements of §§ 1306.6 and 1306.7, developments that are subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the CP Overlay's height, lot occupancy, and floor area ratio restrictions:**

- (a)      **The maximum building height shall not exceed forty-five (45) feet;**
- (b)      **The lot occupancy shall not exceed seventy-five percent (75%); and**

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(c) The floor area ratio shall not exceed 2.4 FAR.

- b. Section 1307, Woodley Park Neighborhood Commercial Overlay District, is amended by adding a new § 1307.8 to read as follows:

1307.8 Notwithstanding the requirements of §§1307.6 and 1306.8, developments that are subject to the requirements of Chapter 26 Inclusionary Zoning may use the following modifications to the WP Overlay's height, lot occupancy, and floor area ratio restriction:

(a) In the WP/C-2-A Overlay District:

- (i) The maximum building height shall not exceed fifty (50) feet;
- (ii) The lot occupancy shall not exceed seventy-five percent (75%); and
- (iii) The floor area ratio shall not exceed 3.0 FAR.

(b) In the WP/C-2-B Overlay District:

- (i) The maximum building height shall not exceed fifty-five (55) feet;
- (ii) The lot occupancy shall not exceed eighty percent (80%); and
- (iii) The floor area ratio shall not exceed 3.6 FAR.

- c. Section 1310, Takoma Park Commercial Overlay District, is amended by adding a new § 1310.11 to read as follows:

1310.11 Developments properties subject to the requirements of Chapter 26 may use the following modifications to height and lot occupancy in order to achieve the bonus density:

(a) The floor area ratio for new construction shall not exceed 3.0 FAR;

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- (b) The lot occupancy shall not exceed seventy-five percent (75%); and
- (c) The maximum building height shall not exceed fifty-five (55) feet.

d. The provisions of the H Street Commercial Overlay District by amending § 1326 to read as follows:

**1326 PLANNED UNIT DEVELOPMENT AND INCLUSIONARY ZONING PROVISIONS (HS)**

1326.1 A planned unit development (PUD) in the HS Overlay District shall be subject to the following provisions in addition to those of Chapter 24 of this Title:

- (a) The additional height and floor area above that permitted as a matter-of-right shall be used only for housing or the preferred uses listed in §§ 1322.2 and 1323.2 and
- (b) The PUD process shall not be used to reduce requirements in this Chapter for designated uses, specifically retail, service, entertainment, and arts uses.

1326.2 The minimum area included within the proposed PUD, including the area of public streets or alleys proposed to be closed, shall be ten thousand square feet (10,000 ft.<sup>2</sup>).

**1326.3 Developments properties subject to the set-aside requirements of Chapter 26 Inclusionary Zoning may use the Height and Lot Occupancy and Bonus to Base Zone FAR in the following table: as the basis of calculating the set-aside requirements of § 2603:**

Base Zone	<u>IZ Bonus</u>		
	<u>Bonus FAR</u>	<u>Lot Occupancy</u>	<u>Maximum Height</u>
<u>H Street</u>	-	-	-
<u>C-2-A</u>	<u>0.5</u>	<u>75%</u>	<u>50</u>
<u>C-2-B</u>	<u>0.7</u>	<u>80%</u>	<u>70</u>
<u>C-2-C</u>	<u>1.2</u>	<u>80%</u>	<u>100</u>

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**1326.4** **The use of bonus density by a property also eligible to use the bonus provided for in § 1324.3 shall be deemed to first utilize the bonus authorized in § 1326.3.**

**1326.5** **Use of the bonus authorized in § 1324.3 shall not count towards the set-aside requirements of § 2603. Bonus density achieved through § 1324.3 of the HS Overlay that is in addition to the above table shall not count toward the set-aside requirements of § 2603.**

4. Chapter 15. MISCELLANEOUS OVERLAY DISTRICTS, § 1563, Height, Bulk, and Use Provisions (FT)<sup>1</sup>, is amended by adding a new § 1563.6 to read as follows:

**1563.6** **Notwithstanding § 1563.4, overlay properties subject to the requirements of Chapter 26 Inclusionary Zoning may utilize, the following modifications to height lot occupancy, and FAR:**

(a) **In the FT/C-3-A Overlay District:**

- (i) **The floor area ratio for new construction shall not exceed 4.8 FAR;**
- (ii) **The lot occupancy shall not exceed eighty percent (80%); and**
- (iii) **The maximum building height shall not exceed sixty-five (65) feet.**

(b) **In the FT/CR Overlay District:**

- (i) **The floor area ratio for new construction shall not exceed 6.0 FAR;**
- (ii) **The lot occupancy shall not exceed seventy-five percent (75%); and**
- (iii) **The maximum building height shall not exceed ninety (90) feet.**

5. Chapter 16. CAPITAL GATEWAY OVERLAY DISTRICT, § 1601, is amended to read as follows:

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<sup>1</sup> “(FT)” signifies that these provisions are applicable to properties located in the Fort Totten Overlay District.

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**1601 BONUS DENSITY AND HEIGHT (CG)**

**1601.1 CG Overlay developments subject to the set-aside requirements of Chapter 26 Inclusionary Zoning may use the FAR, Height and Lot Occupancy in the following table as the basis of calculating the set-aside requirements of § 2603:**

<u>Base Zone</u>	<u>IZ Bonus</u>		
	<u>FAR</u>	<u>Lot Occupancy</u>	<u>Maximum Height</u>
<u>Capitol Gateway</u>			
<u>C-2-C</u>	<u>7.2</u>	<u>80%</u>	<u>110</u>
<u>C-3-C</u>	<u>7.8</u>	<u>100%</u>	<u>90</u>
<u>CR</u>	<u>7.2</u>	<u>80%</u>	<u>100</u>
<u>W-1</u>	<u>3.0</u>	<u>80%</u>	<u>50</u>
<u>W-2</u>	<u>4.8</u>	<u>75%</u>	<u>80</u>
<u>W-3</u>	<u>7.2</u>	<u>75%</u>	<u>100</u>

**Bonus density achieved via §§ 1601.2 or 1601.4 does not add to the set-aside requirements of § 2603.**

1601.42 In the CG/CR and CG/W-3 Districts, a building or combined lot development shall be allowed a maximum density of ~~7.0~~ **8.2** FAR; provided that the additional 1.0 FAR in excess of ~~the matter of right maximum of 6.0~~ **§ 1601.1 FAR** shall be devoted solely to residential uses, which, for the purposes of this subsection, does not include hotel uses.

1601.23 For the purpose of accommodating bonus density as authorized by § 1601.1, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code §§ 6-601.01 to 6-601.09), as amended; provided that in Squares 601, 656, and 657 those lots abutting or separated only by a street or alley from residentially zoned property shall provide a one-to-one (1:1) building setback for any part of a building that exceeds ninety (90) feet in height on the side abutting the residential zone.

1601.34 In the CG/W-1 District, a building or combined lot development shall be allowed a maximum density of ~~3.5~~ **4.0** FAR and a maximum height of fifty-five (55) feet to accommodate the additional density. The additional 1.0 FAR in excess of ~~the matter of right maximum of 2.5~~ FAR **§1601.1** shall be devoted solely to residential uses unless the building or the combined lot

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development includes at least 2.0 FAR of residential uses, in which case the additional 1.0 FAR may be devoted to any permitted use in the W-1 zone. For the purposes of this subsection, the term "residential uses" does not include hotel uses.

1601.45 In the CG/W-2 District, the Zoning Commission may grant additional density to lots as part of the review and approval process applicable to that area, in the manner set forth in §§ 1603.5 and 1603.6.

1601.56 A building that qualifies as a Capitol South Receiving Zone site under § 1709.18 shall be subject to the maximum height and bulk limits of § 1709.21 of this Title.

6. Chapter 19. UPTOWN ARTS-MIXED USE OVERLAY DISTRICT, is amended as follows:

a. Subsection 1904.1 is amended to read as follows:

1904.1 A project shall be eligible for bonus gross floor area for space devoted to one of the preferred uses listed in §1904.2; provided:

(a) Bonus density may be used either to increase the gross floor area of the building for any permitted use up to the maximum floor area ratio (FAR) specified in paragraph (b) of this subsection, or to provide nonresidential uses or development in excess of the otherwise applicable limitation on the gross floor area of nonresidential uses in the underlying zone district; ~~and~~

(b) No building that uses bonus density shall achieve a maximum FAR in excess of 6.0 in the underlying CR District, 4.5 in the underlying C-3-A and C-2-B Districts, or 3.0 in the underlying C-2-A District; **and**

(c) **No property subject to Chapter 26, Inclusionary Zoning, shall be eligible for bonus gross floor area unless it has met the set-aside requirements of § 2603 and used all the bonus density of available through § 2604.**

b. Subsection 1905.1 (c) is amended to read as follows:

1905.1 Two (2) or more lots may be combined for the purposes of transferring bonus density and allocating the permitted mixture of uses among development sites; provided:

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- (c) Bonus floor area earned by the provisions of § 1904 may be developed on any lot or combination of lots governed by the covenant required by paragraph (f) of this subsection; provided, no development on any lot shall exceed the maximum height and bulk standards in §§ 1902 and 1904.1(b), **unless otherwise permitted by § 1909**; and provided further, the ground level uses required by § 1901.1 shall not be transferred, but shall be provided on each lot;

c. By adding a new § 1909 to read as follows:

**1909** **INCLUSIONARY ZONING**

**1909.1** **ARTS Overlay developments subject to the affordability requirements of Chapter 26 Inclusionary Zoning may use the following modifications to height and lot occupancy in order to achieve the bonus density permitted by § 2604.1:**

- (a) **In the ARTS/C-2-A Overlay District:**
- (i) **The floor area ratio shall not exceed 3.0 FAR;**
  - (ii) **The residential lot occupancy shall not exceed seventy-five percent (75%); and**
  - (iii) **The building height shall not exceed fifty (50) feet.**
- (b) **In the ARTS/C-2-B Overlay District:**
- (i) **The floor area ratio shall not exceed 4.2 FAR;**
  - (ii) **The residential lot occupancy shall not exceed eighty percent (80%); and**
  - (iii) **The building height shall not exceed seventy (70) feet.**
- (c) **In the ARTS/C-3-A Overlay District:**
- (i) **The floor area ratio shall not exceed 4.8 FAR;**
  - (ii) **The residential lot occupancy shall not exceed eighty percent (80%); and**

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(iii) The maximum building height shall not exceed seventy-five (75) feet and shall be subject to the setback requirements of § 1902.1 (b).

(d) In the ARTS/CR Overlay District:

(i) The floor area ratio for new construction shall not exceed 7.2 FAR;

(ii) The residential lot occupancy shall not exceed eighty percent (80%); and

(iii) The maximum building height shall not exceed one-hundred (100) feet and shall be subject to the setback requirements of § 1902.2.

1909.2 Bonus density achieved via § 1904.2 does not add to the set-aside requirement of § 2603.

7. Chapter 26. INCLUSIONARY ZONING is amended as follows:

a. Section 2601, Definitions, is amended by striking the definition “Achievable bonus density” and amending the definitions of “the Act” and “Moderate-income household” to read as follows:

**The Act – the Inclusionary Zoning Implementation Amendment Act of 2006, effective Mar. 14, 2007 (D.C. Law 16-275; 54 DCR 880).** References to the Act include any Mayor’s Order, agency rule, or other administrative issuance promulgated pursuant to that legislation.

\*\*\*

**Moderate-income household** - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty-~~one~~ percent (~~50~~ 51%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

b. Section 2602, Applicability, is amended as follows:

(i) Subsection 2602.1 is amended by striking the term “R-3” and inserting the term “R-2 “in its place.

(ii) Subsection 2602.3 (e) is amended by inserting the Eighth Street (ES) Overlay in the exemptions as follows:

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2602.3 This Chapter shall not apply to:

[(a) through (d) are unchanged]

(e) Properties located in any of the following areas:

- (i) The Downtown Development or Southeast Federal Center Overlay Districts;
- (ii) All properties located within The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South receiving zones On February 12, 2007;
- (iii) The W-2 zoned portions of the Georgetown Historic District;
- (iv) The R-3 zoned portions of the Anacostia Historic District; and
- (v) The C-2-A zoned portion of the Naval Observatory Precinct Districts; and

**(vi) The Eighth Street Overlay.**

(iii) Subsections 2602.5 and 2602.6 are amended to read as follows:

2602.5 An owner/occupant of an inclusionary unit may **not** sell the unit at a price greater than **that established by the Mayor pursuant to § 103 if the Act,** ~~maximum permitted under the purchase/rental schedule if~~ **unless** the price is offered by the Mayor **or a Housing Trust authorized by the Mayor.**

**2602.6 No eligible household shall be offered an inclusionary unit for rental or sale at an amount greater than that established by the Mayor pursuant to § 103 of the Act.**

c. Subsections 2603.1 and 2603.2 are amended to read as follows:

2603.1 An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an ~~R-2 R-3~~ through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of **the gross floor area being devoted to residential use** ~~its matter of right density or~~

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75% of its ~~achievable~~ **the** bonus density **being utilized** for inclusionary units.

2603.2 An inclusionary development of steel and concrete frame construction located in the zone districts stated in §2603.1 or any development located in a C-2-B, **C-2-C**, C-3, CR, R-5-C, R-5-D, R-5-E, SP, W-2 or W-3 District shall devote the greater of 8% of **the gross floor area being devoted to residential use** ~~its matter of right density~~ or 50% of its ~~achievable~~ **the** bonus density **being utilized** for inclusionary units.

d. Subsection 2604.3 is amended to read as follows:

2604.3 Inclusionary developments in **R-2** ~~R-3~~ **through** and R-4 zoning districts may use the minimum lot dimensions as set forth in the following table:

<b><u>Base Zone</u></b>	<b><u>IZ Zoning Modifications</u></b>		
	<b><u>IZ Min. Lot Area (square feet)</u></b>	<b><u>Min. Lot Width (feet)</u></b>	<b><u>Min. Lot Width (feet) Special Exception</u></b>
<b><u>R-2 Detached</u></b>	<b><u>3,200</u></b>	<b><u>40</u></b>	<b><u>32</u></b>
<b><u>R-2 Semi-Detached</u></b>	<b><u>2,500</u></b>	<b><u>30</u></b>	<b><u>25</u></b>
<b><u>R-3</u></b>	<b><u>1,600</u></b>	<b><u>20</u></b>	<b><u>16</u></b>
<b><u>R-4</u></b>	<b><u>1,500</u></b>	<b><u>18</u></b>	<b><u>16</u></b>

e. Section 2606, Exemption From Compliance, is amended by striking the existing text and inserting the following new text in its place:

**2606.1** **The Board of Zoning Adjustment is authorized to grant partial or complete relief from the requirement of § 2603 upon a showing that compliance (whether on site, offsite or a combination thereof) would deny the applicant economically viable use of its land.**

**2606.2** **No application for a variance from the requirements of § 2603.2 may be granted until the Board of Zoning Adjustment has voted to deny an application for relief pursuant to this section or § 2607.**

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f. Section 2607 is amended to read as follows:

**2607 OFF-SITE COMPLIANCE**

2607.1 The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of §2603 to be constructed off-site ~~on property owned by the applicant~~ upon proof, based upon a specific economic analysis, that compliance **on-site** would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are:

- (a) Exceptionally high fees in condominium developments that cannot be reduced to levels affordable to eligible households;
- (b) The inclusion of expensive and specialized social or health services in a retirement housing development or a development that principally provides housing for the disabled, if such services are not severable from the provision of housing and render units in the development unaffordable to eligible households; or
- (c) For a rental development the owner of which wishes to change the property's use to one listed in § 2602.3, proof that continuation of the rental use is no longer economically feasible.

2607.2 An applicant who has demonstrated the existence of economic hardship shall further demonstrate that the off-site development:

- (a) Is located within the same census tract as the inclusionary development;
- (b) Consists of new construction for which no certificate of occupancy has been issued;
- (c) Is at a location suitable for residential development;
- (d) Has complied with or will comply with all on-site requirements of this Chapter as are applicable to it;
- (e) Has not received any development subsidies from federal or District government programs established to provide affordable housing; ~~and~~

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- (f) Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than 95% of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site;
- (g) Will not have more than 30% of its gross floor area occupied by inclusionary units that satisfy the set-aside requirement of other properties, including the property that is the subject of the BZA application; and
- (h) Has not utilized bonus density beyond that provided by § 2604.1
- 2607.3 The requirement of 2607.2 (a) may be waived upon a showing that the off-site development is owned by the Applicant, is located in the District of Columbia, and meets the requirements of § 2607.2.: ~~applicant; after good faith efforts, was unable to locate properties within the same census tract or that the costs to purchase and develop available properties would render both the inclusionary and off site projects economically infeasible.~~
- 2607.4 Inclusionary units constructed off-site shall not be counted toward any set-aside requirement separately applicable to the off-site development pursuant to § 2603.
- 2607.5 No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the off-site development and the Mayor. A draft covenant, executed by the owner of the offsite property, shall be attached to an application for relief under this section.

[The remainder of this section is unchanged.]

- g. Section 2608 is amended to read as follows:

**2608 APPLICABILITY DATE**

- 2608.1 The provisions of §§ 2600 through 2607 of this Chapter as adopted by Zoning Commission Orders 04-33, ~~and 04-33A,~~ and 04-33B and all

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amendments made by Orders No. 04-33A and 04-33B to 11 DCMR Chapters 1, 11 through 14, 15, 16, and 19 §§ ~~1402.1, 1904.2, and 1999.2~~ shall become effective upon the publication of the first purchase/rental schedule in the *D.C. Register*.

**2608.2** **The provisions of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior [TO THE EFFECTIVE DATE OF THIS SUBSECTION].**

Vote of the Zoning Commission taken at a special public hearing on July 30, 2007, to **APPROVE** the proposed rulemaking: **4-0-1** (John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; Carol J. Mitten having not participated, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 10, 2007, by a vote of **4-0-1** (Anthony J. Hood, Michael G. Turnbull, John G. Parsons to adopt; Gregory N. Jeffries to adopt by absentee ballot; Carol J. Mitten having not participated, not voting)

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**and**

**Z.C. ORDER NO. 04-33B**

**Z.C. Case No. 04-33B**

**(Text Amendment – Inclusionary Zoning – Addition of R-2 Zones, Standards for Certain  
Overlays, and Clarifying Amendments)**

**September 10, 2007**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF FINAL RULEMAKING**  
**and**  
**Z.C. ORDER NO. 07-20**  
**Z.C. Case No. 07-20**  
**(Map and Text Amendment – 11 DCMR)**  
**(Map Amendment to include Kingman Island and Heritage Island in the**  
**W-0 Zone District and Text Amendments to Accommodate Construction of a Public**  
**Nature Education Center on Kingman Island)**  
**January 14, 2008**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District Charter; hereby gives notice of the adoption of amendments to the Zoning Map and to §§ 901, 925, 930, 938, 2100, and 2200 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

The map amendment zones Kingman and Heritage Islands, islands located in the Anacostia River, to the W-0 Zone District. The text amendments:

- allow a public nature education or interpretive center in the W-0 Zone District to include a boat dock as a matter-of-right;
- create an exemption for certain roof structures on Kingman Island from the roof structure limits of § 930;
- exempt the proposed public nature center on Kingman Island from the waterfront setback requirements of § 938.2; and
- prohibit the construction of parking spaces and service delivery loading spaces on Kingman and Heritage Islands.

A Notice of Proposed Rulemaking was published on the *D.C. Register* (“DCR”) on November 30, 2007 at 54 DCR 11586. The Commission took final action to adopt the amendments at a public meeting on January 14, 2008, making three changes to the text originally proposed, as will be explained later in this Order under “Final Action.” The final rulemaking is effective upon publication in the *D.C. Register*.

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### **Existing Zoning Map and Regulations**

Kingman and Heritage Islands are currently unzoned.

Subsection 901.5 of the Zoning Regulations permits a “public nature education or interpretive center” as a matter-of-right use in the W-0 Zone District, but § 925 provides that a “boat launching facility, dock, wharf, or pier” requires special exception approval. Section 930 establishes a 40-foot height limit for buildings and structures in the W-0 Zone District, and while it exempts certain types of roof structures, it does not exempt structures designed to accommodate wastewater treatment systems as proposed for the Kingman Island nature center. Section 938 requires a 100-foot setback from the mean high water level for buildings or structures in the W-0 Zone District. Sections 2100 and 2200 require all buildings and structures to be served with an allotment of parking spaces and loading facilities.

### **Description of Map and Text Amendments**

The map and text amendments are designed to permit construction of a public nature education center on Kingman Island.

The map amendment zones Kingman and Heritage Islands to the W-0 Zone District.

The text amendments amend §§ 901.5(d) and 925.1 of the Zoning Regulations to allow a public nature education or interpretive center in the W-0 Zone District to include a boat dock as a matter-of-right. The amendments add a new § 930.5 that exempts roof structures from the height limits of the W-0 Zone District when the roof structure is: (1) less than ten (10) feet in height; (2) located atop a building that is below the maximum building height; and (3) located on a building on Kingman Island. The amendments exempt the proposed public nature center on Kingman Island from the waterfront setback requirements of § 938.2. Finally, the text amendments prohibit the construction of parking spaces and service delivery loading spaces on Kingman and Heritage Islands by amending §§ 2100.1 and 2200.1.

### **Relationship to Comprehensive Plan**

The 2006 Generalized Policy Map designates the Kingman and Heritage Islands as “Parks, Recreation and Open Space” with the dominant uses being “parks and recreation centers, cemeteries, and the National Capital Open Space System.” The proposed use of a private, non-profit nature education center for Kingman Island is consistent with this designation and does not appear inconsistent with the Policy Map, the Future Land Use Map or the 2006 Comprehensive Plan.

The proposal supports the 2006 Comprehensive Plan policy objectives for the site including Policy E-5.2.4 (Interpretive Centers) to support the development of environmental education and nature centers in the District in particular in recovering habitat areas such as the Anacostia River

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shoreline. Policy AW-1.2.8 specifically refers to the retention of Kingman and Heritage Islands as natural sanctuaries where use should be limited to an interpretive nature center, trails, public art, passive open space, and pedestrian access ways.

### **Set Down Proceeding**

The Office of Planning (“OP”) initiated this rulemaking by filing a report. The Commission set down the case for a public hearing at its July 30, 2007 public meeting.

### **Public Hearing**

OP submitted a supplemental report suggesting revisions to the advertised text on October 4, 2007. The supplemental report suggested adding the amendments to §§ 901.5(d) and 925.1 to allow inclusion of a boat dock to a public nature education or interpretive center as a matter-of-right.

The Commission held a public hearing on October 11, 2007. OP and the Deputy Mayor’s Office for Planning and Economic Development testified in support of the map and text amendments.

### **Proposed Action**

The Commission voted to support OP’s recommendations and adopt the amendments at the conclusion of the public hearing on October 11, 2007.

The proposed rulemaking was referred to the National Capital Planning Commission (“NCPC”) for review of any impacts on the federal interest under the Comprehensive Plan under the terms of § 492 of the District of Columbia Charter.

NCPC, by action dated November 1, 2007, expressed concern that the proposed new § 930.5, which would allow rooftop structures up to ten (10) ft. in height in the W-0 Zone District, could potentially adversely impact federal interests in or near the portions of the District zoned W-0. NCPC recommended that the text amendments apply only to Kingman and Heritage Islands.

The Notice of Proposed Rulemaking was published in the *D.C. Register* at 54 DCR 11586 on November 30, 2007, for a 30-day notice and comment period. No comments were received.

### **Great Weight Given to ANC Issues and Concerns**

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the issues and concerns expressed in the affected ANC’s written recommendation. No recommendation was received by an affected ANC in this case.

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### Final Action

At its regularly scheduled January 14, 2008 public meeting, the Commission re-opened the record to receive a supplemental report from OP dated October 29, 2007. In the supplemental report, OP acknowledged the NCPC comment regarding the proposed new § 930.5, and recommended limiting its application to Kingman Island.

The Commission took final action to adopt the rulemaking, including the amendments suggested by OP in its October 4 and 29, 2007 supplemental reports, at its regularly scheduled public meeting on January 14, 2008.

Based on the above, the Commission finds that the proposed amendments to the Zoning Map and the Zoning Regulations are in the best interests of the District of Columbia and consistent with the purpose of the Zoning Regulations and the Zoning Act.

The Office of the Attorney General has determined that this rulemaking is legally sufficient.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR:

A. The Zoning Map is amended by including Kingman and Heritage Islands in the W-0 Zone District.

B. Chapter 9, WATERFRONT DISTRICTS, is amended by (new language is shown in **bold and underlined**):

1. Amending § 901.5(d) to read as follows:

(d) Public nature education or interpretive center **including a boat dock**; and

2. Amending § 925.1(k) to read as follows:

(k) Boat launching facility, dock, wharf, or pier **except as provided by § 901.5 (d)**;

3. Adding a new § 930.5 to read as follows:

**930.5 Roof structures less than ten (10) feet in height above a roof or parapet wall of a structure in the W-0 District on Kingman Island shall not be subject to the requirements of this section when the top of the roof structure is below maximum building height prescribed for the W-0 District.**

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4. Amending § 938.2 to read as follows:

938.2 Notwithstanding § 938.1, a waterfront setback need not be provided for a water taxi ticketing/information booth, or for structures directly associated with a public-accessible wharf, dock or pier **and for a public nature education center on Kingman Island.**

C. Chapter 21, OFF-STREET PARKING REQUIREMENTS, is amended by amending § 2100.1 to read as follows (new language is shown in **bold and underlined**):

2100.1 All buildings or structures erected on or after May 12, 1958, shall be provided with parking spaces to the extent specified in § 2101, except as permitted by §§ 2102 through 2108 and **for structures erected on Kingman and Heritage Islands for which the construction of parking spaces shall be prohibited except for handicap spaces.**

D. Chapter 22, OFF-STREET LOADING FACILITY REQUIREMENTS, is amended by amending § 2200.1 to read as follows (new language is shown in **bold and underlined**):

2200.1 All buildings or structures erected on or after May 12, 1958, shall be provided with loading berths, loading platforms and service delivery loading spaces to the extent specified in § 2201, except as provided in § 2202 and **for structures erected on Kingman and Heritage Islands for which the construction of service delivery loading spaces shall be prohibited.**

The Zoning Commission voted to **APPROVE** the proposed rulemaking at the close of the public hearing on October 11, 2007 by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; John G. Parsons not present, not voting).

The Zoning Commission voted to **ADOPT** this final rulemaking at its public meeting on January 14, 2008 by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to adopt; Peter G. May and Curtis L. Etherly, Jr., having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING**

**and**

**Z.C. ORDER NO. 07-20**

**Z.C. Case No. 07-20**

**(Map and Text Amendment – 11 DCMR)**

**(Map Amendment to include Kingman Island and Heritage Island in the  
W-0 Zone District and Text Amendments to Accommodate Construction of a Public  
Nature Education Center on Kingman Island)**

**January 14, 2008**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.