

**D.C. DEPARTMENT OF HUMAN RESOURCES
METROPOLITAN POLICE DEPARTMENT**

NOTICE OF FINAL RULEMAKING

The Director, D.C. Department of Human Resources (DCHR), and the Chief, Metropolitan Police Department (MPD), with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title XVI of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-616.51 *et seq.*) (2006 Repl.), hereby gives notice of final rulemaking action. The main purpose of these rules is to amend section 1603, *Definition of Cause: General Discipline*, of Chapter 16, General Discipline and Grievances, of Title 6 of the District of Columbia Municipal Regulations (DCMR). Specifically, section 1603.3 is amended to modify the definition of the causes for which disciplinary action may be taken; and a new section 1619, *Table of Appropriate Penalties*, is added to the chapter listing the causes in subsection 1603.3, infractions or offenses under each cause, and the penalty. Other changes were made to section 1603, as well as changes to sections 1600, 1601, 1604, 1606, and 1608 of the chapter. Additionally, section 1619, *Enforced Leave*, was renumbered as 1620 and amended; and section 1699 was amended to add a definition of the terms "covered supervisor," "nexus," "temporary appointment," and "term appointment;" and amend the definition of the terms "deciding official," "enforced leave" and "grievance." The DCHR received comments from the public based on the Notice of Proposed Rulemaking published at 54 DCR 012043 (December 14, 2007). As the comments received produced no substantive changes, the proposed rules published on December 14, 2007, and as promulgated by the DCHR and the MPD, are being certified as final. Additionally, having found that no substantive changes are required of the rulemaking notice, the legal sufficiency certification received by the Office of the Attorney General for the District of Columbia stands. Final rulemaking action was taken on February 8, 2008.

CHAPTER 16

GENERAL DISCIPLINE AND GRIEVANCES

Chapter 16 of the D.C. Personnel Regulations is amended as follows:

Section 1600 is amended as follows:

1600 APPLICABILITY: GENERAL DISCIPLINE

A new section 1600.1 is added to read as follows:

1600.1 The rules for the adverse and corrective action system specified in sections 1601 through 1619 of this chapter are established in accordance with the provisions of sections 604 and 1651 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-606.04 and 1-616.51) (2006 Repl.).

Section 1600.1 is renumbered as 1600.2 and amended to read as follows:

1600.2 Sections 1601 through 1619 of this chapter shall apply to each District government employee in the Career Service who has completed a probationary period.

A new section 1600.3 is added to read as follows:

1600.3 The following employees are excluded from coverage under sections 1601 through 1619 of this chapter:

- (a) An employee serving under a Career Service appointment (Probational);
- (b) An employee serving on a term appointment during the period in which he or she is completing the required probationary period;
- (c) An employee given a temporary appointment in the Career Service;
- (d) An employee of the Board of Trustees of the University of the District of Columbia;
- (e) An employee in the Legal Service;
- (f) An employee in the Excepted Service;
- (g) An employee in the Management Supervisory Service; and
- (h) Any 905 series attorney not in the Legal Service.

Section 1601.1 is amended to read as follows:

1601.1 An employee covered by section 1600.2 of this chapter may not be suspended, reduced in grade, removed, given an official reprimand, or placed on enforced leave except as provided in this chapter or in chapter 24 of these regulations.

Section 1603 is amended as follows:

1603 DEFINITION OF CAUSE: GENERAL DISCIPLINE

Sections 1603.1 through 1603.3 are amended to read as follows:

1603.1 There must be full accountability for managers and supervisors for all disciplinary actions taken under sections 1601 through 1619 of this chapter. Therefore, no corrective or adverse action may be initiated under those sections unless the action is first authorized by a manager or supervisor who the Mayor or an agency head may remove from his or her position at will.

1603.2 In accordance with section 1651 (1) of the CMPA (D.C. Official Code § 1-616.51 (1)) (2006 Repl.), disciplinary actions may only be taken for cause.

- 1603.3 For the purposes of this chapter, except as provided in section 1603.5 of this section, cause for disciplinary action for all employees covered under this chapter is defined as follows:
- (a) Conviction of a felony;
 - (b) Conviction of a misdemeanor based on conduct relevant to an employee's position, job duties, or job activities;
 - (c) Any knowing or negligent material misrepresentation on an employment application;
 - (d) Any knowing or negligent material misrepresentation on other document given to a government agency;
 - (e) Any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law;
 - (f) Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include:
 - (1) Unauthorized absence;
 - (2) Absence without official leave;
 - (3) Neglect of duty;
 - (4) Insubordination;
 - (5) Incompetence;
 - (6) Misfeasance;
 - (7) Malfeasance;
 - (8) Unreasonable failure to assist a fellow government employee in carrying out assigned duties; and
 - (9) Unreasonable failure to give assistance to the public;
 - (g) Any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious;
 - (h) Any act which constitutes a criminal offense whether or not the act results in a conviction; and
 - (i) Use of illegal drugs, unauthorized use or abuse of prescription drugs, use of alcohol while on duty, or a positive drug test result.

A new section 1603.4 is added to read as follows:

1603.4 The causes specified in section 1603.3 of this section shall include but not necessarily be limited to the infractions or offenses under each cause contained in the Table of Appropriate Penalties in section 1619 of this chapter.

Section 1603.4 is renumbered as 1603.5 and amended to read as follows:

1603.5 Cause for disciplinary action under this chapter shall also mean the following for the five (5) categories of employees described in subsection 1603.5 (b)(1) through (5) below, whether on or off duty:

- (a) Any act or omission which constitutes a criminal offense, whether or not such act or omission results in a conviction; and
- (b) Any credible evidence of use of an illegal drug, unauthorized use or abuse of prescription drugs including, without limitation, the results of any drug test:
 - (1) All employees of the MPD;
 - (2) All employees of the Department of Corrections, including correctional officers;
 - (3) Any commissioned special police officer employed by the District government;
 - (4) Any employee of the Department of Youth Rehabilitation Services covered by the law enforcement retirement provisions of the Civil Service Retirement System or the detention officer provisions of the District government's retirement benefits program established in accordance with sections 2605 through 2614 of the CMPA (D.C. Official Code §§ 1-626.05 through 1-626.14) (2006 Repl); or
 - (5) Any other District government employee authorized to carry a firearm while on duty, including employees of the Office of the Inspector General covered by this chapter.

Sections 1603.5 through 1603.7 are deleted.

Section 1603.8 is renumbered as 1603.6 and amended to read as follows:

1603.6 The authority to adopt corrective or adverse action penalty guidelines or requirements is held exclusively by the Mayor and independent personnel authorities covered under this chapter, except that with regard to the MPD, such authority is held by the Mayor and the Chief of Police.

A new section 1603.7 is added to read as follows:

1603.7 Notwithstanding the provisions in sections 1603.3, 1603.5, and 1603.6 of this section, the Director, D.C. Department of Human Resources (DCHR), or independent personnel authority may, on a case-by-case basis, approve the use of penalty guidelines or requirements developed by an agency head for employees of the agency covered under this chapter. The Director, DCHR, shall publish in the District Personnel Manual any such guidelines or requirements approved for a subordinate agency.

Sections 1603.9 through 1603.11 are renumbered as 1603.8 through 1603.10, respectively, and amended to read as follows:

1603.8 Unless otherwise required by law, in selecting the appropriate penalty to be imposed in a disciplinary action, consideration will be given to any mitigating or aggravating circumstances that have been determined to exist, to such extent and with such weight as is deemed appropriate.

1603.9 In any disciplinary action, the District government will bear the burden of proving by a preponderance of the evidence that the action may be taken or, in the case of summary action, that the disciplinary action was taken for cause, as that term is defined in this section. A criminal conviction will estop the convicted party from denying the facts underlying the conviction.

1603.10 All notices issued in connection with an adverse or corrective action under this chapter shall conform to all requirements of the Fifth Amendment Due Process Clause of the United States Constitution.

Sections 1603.12 and 1603.13 are deleted.

Section 1604 is amended as follows:

1604 CORRECTIVE ACTION: GENERAL DISCIPLINE

1604.1 A corrective action shall be an official reprimand, or a suspension of less than ten (10) days.

Section 1604.2 is amended to read as follows:

1604.2 Except as provided in section 1604.3 of this section, a corrective action may be contested as a disciplinary grievance pursuant to section 1617 of this chapter.

A new section 1604.3 is added to read as follows:

1604.3 (a) Notwithstanding the provisions of section 1604.1 of this section or any other provision of this chapter, a proposing official may attempt to resolve a proposed corrective action of a suspension of less than ten (10) days by conducting a Resolution Conference with the employee subject to the proposed suspension and his or her union representative (unless representation is voluntarily waived by the employee), if applicable. The following conditions shall apply:

- (1) Resolution Conferences shall be limited to proposed suspensions of less than ten (10) days proposed under this chapter;
 - (2) Any Resolution Conference shall be conducted immediately after the issuance of the advance written notice;
 - (3) A successful Resolution Conference shall result in a written agreement between the proposing official and affected employee to a suspension less than originally contemplated, or an official reprimand in lieu of a period of suspension without pay;
 - (4) A lesser suspension or official reprimand penalty shall not be instituted unless the proposing official and affected employee reach mutual agreement in writing and the employee voluntarily waives his or her right to file an administrative grievance under section 1617 of this chapter or to appeal under a negotiated grievance procedure, as applicable;
 - (5) If an agreement is not reached, normal procedures to effect the suspension action originally proposed shall be followed; and
 - (6) Statements concerning an agreement resulting from a Resolution Conference shall not be used by either party as evidence or precedent in another disciplinary action, except that the outcome of a Resolution Conference may be considered in the future for purposes of progressive discipline.
- (b) The personnel authority shall set forth procedures for Resolution Conferences under this section.

Section 1606 is amended as follows:

1606 AGENCY RESPONSIBILITY: GENERAL DISCIPLINE

Section 1606.1 is amended to read as follows:

- 1606.1 In taking disciplinary actions under this chapter, each agency head shall ensure the following:
- (a) That actions covered by this chapter are taken in accordance with the provisions herein;
 - (b) That each employee covered by this chapter is afforded fair and equitable treatment, as well as the rights and protections provided herein; and
 - (c) That the employee, the employee's representative, and witnesses, have freedom from restraint, coercion, interference, or reprisal by any official of the agency.

Section 1606.2 is deleted.

Section 1606.3 is renumbered as 1606.2 and amended to read as follows:

1606.2 In determining the penalty for a disciplinary action under this chapter, documentation appropriately placed in the OPF regarding prior corrective or adverse actions, other than a record of the personnel action, may be considered for not longer than three (3) years from the effective date of the action, unless sooner ordered withdrawn in accordance with section 1601.7 of this chapter.

New sections 1606.3 through 1606.5 are added to read as follows:

1606.3 When a disciplinary action is proposed for cause as provided in section 1603.3 (b) of this chapter, the agency shall present evidence to demonstrate that the employee engaged in the alleged conduct during duty hours or off-duty hours, when such evidence is relevant to assessing a penalty.

1606.4 In showing that an employee's conduct would affect or has affected adversely the ability of the employee or the employing agency to perform effectively, the agency must demonstrate nexus, which may include but is not limited to one (1) or more of the following:

- (a) That the agency is less able to carry out its assigned functions;
- (b) That the employee is unable or unsuitable to perform his or her assigned duties;
- (c) That other employees refuse to work with the employee who engaged in the misconduct;
- (d) That the conduct has been publicized or has gained notoriety which has a deleterious effect on the operation of the agency; or
- (e) That there is otherwise an adverse effect on the operation of the agency.

1606.5 Federal case law, arbitration decisions, or other relevant authorities may be relied upon by the agency in taking any action for cause or in demonstrating nexus.

Section 1606.4 is renumbered as 1606.6 and amended to read as follows:

1606.6 Except as provided by sections 1601.2 and 1601.5 of this chapter, no provision in this chapter shall be interpreted to permit a modification of the corrective action procedures and standards in this chapter by contract, memorandum of understanding, informal agreement, past practices, or agency order. Any modification of these corrective action procedures and standards shall be done explicitly by the adoption and issuance of additional regulations.

Section 1606.5 is deleted.

Section 1606.6 is renumbered as 1606.7 and amended to read as follows:

1606.7 In appropriate discipline-related cases, agency heads may utilize the counseling program for troubled employees as provided under section 2007 of the CMPA (D.C. Official Code § 1-620.07) (2006 Repl).

Section 1608.9 is amended to read as follows:

1608.9 An employee against whom a corrective or adverse action is proposed shall be entitled to be retained in an active duty status during the notice period, except when the employee has been placed on administrative leave as provided in sections 1608.8 or 1620.1 of this chapter.

A new section 1619 is added to read as follows:

1619 TABLE OF APPROPRIATE PENALTIES: GENERAL DISCIPLINE

1619.1 The Table of Appropriate Penalties, which begins on the next page, shall be used as specified in this chapter:

CAUSES SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<p>1. Conviction of a Felony: Conviction including a plea of <i>nolo contendere</i> of a felony at any time following submission of an employee's job application. <u>Notes:</u> A felony is a serious crime usually punishable by a prison term of more than one (1) year. The term "<i>nolo contendere</i>" means a plea entered by the defendant in response to being charged with a crime. If a defendant pleads <i>nolo contendere</i>, he or she is neither admitting nor denying commission of the crime, but agreeing to a punishment (usually a fine or jail time) as if guilty. <u>Proof Needed:</u> Court Order or Decision</p>	Removal	N/A	N/A
<p>2. Conviction of a Misdemeanor Based on Conduct Relevant to an Employee's Position, Job Duties, or Job Activities: Includes conviction of a misdemeanor at any time following the submission of an employee's job application, when the conviction is based on conduct that would affect adversely the employee's or the agency's ability to perform effectively, or conduct that is relevant to the employee's position, job duties, or job activities. <u>Notes:</u> A plea of guilty or a conviction following a plea of <i>nolo contendere</i> to a charge of a misdemeanor involving the specified conduct shall constitute prima facie evidence of the elements of the misdemeanor. A misdemeanor is a less serious crime than a felony, punishable by no more than one (1) year in jail.</p>	Removal	N/A	N/A
<p>3. Any Knowing or Negligent Material Misrepresentation on an Employment Application: The willful and deliberate misrepresentation or omission of any facts in the employment application which would have precluded or cast doubt upon the selection for appointment or promotion. <u>Note:</u> Misrepresentation or omission is related to major requirements of the position, educational background, work history, arrest record, drug use, licenses, and proof of residency. <u>Proof Needed:</u> Corroboration that the statement is false. Example, transcripts, certification from license agencies that the person is unlicensed, arrest records, affidavits indicating person is not a resident.</p>	Removal	N/A	N/A

CAUSES SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
4. Any Knowing or Negligent Material Misrepresentation on Other Document Given to a Government Agency:			
<p>(a) A non-intentional false statement as a result of negligence.</p> <p>(b) An intentional false statement or omission with respect to other government documents or making a false entry on government records which call into question the credibility of the document.</p> <p><u>Note:</u> Aggravating factors to consider include whether as a result of the falsification the employee received financial gain, misused government property or jeopardized the safety of others.</p> <p><u>Examples:</u> Falsification of time and attendance records, travel vouchers or other documents related to entitlements.</p>	<p>Suspension for 5-15 days</p> <p>Suspension for 15 days</p>	<p>Suspension for 30 days to Removal</p> <p>Suspension for 30 days to Removal</p>	<p>Removal</p> <p>Removal</p>
5. Any On Duty or Employment-Related Act or Omission that the Employee Knew or Should Reasonably Have Known is a Violation of Law:			
<p>Engaging in activities that have criminal penalties or are in violation of federal or District of Columbia laws and statutes, such as:</p> <p>(a) Unauthorized smoking in the workplace; incidents of a sexual or ethnic nature involving unwelcome remarks, joking, offensive comments or slurs; and acts of insubordination that are verbally abusive.</p> <p><u>Note:</u> Certain on-duty acts are more egregious than others, requiring more severe discipline.</p> <p>(b) Misuse of resources or property; unwanted sexual advances or propositions; etc.</p> <p>(c) Assault or fighting on duty; battery, violation of EEO laws; such as incidents of sexual harassment involving physical or financial threats; touching (Class Four felony or stalking); or other violations of EEO law that result in the loss of employment; misuse of funds; resources or property; unfair labor practices or illegal work stoppage; use or distribution of controlled substances, etc.</p>	<p>Suspension for 5-15 days</p> <p>Suspension for 30-days up to Removal</p> <p>Removal</p>	<p>Suspension for 10-30 days</p> <p>Removal</p> <p>N/A</p>	<p>Removal</p> <p>N/A</p> <p>N/A</p>

CAUSES SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<p>6. Any on-Duty or Employment-Related Act or Omission that Interferes with the Efficiency and Integrity of Government Operations:</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>
<p>(a) Unauthorized Absence: Ten (10) consecutive days or more constitutes abandonment</p>	<p>Removal</p>	<p>Suspension for 10-20 days</p>	<p>Suspension for 30 days to Removal</p>
<p>(b) Absence Without Official Leave</p>	<p>Reprimand to Removal</p>	<p>Suspension for 15-days to Removal</p>	<p>Suspension for 30-days to Removal or Reduction Grade</p>
<p>(c) Neglect of Duty: Failure to follow instructions or observe precautions regarding safety; failure by a supervisor to investigate a complaint; failure to carry out assigned tasks; careless or negligent work habits.</p>	<p>Reprimand to Removal</p>	<p>Suspension for 15-30 days</p>	<p>Reduction in Grade to Removal</p>
<p>(d) Insubordination: Includes refusal to comply with direct orders, accept an assignment or detail; and carry out assigned duties and responsibilities.</p>	<p>Reprimand to Suspension for up to 10 days</p>	<p>Suspension of 20-30 days</p>	<p>Suspension for 45 days to Removal</p>
<p>(e) Incompetence: Includes careless work performance; serious or repeated mistakes after given appropriate counseling or training; failing to complete assignment timely.</p>	<p>Suspension for 5-15 days</p>	<p>Suspension for 15 days</p>	<p>Removal</p>
<p>(f) Misfeasance: Includes careless work performance, failure to investigate a complaint, providing misleading or inaccurate information to superiors; dishonesty; unauthorized use of government resources using or authorizing the use of government resources for other than official business.</p>	<p>Suspension for 30 days to Removal</p>	<p>Suspension for 45 days to Removal</p>	<p>Removal</p>
<p>(g) Malfeasance: Doing something illegal. This term is often used when a professional or public official commits an illegal act that interferes with the performance of his or her duties. This includes misuse, mutilation or destruction of government property; concealment, misuse, removal, mutilation, alteration of government property, public records or funds; misuse of official position for unlawful or personal gain.</p> <p><u>Example:</u> A contracting officer accepts a bribe in exchange for issuing a contract to a vendor.</p>	<p>Suspension for 30 days to Removal</p>	<p>Suspension for 45 days to Removal</p>	<p>Removal</p>

CAUSES SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<p>6. Any on-Duty or Employment-Related Act or Omission that Interferes with the Efficiency and Integrity Government Operations (Continued):</p>			
<p>(h) Unreasonable Failure to Assist a Fellow Government Employee in Carrying Out Assigned Duties: Refusal of an employee to carry out a directive by a superior to perform a duty that is outside the normal scope of the employee's duties or responsibilities.</p>	<p>Reprimand to Suspension for up to 10 days</p>	<p>Suspension for 15-25 days</p>	<p>Suspension for 30 days to Removal</p>
<p>(i) Unreasonable Failure to Give Assistance to the Public: Includes discourteous treatment of the public; violation of department customer services standards; failure to return phone calls; failure to offer assistance when requested, etc.</p>	<p>Reprimand to Suspension for up to 10 days</p>	<p>Suspension for 15-25 days</p>	<p>Suspension for 30 days to Removal</p>
<p>7. Any Other On Duty or Employment-Related Reason for Corrective or Adverse Action that is not Arbitrary or Capricious:</p>	<p>“Catchall” phrase; may include any activities for which the investigation can sustain that is not “de minimis” (i.e., very small or trifling matters) can include:</p> <ul style="list-style-type: none"> • Drunkenness on duty • Gambling • Arguing • Use of abusive or offensive language • Rude or boisterous playing • Sleeping on the job <p>In most instances, the behavior can be placed in one of the categories outlined above.</p>	<p>Reprimand to Suspension for up to 15 days</p>	<p>Removal</p>
<p>8. Any Act which Constitutes a Criminal Offense whether or not the Act Results in a Conviction:</p>	<p>Conviction not needed; may act on the arrest if the arrest is related to the job. Proof Needed: Arrest record</p>	<p>Suspension for 10 days to Removal</p>	<p>Removal N/A</p>

CAUSES SPECIFICATIONS/GENERAL CONSIDERATIONS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
<p>9. Use of Illegal Drugs; Unauthorized Use or Abuse of Prescription Drugs; or Positive Drug Test Result:</p> <p>The District government has a drug-free work policy that prohibits not only the use of illegal drugs, but extends to the inappropriate use (or abuse) of prescription drugs and over-the-counter drugs.</p>	Suspension for 15 days to Removal	Removal	N/A

Section 1619 is renumbered as 1620 and amended to read as follows:

1620 ENFORCED LEAVE

- 1620.1 Notwithstanding any other provision of this chapter, a personnel authority may authorize placing an employee on enforced leave if:
- (a) A determination has been made that the employee utilized fraud in securing his or his or her appointment or that he or she falsified official records;
 - (b) The employee has been indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of *nolo contendere*); or
 - (c) The employee has been indicted on, arrested for, or convicted of any crime (including conviction following a plea of *nolo contendere*) that bears a relationship to his or her position; except that no such relationship need be established between the crime and the employee's position in the case of uniformed members of the Metropolitan Police Department or correctional officers in the D.C. Department of Corrections.
- 1620.2 Placement of an employee on enforced leave pursuant to this section is not a corrective or adverse action.
- 1620.3 A personnel authority may propose the placing of an employee on enforced leave in accordance with this section as follows:
- (a) For actions based on any of the conditions described in section 1620.1 (a) or (c) of this section, only if the personnel authority has a good faith belief that any of the conditions described in section 1620.1 (a) or (c) of this section are met after reviewing and considering the information contained in affidavits, legal indictments, charges or complaints, arrest records, or other documents or other credible information; and
 - (b) For actions based on any of the conditions described in section 1620.1 (b) of this section, only after the personnel authority has obtained official documentation such as affidavits, legal indictments, charges or complaints, arrest records, or other documentation, to support the determination that any of the conditions described in section 1620.1 (b) of this section are met.
- 1620.4 If the personnel authority determines that the conditions described in section 1620.1 of this section are met, an employee shall initially be placed on administrative leave for a period of five (5) workdays.
- 1620.5 The first day of the administrative leave period shall be the first workday that immediately follows the day on which the employee was placed on administrative leave pursuant to section 1620.4 of this section.
- 1620.6 The proposing official shall issue a written notice to propose placement of an employee on enforced leave. The notice shall inform the employee of the following:

- (a) The reasons for the proposed enforced leave;
 - (b) The specific basis, including affidavits or other documentation, upon which the decision to propose placement of the employee on enforced leave was based and which establishes that the conditions described in section 1620.1 of this section have been met. The employee shall be provided with a copy of the notice;
 - (c) The beginning and ending dates of the five (5) workdays of administrative leave;
 - (d) The beginning date of the proposed enforced leave;
 - (e) The right to make a written or oral response, or both, to the notice, and to furnish written statements of witnesses or other documentation in support of the response, all within one (1) workday of receipt of the notice of proposal;
 - (f) The person to whom the response is to be presented;
 - (g) The right to be represented by an attorney or other representative; and
 - (h) The right to a written final decision within the five (5) workdays of administrative leave.
- 1620.7 Prior to actual delivery of the notice under section 1620.8 of this section, initial delivery of the notice proposing placement of an employee on enforced leave may be accomplished by reading the notice to the employee over the telephone.
- 1620.8 During the five-day (5-day) period of administrative leave under section 1620.4 of this section, the agency shall deliver the notice proposing placement of an employee on enforced leave to the employee personally, or by leaving a copy at the employee's home with some person of suitable age and discretion who is present.
- 1620.9 The response period provided for in section 1620.6 (e) of this section shall begin the first workday that immediately follows the day on which initial delivery of the notice is made, regardless of the method by which delivery was accomplished.
- 1620.10 If a determination is made to place the employee on enforced leave, the written final decision shall inform the employee of the following:
- (a) The placement on enforced leave as provided in section 1620.12 of this section;
 - (b) The date the enforced leave is to commence; and
 - (c) The right to grieve the action under the procedure set forth in section 1636 of this chapter, and that if the enforced leave lasts ten (10) days or more, the employee has the right to file an appeal with the Office of Employee Appeals within thirty (30) days of the final decision.

- 1620.11 The enforced leave period shall commence on the first workday that immediately follows the five (5) workdays of administrative leave, as provided in section 1620.4 of this section.
- 1620.12 During the period in which the employee is in the enforced leave status, each day of absence is to be charged against the employee in the following sequence:
- (a) Accrued annual leave, if available, until exhausted;
 - (b) Compensatory time which is authorized and recorded on time and attendance reports, if available, until exhausted; or
 - (c) Leave without pay when annual leave and compensatory time are exhausted or not available.
- 1620.13 If a determination is made not to place the employee on enforced leave, the written final decision shall so inform the employee.
- 1620.14 An employee shall remain on enforced leave until such time as disciplinary action, in accordance with this chapter and taken as a result of the event that caused the administrative action, is effected, or a determination is made that no disciplinary action will be taken.
- 1620.15 If the basis for placing an employee on enforced leave pursuant to this section does not result in disciplinary action pursuant to the provisions of this chapter, any annual leave, compensatory time, or pay lost as a result of the administrative action shall be restored retroactively.

1621 – 1629 RESERVED

Section 1699, Definitions, is amended to add the definition of the terms “covered supervisor,” “nexus,” “temporary appointment,” and “term appointment;” and amend the definitions of the terms “deciding official,” “enforced leave,” and “grievance.”

Covered supervisor – a Career Service employee covered under the provisions of section 1600.2 of this chapter who occupies a supervisory position.

Deciding official – the individual who issues a final decision on a disciplinary action in accordance with section 1613 of this chapter, or enforced leave action, in accordance with section 1620 of this chapter.

Enforced leave – involuntary placement of an employee on annual leave, compensatory time authorized and recorded on the appropriate time and attendance reports, or leave without pay, as applicable, as provided in section 1620 of this chapter.

Grievance – any matter under the control of the District government which impairs or adversely affects the interest, concern, or welfare of employees, including but not limited to a request by an employee for relief concerning a final written decision that involuntarily placed him or her on enforced leave that lasts less than ten (10) days, as provided in section 1620.10 (c) of this chapter; or a request by an applicant for

employment for non-monetary relief in matters involving the application of the merit staffing process; or a request by a former employee for relief in a matter of concern or dissatisfaction that is subject to the control of the District government, and that is related to an employment condition, as provided in section 1636 of this chapter. This definition does not include adverse actions resulting in removals, suspension of ten (10) days or more, reductions in grade, or enforced leave actions that last ten (10) days or more; reductions in force; or classification matters, nor is it intended to restrict matters that may be subject to a negotiated grievance and arbitration procedure in a collective bargaining agreement between the District and a labor organization representing employees.

Nexus – a reasonable connection between the conduct of an employee and the ability of the employee to perform his or her job or the ability of the employing agency to perform effectively, determined in accordance with sections 1606.4 and 1606.5 of this chapter.

Temporary appointment – a Career Service appointment effected as provided in Chapter 8 of these regulations that has a specific time limitation of one (1) year or less.

Term appointment – a Career Service appointment effected as provided in Chapter 8 of these regulations that has a specific time limitation in excess of one (1) year, but not exceeding four (4) years, unless extended by the personnel authority.

**DEPARTMENT OF HUMAN SERVICES
INCOME MAINTENANCE ADMINISTRATION**

NOTICE OF FINAL RULEMAKING

The Director of the Department of Human Services (DHS), pursuant to the authority set forth in Mayor's Reorganization Plan No. 3 of 1986, section 502(e)(2) of Title V of the Omnibus Budget Support Act of 1995, effective September 26, 1995 (D.C. Law 11-52; D.C. Official Code § 4-205.52(d)), and Mayor's Order 97-53, dated March 19, 1997, hereby gives notice of adoption of the following amendments to Section 5814 of Chapter 58 (Temporary Assistance for Families with Children (TANF)); Subsection 6600.4 of Chapter 66 (Interim Disability Assistance (IDA)); and Section 7200 of Chapter 72 (Standards of Assistance and Payment Levels in Public Assistance Programs) of Title 29 of the District of Columbia Municipal Regulations (DCMR). No comments were received and no changes have been made to the text of the emergency and proposed rules published in the *D.C. Register* on January 25, 2008 (55 DCR 813-815). These final rules will become effective upon publication the *D.C. Register*.

Section 6600.4 of Chapter 66 is amended by deleting the existing paragraph and replacing it with the following amended paragraphs:

CHAPTER 66. INTERIM DISABILITY ASSISTANCE

6600 PURPOSE

6600.4 The monthly grant shall be the same as that for a family size of one (1) or two (2) under the TANF Program as set forth in section 552 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law § 4-101; D.C. Official Code § 4-205.52(c)), as amended. The payment levels set forth in Chapter 72 of Title 29 shall apply to payments made after October 1, 2007.

Section 5814.5 of Chapter 58 is amended by deleting the existing paragraph and replacing it with the following amended paragraph:

CHAPTER 58. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

5814 INCOME DISREGARDS

5814.5 After application of these disregards in subsection 5814.4, the remaining income shall be compared to the Standard of Assistance for a family unit. The Standard of Assistance shall be defined as specified in the District of Columbia Public Assistance Act of 1982, as amended. If less than the Standard of Assistance, the income shall be compared to the payment standard. The payment standard shall be defined as specified in the District of Columbia Public Assistance Act of 1982, as amended. The payment levels set forth in Chapter 72 of Title 29 DCMR shall apply to payments made after October 1, 2007.

Chapter 72 of Title 29, DCMR, Public Welfare, is amended by deleting the existing paragraph and replacing it with the following amended paragraphs:

CHAPTER 72. STANDARDS OF ASSISTANCE AND PAYMENT LEVELS IN PUBLIC ASSISTANCE PROGRAMS

7200 STANDARDS OF ASSISTANCE AND PAYMENT LEVELS

- 7200.1 For the purposes of payments under TANF (D.C. Official Code § 205.52), POWER (D.C. Official Code §4-205.78), General Assistance for Children (D.C. Official Code § 4-205.05a) and Interim Disability Assistance (D.C. Official Code § 4-204.07), effective October 1, 2007, the District of Columbia’s payments levels are adjusted as set forth in § 7200.2.
- 7200.2 Pursuant to D.C. Official Code §4-205.52(d), the payment levels set forth in this subsection shall apply to public assistance payments made after October 1, 2007.

Family Size	Standards of Assistance	Payment Level
1	\$ 450	\$ 270
2	560	336
3	712	428
4	870	523
5	1,002	602
6	1,178	708
7	1,352	812
8	1,494	897
9	1,642	987
10	1,786	1,072
11	1,884	1,131
12	2,024	1,216
13	2,116	1,271
14	2,232	1,340
15	2,316	1,391
16	2,432	1,461
17	2,668	1,602
18	2,730	1,639
19	2,786	1,673

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

and

Z.C. ORDER NO. 05-05

Z.C. Case No. 05-05

(Text Amendment - 11 DCMR)

(Emergency Shelters in the C-M-1 and C-M-2 (Commercial-Light Industrial) Districts)

December 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, as amended; D.C. Official Code § 6-641.01); having held a public hearing 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 the following amendments to Chapter 8 of the Zoning Regulations (Title 11 DCMR).

The amendments permit emergency shelters to locate in certain Commercial-Light Manufacturing (C-M) Districts if approved as a special exception by the Board of Zoning Adjustment.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on March 16, 2007, at 54 DCR 2378. The Commission took final action to adopt the amendments at a public meeting on December 10, 2007. In doing so it made changes to the proposed text as will be explained in this Order. This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

The Zoning Regulations define an "emergency shelter," as:

A facility providing temporary housing for one (1) or more individuals who are otherwise homeless and who are not in need of a long-term sheltered living arrangement, as that arrangement is defined in the Health Care Facilities and Community Residence Regulations 22 DCMR § 3099.1 (1986)(superseded).

The current Zoning Regulations permit emergency shelters as shown in the following table.

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ZONE	MATTER-OF-RIGHT	SPECIAL EXCEPTION
R-1	1-4 persons	5-15 persons 15+ persons
R-2, R-3, R-4	1-4 persons	5-15 persons 15+ persons
R-5, SP, C-R, W-1, W-2, W-3	1-4 persons	5-25 persons 25+ persons
C-1	1-7 persons	5-15 persons 15+ persons
C-2	1-7 persons	5-25 persons 25+ persons
C-3, C-4, C-5	No Limit	N/A
C-M, M, W-0	Not Permitted	Not Permitted

Description of the Text Amendment

The amendments permit emergency shelters to locate in the C-M-1 and C-M-2 Commercial-Light Manufacturing (C-M) Districts, if approved as a special exception by the Board of Zoning Adjustment (“BZA”), and establishes standards for the BZA to apply when deciding the special exception applications. Emergency shelters would still be prohibited in the C-M-3 and M Districts. The amendments also permit an existing emergency shelter located at 2210 Adams Place, N.E. to operate as a matter-of-right use, if the shelter obtains a Certificate of Occupancy within one year.

Relationship to the Comprehensive Plan

The amendments are not inconsistent with the Comprehensive Plan.

The Office of Planning (“OP”) submitted a report explaining the consistency of the amendments with the Comprehensive Plan in effect when the Commission held its hearing.

The OP report stated that the amendments advance the Comprehensive Plan’s major theme of, “[p]roviding for Diversity and Overall Social Responsibilities,” 10 DCMR § 111, and are fully consistent with the following provisions of the Comprehensive Plan pertaining to that theme:

- “Each distinct neighborhood of the District is an integral part of a diverse larger community that contributes to the District attractiveness and strength.” 10 DCMR § 111.1;
- “Although many residents have sufficient means or individual support systems to be self-reliant, other residents are periodically more dependent on the larger community for support or assistance in their daily living.” 10 DCMR § 111.1(a);
- “While the District must strive to increase educational, employment, and other opportunities to reduce such dependency, all neighborhoods should share in the overall

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social responsibilities of the community including but not limited to, housing the homeless, feeding the hungry, accommodating the disabled, and welcoming residents of diverse backgrounds and needs.” 10 DCMR § 111.1(b).

The report also stated that the amendments advance the policy of the Human Services and Housing elements of the Comprehensive Plan that there should be a, “[f]ocus the full range of health and social services on major problems facing the District, such as infant mortality, the homeless, alcohol, drug abuse, Acquired Immune Deficiency Syndrome (AIDS), and the availability and cost containment of services,” 10 DCMR § 1002.2 (a), and the policy setting the goal to “[m]aintain and improve services for all children and adults in twenty-four hour (24 hr.) care facilities and ensure that victims of homelessness are cared for, especially when extreme weather conditions occur.” 10 DCMR § 1002.2 (b).

The report further stated that the amendments advance a major policy of the Housing Element of the Comprehensive Plan that, “[t]he District should continue to intensify its efforts to identify and address issues applicable to the elderly population, including institutional housing and community-based residential facilities.” 10 DCMR § 300.6.

Public Roundtable

The Commission held a public roundtable on September 23, 2004, to hear the public’s views on allowing emergency shelters and adult rehabilitation homes in C-M Districts. At the roundtable, non-profit and for-profit service providers, government agency representatives, ANC representatives, and members of the general public testified. Most of the testimony presented dealt with adult rehabilitation homes. Testimony relating to emergency shelters addressed the challenges associated with the economic infeasibility of smaller facilities and expressed community opposition to the expansion of such shelters to the C-M Districts.

Set Down Proceeding

OP initiated this rulemaking by filing a report. The Commission set down the case for a public hearing at its March 14, 2006 public meeting, and in doing so indicated that it had several concerns that it wanted addressed at the hearing, namely, the propriety of locating shelters near noxious uses, whether allowing large shelters would result in the “warehousing” of residents, whether there was an unequal distribution of shelters around the District, and expressed further concerns about the accessibility and security of the shelters.

Public Hearing

The Commission held a public hearing on October 26, 2006.

OP testified in favor of the proposed amendments, explaining that allowing emergency shelters in C-M Districts would expand the potential locations available for use as emergency shelters, lower the potential cost of property acquisition, and make available sites that could accommodate larger shelters. OP also addressed the concerns raised by the Commission in its report dated

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October 16, 2006. In response to the Commission's concern regarding proximity of shelters to noxious uses, OP noted that the advertised text would not permit shelters within 1,000 feet of a square containing a wastewater treatment facility or a solid waste handling facility. The report also explained that since shelters in C-M-1 and C-M-2 zones would only be allowed if approved as a special exception, the BZA would evaluate the propriety of each location. In response to the Commission's concern about the number of residents allowed in a shelter (up to 150 persons per shelter), OP explained that shelters with up to 150 persons was manageable and not uncommon, and that larger shelters allow more efficient delivery of social services to the residents. OP also responded to the Commission's concerns about accessibility and security of the shelters in the report.

The Office of Property Management also testified in favor of the amendments, testifying that a critical mass of people is needed to support the full range of services it aimed to provide at the shelters, and that limiting the number of persons in a shelter could diminish the quality of services.

In response to this testimony, the Commission requested that OP make a recommendation as to whether a limit should be placed on the number of facilities within a square, and/or whether the regulations should place a cap on the maximum number of persons allowed in a shelter housing more than 150 persons (with BZA approval).

Proposed Action

Prior to taking proposed action to approve the text amendments, the Commission noted the receipt of additional submissions from the Office of Property Management and the Department of Human Services, and a supplemental report from OP dated February 2, 2007, responding to its request for further recommendations.

OP's supplemental report recommended revising the text to allow a maximum of two shelters in a square or within 1,000 feet of each other, and between 151 and 300 persons per facility with a maximum of 450 persons for all facilities within a square, and to exempt an existing emergency shelter located at 2210 Adams Place, N.E. from these limitations.

The Office of Property Management and Department of Human Services submission stated it needed the flexibility recommended by OP in order to meet the unpredictable and increasing service demand for emergency shelters.

The Commission took proposed action to adopt OP's recommended text revisions at a properly noticed special public meeting held on February 12, 2007. When the Commission took proposed action, it expressed further concerns about the facility located at 2210 Adams Place, N.E.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on March 16, 2007 at 54 DCR 2378, for a 30-day notice and comment period.

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The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. No response was received as of the date upon which the Commission took final action to approve this application, which occurred after the 30 day period for NCPC comment expired.

A letter dated April 13, 2007, was submitted by the Washington Legal Clinic for the Homeless, Inc., in which they stated their opposition to the proposed text amendments.

On November 30, 2007, OP submitted a final supplemental report addressing the Commission's concerns about the shelter located at 2210 Adams Place, N.E., and requesting the Commission adopt revised language that in the opinion of OP better reflected the Commission's intent when it took proposed action than was published in the proposed rulemaking notice. Specifically, OP recommended four changes to the text so that:

- The existing shelter at 2210 Adams Place, N.E. would not be required to obtain a special exception, but could operate as a matter-of-right provided that it receives a certificate of occupancy within a year after the effective date of this amendment. The shelter was opened at a time that its use was not permitted and, therefore, no certificate of occupancy was issued.
- There would not be a restriction on the distance between an emergency shelter and a "documented contaminated site". OP was concerned that the quoted term did not exist in either the D.C. or U.S. Code.
- An emergency shelter could not be located within 1,000 feet of a "solid-waste handling facility" as had been originally advertised.
- Emergency shelters would not be permitted in M Districts.

Final Action

At its properly noticed December 10, 2007 public meeting, the Commission took final action to approve the text amendments recommended by OP in its November 30, 2007 report. The Commission found that the changes in the text did not require the republication of a notice of proposed rulemaking because the final rules are similar enough to those published in the original notice of proposed rulemaking that all interested parties were assured an opportunity to protect their interests by contributing to the administrative process.

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

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 the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 8 of the Zoning Regulations, Title 11 DCMR:

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Chapter 8, INDUSTRIAL DISTRICTS, is amended as follows:

1. By adding a new § 801.11 to read as follows:

801.11 The emergency shelter located at 2210 Adams Place, N.E. (Square 4259, Parcel 54/81) shall be permitted as a matter of right in the C-M District; provided that a Certificate of Occupancy as an emergency shelter is obtained within one year of the effective date of this amendment.

2. By amending § 802.1 to read as follows (new text is shown in **bold and underline**):

802.1 The uses in this section shall be permitted as special exceptions in a C-M District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section **except that emergency shelters shall not be permitted in a C-M-3 District.**

3. By adding a new § 802.28 to read as follows:

802.28 An emergency shelter for five (5) to one hundred and fifty (150) persons not including resident supervisors or staff and their families, shall be permitted in a C-M-1 and C-M-2 Districts only, if the following requirements are met:

- (a) There shall be no other property containing an emergency shelter for five (5) or more persons in the same square;
- (b) There shall be no other property containing an emergency shelter for five (5) or more persons within a radius of one thousand (1,000) feet from any portion of the property;
- (c) Emergency shelters shall not be located within one thousand (1,000) feet of a square containing a sewerage treatment plant, a wastewater treatment facility, or a solid waste handling facility;
- (d) There shall be adequate, appropriately located, and screened off-street parking to provide for the needs: of occupants, employees, and visitors to the facility;
- (e) The shelter shall not have any adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area;
- (f) Notwithstanding § 802.28 (b) the Board may approve up to one additional emergency shelter to be located in the same square as an

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existing emergency shelter for five (5) or more persons only if the Board finds that the cumulative effect of the two facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations;

- (g) The Board may approve a facility for between one hundred and fifty-one (151) and three hundred (300) persons, not including resident supervisors_or staff and their families, only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and there is no other reasonable alternative to meet the program needs of that area of the District provided that no shelter shall be approved that would increase the total number of emergency shelter residents housed within the square to exceed four hundred and fifty (450) persons; and
- (h) The Board shall submit the application to the D.C. Office of Planning for coordination, review, report, and impact assessment, along with reports in writing of all relevant District departments and agencies, including but not limited to the Departments of Transportation and Human Services and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.

4. By amending § 821.3 to read as follows (new text is shown in **bold underline**):

821.3 Any other lawful use not regulated by §§ 822 or 823 shall be permitted, subject to the standards of external effects in § 825, **except emergency shelters.**

Vote of the Zoning Commission taken at its public meeting on February 12, 2007 to **APPROVE** the proposed rulemaking by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, and John G. Parsons to approve; Carol J. Mitten, having not participated, not voting).

Vote of the Zoning Commission taken at its public meeting on December 10, 2007 to **ADOPT** the final rulemaking by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, and John G. Parsons to adopt; Carol J. Mitten, having not participated, not voting).

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In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D.C. Register*; that is, on FEB 22 2008.

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

and

Z.C. ORDER NO. 05-05

Z.C. Case No. 05-05

(Text Amendment - 11 DCMR)

(Emergency Shelters in the C-M-1 and C-M-2 (Commercial-Light Industrial) Districts)

December 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. 07-19

Z.C. Case No. 07-19

(Text Amendment - 11 DCMR)

(Repeal of 11 DCMR § 411.10)

October 15, 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, 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 of Columbia Charter; hereby gives notice of the adoption of the following amendment to repeal § 411.10 of the Zoning Regulations (Title 11 DCMR).

A Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on July 27, 2007, at 54 DCR 7257. The Commission took final action to adopt the repealer at a public meeting on October 15, 2007. This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

Subsection 11 DCMR § 411.10 requires that the Zoning Administrator submit roof structure plans to the Office of Planning for its review and report within fifteen (15) days. Subsection 411.10 now reads:

Before taking final action on a roof structure plan, the Zoning Administrator shall submit the plan to the D.C. Office of Planning for review and report. The report shall be returned within fifteen (15) days of the date of submission unless a different period has been provided by mutual agreement of all parties involved.

Description of Text Amendment

The text amendment repeals § 411.10.

Relationship to the Comprehensive Plan

The amendment is not inconsistent with the Comprehensive Plan.

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 07-19

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Set Down Proceeding

The Office of Planning initiated this rulemaking by filing a report. The report indicated that the repeal would address unintended delays in the permitting process due to the increase in the volume of development projects submitted to the Department of Consumer and Regulatory Affairs (DCRA).

The Zoning Commission set down the case for a public hearing at its July 9, 2007 public meeting. The Commission also authorized immediate publication of a notice of proposed rulemaking.

Public hearing

The Commission held a public hearing on September 20, 2007. The Office of Planning testified in support of the text amendment.

Proposed Action

The Zoning Commission took proposed action at the conclusion of the public hearing. A Notice of Proposed Rulemaking was published in the *D.C. Register* on July 27, 2007, at 54 DCR 7257. No comments were received.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. On October 5, 2007, the Commission received a communication from NCPC stating that it was not scheduling the matter for a meeting within the 30 day review period. The communication further stated that the staff had reviewed the proposed amendment, that the staff had not identified any adverse effects on the federal interest, and that the communication did not constitute the official comments of NCPC in the case. NCPC did not issue an official comment within the 30-day time period provided by the District Charter.

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

Final Action

At its properly noticed October 15, 2007 public meeting, the Commission took final action to approve the proposed text amendments. The final action became effective when the NCPC 30-day comment period expired.

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 the Zoning Act.

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 07-19

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In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapter 4 of the Zoning Regulations, Title 11 DCMR.

Subsection 411.10 is repealed.

Vote of the Zoning Commission taken at the conclusion of the public hearing on September 20, 2007 to **APPROVE** the proposed rulemaking by a vote of: **3-0-2** (John G. Parsons, Gregory N. Jeffries, and Anthony J. Hood to approve; Carol J. Mitten and Michael G. Turnbull, not having participated, not voting).

The Zoning Commission took final action to **ADOPT** the text amendment at its public meeting on October 15, 2007 by a vote of **3-0-2** (Anthony J. Hood, John G. Parsons, and Gregory N. Jeffries to adopt; Carol J. Mitten and Michael G. Turnbull, not having 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*; that is, on ~~_____~~ **FEB 22 2008** ~~_____~~.

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

AND

Z.C. ORDER NO. 07-19

Z.C. Case No. 07-19

(Text Amendment - 11 DCMR)

(Repeal of 11 DCMR § 411.10)

October 15, 2007

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