

**D.C. DEPARTMENT OF HUMAN RESOURCES****NOTICE OF FINAL RULEMAKING**

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2007-95, dated April 18, 2007; and in accordance with the provisions of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*) (2006 Supp.), as amended by section 204 of Title II of the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 4-1501.05) (2007 Supp.), hereby gives notice of final rulemaking action. D.C. Law 16-306 amended D.C. Official Code § 4-1501.05, to: (1) modify the language and the list of offenses concerning the signed affirmation that must be completed by applicants subject to a criminal background check before the check is conducted; (2) add a new section 4-1501.05a, "Assessment of Information Obtained from Criminal Background Check," providing that the information obtained from a criminal background check shall not create a disqualification or presumption against employment or volunteer status of an applicant unless the Mayor determines that the applicant poses a present danger to children or youth, and listing the factors to be considered in making such a determination; and (3) afford individuals subjected to criminal background checks the right to appeal a denial of employment or volunteer status based on a finding that they pose a present danger to children or youth to the Office of Human Rights. D.C. Law 15-353 and D.C. Law 16-306 are referred to hereinafter in this preamble and these rules as "the Act." Because the Act requires that rules be issued to implement its provisions, and to ensure the preservation of the welfare of the public in general and the welfare of children and youth serviced by covered District government agencies in particular, action was taken on August 29, 2007 to adopt the following rules on an emergency basis effective August 29, 2007. In order to implement the provisions of the Act, sections 412 and 499 of Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations (DCMR), were amended and new sections 413 through 425 were added to the chapter. Additionally, various provisions in sections 402, 403, 405, and 407 of the chapter, unrelated to the Act, were amended. No comments were received and no changes were made to the rules under the notice of emergency and proposed rulemaking published at 54 DCR 11759 (December 7, 2007). Final rulemaking action was taken on January 11, 2008.

**CHAPTER 4****ORGANIZATION FOR PERSONNEL MANAGEMENT**

*Chapter 4 of the D.C. Personnel Regulations is amended as follows:*

*Sections 402.1, 402.2, and 402.3 are amended to read as follows:*

- 402.1 It shall be the policy of the District government to consider persons for employment who are suitable in efficiency, character, conduct, and reputation; and who have the knowledge and ability to perform the duties of the position sought. Pre-employment checks and background checks and investigations shall be conducted, as specified in

this chapter, for the purpose of ascertaining applicants' fitness and suitability in these areas.

- 402.2 Employees in Information Technology Systems positions, as well as appointees to such positions, must be particularly suitable in character, conduct and reputation, because they have access to systems that house financial, proprietary, or sensitive personal data. Any misconduct, illegal action, or inaction on their part could directly compromise the security of the District government. For those reasons, these individuals shall be subject to separate suitability investigations as specified in section 406 of this chapter.
- 402.3 Each personnel authority shall determine, as part of pre-employment checks and background checks and investigations, whether a person being considered for employment is or has been involved in any act that constitutes a reasonable basis for concluding that the person would not faithfully discharge the duties of the position for which he or she is being considered.

*Section 403 is amended as follows:*

### **403 GENERAL PROVISIONS ON SUITABILITY**

*Section 403.1 is amended to read as follows:*

- 403.1 Except for the provisions in sections 412 through 425 of this chapter, or otherwise provided by law or regulation, any pre-employment check, background check, or background investigation provisions negotiated between the District government and a labor organization shall take precedence over the provisions of this chapter, for employees in a bargaining unit represented by a labor organization, to the extent that there is a difference.
- 403.2 In securing information about individuals as part of pre-employment inquiries or background investigations under this chapter, each individual shall be afforded the necessary rights and protections.

*Sections 403.3 through 403.5 are amended to read as follows:*

- 403.3 When taking suitability administrative action against an employee under this chapter, personnel authorities shall ensure that the affected employee is afforded due process, and fair and equitable treatment.
- 403.4 (a) Except as otherwise specified in this chapter, pre-employment checks, background checks, and background investigations shall be initiated after the personnel authority has extended a written tentative job offer to the person selected and, to the extent practicable, before actual employment commences. For the purposes of this chapter, any job offer made under these circumstances is conditional and non-binding on the appropriate personnel authority or employing agency.

- (b) Upon completing the check or investigation, the personnel authority shall complete a review to determine whether a final job offer should be made or denied; or, if the person had begun to work pending the completion of the check or investigation, whether he or she should be retained or employment shall be terminated.

403.5 The Mayor may delegate his or her personnel authority, in whole or in part, to subordinate agency heads to conduct suitability checks and background investigations as described in this chapter.

*The heading of section 405 is changed from "Suitability Checks and Background Investigations;" and the section is amended to read as follows:*

**405 PRE-EMPLOYMENT CHECKS AND BACKGROUND CHECKS AND INVESTIGATIONS**

405.1 Each personnel authority shall establish the suitability for employment of an appointee by conducting pre-employment checks and background checks and investigations as described in this section.

405.2 Each personnel authority shall conduct the following pre-employment checks:

- (a) Prior employment checks to verify:
  - (1) Dates of employment;
  - (2) Salary or other compensation received;
  - (3) Titles held and nature of duties performed;
  - (4) Reasons for leaving employment; and
  - (5) Performance.
- (b) Possession of a college degree shall be verified if the education was substituted for experience in qualifying the person for the position;
- (c) Possession of a professional or other type of license shall be verified if it is a prerequisite for employment; and
- (d) Possession of a college degree from an accredited school and in the appropriate professional field shall be verified, including semester hours or other measures of credit completed, periods of attendance, type of degree and date conferred, if the degree is required as a job-related qualification standard such as is the case in the professional engineering field.
- (e) Miscellaneous checks such as professional standing and other inquiries may also be conducted, if considered necessary by the personnel authority, and in addition

to the pre-employment checks required in subsection 405.2 (a) through (d) of this section.

- (f) In addition to the pre-employment checks required in subsection 405.2 (a) through (d) of this section, every new appointee shall be subject to completion of at least three (3) reference checks to ascertain character, reputation, relevant traits and characteristics, and other relevant personal qualities, and whether the reference would recommend the appointee for the position for which he or she is being considered.
- (g) The three (3) reference checks specified in this section shall be made with the appointee's former employer, except that personal references may be utilized instead of, or in addition to, checks with former employers as deemed necessary by the personnel authority.

405.3 Based on the duties of the position, or if required by law or regulation, each personnel authority shall determine which positions, in addition to being subject to the pre-employment checks listed in section 405.2 of this section, shall be subject to background checks or investigations, or mandatory criminal background checks. The vacancy announcements for such positions, and for positions described in section 406 of this chapter, shall include a statement informing applicants of the specific requirement. The Director of the D.C. Department of Human Resources (or his or her designee) shall publish in the District Personnel Manual (or any other procedural manual or manuals developed) positions in subordinate agencies subject to background checks pursuant to this subsection, section 406 of this chapter, or any other law or regulation, as applicable.

405.4 Except for a mandatory criminal background check required by law or regulation, a background check under section 405.3 of this section shall be conducted in accordance with the following:

- (a) Before conducting the background check, the personnel authority shall determine the degree of sensitivity of the position being filled in order to determine the scope of the check. Based on that determination, the background check may cover, in addition to the requirements in section 405.2 of this section, the following:
  - (1) Additional reference checks;
  - (2) Employment history for a specific number of past years;
  - (3) Highest education completed or last school attended beyond high school;
  - (4) A credit check that adheres to the notification and consent requirements of the Fair Credit Reporting Act and any other applicable law or regulation;
  - (5) A traffic record check; or
  - (6) A newspaper/magazine/media search on the appointee.

- (b) In conducting the background check, a personnel authority shall attempt to verify any derogatory information by seeking it from more than one (1) source, asking former employers and other sources for permission to name them as the source and, as needed, obtaining a written release from the subject.
- 405.5 Unless otherwise provided by law, regulation, or sections 412 through 425 of this chapter, in filling a position subject to background checks, a check need not be conducted if the appointee is already employed with the District government in a position subject to a background check; and the nature of the personnel action for the new appointment is one (1) of the following:
- (a) Promotion;
  - (b) Demotion;
  - (c) Reassignment; or
  - (d) An appointment or conversion of an employee who has been serving continuously with a District government agency for at least one (1) year in a position or positions under an appointment subject to a background check.
- 405.6 (a) Upon completing a check or investigation in accordance with this section, the personnel authority shall inform the agency of the results, and may make a determination that an appointee is not suitable for employment, and may thereby:
- (1) Deny him or her examination for or appointment to the position for which the person had been considered; or
  - (2) Require that the employing agency terminate the person from District government service in the case of a person who began employment before the pre-employment checks or background check was completed.
- (b) A subordinate agency that has been delegated personnel authority to conduct checks or investigations in accordance with this section shall promptly make the appropriate determination under section 405.6 (a) of this section upon completing the check or investigation, and immediately inform the D.C. Department of Human Resources of the determination, in writing.
- 405.7 Before taking suitability disqualification action against an appointee, and at the discretion of the personnel authority, the person may be given an opportunity to explain the derogatory information found, in writing, within fifteen (15) days of the notification. The appointee must provide information to explain any discrepancies, omissions, or misinformation, or mitigating circumstances that may exist which are unknown.
- 405.8 The reasons which may be used in making a determination of disqualification of an appointee due to unsuitability may include, but shall not be limited to the following:
- (a) Delinquency or misconduct in prior employment;

- (b) Criminal, dishonest, or other conduct of a nature that would cause discredit to the District government;
- (c) A false statement of any material fact, or engagement in deception or fraud in the examination or appointment process;
- (d) Illegal use of drugs; or
- (e) Any other legal disqualification for appointment.

*The heading of section 407 is changed from "Suitability Actions Initiated by Personnel Authorities against Employees;" and the section is amended to read as follows:*

**407 SUITABILITY ACTIONS AGAINST EMPLOYEES INITIATED BY PERSONNEL AUTHORITIES**

- 407.1 The personnel authority shall initiate suitability action against a District government employee pursuant to this section when:
- (a) The personnel authority makes a determination that the employee provided a material false statement; engaged in deception or fraud in his or her examination or appointment with the District government; or engaged in the falsification of official personnel records;
  - (b) Derogatory information about the employee, of a nature that constitutes an immediate hazard to the agency, the employee concerned, to other employees, or to the detriment of the public health, safety, or welfare, is disclosed by a credible source or independently discovered by the personnel authority or employing agency; or
  - (c) Derogatory information about an employee, of a nature that will impact the employee's suitability to continue performing the duties of his or her position, is disclosed by a credible source or independently discovered by the personnel authority or employing agency.
- 407.2 In either of the circumstances described in section 407.1 of this section, the personnel authority shall:
- (a) Require that the employing agency remove the employee from District government service;
  - (b) In addition to requiring the employee's removal, require that the agency cancel any reinstatement eligibility, as applicable; or
  - (c) In addition to the actions in accordance with subsection 407.2 (a) and (b) of this section, deny the employee examination for and appointment to a position in the

agency for a period of not more than three (3) years from the date of the determination of unsuitability.

- 407.3 If a determination is made that the suitability violation does not rise to the standard described in section 407.1 (a) of this section, the personnel authority may require that the employing agency take an administrative action against the employee that is less than removal.
- 407.4 The appropriate personnel authority shall determine the specific duration of any punitive period imposed under section 407.2 (c) of this section.
- 407.5 Subordinate agencies shall refer any case with circumstances as described in section 407.1 of this section to the Director of the D.C. Department of Human Resources.
- 407.6 The appropriate personnel authority shall ensure that any suitability action taken against an employee pursuant to this section is based on information or documentation that is accurate, timely, relevant, and complete.
- 407.7 Before taking any of the actions listed in sections 407.2 and 407.3 of this section, the employee shall be given an opportunity to explain the derogatory information, in writing, within fifteen (15) days of being notified thereof, to allow the appointee to provide information that would explain any discrepancies, omissions, or misinformation, or mitigating circumstances that may exist which are unknown to the personnel authority or the employing agency.

*Section 407.8 is amended to read as follows:*

- 407.8 Any suitability disqualification action against a subordinate agency head shall be taken by the Mayor (or his or her designee).

*The heading of section 412 is changed from “Criminal Background Check and Traffic Record Check Requirements – District Government Agencies Considered Covered Child or Youth Services Providers;” and the section is amended to read as follows:*

**412 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – GENERAL PROVISIONS**

- 412.1 Pursuant to D.C. Official Code 4-1501.03 (2006 Supp.), the Mayor and other personnel authorities subject to these regulations shall be required to conduct criminal background checks and traffic record checks to investigate certain employees and volunteers, and persons being considered for employment with covered child or youth services provider agencies, as specified in sections 412 through 425 and 499 of this chapter.
- 412.2 Each current employee in a covered position shall be subjected to an initial criminal background check beginning within forty-five (45) days of the publication in the D.C. Register of the notice of final rulemaking implementing the criminal background check requirements of the Act. The personnel authority shall notify each current employee in a covered position that he or she shall be subject to an initial criminal background check under the Act prior to conducting any such check.

- 412.3 Each current employee or volunteer in a covered position shall be required to submit to periodic criminal background checks while employed by or volunteering at a covered child or youth services provider agency. The provisions for periodic criminal background checks are specified in section 423 of this chapter.
- 412.4 The Mayor or the appropriate personnel authority shall conduct the criminal background checks under the Act.
- 412.5 Criminal background checks shall be conducted in accordance with Metropolitan Police Department (MPD) and Federal Bureau of Investigations (FBI) policies and procedures and in a FBI-approved environment, by means of fingerprint and National Criminal Information Center checks and procedures.
- 412.6 Agencies subordinate to the Mayor and independent District government agencies that are subject to the Act and these regulations shall cover the costs for criminal background checks and traffic record checks required under the Act.
- 412.7 Personnel authorities shall be responsible for conducting traffic record checks pursuant to the Act, and for developing internal operating procedures for conducting the checks.
- 412.8 Traffic record checks shall be obtained from the traffic records maintained by the D.C. Department of Motor Vehicles.

*New sections 413 through 425 are added to read as follows:*

**413 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – APPLICABILITY**

- 413.1 Criminal background checks for the protection of children and youth shall be required for the following persons:
- (a) Each person being considered for paid employment with a covered child or youth services provider agency, and who is appointed to a position with duties and responsibilities as described in section 416 of this chapter or similar duties and responsibilities;
  - (b) Each person being considered for unsupervised voluntary service with duties and responsibilities as described in section 416 of this chapter, or similar duties and responsibilities, in a covered child or youth services provider agency;
  - (c) Each paid employee who occupies a position with duties and responsibilities as described in section 416 of this chapter, or similar duties and responsibilities, in a covered child or youth services provider agency;
  - (d) Each volunteer in an unsupervised position with duties and responsibilities as described in section 416 of this chapter, or similar duties and responsibilities, in a covered child or youth services provider agency; and

- (e) Any District government employee who serves as a host of a child or youth who participates in the Summer Youth Employment Program within the employee's agency. Such an employee shall be considered a volunteer in an unsupervised position for the purposes of the Act, and shall be subject to a criminal background check, a traffic record check, or both, before he or she is allowed to serve as host for the child or youth.

413.2 Criminal background checks shall not be required for the following persons:

- (a) Persons being considered for compensated or voluntary employment with child or youth services provider agencies that will not bring the persons in direct contact with children or youth;
- (b) Volunteers with covered child or youth services provider agencies who only have supervised contact with children or youth. If applicable, such persons will be required to submit to traffic record checks;
- (c) Persons being considered for compensated or voluntary employment in covered child or youth services provider agencies who have active federal security clearances; and
- (d) Officers and members of the MPD, because current standards for criminal background checks within the MPD exceed the requirements set forth in the Act.

413.3 Traffic record checks shall be conducted on employees, and supervised and unsupervised volunteers, and appointees who would be required to drive motor vehicles to transport children or youth in the course of performing their duties at covered child or youth services provider agencies.

**414 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – CHILD OR YOUTH SERVICES PROVIDER AGENCIES**

414.1 The standard for determining that an agency is a covered child or youth services provider is that as part of its mission, the agency, as a whole or certain components thereof, provides the types of direct services to children or youth, or for the benefit of children or youth, encompassed in the duties and responsibilities listed in section 416 of this chapter:

414.2 The following subordinate agencies shall be considered covered child or youth services providers subject to the criminal background check and traffic record check provisions of the Act and these regulations.

- (a) Department of Human Services;
- (b) Department of Health;
- (c) Department of Parks and Recreation;

- (d) Fire Prevention Bureau (FPB) within the Fire and Emergency Medical Services Department (FEMSD), provided that the primary duties of any position designated as subject to the Act within the FPB shall require direct contact with children or youth, and the incumbent of the position would not otherwise be subject to a criminal background check or traffic record check in accordance with existing policies and practices for the FEMSD;
- (e) Youth Investigations Branch; Youth Violence Prevention Section; Office of Community Policing, Community Partnership Branch; and the Office of Human Services within the Metropolitan Police Department (MPD);
- (f) Traffic Safety Administration, within the District Department of Transportation;
- (g) Office of the State Superintendent of Education;
- (h) Department of Youth Rehabilitation Services;
- (i) Department of Employment Services;
- (j) Department of Mental Health;
- (k) Child and Family Services Agency;
- (l) Department of Disability Services;
- (m) D.C. Public Schools; and
- (n) Any other District government agency subject to these regulations which, as a result of a permanent or temporary change to its mission such as may be caused by reorganization or any other similar reason shall become a covered child or youth services provider subject to the criminal background check and traffic record check provisions in the Act.

**415 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – CHALLENGES TO DESIGNATION AS A CHILD OR YOUTH SERVICES PROVIDER AGENCY**

- 415.1 Child or youth services provider agencies may challenge their designation and the requirement to comply with the Act, in writing, to the appropriate personnel authority.
- 415.2 The submission to the personnel authority shall include information and documentation deemed appropriate by agencies to challenge the designation.
- 415.3 The personnel authority shall evaluate the information and documentation submitted by an agency, and respond in writing within five (5) days of the receipt of the agency's challenge.
- 415.4 The decision of the personnel authority shall be final and non-appealable.

**416 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – STANDARDS AND PROCEDURES FOR IDENTIFYING COVERED POSITIONS**

416.1 Upon consulting with the head of a covered child or youth services provider agency, the appropriate personnel authority shall identify and determine which positions in the agency shall be covered under the Act. In identifying the covered positions, the personnel authority shall ensure that the duties and responsibilities of each position require the provision of direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to at least one (1) of the following duties, responsibilities, and essential functions or tasks:

- (a) Childcare duties;
- (b) Recreational activities;
- (c) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders;
- (d) Educational activities;
- (e) Individual counseling;
- (f) Group counseling;
- (g) Assessment, case management and support services;
- (h) Psychiatric and psychological assessment services;
- (i) Developmental, speech, and language evaluation services;
- (j) Diagnostic evaluation and treatment services;
- (k) Childhood development services;
- (l) Medical or clinical services;
- (m) Therapeutic services, including individual and group therapy, and play therapy;
- (n) Prevention and intervention services;
- (o) Mentoring services;
- (p) Youth care services;

- (q) Healthcare services, including medical, behavioral, mental health, dental, vision, nutrition, or developmental services;
- (r) Cultural enrichment services;
- (s) Public safety services, including counseling or education intervention services about safety, crime prevention, fire safety, youth problem-solving;
- (t) Youth employment services; or
- (u) Driving a motor vehicle to transport children or youth.

416.2 The following standards shall be applied in identifying positions, compensated or not, which shall be subject to the criminal background check requirement or the traffic record check requirement under the Act:

- (a) The underlying guiding standard to be applied in identifying positions that shall be subject to the criminal background check requirement and traffic record check requirement shall be one of reasonableness, coupled with the standards outlined in section 416.2 (b) through (k) of this section, as applicable.
- (b) A determination that a position is covered under the Act and subject to the criminal background check requirement shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties contains at least one (1) of the duties and responsibilities listed in this section or similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely.
- (c) Location in a covered child or youth services provider agency does not automatically make a position or its incumbent subject to the criminal background check requirement or the traffic record check requirement of the Act.
- (d) Strictly tangential, casual, or occasional contact with children or youth does not automatically make an employee or volunteer subject to the criminal background check requirement or traffic record check requirement of the Act.
- (e) Administrative, clerical, or technical support positions within the immediate office of the head of a covered child or youth services provider agency, and other components, units, or divisions of the agency that provide non-operational support services shall not be subject to the criminal background check requirement unless the position descriptions or statements of duties, as applicable, contain at least one (1) of the duties and responsibilities listed in this section, or similar duties and responsibilities related to the direct provision of services to children or youth, and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely.

- (f) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall be subject to an initial criminal background check upon the effective date of the personnel action, and to periodic criminal background checks while detailed, temporarily promoted, or temporarily reassigned to the covered position.
- (g) A volunteer whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to an initial criminal background check upon being moved to the covered assignment and to periodic criminal background checks while in the covered assignment.
- (h) A determination that a position is subject to the traffic record check requirement under the Act shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties requires that any incumbent of the position drive a motor vehicle, whether the incumbent's personal or government vehicle, to transport children or youth in the course of performing his or her duties.
- (i) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a position that will require him or her to drive a motor vehicle to transport children or youth in the course of performing the duties of the detail, temporary promotion, or temporary reassignment shall be subject to an initial traffic record check upon the effective date of the personnel action.
- (j) A volunteer whose assignment changes from non-covered duties and responsibilities to duties and responsibilities that will require him or her to drive a motor vehicle to transport children or youth in the course of performing the duties of the voluntary assignment shall be subject to an initial traffic record check requirement upon being moved to the covered assignment.
- (k) Except as specified in section 413.2 of this chapter, any position subject to the traffic record check requirement shall also be subject to the criminal background check requirement.

416.3 The Director of the D.C. Department of Human Resources (or his or her designee), shall publish the list of positions in agencies under the personnel authority of the Mayor that are subject to a criminal background check or traffic record check, or both, in the District Personnel Manual (or any other procedural manual developed). The list shall be published at least annually; and republished as needed to delete or add positions.

#### **417 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – RECRUITMENT**

417.1 In the case of competitive recruitment for a position requiring a criminal background check or traffic record check, or both, the vacancy announcement and subsequent offer letter to the appointee shall include statements with the following information:

- (a) That the position for which he or she is applying has been identified and designated as requiring a criminal background check or traffic record check, or both;
- (b) That, if tentatively selected for the position, a criminal background check or traffic record check, or both, as appropriate, will be conducted; and
- (c) That the appointee to the position may be offered employment contingent upon receipt of a satisfactory criminal background check or traffic record check, or both.

417.2 In the case of non-competitive recruitment for a position requiring a criminal background check or traffic record check, or both, the offer letter to the person being considered for employment shall inform the person of the requirements specified above for competitive recruitment actions.

417.3 Subject to the approval of the personnel authority, an appointee to a compensated position with a covered child or youth services provider agency may be offered employment contingent upon receipt of a satisfactory criminal background check or traffic record check, or both, and begin working in a supervised setting, prior to receiving the results of the checks, and prior to the employing agency making a determination that the appointee meets the requirements of the Act.

#### **418 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – AUTHORIZATION PROCESS**

418.1 Prior to a criminal background check being conducted, the appropriate personnel authority will inform each appointee, employee, or unsupervised volunteer subject to the check of the location of the office where the check will be conducted; when to report for fingerprinting; and provide each appointee, employee, or unsupervised volunteer with a form or forms to be utilized for the following purposes:

- (a) To authorize the MPD or other entity, as appropriate, to conduct the criminal background check and confirm that the appointee, employee, or unsupervised volunteer has been informed that the employing agency is authorized to conduct a criminal background check;
- (b) To complete a signed affirmation stating whether or not the appointee, employee, or unsupervised volunteer:
  - (1) Has or has not been convicted of any of the offenses listed in subsection 418.1 (c)(1) through (9) of this section, or their equivalent, either in the District of Columbia, or in any state or territory;
  - (2) Has or has not pleaded nolo contendere to any of the felony offenses listed in subsection 418.1 (c)(1) through (9) of this section, or their equivalent, either in the District of Columbia, or in any state or territory;

- (3) Is or is not on probation before judgment or placement upon a stet docket of a case involving any of the felony offenses on the list in subsection 418.1 (c)(1) through (9) of this section, or their equivalent, in the District of Columbia, or in any state or territory; and
  - (4) Has or has not been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia; or for any of the felony offenses listed in subsection 418.1 (c)(1) through (9) of this section, either in the District of Columbia, or in any state or territory.
- (c) The list of offenses referred to in subsection 418.1 (b)(1) through (4) of this section relating to the signed affirmation to be completed by the appointee, employee, or unsupervised volunteer is as follows:
- (1) Murder, attempted murder, manslaughter, or arson;
  - (2) Assault, assault with a dangerous weapon, mayhem, malicious disfigurement, or threats to do bodily harm;
  - (3) Burglary;
  - (4) Robbery;
  - (5) Kidnapping;
  - (6) Illegal use or possession of a firearm;
  - (7) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;
  - (8) Child abuse or cruelty to children; or
  - (9) Unlawful distribution or possession of or possession with intent to distribute a controlled substance;
- (d) To acknowledge in writing that the appointee, employee, or unsupervised volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;
- (e) To acknowledge that the employing agency may choose to deny the appointee employment or an unsupervised volunteer position, or to terminate an employee or volunteer, based on the outcome of the criminal background check;

- (f) To provide any additional identification that is required, such as name, social security number, date of birth, and gender; and
- (g) To inform the appointee or employee that a false statement on the form or forms may subject the appointee or employee to criminal penalties.

418.2 Upon receiving and completing the form or forms specified in this section, the appointee or employee shall report to the designated location to be fingerprinted.

**419 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – REVIEW AND DETERMINATION PROCESS**

419.1 The Mayor’s authority to make suitability determinations under this section is delegated to the appropriate personnel authority.

419.2 Upon completing each criminal background check, the designated MPD representative, or the representative for any other entity conducting the check, shall forward the check to the appropriate personnel authority.

419.3 Upon receipt of the criminal background check, the personnel authority shall complete a review and determination process as specified in this section.

419.4 The personnel authority shall conduct an initial review of the criminal background check, to determine if the appointee has a criminal record, including any of the proscribed offenses, and determine if there are any charges with no clear disposition.

419.5 The information obtained from a criminal background check shall not immediately disqualify or create a presumption against employment or volunteer status of an appointee, employee, or unsupervised volunteer with a criminal record, including a proscribed offense, unless the Mayor determines that because of such criminal record, the person would pose a present danger to children or youth that makes him or her unsuitable for paid employment of unsupervised voluntary service in a covered position. This determination shall be made based on the following seven (7) factors:

- (a) The specific duties and responsibilities necessarily related to the employment sought;
- (b) The bearing, if any, the criminal offense for which the appointee was previously convicted will have on his or her fitness or ability to perform one (1) or more of the duties or responsibilities of the position;
- (c) The time which has elapsed since the occurrence of the criminal offense;
- (d) The age of the appointee at the time of the occurrence of the criminal offense;
- (e) The frequency and seriousness of the criminal offense;

- (f) Any information produced by the appointee, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense; and
  - (g) The public policy that is beneficial generally for ex-offenders to obtain employment.
- 419.6 When there is a discovery of charges with no clear disposition, the personnel authority shall:
- (a) Contact the appointee and inform him or her of the charges with no clear disposition contained in the criminal background check;
  - (b) Notify the appointee, in writing, that he or she has five (5) business days to provide the necessary information on the final disposition of the charges; and
  - (c) Determine whether or not the information submitted by the appointee resolve the charges with no clear disposition.
- 419.7 Notwithstanding the seven (7) factors listed in section 419.5 of this section, a covered District government agency shall not employ or permit to serve as an unsupervised volunteer an appointee who has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.
- 419.8 When the personnel authority resolves criminal background check information issues, the personnel authority shall make the final suitability determination whether:
- (a) A final offer of appointment should be made or denied; or
  - (b) A person appointed to a compensated position who had begun to work in a supervised setting prior to receiving the results of the check should be retained or employment shall be terminated.
- 419.9 The personnel authority shall notify the employing agency of the final suitability determination.
- 419.10 Upon determining that a final offer of appointment should be made to an appointee, the appropriate personnel authority shall promptly issue a final offer letter to the appointee. If the determination is to terminate employment, the personnel authority shall issue a termination letter to the employee, and process the action to terminate the employment within ten (10) days of making the determination.
- 419.11 In completing the review and determination process of traffic records checks, records of traffic infractions shall be judged on an individual basis for appointees whose duties would include driving a motor vehicle to transport children or youth as described in the Act. A pattern of disregard for existing traffic regulations, particularly where there has been a conviction for driving under the influence of intoxicants or drugs, may make the

appointee unsuitable for employment or voluntary service, if the appointee could be required to drive a motor vehicle to transport children or youth in the course of performing his or her duties.

- 419.12 A final suitability determination on a criminal background check or traffic record check pursuant to this section shall be the final agency decision.

**420 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – CHALLENGE PROCESS**

- 420.1 After the review and determination process under section 419 of this chapter is completed, a person who is denied a final offer of appointment or whose employment is terminated because of a determination that he or she committed a proscribed offense may challenge the final decision with the Office of Human Rights.

- 420.2 A person claiming to be aggrieved by an unlawful discriminatory practice on the part of District government agencies, officials, or employees, may elect to file an administrative complaint under the rules of procedure established by the Office of Human Rights pursuant to D.C. Official Code § 2-1401.01 *et seq.* (2006 Supp.).

**421 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – PENALTY FOR PROVIDING FALSE INFORMATION**

- 421.1 An appointee to a position subject to the Act who intentionally provides false information that is material to the application in the course of applying for a position shall be subject to prosecution pursuant to section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982.

**422 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – APPLICATION BY VOLUNTEERS TO MULTIPLE COVERED UNSUPERVISED POSITIONS**

- 422.1 A volunteer in an unsupervised position may use the same successful criminal background check conducted on him or her for a period of two (2) years when applying for multiple unsupervised volunteer positions, if the volunteer provides a signed affirmation stating whether or not he or she has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the felony offenses listed in section 418.1 (c)(1) through (9) of this chapter, or their equivalent in any other state or territory, since the date of the most recent check.

**423 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – PERIODIC CRIMINAL BACKGROUND CHECKS**

- 423.1 For the purposes of this section, the following term has the meaning ascribed:

**Administrative action** – official reprimands, suspensions, reductions in grade, or removals under the corrective and adverse action provisions for the Career Service contained in Chapter 16 of these regulations; and other similar penalties, up to and including removal, for employees in services other than the Career Service.

- 423.2 A periodic criminal background check for each current employee and unsupervised volunteer occupying a covered position shall be conducted within two (2) years of the required initial criminal background, and every two (2) years thereafter. Each employee or unsupervised volunteer subject to the check shall complete the signed affirmation described in section 418 of this chapter prior to submitting to the periodic criminal background check.
- 423.3 In addition to the two-year (2-year) periodic criminal background check, a criminal background check shall be conducted when:
- (a) Derogatory information about an employee or unsupervised volunteer, of a nature that will impact their suitability to continue performing the duties of their covered positions is disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority; or
  - (b) Information about a criminal offense committed by the employee or unsupervised volunteer, such as the criminal offenses listed in section 418 of this chapter, is disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority.
- 423.4 Separate from the requirements for periodic criminal background checks described in this section, each covered employee and unsupervised volunteer shall disclose to his or her supervisor any arrest, conviction of a crime, plea of nolo contendere, probation before judgment or placement of a case upon a stet docket, or if he or she has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the felony offenses listed in section 418 (c)(1) through (9) of this chapter, or their equivalent in any other state or territory, immediately after any of these actions occur.
- 423.5 As applicable, the employing agency shall inform the personnel authority of any employee who fails to make disclosure as specified in this section. The personnel authority shall conduct an evaluation for suitability; determine if administrative action against the employee is warranted; and notify the agency of the course of action that shall be taken.
- 423.6 An employee who intentionally misinforms or misleads the personnel authority when completing a signed affirmation; fails a periodic criminal background check; or fails to make disclosure under section 423.4 of this section, may be subject to administrative action. In determining the type of administrative action to be taken, the seven (7) factors listed in section 419.5 of this chapter shall be considered, if applicable, and any

other similar factors and variables, except that a criminal background check or employee disclosure reflecting that the employee has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor shall result in removal.

- 423.7 In addition to or in the place of administrative action, an employee who fails a periodic check may be reassigned to a non-covered position, except that this option shall not be available for an employee whose criminal background check reflects that he or she has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.
- 423.8 An unsupervised volunteer who fails a periodic criminal background check may be terminated or moved to another volunteer assignment that does not include the provision of direct services to children or youth. In determining the type of action to be taken, the personnel authority shall consider the seven (7) factors listed in section 419.5 of this chapter, as applicable, except that a criminal background check reflecting that the unsupervised volunteer has been convicted of, has pleaded nolo contendere, is on probation before judgment of a case upon a stet docket, or has been found not guilty for reason of insanity for any sexual offenses involving a minor shall result in the termination of the voluntary services.
- 423.9 In the case of an agency that violates any of the provisions of the Act, the Mayor (or his or her designee) or personnel authority may take administrative action, or direct that administrative action be taken, against the agency head or other agency official who violated the particular provision or provisions of the Act.

**424 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – CONFIDENTIALITY PROVISIONS**

- 424.1 Criminal background check records obtained under this section shall be confidential and shall be for the exclusive purpose of making employment-related determinations under this section. The records shall not be released or otherwise disclosed to any person, except when:
- (a) Required as one component of an application for employment with a District government agency considered a covered child or youth services provider;
  - (b) Requested by the personnel authority during an official inspection or investigation;
  - (c) Ordered by a court;
  - (d) Authorized by the written consent of the person being investigated; or

- (e) Utilized for an administrative action in a personnel proceeding, including but not limited to, disciplinary actions under Chapter 16 of these regulations.

424.2 An individual who discloses confidential information in violation of any of the provisions in section 424.1 of this section shall be guilty of a criminal offense and, upon conviction, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one hundred eighty (180) days, or both.

#### **425 CRIMINAL BACKGROUND AND TRAFFIC RECORD CHECKS FOR THE PROTECTION OF CHILDREN AND YOUTH – REPORTING REQUIREMENTS**

425.1 As applicable, the Director of the D.C. Department of Human Resources, and each independent personnel authority for agencies considered covered child or youth services providers under the Act, shall prepare compliance reports every six (6) months beginning on the date that these regulations are effective. Each report shall be submitted to the Mayor and shall include:

- (a) The number of criminal background checks and traffic record checks conducted for appointees, the number of appointees who were hired upon completion of the check, and the number rejected; and
- (b) The number of periodic criminal background checks conducted for employees and unsupervised volunteers, and any administrative action initiated or taken upon completion of the periodic checks.

425.2 On an annual basis by December 1<sup>st</sup> of every year, subordinate and independent agencies considered covered child or youth services providers under the Act shall submit, directly to the Mayor, a list with each position in the agency which has been identified as a covered position subject to the criminal background check requirement.

*Section 499 is amended to read as follows:*

#### **499 DEFINITIONS**

499.1 When used in this chapter, the following terms have the meaning ascribed:

**Applicant** – for the purposes of sections 412 through 425 of this chapter, a person who has filed a resume or written or electronic (web-based) application for employment with a covered child or youth services provider agency; or a person who has made an affirmative effort through written application, resume or a verbal request, to serve in an unsupervised volunteer position with a covered child or youth services provider agency.

**Appointee** – for the purposes of sections 412 through 425 of this chapter, a person who has been made a tentative job offer to a covered position, compensated or voluntary, subject to the satisfactory completion of a criminal background check or traffic record check, or both.

**Children** – for the purposes of sections 412 through 425 of this chapter, persons twelve (12) years of age and under.

**Covered assignment** – for the purposes of sections 412 through 425 of this chapter, tasks of a volunteer with a covered child or youth services provider agency which require the volunteer to provide direct services that affect the health, safety, and welfare of children or youth, including but not limited to the duties and responsibilities listed in section 416 of this chapter.

**Covered child or youth services provider** – for the purposes of sections 412 through 425 of this chapter, any District government agency, or a component of a District government agency such as an office, unit or division, including the agencies listed in section 414 of this chapter, that provides direct services that affect the health, safety, and welfare of children or youth, including individual and group counseling, therapy, case management, supervision, or mentoring. These services are provided either directly or for the benefit of children or youth.

**Covered duties and responsibilities** – for the purposes of sections 412 through 425 of this chapter, duties and responsibilities of a volunteer in a covered child or youth services provider agency that require the volunteer to provide direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to the duties and responsibilities listed in section 416 of this chapter.

**Covered position** – for the purposes of sections 412 through 425 of this chapter, a position, compensated or voluntary, in a covered child or youth services provider agency with duties and responsibilities that would require the employee or volunteer to provide direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to the duties and responsibilities listed in section 416 of this chapter.

**Criminal background check** – the investigation of a person’s criminal history through the record systems of the FBI or MPD.

**Days** – calendar days, unless otherwise indicated.

**Independent agency** – any board or commission of the District of Columbia government not subject to the administrative control of the Mayor.

**Material** – a statement that is capable of influencing, or has a natural tendency to affect, an official decision.

**Non-covered duties and responsibilities** – for the purposes of sections 412 through 425 of this chapter, duties and responsibilities of a volunteer in a covered child or youth services provider agency of such a nature that would not require that the volunteer be subjected to the criminal background check and traffic records check requirements of the Act.

**Non-covered position** – for the purposes of sections 412 through 425 of this chapter, a position, compensated or voluntary, in a child or youth services provider agency with duties and responsibilities of such a nature that would not require that the employee or volunteer be subjected to the criminal background check and traffic records check requirements of the Act.

**Person being considered for employment** – for the purposes of sections 412 through 425 of this chapter, a person who has been made a tentative offer of employment, compensated or

voluntary, to a covered position, subject to the satisfactory completion of a criminal background check or a traffic record check, or both.

**Volunteer** – for the purposes of sections 412 through 425 of this chapter, any person who performs work without any monetary or other financial compensation, in a covered position, for a child or youth services provider agency; or an employee of the District government who volunteers his or her services as a host of a child or youth participating in the Summer Youth Employment Program within his or her agency.

**Youth** – for the purposes of sections 412 through 425 of this chapter, persons between thirteen (13) and seventeen (17) years of age, inclusive.

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

**and**

**Z.C. ORDER NO. 06-48**

**Z.C. Case No. 06-48**

**(Text and Map Amendments to Establish and Map  
the Georgia Avenue Commercial Overlay District)**

**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; D.C. Official Code § 6-641.01, *et seq.*); having held a public hearing and thereafter having referred the proposed amendments to the National Capital Planning Commission ("NCPC") for a 30-day period of review as required by § 492 of the District Charter D.C. Official Code § 6-641.03); hereby gives notice of the adoption of amendments to the Zoning Map of the District of Columbia and of new §§ 1327 through 1331 of the Zoning Regulations for the District of Columbia ("DCMR" Title 11). The text amendments establish the Georgia Avenue Commercial Overlay District ("GA") and the map amendments include within the new Overlay C-2-A and C-3-A properties along the Georgia Avenue, N.W. corridor from Kenyon Street, N.W. to Varnum Street, N.W. The Commission took final action to adopt the amendments at a public meeting held on December 10, 2007. No changes were made to the text contained within the Notice of Proposed Rulemaking published in the November 9, 2007 edition of the *D.C. Register* ("DCR"). The specific amendments to the zoning map and text appear at the conclusion of this order.

This final rulemaking is effective upon publication in the *D.C. Register*.

Description of Text Amendment

The Commission initiated this rulemaking in response to a petition from the Office of Planning to advance objectives identified in the *Georgia Avenue – Petworth Metro Station Area and Corridor Plan*, which recommended the establishment of an overlay district to stabilize and encourage redevelopment.

Design requirements incorporated in the GA Commercial Overlay District are intended to improve the pedestrian experience on the street. Generally, they are designed to provide more openness between the pedestrians and buildings, direct access into individual businesses, and minimization of solid, windowless walls.

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The GA Overlay sets guidelines for development review through the PUD and special exception processes. Development on any lot containing 12,000 square feet or more is required to obtain special exception approval. Any lot containing at least 10,000 square feet may pursue a planned unit development.

The Overlay also prohibits uses that are not viewed as contributing to an enhanced pedestrian environment, such as those that sell or service motor vehicles.

#### Description of Map Amendment

This map amendment applies the overlay's provisions to all C-2-A and C-3-A zoned properties along the Georgia Avenue, N.W. corridor between Kenyon Street, N.W. and Varnum Street, N.W.

#### Relationship to 2006 Comprehensive Plan

The GA Overlay was designed in conformance with the 2006 amendments to the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan"). The 2006 Generalized Policy Map shows the areas along Georgia Avenue, between Kenyon Street, N.W. and Newton Place, N.W., and between Quincy Street, N.W. and Varnum Street, N.W., as a "Main Street Mixed Use Corridor," with the area between Newton Place and Quincy Street as a "Multi-Neighborhood Center."

The Overlay would further the goals of the 2006 Comprehensive Plan in the Land Use, Transportation, Economic Development, and Urban Design elements by discouraging automobile-oriented uses, creating additional shopping opportunities, and establishing design guidelines for new construction. It would also further the goals of the Mid-City Area Element and the Rock Creek East Element by encouraging redevelopment of vacant lots and rehabilitation of abandoned structures, and by providing a framework to guide future development strategies to enhance the quality of life along the corridor.

#### Public Hearing

A Notice of Public Hearing was published in the *D.C. Register* on May 25, 2007, at 54 DCR 5275, setting a hearing date for July 19, 2007. On June 25, 2007, Councilmember Jim Graham requested a postponement of the public hearing until October 2007 to allow the neighborhood additional time for preparation and an opportunity to meet and discuss the issues with the new director of the Office of Planning.

A Notice of Rescheduled Public Hearing was published in the *D.C. Register* on July 27, 2007, at 54 DCR 7213, setting a new hearing date for October 25, 2007.

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The Office of Zoning received 24 comments on the proposed amendments, all recommending adoption of the Overlay. Residents, business owners, and representatives from community organizations also spoke in favor of the map and text amendments.

One letter received by the Office of Zoning, from Councilmember Jim Graham, expressed concern with the use of the word "primarily" in § 1329.1(f), which listed, as a prohibited use, a "[L]iquor store or other similar establishment which primarily sells alcoholic drinks for off-premises consumption." Councilmember Graham was concerned that the word "primarily" would be difficult for the Zoning Administrator to interpret and apply. His letter suggested that the language of § 1329.1(f) be changed to reference an establishment where "the sale of alcoholic beverages constitutes no more than 15% of the total volume of gross receipts on an annual basis."

At the conclusion of the October 25, 2007 public hearing, the Commission took proposed action on the proposed map and text amendments as advertised except for the provision that was the subject of the Councilmember's correspondence. While the Commission agreed that the potential for ambiguity needed to be addressed, the Commission decided against the use of a particular percentage to create a threshold of prohibited use. Instead, the Commission changed the language of proposed § 1329.1(f) to just "liquor store." This simpler, clearer language will avoid the uncertainty associated with the word "primarily."

#### Proposed Rulemaking

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 9, 2007, at 54 *DCR* 5275. No comments were received.

The proposed amendments were referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Charter. NCPC by report to the Office of Zoning on November 29, 2007, determined that there is no adverse impact to the Federal interests in the District.

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

#### Final Action

At its regularly scheduled public meeting on December 10, 2007, the Zoning Commission took final action to approve the map and text amendments as proposed, with no changes to the proposed text. No other changes were made to the text as published in the *D.C. Register*, in the Notice of Proposed Rulemaking.

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

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consistent with the purposes of the Zoning Regulations, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following actions:

A. Amend the Zoning Map of the District of Columbia as follows:

1. Rezone from C-2-A to GA/C-2-A:

- Square 2892, Lots 98, 102, 103, 104, 105, 114, 804, 805, 806, 875, 879, 903, 904, 909, 910, 911;
- Square 2893, Lots 54, 68, 69, 70, 71, 91, 92, 93, 94, 95, 96, 97, 828, 830, 875, 879, 2001 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062;
- Square 2894, Lots 61, 75, 76, 89, 90, 898, 911;
- Square 2909, Lots 24, 25, 38, 39, 40, 64, 65, 66, 70, 812, 813;
- Square 2910, Lots 33, 34, 35, 40, 805;
- Square 3026, Lots 45, 46, 47, 48, 805, 807, 808, 809;
- Square 3034w, Lots 1, 801, 802;
- Square 3039, Lots 118, 119, 120, 135, 822, 823, 848;
- Square 3040, Lots 105, 106, 107, 130;
- Square 3041, Lots 25, 26, 27, 28, 29, 53, 54; and
- Square 3042, Lots 28, 29, 801, 807, 809.

2. Rezone from C-3-A to GA/C-3-A:

- Square 2895, Lots 123, 124, 125, 134, 135, 136, 137, 822, 824, 825, 826, 830, 831;
- Square 2897, Lots 54, 55, 56, 131, 132, 133, 134, 135, 136, 137, 145, 147, 808, 841;
- Square 2898, Lot 47;
- Square 2900, Lots 820, 821, 822;
- Square 2905, Lots 30, 809;
- Square 2906, lots 88, 846, 848, 849;
- Square 3027, Lots 24, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 74, 77, 78, 81, 82, 813, 814;
- Square 3028, Lots 39, 40, 51, 52, 53, 54, 55, 809, 818;

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- Square 3029, Lots 12, 18, 19, 20, 25, 805, 806;
- Square 3030, Lots 805, 806;
- Square 3031, Lots 233, 805, 806;
- Square 3032, Lots 28, 29, 30, 31, 32, 150, 803, 832, 839;
- Square 3033, Lots 81, 82, 83, 89, 827; and
- Square 3038, Lots 54, 61, 62, 63, 64, 65, 94, 834, 2009, 2010, 2011, 2053.

- B. Title 11 DCMR (Zoning) is amended by adding new §§ 1327 through 1331 to Chapter 13, "Neighborhood Commercial Overlay District."

**1327 GEORGIA AVENUE COMMERCIAL OVERLAY DISTRICT**

1327.1 The Georgia Avenue Commercial (GA) Overlay District applies to all properties zoned C-2-A and/or C-3-A along both sides of Georgia Avenue, N.W., from the north side of the intersection of Georgia Avenue and Kenyon Street to the south side of the intersection of Georgia Avenue and Varnum Street.

1327.2 The provisions of the GA Overlay shall not apply to public schools.

1327.3 In addition to the purposes in § 1300, the purposes of the GA Overlay District are to:

- (a) Implement the objectives of the Georgia Avenue – Petworth Metro Station Area and Corridor Plan, approved by the Council of the District of Columbia on July 7, 2006 (Res. 16-686; 53 DCR 5444);
- (b) Implement the goals of the Great Streets Framework Plan for 7th Street – Georgia Avenue, published by the District Department of Transportation and dated 2006;
- (c) Encourage additional residential uses along the Georgia Avenue corridor;
- (d) Encourage improved commercial uses;
- (e) Provide uniform building design standards;
- (f) Set guidelines for development review through PUD and special exception proceedings; and

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- (g) Encourage vertically-mixed uses (ground floor commercial and residential above) within a quarter mile of the Georgia Avenue – Petworth Metrorail Station along Georgia Avenue, from Park Road to Shepherd Street.

**1328 DESIGN REQUIREMENTS (GA)**

- 1328.1 The design requirements of §§ 1328.2 through 1328.11 shall apply to any lot in the GA Overlay District for which a building permit was applied for after December 11, 2006.
- 1328.2 Buildings shall be designed and built so that not less than seventy-five percent (75%) of the street wall at the street level shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots shall be constructed to all property lines abutting public streets.
- 1328.3 In the GA/C-2-A Zone District, seventy percent (70%) lot occupancy shall be permitted for mixed use buildings that include residential use.
- 1328.4 On-grade parking structures with frontage on Georgia Avenue, N.W. shall provide not less than sixty-five percent (65%) of the ground level frontage as commercial space.
- 1328.5 Each building on a lot that fronts on Georgia Avenue, N.W. shall devote not less than fifty percent (50%) of the surface area of the street wall at the ground level to entrances to commercial uses or to the building's main lobby, and to display windows having clear or clear/low emissivity glass. Decorative or architectural accents do not count toward the fifty percent (50%) requirement.
- 1328.6 Security grilles over windows or doors shall have no less than seventy percent (70%) transparency.
- 1328.7 Each commercial use with frontage on Georgia Avenue, N.W. shall have an individual public entrance directly accessible from the public sidewalk.
- 1328.8 Buildings shall be designed so as not to preclude an entrance every forty feet (40 ft.) on average for the linear frontage of the

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building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby.

1328.9 The ground floor level of each building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.).

1328.10 Buildings subject to § 1328.9 shall be permitted an additional five feet (5 ft.) of building height over that permitted as a matter-of-right in the underlying zone.

1328.11 Notwithstanding 11 DCMR § 2116.2, off-street surface parking shall be permitted in rear yards only.

**1329 USE PROVISIONS (GA)**

1329.1 The following uses are prohibited within the GA Overlay District:

- (a) Automobile and truck sales;
- (b) Automobile laundry;
- (c) Boat or marine sales;
- (d) Any use that includes a Drive-through;
- (e) Gasoline service station;
- (f) Liquor store;
- (g) Pawn shop;
- (h) Repair garage;
- (i) Storage facilities; and
- (j) Surface parking lot.

**1330 SPECIAL EXCEPTION (GA)**

1330.1 The following uses are permitted by special exception within the GA Overlay District regardless of whether the use is permitted as a

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matter of right in the underlying zone, pursuant to §§ 3104 and 1304.

- (a) Fast food establishments including any within twenty-five feet (25 ft.) of a Residence District, subject to the additional criteria contained in § 733.
- (b) Construction of a building on a lot that has twelve thousand square feet (12,000 ft.<sup>2</sup>) or more in land area.
- (c) Enlargement, by fifty percent (50%) or more, of the gross floor area of a building located on a lot that has twelve thousand square feet (12,000 ft.<sup>2</sup>) or more of land area.

1330.2

Exceptions from the design requirements of the Georgia Avenue Commercial Overlay District, as set forth in § 1328, shall be permitted as a special exception if approved by the Board of Zoning Adjustment in accordance §§ 1304 and 3104 and subject to the criteria below.

- (a) The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located;
- (b) Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions;
- (c) Parking and traffic conditions associated with the operation of a proposed use shall not significantly affect adjacent or nearby residences; and
- (d) Noise associated with the operation of a proposed use shall not significantly affect adjacent or nearby residences.

1330.3

The Board may impose requirements pertaining to design, appearance, massing, landscaping, and other such factors as it deems necessary to protect neighboring property and to achieve the purposes of the Georgia Avenue Overlay District.

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 06-48

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**1331 PLANNED UNIT DEVELOPMENT PROVISIONS (GA)**

1331.1 A planned unit development (PUD) in the GA Overlay District shall be subject to the following provisions in addition to those of Chapter 24 of this Title:

- (a) Any additional height and floor area above that permitted as a matter-of-right in the underlying zone shall be for residential use only;
- (b) The minimum area included within the proposed PUD, including the area of public streets or alleys proposed to be closed, shall be a total of ten thousand square feet (10,000 ft.<sup>2</sup>).

The Zoning Commission voted to **APPROVE** the proposed rulemaking during its public hearing of October 25, 2007, by a vote of **4-0-1** (Gregory N. Jeffries, Michael G. Turnbull, Curtis L. Etherly, Jr., and John G. Parsons to approve; Anthony J. Hood, not present, not voting).

The Zoning Commission, at its public meeting of December 10, 2007, **ADOPTED** this Order by a vote of **4-0-1** (Gregory N. Jeffries, Michael G. Turnbull, Curtis L. Etherly, Jr., and John G. Parsons (by absentee ballot) to adopt; Anthony J. Hood, 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*; that is on **JAN 25 2008**

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

**and**

**Z.C. ORDER NO. 06-48**

**Z.C. Case No. 06-48**

**(Text and Map Amendments to Establish and Map  
the Georgia Avenue Commercial Overlay District)**

**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. 07-04**

**Z.C. Case No. 07-04**

**(Text Amendment – Repeal of Section 801.7(k))**

**July 30, 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 amendment to the National Capital Planning Commission for a 30-day period of review pursuant to Section 492 of the District Charter; hereby gives notice of the adoption of the following amendment to repeal § 801.7(k) of the Zoning Regulations in its entirety.

A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on June 15, 2007, at 54 DCR 5859. The Commission took final action to adopt the amendments at a public meeting on July 30, 2007. This final rulemaking is effective upon publication in the *D.C. Register*.

**Existing Regulations**

Paragraph 801.7(k) of the Zoning Regulations permits, “[t]emporary detention or correctional institution on leased property for a period not to exceed three (3) years” as a matter-of-right use in the C-M (commercial-light manufacturing) Zone District. This provision was originally adopted by Zoning Commission Order No. 46 in Case No. 71-3 in response to a short-term crisis the District faced in housing its prison population. The provision was never lawfully used and the crisis has long passed.

**Description of Text Amendment**

The text amendment deletes paragraph 801.7(k) from the Zoning Regulations.

**Relationship to the Comprehensive Plan**

The amendment is not inconsistent with the Comprehensive Plan.

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### **Set Down Proceeding**

The Office of Planning ("OP") initiated this rulemaking by filing a report with the Zoning Commission. The OP report dated February 2, 2007, requested a text amendment to repeal paragraph 801.7(k) of the Zoning Regulations.

At its February 12, 2007 public meeting, Zoning Commission set the case down for a public hearing.

### **Public Hearing and Proposed Action**

The Commission held a public hearing on May 31, 2007. There was no public testimony. ANC-6B, by a written resolution, supported the deletion of this section. Following the conclusion of the hearing, the Commission took proposed action to repeal paragraph 801.7(k).

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC by report to the Office of Zoning on July 18, 2007, determined that there is no adverse impact to the Federal interests in the District.

No other comments were received.

### **Great weight given to ANC issues and concerns**

The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) to give great weight to an affected ANC's recommendation. The Commission has carefully considered ANC 6B's recommendation for approval and concurs with its recommendation.

### **Final Action**

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on July 30, 2007. No changes were made to the advertised text.

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 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:

Title 11 (DCMR) is amended by deleting paragraph 801.7(k).

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The Zoning Commission voted to **APPROVE** the proposed rulemaking at the close of the public hearing on May 31, 2007 by a vote of **3-0-2** (Anthony J. Hood, John G. Parsons, and Michael G. Turnbull in favor; Carol J. Mitten, Gregory N. Jeffries not present, not voting).

The Zoning Commission at its public meeting on July 30, 2007 voted to **APPROVE** the final rulemaking by a vote of **3-0-2** (Anthony J. Hood, John G. Parsons, and Michael G. Turnbull in favor; Carol J. Mitten, Gregory N. Jeffries not participating, 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     **JAN 25 2008**    .

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

**and**

**Z.C. ORDER NO. 07-04**

**Z.C. Case No. 07-04**

**(Text Amendment – Repeal of Section 801.7(k))**

**July 30, 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. 07-24**

**Z.C. Case No. 07-24**

**(Text Amendments – 11 DCMR)**

**Elimination of the Certificate of Occupancy Requirement for Community Based  
Residential Facilities Housing Six or Less Persons with Disabilities  
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 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 adoption of the following amendments to § 3203.1 of the Zoning Regulations (11 DCMR) to eliminate the requirement that a certificate of occupancy be obtained for community based residential facilities (“CBRF”) intended to house six or fewer unrelated persons with disabilities. Notice of the public hearing was published in the *D.C. Register* (54 DCR 9363) on September 28, 2007, together with a Notice of Emergency and Proposed Rulemaking (54 DCR 9445). The Commission took final action to adopt the amendments at a public meeting held on December 10, 2007 making no substantive changes to the proposed text.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

Provisions within the Zoning Regulations require that a certificate of occupancy (“C of O”) be obtained for all uses except one-family dwellings. A “one-family dwelling” is defined as “a dwelling used exclusively as a residence for one (1) family”, 11 DCMR 199.1. A family is defined to include six or fewer unrelated persons. *Id.* Thus, six unrelated persons (whether disabled or not) constitute a “family” and may occupy a dwelling without first obtaining a C of O. However, if such individuals require one or more persons to live with them to provide “treatment, rehabilitation, assistance, or supervision in their daily living,” their dwelling would meet the definition of a community based residential facility and a C of O must be obtained. Thus, whether or not six unrelated persons must obtain a C of O for a dwelling depends solely upon whether the group needs an additional resident to provide the assistance needed for them to live in a non-institutional setting. The Commission finds this distinction unnecessary.

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### Description of Text Amendments

The text amendments eliminate the requirement that a certificate of occupancy be obtained for community based residential facilities ("CBRF") intended to house six or fewer unrelated persons with disabilities.

### Relationship to the Comprehensive Plan

The text amendments are not inconsistent with the city-wide element, **Health Facilities and Services** theme of the Comprehensive Plan, which calls for "[C]oordination to Better Serve Special Needs Residents. Design and coordinate health and human services to ensure the maximum degree of independence for senior citizens, the disabled, and the physically and mentally handicapped." (CSF-2.1.3), as well as the specific Rock Creek West element which reads: "Encourage the development of small-scale community-based residential facilities on scattered sites within the Planning Area, and social service counseling and referral facilities on the commercial corridors. Additional group homes and community based residential facilities should be accommodated, provided that such facilities are consistent with the area's low-density character. Local religious institutions should be encouraged to host small shelters to provide for the homeless, taking into consideration issues of liability, security, and adequacy of facilities." (RCW-1.2.10)

### Public Hearing and Comment

The Commission held a public hearing on the proposed text amendments on November 8, 2007. There was public testimony expressing concerns that removal of the C of O requirement could expose a possibly vulnerable population to potentially inhabitable or dangerous residences. Concerns were also expressed about facilities that accept federal funds. ANC 6C submitted a letter questioning proper notice.

The Commission believes that any specific vulnerability of this population group is best protected by licensing requirements, which can be tailored to the specific type of disability involved. The Commission also believes that proper notice had been given, particularly in view of the fact that the record stayed open for thirty days prior to final action.

### National Capital Planning Commission

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 November 29, 2007, found that the proposed text amendment would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan.

Z.C. NOTICE OF FINAL RULEMAKING & Z.C. ORDER NO. 07-24  
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The Office of the Attorney General determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on December 10, 2007. No substantive changes were made to the advertised prepared text.

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.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to § 3203.1 of Chapter 32, ADMINISTRATION AND ENFORCEMENT, of the Zoning Regulations, Title 11 DCMR. Added wording is in **bold and underlined**, and deleted wording is shown in ~~striketrough~~ lettering:

1. Subsection 3203.1 is amended to read as follows:

3203.1 Except as provided in §§ 3203.7, 3203.8, 3203.9, **or the second sentence of this subsection**, no person shall use any structure, land, or part of any structure or land for any purpose ~~other than a one-family dwelling~~ until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR. **The requirements of this subsection shall not apply to:**

**(a) A one-family dwelling; or**

**(b) A community based residential facility to be occupied by six or fewer persons with a handicap plus resident supervisors, as permitted by right in residence and commercial districts pursuant 11 DCMR §§ 201.1 (o) and 330/5 (i).**

Vote of the Zoning Commission taken at its public meeting on November 8, 2007, to **APPROVE** the proposed rulemaking (for NCPC referral purposes): 4-0-1 (Anthony J. Hood, Gregory N. Jefferies, John G. Parsons, and Michael G. Turnbull to approve; Curtis Etherly, not present, not voting).

Z.C. NOTICE OF FINAL RULEMAKING & Z.C. ORDER NO. 07-24  
Z.C. CASE NO. 07-24  
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This Order was **ADOPTED** by the Zoning Commission at its public meeting on December 10, 2007, by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jefferies, John G. Parsons (by absentee ballot), and Michael G. Turnbull to adopt; Curtis Etherly, 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     **JAN 25 2008**

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

**and**

**Z.C. ORDER NO. 07-24**

**Z.C. Case No. 07-24**

**(Text Amendments – 11 DCMR)**

**Elimination of the Certificate of Occupancy Requirement for Community Based  
Residential Facilities Housing Six or Less Persons with Disabilities**

**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*.