

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health pursuant to the authority set forth in § 6(c) of the District of Columbia Smoking Restriction Act of 1979, effective September 28, 1979 (D.C. Law 3-22; D.C. Official Code, § 7-1705(c) (2001)), § 4921 of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-747(2006 Supp.)), and Mayor's Order 2007-63, dated March 8, 2007, hereby gives notice of the adoption of the following amendments to Title 20, Chapter 21 of the District of Columbia Municipal Regulations, (DCMR). The Director took final action to adopt this rule on October 23, 2007.

A Notice of Emergency Rulemaking was published on December 29, 2006, at 53 DCR 10340, which expired on April 14, 2007. A Notice of Proposed Rulemaking that differed from the content of the Notice of Emergency Rulemaking was published on December 14, 2006, at 53 DCR 9925. A Notice of Emergency and Proposed Rulemaking was published on April 6, 2007, at 54 DCR 3084, which was superseded by a Notice of Emergency and Proposed Rulemaking published April 27, 2007, at 54 DCR 3896 and expired on August 8, 2007. Each of the preceding notices had substantial differences. A proposed resolution to approve the emergency and proposed rules was introduced in the Council on April 28, 2007 as PR-229, the Smoking and Tobacco Control Regulations Approval Resolution of 2007. The resolution was deemed approved on September 28, 2007.

A Notice of Emergency Rulemaking was published July 20, 2007, at 54 DCR 6999. The Notice of Emergency Rulemaking was identical to the Notice of Emergency and Proposed Rulemaking published April 6, 2007, and was published only for the purpose of preventing a regulatory gap while the Council was on recess. The April 27, 2007, notice elicited one public comment that was generally favorable but offered suggestions for improvement and expansion of the smoking ban. The Director has taken the comments into consideration and decided to adopt the rule as originally published.

This rulemaking regulates smoking in places of employment and public places, specifies the requirements for eligibility for exemptions or waivers from the prohibition of smoking in public places and places of employment, and harmonizes the existing smoking rules with the requirements for signage under the Department of Health Functions Clarification Amendment Act of 2006, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741 *et seq.* (2006 Supp.)). This rulemaking will become effective upon publication of this notice in the *D.C. Register*.

Title 20 DCMR (Environment) (February 1997) is amended to read as follows:

2100 PURPOSE AND GENERAL PROVISIONS

2100.1 The purpose of this chapter is to regulate tobacco sales and smoking, as required by the District of Columbia Smoking Restriction Act of 1979, as amended, and the Department of Health Functions Clarification Act of 2001, as amended, (the "Acts").

2100.2 This chapter shall apply to all public places and places of employment and, as of 12:01 A.M. on January 2, 2007, the following:

- (a) A brew pub;
- (b) A club;
- (c) A nightclub;
- (d) A tavern; and
- (e) The bar and bar area of a restaurant.

2101 PLACE OF EMPLOYMENT AND PUBLIC PLACE SMOKING POLICY

2101.1 Each place of employment and public place shall adopt a smoking policy that is consistent with the requirements of the Acts and this chapter.

2101.2 An employer shall notify each employee, both orally and in writing, of the smoking policy for the place of employment.

2101.3 The employer's smoking policy shall apply to each person in the workplace, including a visitor.

2101.4 An employer shall post the written smoking policy in the place of employment in the same place as the Worker's Compensation notice or any similar employee notice.

2101.5 An employer shall prohibit smoking in the enclosed area of a place of employment, except as provided in § 2105.

2101.6 An employer may permit smoking in an outdoor area under his or her control, subject to the terms and conditions of any lease or contract between the owner and the tenant.

2101.7 When an employer of an establishment that is a restaurant, tavern, club, brew pub, or nightclub permits smoking in an outdoor area, the employer

shall ensure that no area designated for smoking encompasses an area where smoking is prohibited.

2101.8 **Repealed.**

2102 VENTILATION OF SMOKING AREA IN THE WORKPLACE

2102.1 For the purpose of applying the Acts to designated smoking areas permitted because the employer is exempt under D.C. Official Code § 7-743 or has obtained an economic hardship waiver under D.C. Official Code § 7-745, all buildings constructed before August 3, 1991, shall be deemed to be in compliance with the ventilation requirements of the District of Columbia Construction Codes, unless the building has undergone a renovation since August 3, 1991, that required a building permit.

2103 POSTING OF SIGNS IN PLACES OF EMPLOYMENT AND PUBLIC PLACES

2103.1 The requirements of this section shall supplement the requirements for the posting of warning signs pursuant to DCMR Title 12D, Fire Prevention Code Supplement, and the BOCA National Fire Prevention Code.

2103.2 When smoking is prohibited in a building by the building owner, the owner or the owner's agent shall conspicuously post signs that include the internationally recognized symbol for no smoking and read as follows:



NO SMOKING UNDER PENALTY OF LAW. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000).”

2103.3 When posting signs pursuant to §2103.2, the building owner, or the owner's agent, shall conspicuously post signs at the entrance of the building, inside each elevator, and inside the building in sufficient number to give notice to the public of the law.

2103.4 If a building owner does not prohibit smoking and a tenant of the building owner permits smoking because it is exempt under D.C. Official Code § 7-743 or has obtained an economic hardship waiver under D.C. Official Code § 7-745, the owner or the owner's agent shall conspicuously post signs that include the internationally recognized smoking symbol and read as follows:



NO SMOKING EXCEPT IN SMOKING AREAS. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000)".

2103.5 When posting a sign pursuant to §2103.4 the building owner, or the owner's agent, shall conspicuously post signs at the entrance to the building, inside each elevator, and inside the building in sufficient number to notice to the public of the law.

2103.6 An employer shall conspicuously post one of the following signs in a place of employment:

- (a) If the employer is not exempt under D.C. Official Code § 7-743 or has not obtained an economic hardship waiver under D.C. Official Code § 7-745, the employer shall conspicuously post signs that include the internationally recognized no-smoking symbol and read as follows:



NO SMOKING UNDER PENALTY OF LAW. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000).”; or

- (b) If the employer is exempt under D.C. Official Code § 7-743 or has obtained an economic hardship waiver under D.C. Official Code § 7-745, the employer shall conspicuously post signs that include the internationally recognized smoking symbol and read as follows:



NO SMOKING EXCEPT IN SMOKING AREAS. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000).”

2103.7 The internationally recognized smoking and no-smoking symbols required for each of the signs described in this section shall be in a typeface that is at least as large as the largest lettering on the sign.

2103.8 The employer shall post the signs required by §2103.6 in the following places that are open to or used by employees or the public:

- (a) At an entrance to the place of employment; and
- (b) On the interior of any non-smoking area so that they are visible to employees and the public.

2103.9 If the employer is exempt under D.C. Official Code § 7-743 or has obtained an economic hardship waiver under D.C. Official Code § 7-745, the employer shall conspicuously post in a designated smoking area a sign

that states, in letters not less than three-quarters of an inch (3/4 in.) in height, the following:

“SMOKING IN ACCORDANCE WITH EMPLOYER’S SMOKING POLICY ONLY, SMOKING CAUSES LUNG CANCER, HEART DISEASE, EMPHYSEMA, AND MAY CAUSE FETAL INJURY, PREMATURE BIRTH, AND LOW BIRTH WEIGHT IN PREGNANT WOMEN. MAXIMUM FINE ONE THOUSAND DOLLARS (\$1,000)”.

2104 PLACES LICENSED TO SELL TOBACCO PRODUCTS

2104.1 It shall be unlawful for any person to sell, give, or furnish any tobacco products to any person younger than eighteen (18) years of age.

2104.2 Any person who sells any cigarette or other tobacco product who has reasonable cause to believe that a person who attempts to purchase the product is under twenty-five (25) years of age shall require that the purchaser present identification that indicates his or her age.

2104.3 The owner, manager, or other person in charge of any business licensed to sell cigarettes or any tobacco product under D.C. Official Code §47-2404 (2001), shall conspicuously post signs that state, in letters not less than three-quarters of an inch (3/4 in.) in height, the following:

“NO PERSONS UNDER EIGHTEEN (18) YEARS OF AGE SHALL PURCHASE ANY CIGARETTE OR OTHER TOBACCO PRODUCT. THE UNITED STATES SURGEON GENERAL HAS ISSUED A WARNING THAT SMOKING CAUSES LUNG CANCER, HEART DISEASE, EMPHYSEMA, AND MAY COMPLICATE PREGNANCY. MAXIMUM CRIMINAL FINE ONE THOUSAND DOLLARS (\$1,000) AND NINETY (90) DAYS IN JAIL.”

2104.4 The owner, manager, or person in charge shall post the sign required by §2104.3 at the entrance to the business and on the interior of the business near all points of purchase.

2105 EXEMPTIONS

2105.1 The following places shall be exempt from § 2101.5:

- (a) A retail store that has as its primary source of revenue the sale of tobacco products and smoking accessories, provided that:

- (1) No more than twenty-five percent (25%) of the revenue the store generates is from non-tobacco products; and
 - (2) The store does not share space with any other establishment;
- (b) A tobacco bar;
- (c) An outdoor area of the following:
- (1) A restaurant;
 - (2) A tavern;
 - (3) A club;
 - (4) A brew pub; or
 - (5) A nightclub;
- (d) A hotel room or motel room rented to one or more guests;
- (e) A medical treatment, research, or nonprofit institution where the activity of smoking is conducted for the purpose of medical research or is an integral part of a smoking cessation program; and
- (f) Upon the stage of a theatrical performance, provided that smoking is part of the theatrical production.

2105.2 A place shall not be exempt under § 2505.1(a), (b), or (e) until it establishes, to the satisfaction of the Director, that it satisfies the revenue requirements to qualify for the exemption or is engaged in an activity that qualifies the place for an exemption. Revenue claimed for this exemption shall be exclusive and distinct and not bundled with some other service, such as a membership fee, or an entry fee, or a non-tobacco product, such as a food item or an alcoholic drink.

2105.3 A place first applying for an exemption under § 2105.2 may receive a conditional certificate of exemption, valid for not longer than ninety (90) days, while its application is pending. To qualify for a conditional certificate of exemption the applicant shall:

- (a) Submit a statement that asserts, under penalty of perjury, that it satisfies the revenue requirements or is engaged in an activity that qualifies it for an exemption; and
- (b) Promptly supply documentation to support its application and respond to requests for additional information during the period of the conditional certificate.

2105.4 The Director shall deny an application for exemption if the applicant fails to comply with the requirements of § 2105.3. After reviewing the applicant's documentation in support of an application for exemption, the Director shall make a determination, in writing, whether the applicant qualifies for an exemption. If the Director fails to make a determination within ninety (90) days and the applicant has complied with requests for information, the Director shall extend the validity of the conditional certificate for additional thirty (30)-day increments until the Director makes a final determination.

2105.5 If the Director determines that a place qualifies for an exemption after a review of the place's financial records, the Director shall issue a certificate of exemption to that place. The certificate issued under this subsection shall be valid for not longer than three (3) years and shall not be transferable to another location or another owner.

2105.6 The Director may perform an annual audit of the financial records of a place that holds a certificate of exemption. If, after an audit, the Director determines that a place does not satisfy the requirements for an exemption, the Director shall revoke the certificate of exemption. The Director may revoke the certificate of exemption if the tobacco bar or retail store fails to provide documentation to show that it continues to satisfy the revenue requirements for the exemption.

2106 ECONOMIC HARDSHIP WAIVER

2106.1 The Director may, after May 1, 2007, grant a place of employment or a public place an economic hardship waiver from the requirements of this chapter provided that:

- (a) The place of employment or public place was in existence on or before January 1, 2007;
- (b) The place of employment or public place has not been found liable for two (2) or more notices of violation for violations of the Acts or this chapter during the previous one (1) year;

- (c) The place of employment or public place demonstrates undue financial hardship by one of the following:
- (1) By showing a reduction in sales tax for food and beverages of fifteen percent (15%) or more for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007;
 - (2) If the place of employment or public place has not operated for a period of two (2) years before January 1, 2007, by showing a reduction in sales tax for food and beverages of fifteen percent (15%) or more for a period of three (3) consecutive months during which the place of employment or public place has operated smoke-free, as compared to the three (3) month period immediately preceding January 1, 2007; and
- (d) The place of employment or public place demonstrates one or more of the following:
- (1) Sales revenues that fail to reach reasonably expected or anticipated levels for three (3) consecutive months after January 1, 2007 as compared to the same three (3) month period during the previous two (2) years before January 1, 2007;
 - (2) Significantly reduced staffing levels for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007;
 - (3) Significantly reduced food and materials purchases for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007; or
 - (4) Significantly reduced alcohol sales for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007.

2106.2

To receive an economic hardship waiver a place of employment or a public place shall submit an economic hardship waiver application to the Director. In not more than ten (10) business days the Director shall

return an incomplete application and inform the applicant of the information necessary to complete the application.

- 2106.3 The Director shall make a final determination regarding the application, in writing, not later than sixty (60) days after receiving an application. The decision shall state the reasons for granting or denying the application.
- 2106.4 An application for an economic hardship waiver shall include the following information:
- (a) The specific provision from which a place of employment or public place is seeking a waiver;
 - (b) A description of the efforts the place of employment or public place has made to operate profitably while smoke-free;
 - (c) Exact copies of District sales tax statements for each three (3) month period used to demonstrate a reduction in sales tax receipts;
 - (d) Evidence that demonstrates that the place of employment or public place incurred a reduction in revenue because of eliminating smoking instead of other factors including evidence that the place of employment or public place:
 - (1) Operated during the same number of hours;
 - (2) Was open the same number of days;
 - (3) Was open on the same high business days;
 - (4) Sold food and beverages from a menu similar in selection and cost;
 - (5) Maintained the same management and staffing strategy;
 - (6) Did not fail to respond to new competitors who entered the market; and
 - (7) Maintained a similar or enhanced marketing strategy; and
 - (e) A description of the actions the place of employment or public place plans to take to minimize the effects of smoking on non-smoking patrons or visitors as a result of a waiver.

- 2106.5 If the Director grants a waiver under this section the Director shall require that the area where smoking is permitted shall not exceed twenty-five percent (25%) of the total area if the place of employment or public place is a restaurant. The Director may require additional conditions or restrictions that may be necessary to minimize the adverse effects of smoking consistent with the general purpose of D.C. Official Code § 7-741 *et seq.* including the following:
- (a) Prohibiting smoking near restrooms or commonly used pathways and entrances;
 - (b) Requiring physical barriers or ventilation systems, or both, between smoking and non-smoking areas;
 - (c) Requiring additional or differently sized signs to designate smoking and non-smoking areas; and
 - (d) Taking additional measures to minimize employee exposure to secondhand smoke.
- 2106.6 The Director may grant a waiver for a period not to exceed three (3) years. The waiver shall be:
- (a) For a specific location and not transferable;
 - (b) For a specific applicant and not transferable to a new owner; and
 - (c) Nonrenewable.
- 2106.7 Each tobacco bar and retail store that holds an economic hardship waiver shall provide to the Director every twelve (12) months from the date of the waiver documentation that it continues to satisfy the minimum revenue requirements to maintain the waiver. The Director may revoke the waiver if the tobacco bar or retail store fails to provide documentation to show that it continues to satisfy the revenue requirements for the waiver.
- 2106.8 The Director shall conduct periodic inspections to ensure that the holder of a waiver complies with the requirements of this section or any conditions or restrictions contained in the waiver.
- 2106.9 The Director may suspend or revoke a waiver upon finding that the holder of a waiver has violated a condition or restriction or has failed to

comply with the requirements of this chapter or the Acts that have not been waived.

- 2106.10 The Director may also grant an event-specific waiver based on economic hardship to a hotel, motel, or convention hall for an event that was scheduled before April 4, 2006. To qualify for an event-specific waiver a hotel, motel, or convention hall shall provide proof to the Director that it entered into a contract or other binding agreement on or before April 4, 2006, for an event scheduled to take place after January 1, 2007. An event shall not be eligible for an event-specific waiver unless it takes place in enclosed area that is separate from other areas accessible to the general public. The Director shall require additional conditions or restrictions that may be necessary to minimize the adverse effects of smoking.

2107 DISTRIBUTION OF FREE CIGARETTES

- 2107.1 No person, agent, or employee of any person shall, in the course of doing business, distribute any free cigarettes or other tobacco products to any person on any public street, public sidewalk, public park, playground, in a public building, other public property, or private property open to the public.

- 2107.2 A person may distribute free cigarettes or other tobacco products only under the following circumstances:

- (a) At a tobacco store to persons eighteen (18) years of age or older,
- (b) At a convention to persons eighteen (18) years of age or older, or
- (c) At a conference catering to persons eighteen (18) years of age or older.

2108 PENALTIES AND FINES

- 2108.1 Any person who fails to comply with any of the applicable provisions of this chapter shall, upon conviction, be punished as follows:

- (a) Any person smoking in a posted "NO SMOKING" area, disfiguring or removing a "NO SMOKING" sign, or failing to post warning signs as set forth in this Chapter shall, upon conviction, be punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand (\$1,000) for a first offense; and not less than two hundred dollars (\$200) nor a more than one thousand dollars (\$1,000) for each subsequent offense;

- (b) Each person found covering, removing, disfiguring, or otherwise destroying any sign posted under the provisions of this Chapter shall, upon conviction, be fined five hundred dollars (\$500).
- (c) Each person who fails to post or maintain "No Smoking" signs as required by this chapter shall be punished by a fine not to exceed five hundred dollars (\$500). Each day that the violation continues shall constitute a separate offense and the penalties provided in this paragraph shall be applicable to each offense.
- (d) Each person who fails to warn a smoker observed to be smoking in violation of the Acts and as required by this chapter, shall be punished by a fine not to exceed five hundred dollars (\$500). Each day that the violation continues shall constitute a separate offense and the penalties provided in this paragraph shall be applicable to each offense.

2108.2 Hearings or adjudication of violations under this chapter shall be conducted pursuant to D.C. Official Code § 2-1801.01 *et seq.*, (2001).

2108.3 Pursuant to D.C. Official Code § 22-1320(c), any person licensed to sell tobacco products who violates § 2104.1 or 2104.2 of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars (\$500) or less than one hundred dollars (\$100), or imprisoned not more than thirty (30) days, or both, for the first offense.

2108.4 Pursuant to D.C. Official Code § 22-1320(c), any person who commits a subsequent violation of §2104.1 or 2104.2 shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars (\$1,000) or less than five hundred dollars (\$500), or imprisoned not more than ninety (90) days, or both.

2108.5 Pursuant to D.C. Official Code § 7-1731(b), any person who violates §2107.1 of this chapter shall, upon conviction, be fined not less than two hundred fifty dollars (\$250) for each violation.

2199 DEFINITIONS

Acts – D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979 (D.C. Official Code § 7-1701 *et seq.*) and D.C. Law 16-90, the Department of Health Functions Clarification Amendment Act of 2006 (D.C. Official Code § 7-741 *et seq.*).

Bar area of a restaurant—the area immediately adjacent to the bar in a restaurant where there are no dining tables or that is primarily the area

where persons of legal drinking age consume alcoholic beverages purchased at the bar.

Director—the Director of the Department of Health.

Employee—the license holder, person in charge, person having supervisory or management duties, person on the payroll, volunteer, or person performing work under contractual agreement at a place of employment.

Enclosed area – the space between a floor and ceiling that is enclosed on all sides by solid walls, windows, or doors, exclusive of doorways, that extend from the floor to the ceiling, regardless of whether windows or doors are open.

Existing building—a building that was built, under construction, or had a building permit issued on or before August 3, 1991.

Place of employment—an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, and vehicles owned by a private employer, if the vehicle is used by more than one person. This term does not apply to a private residence unless it is used as a child development center, adult day care facility, or health care facility.

Public place—an enclosed area to which the public is invited or in which the public is permitted, including banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, nightclubs, retail service establishments, retail stores, shopping malls, sports arenas, taverns, theaters, and waiting rooms. This term does not apply to a private residence unless it is used as a child development center, adult day care facility, or health care facility.

Review—a critical evaluation, examination, or study on a retrospective basis that may or may not include a formal examination of accounting records with applicable audit standards.

Smoking—the act of burning a cigar, cigarette, pipe, or any other matter or substance that contains tobacco.

Tobacco bar—a restaurant, tavern, brew pub, club, or nightclub that generates ten percent (10%) or more of its total annual revenue from the

on-site sale of tobacco products, excluding sales from vending machines or the rental of on-site humidors.

Tobacco product – any product made from or containing any percentage of the dried processed leaves of the plant genus *nicotiana* or any byproduct thereof used primarily for the purpose of smoking.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Commissioners of District of Columbia Housing Authority (“DCHA”) hereby gives notice of the following new chapter of Title 14 DCMR, “Chapter 94: “Affordable Housing Rental Rehabilitation Financial Assistance.” This Chapter governs the administration of financial assistance, which financial assistance, subject to availability of funding, may be made available by DCHA periodically in the form of loans or grants to assist in paying for costs of eligible rehabilitation, renovation or repair of affordable housing dwelling units occupied or to be occupied by eligible tenants. DCHA’s rulemaking authority is found in the District of Columbia Housing Authority Act of 1999 at D.C. Official Code, §§ 6-202 and 6-203(12). A Notice of Proposed Rulemaking was published in the *D.C. Register* on August 24, 2007 at 54 DCR 8279. No comments were received. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Amendment: Chapter 94, affordable housing rental rehabilitation financial assistance, a new Chapter in Title 14 of the DCMR is to read as follows:

**CHAPTER 94 AFFORDABLE HOUSING RENTAL REHABILITATION
FINANCIAL ASSISTANCE**

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- 9404 APPROVAL AND FUNDING OF APPLICATIONS; CONTINUING RESPONSIBILITIES OF OWNERS
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9400 INTRODUCTION

- 9400.1 DCHA recognizes that sufficient funding and financing sources may not be available to owners of eligible affordable housing dwelling units to finance or pay for costs of rehabilitation, renovation or repair necessary to modify such dwelling units to satisfy the Uniform Federal Accessibility Standards, or to make energy conservation improvements, or to satisfy the Housing Quality Standards. DCHA may periodically make financial assistance in the form of no or low interest loans and grants available to owners of existing dwelling units that are eligible to participate in DCHA’s Partnership Program for Affordable Housing and enter into a Project-Based Housing Choice Voucher Housing Assistance Payments Contract with DCHA under the Partnership Program.
- 9400.2 This Chapter will set forth rules governing the administration of a DCHA program to provide financial assistance to owners of affordable housing dwelling units.

9400.3 The purpose of the program will be to provide financial assistance in the form of no or low interest loans or grants to owners of affordable housing dwelling units in need of rehabilitation, renovation or repair to comply with the Uniform Federal Accessibility Standards, or to make energy conservation improvements, or to satisfy the Housing Quality Standards. DCHA may, from to time and subject to availability of funding, announce the availability of financial assistance under this program.

9400.4 The program is established under the authority of D.C. Official Code § 6-203(10) (2001 Ed.).

9400.5 The Executive Director, for good cause shown in writing, may waive any provision of this Chapter consistent with applicable law. All waivers shall be justified by a determination that undue hardship will result from applying the requirements and where application of the requirement would adversely affect the purpose and objectives of the program.

9401 PROGRAM REQUIREMENTS

9401.1 Subject to availability of funding, DCHA may periodically make financial assistance available in accordance with this Chapter and an announcement in the form of no or low interest loans or grants to owners of eligible affordable housing dwelling units to pay for costs of rehabilitation work.

9401.2 Financial assistance may be used to pay directly or reimburse owner for:

- (a) Reasonable project costs approved by DCHA with respect to the property;
- (b) Professional services costs approved by DCHA for reasonable customary costs of architectural, engineering, construction management and related professional services required in preparation of project plans, drawings or specifications for rehabilitation work;
- (c) Reasonable costs approved by DCHA for providing temporary housing for tenants of the property holding Housing Choice Vouchers while rehabilitation work is being conducted in or affecting a tenant's dwelling unit;
- (d) Cost of building permits and related fees; and
- (e) Contingency reserve fund approved by DCHA to be used for unanticipated project costs and unanticipated increases in other eligible costs.

9402 ELIGIBILITY

9402.1 In order to receive financial assistance under this Chapter, (a) the owner and dwelling units must satisfy the conditions for participation in the Partnership Program including, without limitation, location of property within the District of Columbia, site and neighborhood requirements, property eligibility and eligible tenants and tenant selection, provided that subject to availability of financial assistance and the conditions of the applicable announcement, a property which fails to satisfy HQS may receive financial assistance to fund all or a portion of the costs of repairs needed to satisfy HQS, (b) the dwelling units must be suitable, as determined by DCHA, for the proposed rehabilitation work, (c) the rehabilitation work may not have been commenced prior to approval of the application by DCHA unless DCHA approves earlier commencement of rehabilitation work, (d) the owner, the property and the project must satisfy the requirements for financial assistance contained in the applicable announcement and this Chapter, and (e) the owner must enter into and comply with an AHAP Contract for the property.

9403 APPLICATIONS FOR FINANCIAL ASSISTANCE; ANNOUNCEMENT OF AVAILABILITY OF FINANCIAL ASSISTANCE

9403.1 A person may be eligible to make application for financial assistance if the person:

- (a) Consists of one or more individuals, corporations, partnerships, limited liability companies or other privately-controlled legal entities; and
- (b) Can establish to the satisfaction of DCHA its reasonable capacity to meet the requirements applicable to receipt of financial assistance under this Chapter, applicable law and the applicable announcement; and
- (c) Can establish to the satisfaction of DCHA that such person holds valid legal title to the property; and
- (d) is not on the U.S. General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs; and
- (e) Can demonstrate to the satisfaction of DCHA an effective plan to minimize the interruption of occupancy of the property by, and the duration of relocation of, tenants holding Housing Choice Vouchers.

9403.2 DCHA may periodically announce the availability of financial assistance and a summary of the requirements for application and approval for financial assistance.

9403.3 In an announcement, DCHA will provide general information, in a form prescribed by DCHA, which may include, but is not limited to, the following:

- (a) The deadline for submission of applications;
- (b) The method and location for requesting an application;
- (c) Application fees, if any, payable by applicants;
- (d) A detailed description of the financial assistance available and the type of project and project costs eligible for financial assistance; and
- (e) Criteria that will be used to evaluate applications and grant financial assistance.

9403.4 DCHA's announcement and summary of application requirements will be published in at least one (1) newspaper of general circulation in the District of Columbia, in at least one (1) newspaper serving minority communities in the District of Columbia, and in at least one (1) bi-lingual newspaper circulated in the District of Columbia.

9404 APPROVAL AND FUNDING OF APPLICATIONS; CONTINUING RESPONSIBILITIES OF OWNERS

9404.1 Upon receipt of an application for financial assistance, DCHA or its designee will perform an initial review to determine completeness and its compliance with the applicable announcement and the eligibility requirements as specified in this Chapter.

9404.2 DCHA or its designee shall reject applications which are initially determined to be incomplete or ineligible and may, in its sole discretion, grant additional time as it deems appropriate to enable applicants to correct deficiencies identified during the initial evaluation of the application.

9404.3 Applications determined to be complete and meeting intake requirements shall be reviewed by DCHA or its designee in accordance with the criteria established pursuant to this Chapter, applicable law and the applicable announcement. Applications determined to be complete and meeting intake requirements will be rated and ranked on the basis of the criteria set forth in the applicable announcement and to the extent of available funds, those applications with the highest ranking may be approved by DCHA to receive financial assistance.

9404.4 DCHA or its designee will notify all applicants in writing of its final decision regarding application approval or disapproval.

9404.5 The initial approval, if any, of an application by DCHA or its designee shall be in the form of a written conditional commitment letter to the applicant which shall establish conditions precedent to receipt of financial assistance for the property.

- 9404.6 Applications for financial assistance will be approved by DCHA or its designee upon a determination by DCHA or its designee that the project is economically feasible according to the criteria established by DCHA with respect to each announcement. The criteria may include one or more of HUD guidelines, Partnership Program guidelines and private market requirements and constraints and will be furnished to applicants. Criteria used to evaluate applications and grant financial assistance may include, but are not limited to, the following:
- (a) Loan to value ratio;
 - (b) Debt coverage ratio;
 - (c) Replacement and operating cost reserves;
 - (d) Property condition, appraisal and market analysis; and
 - (e) Owner capability and credit requirements.
- 9404.7 Financial assistance will be limited to amounts needed as determined by DCHA to finance or reimburse the eligible project costs.
- 9404.8 After a determination is made to grant financial assistance, current tenants of dwelling units receiving financial assistance must be eligible to receive a Housing Choice Voucher.
- 9404.9 Except as otherwise set forth in the applicable announcement, current tenants of the property holding Housing Choice Vouchers must not be permanently displaced as a result of the project.

9405 CONDITIONS TO CLOSINGS

- 9405.1 Prior to closing on financial assistance, the owner shall meet to the satisfaction of DCHA or its designee all conditions of the conditional commitment of DCHA and other requirements of this Chapter and the applicable announcement.
- 9405.2 Each owner shall agree in writing to permit all inspections of the property and property records as DCHA or its designee deems necessary to ensure the quality of rehabilitation work and compliance with applicable laws during the construction period.
- 9405.3 Owner shall demonstrate to the satisfaction of DCHA or its designee that the project was completed in accordance with applicable law and the plans and specifications for the rehabilitation work approved by DCHA or its designee and the dwelling units are re-occupied or occupied by eligible tenants.

9405.4 Owner shall execute and agree to be bound by an AHAP Contract, which, among other things, sets forth the terms and conditions of the HAP Contract.

9499 DEFINITIONS When used in this Chapter, the following words or phrases shall have the meanings ascribed:

AHAP Contract – Agreement to Enter into Project-Based Housing Choice Voucher Program Housing Assistance Payments Contract entered into by DCHA and owner with respect to the property in accordance with the Partnership Program.

Announcement – one or more announcements that may periodically be made by DCHA of the availability of financial assistance under this Chapter.

Applicable laws – federal and District of Columbia laws and regulations of the District of Columbia, DCHA or HUD in effect and applicable to DCHA, the owner or the property, as such laws and regulations may periodically be amended, modified, supplemented or replaced.

Dwelling unit – residential space in existing rental housing that qualifies under the laws of the District of Columbia as a place of habitation or abode for a family, including an apartment or house that contains a living room, kitchen area, sleeping area consisting of 2 or more bedrooms, and bathroom(s). Dwelling units shall not include any units occupied or to be occupied by the owner or any family member of the owner.

Energy conservation improvement – equipment or improvements which, as determined by DCHA, enhance the energy efficiency of the property, reduce energy consumption at the property or are otherwise consistent with the energy conservation policy of HUD or DCHA.

Financial assistance – loans or grants offered periodically by DCHA pursuant to this Chapter.

HAP Contract – Project-Based Housing Choice Voucher Program Housing Assistance Payments Contract entered into by DCHA and owner with respect to the property in accordance with the Partnership Program.

Housing Choice Voucher – a voucher for tenant-based assistance made available by or on behalf of HUD pursuant the Section 8 of the United States Housing Act of 1937, as amended.

Housing Quality Standards or HQS – the housing quality standards promulgated by HUD and set forth in Section 982.401 of Title 24 of the Code of Federal Regulations, as such standards may periodically be amended, modified, supplemented or replaced by HUD.

HUD – the United States Department of Housing and Urban Development.

Owner – one or more individuals, corporations, partnerships, limited liability companies or other privately-controlled legal entities that hold valid legal title to the property.

Partnership Program - Partnership Program for Affordable Housing of DCHA established pursuant to Chapter 93 of this Title 14 of the Code of District of Columbia Municipal Regulations, as the same may periodically be amended, modified, supplemented or replaced by DCHA

Project – (a) rehabilitation or renovation necessary, as determined by DCHA, to make dwelling units in the property comply with UFAS; (b) rehabilitation or renovation to construct or install energy conservation improvements in the property to enhance the energy conservation or efficiency of the dwelling units as determined by DCHA; or (c) repairs to the property necessary, as determined by DCHA, to correct or remove any violations of HQS including repair of specific conditions which could result in future violations of HQS occurring within five (5) years of the date of approval of the application for financial assistance.

Property – the improvements receiving financial assistance.

Rehabilitation work – renovation, rehabilitation, installation or repair of and to the property.

Uniform Federal Accessibility Standards or UFAS – the accessibility standards made applicable to public housing by HUD for purposes of complying with Section 504 of Rehabilitation Act of 1977, as amended, currently set forth in Sections 8.3, 8.32 and Appendix A to Section 40 of Title 24 of the Code of Federal Regulations, as the same may periodically be amended, modified, supplemented or replaced.

OFFICE OF TAX AND REVENUE**NOTICE OF FINAL RULEMAKING**

The Office of Tax and Revenue (OTR), pursuant to the authority set forth in the D.C. Official Code § 42-1117 (2001), D.C. Official Code § 47-920 (2001), Section 155 of the District of Columbia Appropriations Act of 2001 (P.L. 106-522, D.C. Official Code § 1204.24c (2001), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of the repeal of sections 512.1 and 512.2 of Chapter 5, "Recordation of Revocable Trust Deeds," and sections 611.1 and 611.2 of Chapter 6, "Transfers of Revocable Trust Deeds," to Title 9 of the District of Columbia Municipal Regulations ("DCMR"). Section 512.1 provides that any deed which transfers naked legal title to real property to a trustee by a settlor who retains a right of revocation shall be subject to the recordation tax, unless otherwise exempt under the Act of this chapter. Section 512.2 establishes that the measure of the tax is the consideration for the deed. Sections 611.1 and 611.2 similarly provides for the imposition of a transfer tax.

D.C. Official Code § 42-1102(17) exempts from recordation tax a deed by a transferor that conveys bare legal title to the trustee of a revocable trust, without consideration for the transfer, where the transferor is the beneficiary of the trust. Similarly, D.C. Official Code § 47-902(12) similarly provides an exemption from the transfer tax. The Report of the Committee of the Whole on Bill 9-53 which added these exemptions (and others related to revocable trusts) subsequent to the promulgation of the above regulations, in the "Revocable Trust Tax Exemption Amendment Act of 1991" stated the purpose of the bill was to nullify the existing rules [subsequent to 1984] by explicitly exempting certain transfers into or out of a revocable trust from the transfer and deed recordation taxes and to reverse the policy expressed in the above-stated regulations. By doing so, the Committee sought to maximize the options for those planning for the disposition of their assets in the event of future disability. The Committee Report indicated that, for many years prior to 1984, the practice in the District (and in Virginia and Maryland) was to treat transfers into revocable trusts as nontaxable. The Committee Report further stated that

[w]hile legal title to real property changes, in the technical legal sense, upon the establishment of a revocable trust and the naming of a trustee, beneficial ownership is retained by the grantor and can be revoked at any time.

The proposed version of this rulemaking was published in the *D.C. Register* on September 7, 2007 at 54 DCR 8838. No comments were received concerning the published proposed rulemaking. This final rulemaking, as set forth below, shall become effective upon publication in the *D.C. Register*.

Chapter 5 of Title 9 DCMR is amended as follows:

Sections 512.1 and 512.2 are repealed and 512.3 shall be renumbered as 512.1.

Chapter 6 of Title 9 DCMR is amended as follows:

Sections 611.1 and 611.2 are repealed and 611.3 shall be renumbered as 611.1.