

DISTRICT OF COLMBIA BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The Board of Education ("BOE"), pursuant to authority set forth in D.C. Code, §§38-101 and 38-102, et seq., hereby gives notice of proposed rulemaking action taken by the Board at its State Education Agency meeting held on February 20, 2007 to amend Title 5 of the D.C. Municipal Regulations (DCMR) Chapter 38 of the Board Rules.

This amendment, if enacted, will effect the following actions: 1) establish the process for non-public schools and contractual providers to receive a certificate of approval to provide special education services for students with disabilities funded by the District government; 2) require non-public schools and contractual providers to retain a certificate of approval in order to be a qualified provider of such services; and, 3) subject non-public schools and contractual providers to inspection by the District of Columbia Public Schools ("DCPS") State Education Agency ("SEA").

The BOE gives notice of its intent to take final rule making action on this proposed rulemaking in not less than thirty (30) days from publication of this notice in the D.C. Register.

Add Section 3813:

3813 CERTIFICATES OF APPROVAL FOR NON-PUBLIC SCHOOLS AND CONTRACTUAL PROVIDERS SERVING STUDENTS WITH DISABILITIES FUNDED BY THE DISTRICT GOVERNMENT

3813.1 The Board of Education as the State Education Agency (SEA) shall issue certificates of approval to nonpublic schools or providers serving students with disabilities. The Chief State School Officer shall promulgate the appropriate Directive to implement the requirements of this Rule.

3813.2 Certificate of Approval of nonpublic special education schools, programs provided by contractual providers

- (a) The SEA shall develop and administer a Certificate of Approval process for nonpublic schools, or contractual providers that receive funding from the District of Columbia government to provide services to District of Columbia students with disabilities. The SEA shall issue a Certificate of Approval to a nonpublic special education school, or contractual provider after determining that the school, or

contractual provider complies with the regulations set forth in Chapters 22, 25, 30, and 38 of Title 5 of the District of Columbia Municipal Regulations, this Section and any applicable fire safety, building code, health and sanitation requirements.

- (b) A Certificate of Approval shall be for a period not to exceed 3 years.
- (c) The SEA shall develop and maintain a list of approved nonpublic special education schools, and contractual providers, and shall display the list along with appropriate information about each nonpublic special education school, or contractual provider on the Internet site of the District of Columbia Public Schools (DCPS).

3813.3

- (a) The initial application and the Certificate of Approval shall include the following information:
 - (1) Name of the school or program;
 - (2) Location of the school or program;
 - (3) The name and the address of the individual or entity responsible for governing and operating the school or program;
 - (4) The classification of the educational school or program to include, but not limited to, one or more of the following:
 - (A) Nursery School;
 - (B) Kindergarten;
 - (C) Elementary school with sequential grades specified;
 - (D) Secondary school with sequential grades specified; and
 - (E) Special education and related services;
 - (5) Any additional information the SEA requires.

- (b) A school or program shall operate in a manner that is consistent with the specifications recorded on the Certificate of Approval issued to the individual or entity with legal responsibility for governing and operating the school or program.
- (c) The SEA may issue a provisional Certificate of Approval to schools or contractual providers that meet minimum requirements to be established by SEA regulations.
- (d) When placing District of Columbia students with disabilities in a nonpublic special education school or program outside the District of Columbia, the SEA may adopt a certificate of approval or license established by that jurisdiction's state education agency, if the standards of that state are substantially similar to the District of Columbia's Certificate of Approval standards.
- (e) In issuing Certificates of Approval to residential child care facilities, the SEA shall coordinate with the Department of Mental Health, the Department of Human Services, the Child and Family Services Agency, the Department of Youth Rehabilitation Services, and the Medical Assistance Administration of the Department of Health, or any other appropriate public agency.

3813.4 Certificate of Approval – Compliance

- (a) All nonpublic special education schools or contractual providers serving students with disabilities with funding provided by the District of Columbia government shall fully comply with all requirements of this Section in order to maintain their Certificates of Approval.
- (b) To receive funding from the District of Columbia government in the 2007-2008 academic school year, all nonpublic special education schools or programs shall submit applications to the SEA by the date(s) established in the Chief State Officer's Directive.
- (c) For the 2008-2009 academic school year and each subsequent school year, a nonpublic special education school or contractual provider seeking a Certificate of Approval shall submit an initial application to the SEA no later than forty-five (45) days prior to the start of the school year.

- (d) Not later than forty-five (45) days prior to the start of each school year, a school or contractual provider granted a Certificate of Approval by the SEA shall certify its annual compliance with this act and regulations issued pursuant to this act, by filing a certificate of compliance with the SEA.

3813.5 Certificate of Approval – Inspection

- (a) The SEA shall schedule periodic monitoring visits to each special education school or program at least once every three (3) years. The employees of the SEA may make unannounced visits to a school or program during the 3-year period.
- (b) A nonpublic special education school or program approved by the SEA shall be subject to inspection by the SEA or its designee for the following reasons:
 - (1) To verify compliance with this Section and the Chief State School Officer's implementing Directive for the purpose of reviewing an application for the Certificate of Approval;
 - (2) To verify compliance with this Section and the Chief State School Officer's implementing Directive when a nonpublic special education school or program receives District of Columbia government funds for its educational program;
 - (3) To investigate complaints relating to this act or violations of the Individual with Disabilities Improvement in Education Act (IDEA); and
 - (4) To determine compliance with DCPS regulations or to monitor program quality.

3813.6 Certificate of Approval – Renewal

- (a) Nonpublic schools and contractual providers may have their Certificates of Approval renewed for a period not to exceed three (3) years.
- (b) If a Certificate of Approval has not been renewed by the SEA on or before the renewal anniversary date, the certificate of Approval shall expire and the Chief State

School Officer shall take immediate steps to determine an appropriate placement, in accordance with the IDEA for students enrolled in schools or programs outside of DCPS. The DCPS Superintendent shall determine appropriate placement for any DCPS-funded students who attended the nonpublic special education school or program with the expired Certificate of Approval.

3813.7 Certificate of Approval – Denial, revocation, refusal to renew; or suspension.

- (a) The SEA may deny, revoke, refuse to renew, or suspend a Certificate of Approval for any one or combination of the following causes:
- (1) Violating any provision of this act, applicable rules of the SEA or DCPS, or applicable federal laws or regulations;
 - (2) Providing false, misleading, or incomplete information, or failing to provide information requested by the SEA or DCPS;
 - (3) Violating any commitment made in application for a Certificate of Approval;
 - (4) Failing to provide or maintain the premises or equipment of the special education school or program in a safe and sanitary condition as required by applicable law or regulation;
 - (5) Failing to maintain adequate programs or to retain adequate, qualified instructional staff; and
 - (6) Failing within a reasonable time to provide information requested by DCPS or the SEA as a result of a formal or informal complaint, or as a supplement to an initial application for a Certificate of Approval.
- (b) If the SEA determines a nonpublic special education school or program is in violation of the subsection (a) of this section, the SEA shall provide the nonpublic special education school or contractual provider for the program written notice of the violations before denying, revoking,

refusing to renew, or suspending the Certificate of Approval.

- (c) A nonpublic special education school or contractual provider found to be in violation of subsection (a) of this section, may request a hearing before an independent panel of the SEA. This request shall be in writing and submitted to the SEA within 30 days of receipt of the written notice required under subsection (b)(1) of this section. The panel that reviews the SEA decision shall not contain any individual who participated in the decision to issue the original notice.
- (d) The SEA shall hold a hearing within 30 days of receiving a written request, and shall issue its decision no later than 10 days after the hearing. The decision of the SEA panel shall be final and is not subject to appeal.
- (e) Pursuant to the IDEA, while review is pending, the nonpublic special education school or program shall continue to provide special education and related services to enrolled students.

Written comments on the proposed rulemaking are invited from interested citizens. Such comments should be address to Kevin Clinton, Executive Secretary for the D.C. Board of Education, 825 North Capitol Street, N.E., Washington, D.C. 20002. This rulemaking will be available on the District of Columbia Public Schools website at http://www.k12.dc.us/dcps/boe/boe_frame.html. Copies of this rulemaking are available from the Office of the Board of Education by calling (202) 442-4289.

DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF PROPOSED RULEMAKING

The Interim Director, District of Columbia Department of Employment Services, pursuant to the authority set forth in Section 110 of Title 1 of the Way To Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.10 (2006)) and Mayor's Order 2006-122, dated September 27, 2006, hereby gives notice of intent to adopt a new chapter 10 entitled "Living Wage" to Title 7 of the District of Columbia Municipal Regulations (DCMR) (Employment Benefits).

The rulemaking is necessary to implement the provisions of the Living Wage Act of 2006, Title 1, D.C. Law 16-118. The purpose of the Living Wage Act of 2006 is to require that District of Columbia government contractors, recipients of District of Columbia government assistance and their subcontractors subject to the Living Wage Act shall pay to their affiliated employees, at minimum, the living wage specified by the Act.

The Interim Director also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new Chapter 10, "Living Wage", is added to DCMR as follows:

1000 PURPOSE AND SCOPE

- 1000.1 The purpose of this Chapter is to establish principles and guidance for the implementation of the Living Wage Act of 2006, Title 1, D.C. Law 16-118 (Act).
- 1000.2 Unless otherwise required by law, all matters concerning the implementation and enforcement of the Act shall be decided in accordance with these regulations.
- 1000.3 The regulations shall apply to all contracts or agreements for government assistance entered into after June 8, 2006, if the amount of the contract or assistance meets the requirement for coverage. A renewal or extension of a contract or assistance agreement entered into after June 8, 2006 shall be subject to the Act if the amount of the contract or government assistance meets the requirement for coverage.

1001 LIVING WAGE PAYMENT REQUIREMENT

- 1001.1 All recipients of District of Columbia government contracts and all recipients of government assistance in the amount of one hundred thousand dollars

(\$100,000) or more shall pay to their affiliated employees, at minimum, the living wage required by the Act.

- 1001.2 The living wage shall be paid to employees of the District of Columbia government commencing March 1, 2006, unless the employee's wage is established by a collective bargaining agreement, federal law or grant for such time as the collective bargaining agreement, law or grant remains in effect.
- 1001.3 Subcontractors of contractors who receive fifteen thousand dollars (\$15,000) or more from contractors whose contracts are subject to the Act shall minimally pay their employees the living wage required by the Act.
- 1001.4 Subcontractors who receive funds of fifty thousand dollars (\$50,000) or more from recipients of District of Columbia government assistance funds shall minimally pay their affiliated employees the living wage required by the Act.
- 1001.5 Subcontractors of exempt contractors or recipients shall not be exempt from the requirements of the Act if the amount of their subcontract otherwise subjects them to the requirements of the Act.
- 1001.6 The requirements to pay the living wage are subject to annual appropriations as set forth in §103(e) of the Act.
- (a) No contract or form of government assistance commencing on or after the effective date of the Act shall be subject to the requirements of § 103 of the Act unless the authorizing entity of the District of Columbia government shall have received a supplemental appropriation for the increased costs attributable to the payment of the living wage or the appropriation of its budget for the applicable fiscal years;
 - (b) If any entity of the District of Columbia government does not receive sufficient appropriations to require payment of the living wage and to maintain the same level of services provided prior to the effective date of the Act, it shall forthwith advise the Mayor and Director of this fact and shall undertake actions to request and obtain additional funding; and
 - (c) Any entity of the District of Columbia government subject to the requirements of subsection (b) of this section, shall also advise impacted contractors or recipients of government assistance and any known subcontractors to seek a waiver pursuant to §109 of the Act.

1002 AMOUNT OF LIVING WAGE AND ADJUSTMENTS TO AMOUNT

- 1002.1 The amount of the living wage shall be eleven dollars and seventy-five cents (\$11.75) per hour regardless of whether health benefits are provided.

- 1002.2 Annual adjustments to the amount of the living wage shall be made as follows:
- (a) The Director shall annually adjust the rate of the living wage paid in a previous calendar commencing on the 1st day of January 2008;
 - (b) The amount of increase, if any, shall be the amount of average annual increase, if any, in the Consumer Price Index for all Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of Labor Statistics up to an increase of 3%;
 - (c) The Director shall calculate the adjustment to the nearest multiple of \$.05; and
 - (d) Any adjustments to the living wage rate shall be published by the Director in the District of Columbia Register within 45 days of the adjustment.

1003 NOTICES TO CONTRACTORS AND SUBCONTRACTORS

- 1003.1 All contracts and agreements for government assistance shall include provisions and language incorporating the requirements of the Act as to coverage (§103), notices (§106), record keeping (§107), and enforcement (§108).
- 1003.2 Each recipient of a District of Columbia government contract or government assistance shall provide written notification to each of its subcontractors subject to the Act of the requirements of the Act as to coverage (§103) notices (§106), record keeping (§107) and enforcement (§108). The recipient shall provide such written notification no later than the date on which it signs or executes any agreement with the subcontractor that is subject to the Act. The recipient shall keep a record of having given the notice required by this subsection and shall maintain such records in the manner required by §107 of the Act.

1004 NOTICES TO EMPLOYEES

- 1004.1 All recipients of District of Columbia government contracts and government assistance and all subcontractors subject to the Act, no later than the onset of performance of the contract or assistance, shall provide each affiliated employee with a written fact sheet identifying the payment (§103) and enforcement (§108) requirements of the Act.
- 1004.2 All recipients of District of Columbia government contracts and government assistance and all subcontractors subject to the Act shall post in a conspicuous place in their places of business, a notice of the payment (§103) and enforcement (§108) provision of the Act. The notice shall be posted adjacent to the required notices for minimum wage, unemployment compensation, or workers' compensation. If the contractor or recipient of government assistance or subcontractor subject to the Act establishes an onsite office or separate

administrative location from which work subject to the Act is directed, a copy of the notice required by this subsection shall also be conspicuously posted in the onsite office or remote administrative location.

- 1004.3 The Director shall provide a fact sheet and notice to each recipient for conspicuously posting in its place or places of business and for further distribution to affiliated employees. The fact sheet and notice shall be updated or revised whenever the amount of the living wage changes or there are amendments or revisions to the Act.
- 1004.4 The fact sheet and notice shall contain the following:
- (a) Notice of the living wage rate;
 - (b) A summary of requirements under the payment (§103) and record keeping (§107) of the Act; and
 - (c) Information concerning enforcement specifically including the name, address, and telephone number of individual or entity to which complaints of non-compliance with the Act are made.

1005 CREATION AND RETENTION OF RECORDS

- 1005.1 Each recipient of a District of Columbia government contract, government assistance or their subcontractors subject to the Act shall retain payroll records created and maintained in the ordinary course of business pursuant to District of Columbia law for a period of three (3) years from the payroll date for affiliated employees eligible for the living wage as set forth in §103 of the Act.
- 1005.2 The Director or the chief official of any entity of the District of Columbia government which issues contracts or government assistance may request from any contractor, recipient, or subcontractor subject to the Act an affirmative statement setting forth the contractor's, recipient's, or subcontractor's acknowledgment of the Act's application to it.
- 1005.3 The Director or chief official of any entity of the District of Columbia government which issues contracts or government assistance may request from any contractor, recipient, or subcontractor subject to the Act a list of all affiliated employees of the contractor, recipient, or subcontractor performing services for which the affiliated employees are to be paid the living wage required by the Act.
- 1005.4 Any affirmative statement or affiliated employee list requested by the Director or chief official shall be in writing utilizing a form specified by the Director and shall be signed by the Chief Executive Officer of the contract, or recipient, or subcontractor and the signature shall be notarized.

1006 ENFORCEMENT

- 1006.1 Complaints concerning the payment of wages required by the Act shall be made in accordance with and be subject to the provisions of an Act to Provide for the Payment and Collection of Wages in the District of Columbia (D.C. Official Code §32-1301 *et seq.*)
- 1006.2 Complaints concerning other forms of non-compliance with the Act with respect to contracts shall be made to the Contracting Officer as generally provided in D.C. Official Code §2-308.03.
- 1006.3 Complaints concerning other forms of non-compliance with the Act with respect to grants of government shall be made to the Grant Administrator in accordance with the terms of the grant.

1007 EXEMPTIONS

The following types of contracts, government assistance and employment are exempt from the requirements of the Act:

- (a) Contracts or other agreements that are subject to wage level determinations required by federal law;
- (b) Existing and future collective bargaining agreements, provided that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (c) Contracts for electricity, telephone, water, sewer, or other services delivered by a regulated utility;
- (d) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- (e) Contracts or other agreements awarded to recipients that provide trainees with additional services including, but not limited to, case management and job readiness services; provided, that the trainees do not replace employees subject to this part;
- (f) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided, that he or she does not replace an employee subject to this part;

- (g) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided that the tenant or retail establishment did not receive direct government assistance from the District;
- (h) Employees of nonprofit organizations that employ not more than 50 full-time equivalent individuals and qualify for taxation exemption pursuant to 26 U.S.C. § 501(c)(3);
- (i) Medicaid provider agreements for direct care services to Medicaid recipients; provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons, as those terms are defined in D.C. Official Code § 44-501; and
- (j) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

1008 WAIVERS

- 1008.1 The Director may exempt a recipient from the requirements of the Act if the waiver is approved by the Council of the District of Columbia.
- 1008.2 Any recipient requesting a waiver must submit a signed written request to the Director and shall demonstrate that compliance with the Act will constitute a significant financial hardship to the recipient which will result in either:
- (a) layoff of a significant number of employees;
 - (b) a substantial downsizing of the recipient's business entity; or
 - (c) the inability of the recipient to meet its payroll.
- 1008.3 All applications for waiver shall include the recipient's name, telephone number, and the identity and authority of the individual requesting the waiver. The application shall also identify the name, address, and telephone number of any individual or entity that prepared any of the financial information submitted in support of the waiver request. The application shall also identify the name, address, and telephone number of any subcontractor of the recipient that is subject to the Act and is involved with the contract or government assistance for which the waiver is sought. The application shall also contain the number of affiliated employees involved with the contract or government assistance.
- 1008.4 The Director may require any recipient applying for a waiver to submit certified financial or other records that the Director believes may be necessary to decide the waiver request, including financial or other records not otherwise required by § 1005 of this chapter.

- 1008.5 The Director shall decide all waiver requests within thirty (30) work days of the submission of the application for waiver or as soon as practicable thereafter. The thirty (30) work day period shall commence on the day of the submission of the application for waiver or the date on which the final additional document is submitted to the Director, whichever occurs later.
- 1008.6 Submission of a request for waiver shall not relieve the recipient from complying with the Act during the time the application for waiver is pending.
- 1008.7 The Director shall issue a written recommendation or decision on all applications which are to be granted. If the Director does not issue a recommendation or decision by the thirtieth (30th) work day, the application shall be considered denied.
- 1008.8 All applications for waiver which are granted by the Director shall be submitted to the Council of the District of Columbia for approval, by act, as set forth in § 109 of the Act.

1099 DEFINITIONS

When used in this chapter, the following terms shall have the means described:

Act – the Living Wage Act of 2006, Title 1, D.C. Law 16-118 (D.C. Official Code §§2-220.1-.11).

Affiliated Employee – an employee of a recipient of a District of Columbia government contract or recipient of government assistance or a subcontract subject to the requirements of the Act who receives compensation directly from the government contract or assistance or from the government funds paid to a subcontractor. The term applies to both full-time or part-time employees. The term “affiliated employee” does not apply to employees who perform only intermittent or incidental services for the contract or government assistance and who are not compensated directly from the government funds. The term “affiliated employee” does not apply to employees of recipients who do not receive compensation directly from government funds.

Contract – a written agreement between a recipient and the District of Columbia government or any entity of the District of Columbia government for the provision of services.

Director – the Director of the District of Columbia Department of Employment Services.

Government Assistance – a grant, loan, or tax increment financing that results in a financial benefit to a recipient which is received from an agency, commission, instrumentality or other entity of the District of Columbia government.

Living Wage – an hourly wage of at least eleven dollars and seventy-five cents (\$11.75) per hour, regardless of whether health care benefits are provided. If the Director makes an adjustment in the amount of the living wage as generally provided in §102 of this Chapter, that adjusted amount shall become the living wage required by the Act.

Recipient – any individual, sole proprietorship, partnership, joint venture, limited liability company, corporation, or any other form of business or business entity which enters into a contract with or receives government assistance from the District of Columbia government.

All persons wishing to comment on these proposed rules shall submit written comments no later than thirty (30) days after the publication of this notice in the *D.C. Register* to Eugene Irvin, General Counsel, Department of Employment Services, 64 New York Avenue, N.E., 3rd Floor, Washington, D.C. 20002. Copies of the proposed ruled may be obtained from the same address between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF PROPOSED RULEMAKING

The Chairperson of the District of Columbia Taxicab Commission pursuant to the authority set forth in sections 8 (b) (1) (J), 9 (b) and 14 (a) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, (D.C. Law 6-97; D.C. Official Code §§ 50-307 (b) (1) (J), 50-308 (b) and 50-313(a), and Mayor's Order 87-156, dated July 1, 1987, hereby gives notice of his intent to add § 1201.7 to Chapter 12 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The proposed rulemaking requires limousine operators to maintain a written or printed manifest. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following section in 31 DCMR Chapter 12 is added as follows:

1201 GENERAL REQUIREMENTS

1201.7 Every operator of a limousine shall maintain an itinerary/trip ticket, work order, log sheet or electronic device that contains a daily log of all trips engaged in during the operation of the vehicle. The operator is also required to transfer information from an electronic device or cellular telephone from which it was retrieved to a written or printed format which shall be considered a manifest. The format shall consist of an itinerary/trip ticket, work order or log sheet and shall contain, but not be limited to, the following:

- (a) the date;
- (b) time of pick up;
- (c) address or location of the pick up;
- (d) final destination; and
- (e) time of discharge.

Any person desiring to file written comments on the Panel's proposed rulemaking action must do so not later than thirty (30) days after the publication of this notice in the District of Columbia Register. Comments should be filed with Marceline D. Alexander, Acting General Counsel and Secretary, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. Copies of the proposed rulemaking may be obtained by writing to the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

NOTICE OF PROPOSED RULEMAKING

APPLICATION NO. 17633

The Board of Zoning Adjustment of the District of Columbia, pursuant to the authority set forth in the Foreign Missions Act (96 Stat. 283, Pub. L. 97-241, codified at D.C. Official Code § 6-1301, *et. seq.*), and the Zoning Regulations of the District of Columbia, hereby gives notice of its intention to approve, or in the alternative disapprove, Application No. 17633, of the Government of the Republic of Montenegro pursuant to 11 DCMR § 1002.1 to permit the location of a chancery in the DC/SP-1 District at premises 1610 New Hampshire Avenue, N.W. (Square 134, Lot 141). Final action on this application will be taken no less than thirty days from the date of publication of this notice.

Written comments may be submitted to the Board of Zoning Adjustment through Clifford Moy, Secretary of the Board of Zoning Adjustment, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Copies of this notice are available from the Office of Zoning. For further information, call the Office of Zoning at (202) 727-6311.

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

Z.C. Case No. 05-05

(Text Amendment – 11 DCMR)

**(Emergency shelters in Commercial Light Manufacturing (C-M-1 and C-M-2) Zone
Districts)**

The Zoning Commission for the District of Columbia, 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 (2001 ed.)), hereby gives notice of its intent to amend sections 802 and 821 of the Zoning Regulations (Title 11 DCMR). The proposed amendment would permit emergency shelters as a special exception in the C-M-1 and C-M-2 Commercial-Light Manufacturing Zone Districts. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Amend subsection 802.1 to read as follows: (new text is shown in bold underlined)

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

Add a new subsection 802.28 to read as follows:

- 802.28 An emergency shelter for five (5) to one hundred and fifty (150) persons, not including resident supervisors or staff and their families, shall be permitted in a C-M-1 and C-M-2 Districts only, if the following requirements are met:
- (a) There shall be no other property containing an emergency shelter or other community-based residential facility for five (5) or more persons in the same square;
 - (b) There shall be no other property containing an emergency shelter or other community-based residential facility for five (5) or more persons within a radius of one thousand (1,000) feet from any portion of the property;
 - (c) Except for the District of Columbia's operation of an emergency shelter at 2210 Adams Place, N.E. (Square 4259, Parcel 54/81), emergency shelters shall not be located within one thousand (1,000) feet of a square containing a sewerage treatment plant, a wastewater treatment facility, or a documented contaminated site;

NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 05-05
PAGE NO. 2

- (d) There shall be adequate, appropriately located, and screened off-street parking to provide for the needs: of occupants, employees, and visitors to the facility;
- (e) The shelter shall not have any adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area;
- (f) Notwithstanding 802.28 (b) the Board may approve up to one additional emergency shelter to be located in the same square as an existing emergency shelters for five (5) or more persons only if the Board finds that the cumulative effect of the two facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations;
- (g) The Board may approve a facility for between one hundred and fifty-one (151) and three hundred (300) persons, not including resident supervisors or staff and their families, only if the Board finds that the program goals and objectives of the District of Columbia cannot be achieved by a facility of a smaller size at the subject location and there is no other reasonable alternative to meet the program needs of that area of the District provided that no shelter shall be approved that would increase the total number of emergency shelter residents housed within the square to exceed four hundred and fifty (450) persons; and
- (h) The Board shall submit the application to the D.C. Office of Planning for coordination, review, report, and impact assessment, along with reports in writing of all relevant District departments and agencies, including but not limited to the Departments of Transportation and Human Services and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.

Amend subsection 821.2 to read as follows: (new text is shown in bold and underlined)

821.2 Any uses permitted in a C-M District under §§ 801.2 and 801.4 through 801.10, **except emergency shelters.**

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.