

**OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC  
DEVELOPMENT**

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**NOTICE OF FINAL RULEMAKING**

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The Deputy Mayor for Planning and Economic Development hereby gives notice of the adoption of amendments to Title 10 DCMR, which provide Rules of Operation for the Downtown Retail Priority Area. Final action to adopt these rules was taken on January 30, 2006. Notice of Emergency and Proposed Rulemaking was published in the D.C. Register on December 9, 2005, at 52 DCR 10722. These final rules will be effective upon publication of this notice in the D.C. Register.

TITLE 10 DCMR is amended by adding a new Chapter 61 as follows:

**CHAPTER 61      RULES OF OPERATION FOR THE DOWNTOWN RETAIL  
PRIORITY AREA**

**6100      Public Purpose Of the Retail Incentive Act of 2004**

6100.1      The Retail Incentive Act of 2004 (Act) is intended to provide a means to: (1) encourage commercial development in the District of Columbia; (2) expand the tax base through the use of tax increment financing; and (3) provide economic assistance to encourage development of retail facilities in the District of Columbia in Retail Priority Areas.

6100.2      Retail Priority Areas include the Downtown Retail Priority Area (as defined in the Act) and any other areas or areas in the District of Columbia designated by the Mayor and approved by the Council.

6100.3      The Act provides that the Mayor is also to designate the areas known as Columbia Heights, Georgia Avenue, Minnesota/Benning, Shaw, and H Street, NE Corridor as Retail Priority Areas.

**6101      Eligible Retail Development Projects**

6101.1      Under the Act, a Retail Development Project is defined as the establishment of a business engaged in direct onsite retail sales to consumers. With respect to the Downtown Retail Priority Area, Retail Development Projects are limited to businesses that engage in sales of home furnishings, apparel, and general merchandise goods to specialized customers. Under the Act, liquor stores, nightclubs, hotels, restaurants, banks, pharmacies, phone stores and service retail outlets are businesses that do not qualify for inclusion in the Downtown Retail Priority Area.

6101.2 Pursuant to the Act, bonds issued by the District of Columbia to provide financing for Retail Development Projects may be secured by available sales tax revenues (tax increment revenues) as well as the pledge of other assets of the District of Columbia and are to be used to fund the retail development costs of Retail Development Projects. The aggregate principal amount of Bonds that may be issued in the Downtown Retail Priority Area shall not exceed \$30 million.

6101.3 A Retail Development Project that has already received proceeds of bonds through another Tax Increment Financing (TIF) program, either directly or as part of a larger development project, is not eligible to be designated a TIF Area under the Act. Bonds shall not be issued with respect to any TIF Area until the TIF Area is open for business to the general public.

### **6102 Application of Rules of Operation**

6102.1 The Rules of Operation shall be applied uniformly within the Downtown Retail Priority Area as defined in the Act.

6102.2 The Mayor shall have the authority to suspend and re-institute, from time to time, the designation of TIF Areas in response to market conditions.

### **6103 Downtown Retail Committee**

6103.1 The Mayor shall create the Downtown Retail Committee for the Downtown Retail Priority Area for the purpose of evaluating and recommending to the Mayor proposed Retail Development Projects for the Downtown Retail Priority Area as well as the allocable portion of Bond proceeds for each Retail Development Project.

6103.2 The Downtown Retail Committee shall consist of not less than 3 nor more than 15 members. The Downtown Retail Committee shall be comprised of the Mayor, retail brokers and property owners in the Downtown Retail Priority Area and such other persons as the Mayor shall designate. The Mayor shall designate the members of the Downtown Retail Committee and may designate the Chairperson and Vice Chairperson of the Committee.

6103.3 Members of the Downtown Retail Committee may not participate in connection with the evaluation of a Retail Development Project in which they may have any ownership or financial interest in either the entity serving as the Retail Project Developer or the retail tenant.

6103.4 Each Downtown Retail Committee member serves at the pleasure of the Mayor and the Mayor may replace any member at any time for any reason.

6103.5 The duties of the Downtown Retail Committee are to:

- (a) Apply the rating system (Rating System) provided in Appendix 2 for proposed Retail Development Projects; review and revise the Rating System from time to time as necessary to respond to market conditions;

(b) Compute the Bond allocation (Bond Allocation Amount) based on a numeric formula (Bond Allocation Formula) for each Retail Development Project and adjust the Bond Allocation Formula, as necessary or appropriate, to maximize the use of Bond proceeds to achieve the purposes of the Act;

(c) Recommend Retail Development Projects to the Mayor for designation as TIF Areas in the Downtown Retail Priority Area;

(d) Review Downtown Retail Development Projects applications and recommendations of the Office of the Deputy Mayor for Planning and Economic Development (DMPED) as prescribed in section 6106.6 and vote whether to recommend to the Mayor (i) the Retail Development Project in the Downtown Retail Priority Area for designation as a TIF Area and (ii) a Bond Allocation Amount with respect to such Retail Development Project;

(e) In the event that the Downtown Retail Committee votes to recommend to the Mayor (i) the Retail Development Project for designation as a TIF Area and (ii) a Bond Allocation Amount with respect to such Retail Development Project, direct DMPED, subject to the Mayor's approval and certification of the Retail Development Project, to send a written approval letter (Approval Letter) to the Applicant, as further described in section 6106.7;

(f) Take such other actions as the Mayor may consider necessary or appropriate to facilitate the selection and funding of TIF Areas in the Downtown Retail Priority Area.

6103.6 A simple majority shall constitute a quorum for any meeting or for purposes of any vote. All recommendations to the Mayor with respect to any Retail Development Project shall be by a two-thirds vote of the Downtown Retail Committee.

6103.7 All meetings shall take place in person or by teleconference.

6103.8 Voting may be evidenced in person during a meeting or orally during a teleconference. No member may vote on any issue that was considered at any meeting that such member did not attend.

6103.9 The Chairperson or Vice Chairperson of the Downtown Retail Committee or their designee is to provide prior written notice to each member at least three (3) business days prior to any meeting of the Downtown Retail Committee. Such notice may be provided by e-mail, telecopy (provided the sender receives confirmation that such notice was received), hand delivery, or by United States first-class, certified mail, postage prepaid. Notice shall be deemed received: (1) on the date the e-mail or telecopy is transmitted (provided the sender has electronic or telegraphic evidence of successful transmission) or on the date of hand delivery (with a signed receipt); or (2) two (2) business days following receipt of proof of service by United States first class certified mail.

6103.10 The Downtown Retail Committee may request technical assistance from DMPED at any time for any reason, including but not limited to, the evaluation of any Application or any proposed revision of the Rating System or the Bond Allocation Formula.

**6104 Rating System for Ranking Retail Development Projects for Downtown Retail Priority Area**

6104.1 The Application will be scored in conformance with the Rating System as provided in Appendix 2. The Rating System is based on the following objective criteria:

(a) Likelihood of Bond repayment based on projected Tax Increment Revenues from the Retail Development Project;

(b) Uniqueness of the retailer(s) (i.e. type of product, anticipated demand, likelihood of success based on market or feasibility study, experience and public recognition of "brand name" or product(s)) that will be in the Retail Redevelopment Project;

(c) The market position of each retailer and whether each retailer is first in its market to locate in the Downtown Retail Priority Area;

(d) Likelihood that each retailer will attract other retailers to locate nearby (i.e. confidence of other retailers in success and stability of the retailer(s), "draw" factor of the retailer(s), hours and days of operation);

(e) Extent to which each retailer will promote the Downtown Retail Priority Area in its advertising (each retailer to submit a marketing plan for first two years of operation, including prototype of marketing materials (print and radio/TV), types of window displays, etc.);

(f) Vertical integration of retailer(s) (the portion of the product mix that is sold under the retailer's brand);

(g) Intention of each retailer in a given Retail Development Project to locate on more than one level of the building in which it is located;

(h) Extent to which each retailer's storefront is expressive (quality of architecture, "draw" of signage and display windows, extent to which store appearance enhances and upgrades the area);

(i) The location of the ownership of the retailer, i.e. whether the retailer is a District-owned business;

(j) Square footage of retail space; and

(k) Whether the retailer(s) in the Downtown Retail Priority Area is one of multiple retailers that co-locate in the Downtown Retail Priority Area (i.e. is retailer part of a group of retailers that is willing to locate in the Downtown Retail Priority Area).

6104.2 The Downtown Retail Committee may revise the Rating System at any time and from time to time by a two-thirds vote, but may not revise the Rating System for any Application that has been submitted to DMPED.

6105 **Bond Allocation Formula**

The Bond Allocation Formula (based upon the Rating System) for determining aggregate principal amount of Bonds to be allocated to a Retail Development Project if approved as a TIF Area, is as follows:

Grand Total (reflected on the Rating System) X \$2.55 X total  
square feet of Retail Development Project.

6106 **Application Process**

6106.1 Owners of proposed Retail Development Projects within a specified Retail Priority Area (Applicants) shall complete an Application (see Appendix 1).

6106.2 The Application shall include all exhibits and attachments specified in the Application to the extent applicable to the Retail Development Project.

6106.3 All Applications are to be submitted to DMPED postage prepaid by hand delivery (with signed receipt of delivery), by overnight mail requiring a signed receipt, or by United States Postal Service certified mail.

6106.4 Neither DMPED nor the Downtown Retail Committee has any obligation to review or consider for approval any Application that is not complete.

6106.5 (a) DMPED will review each Application and provide to the Downtown Retail Committee a preliminary scoring of such Application based on the Rating System (see Appendix 2) and indicate a recommended Bond Allocation Amount for each Retail Development Project.

(b) Following DMPED's preliminary scoring of the Application, DMPED will forward the Application, together with DMPED's recommendation for each Retail Development Project, including the score received and the recommended Bond Allocation Amount, and any comments, concerns or further recommendations with respect to such Retail Development Project, to the Downtown Retail Committee.

6106.6 Upon receipt by the Downtown Retail Committee from DMPED of an Application and the recommendations of DMPED, the Downtown Retail Committee shall review the Application and the recommendations of DMPED pursuant to Section 6103.5 and shall vote whether to recommend to the Mayor (i) the Retail Development Project in the Downtown Retail Priority Area for designation as a TIF Area and (ii) a Bond Allocation Amount with respect to such Retail Development Project. In reviewing the Application, the Downtown Retail Committee shall apply the Rating System and compute the Bond Allocation Amount. The Downtown Retail Committee shall have the right to accept, reject or revise any or all of the recommendations of DMPED.

6106.7 In the event that the Downtown Retail Committee votes to recommend to the Mayor (i) the Retail Development Project for designation as a TIF Area and (ii) a Bond Allocation Amount with respect to such Retail Development Project, the Downtown Retail Committee shall direct DMPED, subject to the Mayor's approval and certification of the Retail Development Project, to send a written Approval Letter to the Applicant indicating that such Retail Development Project has been approved by the Mayor and stating the reserved Bond Allocation Amount that the Applicant shall receive, subject to the Applicant meeting all program criteria and all requirements necessary for issuance of the Bonds as set forth in the Development Agreement required by section 5(b)(5) of the Act.

#### **6106 Mayor's Approval and Certification**

6106.1 Upon receipt of the recommendation of the Downtown Retail Committee with respect to a Retail Development Project, the Mayor may approve and certify the rating of the Retail Development Project, the designation of the Retail Development Project as a TIF Area, the issuance of Bonds in an amount equal to the Bond Allocation Amount and such other matters as the Mayor considers necessary or appropriate to achieve the goals and objectives of the Downtown Retail Priority Area.

6106.2 DMPED shall facilitate and manage the financing process with the Owner, including negotiating the Development Agreement and any other related documents.

6106.3 In connection with the issuance of the Bonds, the Owner shall enter into a Development Agreement with the District, such Development Agreement to be satisfactory to the Mayor, and consistent with the requirements of the Act and any other applicable laws of the District of Columbia. Such Development Agreement shall also include, among other things, the terms and conditions relative to the issuance of the Bonds.

#### **6199 DEFINITIONS**

**6199.1 Terms not otherwise defined herein shall have the meaning set forth in the Act.**

**6199.2** For purpose of this chapter, the following terms shall have the meaning ascribed.

**Development agreement** – Development Agreement means an agreement between the District and the owner of a building in the TIF area relating to matters specified in section 5(b)(5) of the Act and may include the funding agreement, if any, as specified in section 6 of the Act.

**Rating System** – Rating System means the Rating Matrix contained in Appendix 2.

**Appendix 1 Retail Development Project Application****District of Columbia Retail Incentive Second Congressional Review Emergency Act of 2004  
and Retail Incentive Review Act of 2004****Application for Tax Increment Financing**

Pursuant to the District of Columbia Retail Incentive Second Congressional Review Emergency Act of 2004 and the Retail Incentive Act (collectively, Retail TIF Act), the undersigned Applicant hereby applies to the District of Columbia for tax increment financing for a Retail Development Project in the Downtown Retail Priority Area. This Application shall be submitted to the Office of the Deputy Mayor for Planning and Economic Development ("DMPED").

- Applicant:** [name of applicant], a [form of legal entity] organized under the laws of \_\_\_\_\_, and owner of the Building. A copy of the Deed providing evidence of ownership is attached as Exhibit A.
- Tenant:** [legal tenant name], doing business as [tenant], a [legal entity], organized under the laws of \_\_\_\_\_. The 20xx Annual Report of [parent company name] its parent company, if applicable, is attached as Exhibit B.
- Building:** The [building name], [building address] Street, N.W., Washington, D.C., located on the Land.
- Land:** Lot [xxx] in Square [yyy], as shown on Exhibit C.
- Retail Development Project:** The leasing of [xx,xxx] rentable square feet of space in the Building to [tenant] pursuant to the [tenant] Lease, and the build-out of such space for the retail sale by [tenant] of [describe goods sold]. [Description of the timeline of proposed tenant build-out.]
- [Tenant] Lease:** Applicant and [legal tenant name] have executed a Lease dated [lease execution date], pursuant to which [legal tenant name] is leasing the TIF Area. A copy of the Lease is attached as Exhibit D.
- TIF Area:** The space occupied by [tenant] in the Building, as shown on Exhibit E. The space consists of [xx,xxx] square feet of rentable area on the [floor number(s)] floor(s) of the Building.
- Retail Development Costs:** The estimated costs to be incurred in connection with the Retail Development Project and the plans and specifications for the build-out of the tenant space are included in Exhibit F.

- Projected Sales:** A projection of [tenant's] sales at the TIF Area including projected sales taxes, is attached as Exhibit G.
- Certificate of Occupancy:** The Applicant expects that the District of Columbia will issue a Certificate of Occupancy to [tenant] to operate the TIF Area for retail use on [projected date]. The Applicant expects the [tenant] to open for business on [date]. A copy of the Certificate of Occupancy will be required to be delivered pursuant to the Development Agreement prior to the issuance of the TIF Note or Bonds.
- Requested TIF Amount:** The Requested TIF amount of \$[Requested TIF amount].
- TIF Note/Bond Structure:** The Applicant proposes that the District of Columbia issue a TIF Bond or Note [describe proposed terms and provisions of TIF Note or Bond].
- LSDBE Participation:** The Applicant has affirmed its agreement with respect to LSDBEs in the Development Agreement between the Applicant and the District. The Development Agreement is attached as Exhibit H.
- First Source Commitment:** The Applicant will, and will require that, its tenant also execute a First Source Agreement, the forms of which are attached to the Development Agreement.
- Non-Discrimination and EEO:** Attached as Exhibit I is Applicant's Non-Discrimination Certification. Attached as Exhibit J is Applicant's Equal Employment Opportunity Policy Statement. Attached as Exhibit K is Applicant's Assurance of Compliance with Equal Employment Opportunity Requirements.
- Tax Certification Affidavit:** Attached as Exhibit L is the Applicant's Tax Certification Affidavit.
- No Other Incentives:** The Applicant has not received from the District of Columbia any other funds (including without limitation proceeds of bonds through any other program of tax increment financing) for development of this Retail Development Project.

**Sources and**

**Uses:**

Attached as Exhibit M is a statement of sources and uses for the Building, showing (i) the total estimated costs of the Building (including the Retail Development Costs for this Retail Development Project), and (ii) the sources of funds (including debt, equity and TIF) anticipated to pay these costs including copies of lender commitments, if applicable.

**Certification  
of Application:**

A certification of this Application for Tax Increment Financing is attached as Exhibit N.

Applicant has executed this Application for Tax Increment Financing as of \_\_\_\_\_  
2005.

[Applicant's legal name]

By: [ ]

**List of Exhibits:**

|   |  |
|---|--|
| A | Deed   |
| B | [Parent company] 20xx Annual Report                                    |
| C | Plat of Land   |
| D | Copy of Lease  |
| E | Diagram of TIF Area  |
| F | Retail Development Costs and Plans and Specifications                  |
| G | Projected Sales Taxes  |
| H | Development Agreement  |
| I | Non-Discrimination Certification                                       |
| J | Equal Employment Policy Statement                                      |
| K | Assurance of Compliance with Equal Employment Opportunity Requirements |
| L | Tax Certification Affidavit  |
| M | Sources and Uses   |
| N | Certification of Application   |

Appendix 2 - Rating System

**Downtown Washington DC Retail Incentive Program  
Rating Chart**

This electronic rating worksheet has been designed so that brokers, owners and retailers can self-rate potential recipients of downtown DC retail incentives. Final ratings are made by the Deputy Mayor for Planning and Economic Development. To use the sheet, fill in all 15 yellow boxes. The blue boxes contain formulas and should not be changed. After you have properly filled out this electronic worksheet it will return the approximate amount that the retailer is eligible to receive from the District in the form of a Downtown TIF incentive for tenant improvements (assuming the information provided is verified). You can either send an electronic copy of the completed sheet, or you can fax it to: Susan Linsky, Office of the Deputy Mayor for Planning and Economic Development susan.linsky@dc.gov or fax to 727-6703 with a request that the retailer be officially rated by the District. See the bottom of the sheet for a full explanation of each rating factor. [This rating chart was last approved 10-20-03]

Name of Retailer \_\_\_\_\_ Phone \_\_\_\_\_ Date \_\_\_\_\_  
 Contact Person \_\_\_\_\_ E-mail \_\_\_\_\_  
 Address \_\_\_\_\_ DC Contact \_\_\_\_\_

**First Threshold Test (to be completed by Office of Deputy Mayor or Marketing Partner)**

|   |                                     |                      |            |                       |
|---|-------------------------------------|----------------------|------------|-----------------------|
| A | Projected Sales Per Sq. Ft.         | <input type="text"/> | D          | \$                    |
|   |                                     |                      | Tax/sq. ft | -                     |
| B | Today's LIBOR plus 425 basis points | 0.0545               | E          | Supportable borrowing |
|   |                                     |                      |            | \$0.00                |
| C | Tax rate =                          | 5.75%                | F          | Payback period        |
|   |                                     |                      |            | #NUM! months          |

**RATING FACTOR**

**RATING SCALE**

**RATING**

| 1 | Uniqueness factor   | Unique                         | 2nd in region | <5 in region | >5 in region | <input type="text"/> |        |
|---|---|--------------------------------|---------------|--------------|--------------|----------------------|--------|
|   |   | 9                              | 7             | 4            | 0            |                      |        |
|   | Number of stores in region =  | <input type="text" value="0"/> |               |              |              |                      |        |
|   |   | > 1 store                      | 1 store       | 0 Stores     |              |                      |        |
| 2 | Collateral Leasing Benefit (exclusive of #4)<br><small>(Depends on # of co-tenants anticipated to follow this retailer)</small> | 8                              | 4             | 0            |              | <input type="text"/> |        |
|   |   | sales/ft                       | factor        | sales/ft     | factor       | sales/ft             | factor |
| 3 | Sales per square foot and factor  | \$ 200                         | 1             | \$ 400       | 4            | \$ 700               | 6      |
|   |   | \$ 250                         | 2             | \$ 450       | 4            | \$ 800               | 6      |

/square foot

|        |   |        |   |          |   |
|--------|---|--------|---|----------|---|
| \$ 300 | 3 | \$ 500 | 5 | \$ 900   | 6 |
| \$ 350 | 3 | \$ 600 | 5 | \$ 1,000 | 6 |

|     |    |
|-----|----|
| Yes | No |
| 5   | 0  |

4 Dominates category or 1st in market

4a Fulfills clustering goal

5 (must be part of a 3+ store deal)

4b **Minimum 10 points needed to be eligible for TIF incentives. If <10, stop here.**

Subtotal

5 Advertises in region

|        |       |     |
|--------|-------|-----|
| > \$10 | > \$5 | \$0 |
| 7      | 3     | 0   |

(\$ of advertising / square feet of store)

6 Vertically integrated retailer

|      |      |      |
|------|------|------|
| >50% | <50% | <25% |
| 4    | 2    | 0    |

(percentage of goods carried under the retailers label)

7 Highly expressive retail façade

|     |    |
|-----|----|
| Yes | No |
| 2   | 0  |

8 Second floor occupied (75% of 1st)

|   |   |
|---|---|
| 1 | 0 |
|---|---|

9 DC owned business

|   |   |
|---|---|
| 2 | 0 |
|---|---|

10 Square footage of retail store (Anchor ability)

| square feet | factor | square feet | factor | square feet | factor |
|-------------|--------|-------------|--------|-------------|--------|
| < 7000      | -      | 20,000      | 2      | 50,000      | 3      |
| 7,000       | 1      | 30,000      | 2      | 75,000      | 3      |
| 10,000      | 1      | 40,000      | 3      | 100,000     | 3      |
| 15,000      | 1      |             |        |             |        |

square feet =

11 Unique circumstances (awarded by Deputy Mayor)

Grand Total

If subtotal on line 4b is >= 10, then multiply grand total by

\$2.55

Incentive/sq. foot

**MAXIMUM ALLOWABLE TIF INCENTIVE**

- 1 Uniqueness factor/number of stores in region is the number of other stores that the retailer has in the Washington DC region. This includes DC, Montgomery, Prince Georges, Fairfax, Arlington, Alexandria, and the independent cities in this area. If the retailer is not an anchor, the deputy mayor may determine that the geographic area for rating that retailer as unique is larger
- 2 Collateral Leasing Benefit (exclusive of #4) is the strong likelihood that one or more additional retail co-tenants as defined in the developer's MOU will sign leases to locate in close proximity to the retailer being rated as a direct result of that retailer coming into the area.
- 3 Sales per square foot and factor are the projected sales per square foot based on a retailers other stores in similar demographic markets and the rating factor that matches the projected sales per square foot listed.
- 4 Dominates category or 1st in market is whether a retailer is either the most dominant retailer in its category (i.e. women's shoes) or whether it is the first in its category to locate in the shopping district (i.e. men's suits).
- 4a Fulfills clustering goal is an alternative to #4. If three retailers sign leases together as a package and satisfy other criteria, they can each be awarded 5 points for creating a critical mass.
- 5 Advertises in region is whether the retailer does, or will, spend more than a certain dollar amount per square foot on regional advertising that will promote its downtown location.
- 6 Vertically integrated retailer is the extent to which the retailer sells only its own brand name goods.
- 7 Highly expressive retail façade is how well the retailer designs its storefront, signage and display windows to animate both its store and the sidewalk.
- 8 Second floor occupied (75% of 1st) is whether the retailer occupies a minimum amount of space on a second floor (either above or below) in addition to its ground floor space.
- 9 DC owned business is whether the retailer is a District of Columbia business, or whether the primary owner is a DC resident.
- 10 Square footage of retail store (Anchor ability) is the number of square feet of retail space to be leased. This does not include back of the house space.
- 11 Unique circumstances include issues such as higher build out costs due to historic preservation requirements, or unique buildings or locations that have very high retail impact. Points are awarded at the discretion of the Deputy Mayor.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 46 of Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations (DCMR). The proposed amendments establish standards of treatment and care for patients afflicted with chronic pain. This proposed rulemaking was previously published on October 21, 2005 at 52 DCR 9411. No substantive changes were made. These rules will become effective upon publication in the D.C. Register.

**Chapter 46 (Medicine) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended to read as follows:**

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

**4609            Standards for the Use of Controlled Substances for  
the Treatment of Pain**

- 4609.1            A licensed physician shall prescribe, order, administer, or dispense controlled substances for pain only for a legitimate medical purpose based on accepted scientific knowledge of the treatment of pain or based on sound clinical grounds. All such prescribing shall be based on clear documentation of unrelieved pain and in compliance with applicable District or federal law.
- 4609.2            A licensed physician shall employ up-to-date treatment modalities in order to improve the quality of life for patients who suffer from pain as well as to reduce the morbidity and costs incurred by patients associated with untreated or inappropriately treated pain. For purposes of this section, "inappropriately treated pain" includes the following:
- (a) Non-treatment;
  - (b) Under-treatment;
  - (c) Over-treatment; and
  - (d) The continued use of ineffective treatments.

- 4609.3 A licensed physician shall perform an evaluation of the patient by taking a complete medical history and performing a physical examination. The medical history and physical examination shall be documented in the medical record. The medical record shall contain a description of the following:
- (a) The nature and intensity of the patient's pain;
  - (b) The patient's current and past treatments for pain;
  - (c) The patient's underlying or coexisting diseases or conditions;
  - (d) The effect of the pain on the patient's physical and psychological function;
  - (e) A history of the patient's substance abuse if applicable; and
  - (f) The presence of one or more recognized medical indications in the patient for the use of a controlled substance.
- 4609.4 A licensed physician shall maintain a written treatment plan which states the objectives used to determine treatment success, such as pain relief and improved physical and psychosocial function
- 4609.5 The treatment plan shall indicate if any further diagnostic evaluations or other treatments are planned.
- 4609.6 The physician shall adjust drug therapy to the individual medical needs of each patient after treatment begins.
- 4609.7 The physician shall consider other treatment modalities or a rehabilitation program if necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.
- 4609.8 The physician shall discuss the risks and benefits of the use of controlled substances with the patient, person(s) designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent.
- 4609.9 If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician shall employ the use of a written agreement between the physician and patient outlining the patient's responsibilities, including, but not limited to:
- (a) Urine/serum medication levels screening when requested;

- (b) Number and frequency of all prescription refills; and
- (c) Reasons for which drug therapy may be discontinued, such as violation of an agreement.

4609.10 The physician shall do the following:

- (a) Review the course of treatment and any new information about the etiology of the pain at reasonable intervals based on the individual circumstances of the patient;
- (b) Continue or modify the pain therapy depending on the physician's evaluation of the patient's progress;
- (c) Reevaluate the appropriateness of continued treatment if treatment goals are not being achieved despite medication adjustments; and
- (d) Monitor the patient's compliance in medication usage and and related treatment plans.

4609.11 The physician shall refer the patient, as necessary, to another physician for additional evaluation and treatment in order to achieve treatment objectives. Special attention shall be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion.

4609.12 The physician shall consult with or refer to an expert for management the following types of patients:

- (a) Patients with a history of substance abuse; or
- (b) Patients with comorbid psychiatric disorders that require extra care, monitoring, and documentation.

4609.13 The physician shall recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not the same as addiction.

4609.14 The physician shall keep accurate and complete records that include, but are not limited to:

- (a) The medical history and physical examination, including history of drug abuse or dependence, as appropriate;
- (b) Diagnostic, therapeutic, and laboratory results;

- (c) Evaluations and consultations;
- (c) Treatment objectives;
- (d) Discussion of risks and benefits;
- (e) Treatments;
- (f) Medications including date, type, dosage, and quantity prescribed;
- (g) Instructions and agreements; and
- (h) Periodic reviews.

4609.15 The physician shall maintain current records in an accessible manner that is readily available for review.

**4699 DEFINITIONS**

4699.1 As used in this chapter, the follow terms shall have the meaning ascribed:

**Chronic pain** – a pain state that is persistent.

**Pain** – an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

**Substance abuse** – the use of any substance for non-therapeutic purposes or use of medication for purposes other than those for which it is prescribed.

**METROPOLITAN POLICE DEPARTMENT****NOTICE OF FINAL RULEMAKING**

The Chief of Police, pursuant to section 1102(f) of the Detective Adviser Act of 2004 (Act), effective September 30, 2004 (D.C. Law 15-194, D.C. Official Code § 5-129.31(f) (March 2005 Supp.)), and Mayor's Order 05-99, dated June 14, 2005, hereby gives notice of the adoption of the following rules governing the selection standards for detective advisers.

These amendments were previously published in 52 DCR 6684 on July 15, 2005 as emergency and proposed rulemaking. No comments were received after publication.

The only change has been to clarify the eligibility requirements in § 111.2. As a result of this clarification, § 112.2 as published in the emergency and proposed rulemaking notice was deleted, and the remaining provisions were renumbered. No other changes were made.

These amendments, requiring consideration of a detective adviser applicant's disciplinary history, physical and mental health, and past job performance with the Metropolitan Police Department, will create new sections 111 through 116 in Title 6A, Police Personnel, of the District of Columbia Municipal Register (DCMR).

Title 6A DCMR, "Police Personnel" is amended by adding new sections 111 through 116 to read as follows:

- 111 Establishment Of Temporary Excepted Service Position Of "Detective Adviser"**
- 111.1 Pursuant to the Detective Adviser Act of 2004 (Detective Advisor Act), effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-129.31), there is hereby established within the Metropolitan Police Department the temporary full-time or part-time position of "Detective Adviser" subject to the rules of the Excepted Service of the District of Columbia Government, except as specified in these rules or otherwise required by law or regulation.
- 111.2 Except for disability annuitants, members who, regardless of rank, served in an investigative unit with the Metropolitan Police Department and who have retired in good standing from the Metropolitan Police Department shall be eligible for rehire to the position of Detective Adviser at the discretion of the Chief of Police.
- 111.3 A retired police officer rehired under these rules shall not incur annuitant liability for salary earned from the District of Columbia Government, nor jeopardize his/her retirement benefits.
- 111.4 Service as a Detective Adviser shall not count as creditable service for the purposes of section 12(c) of An Act Making appropriations to provide for the expenses of the Government of the District of Columbia for the fiscal year ending June thirteenth, nineteen hundred and seventeen, and for other purposes (Police and Firemen's

Retirement and Disability Act), approved September 1, 1916 (39 Stat. 718; D.C. Official Code § 5-704) or have any negative impact on the unfunded liability of the D.C. Police Officers and Fire Fighters' Retirement Fund.

- 111.5 Detective Advisers shall have no police powers.
- 111.6 If authorized by and qualified under § 3(a) of the Law Enforcement Officers Safety Act of 2004, approved July 22, 2004 (118 Stat. 865; 18 U.S.C. § 926(c)), a Detective Adviser may, at the discretion of the Chief of Police, carry a concealed firearm in accordance with Department guidelines.
- 111.7 A Detective Adviser shall be equivalent in rank to a Detective Grade I.

## **112 Eligibility For Employment**

- 112.1 A former police officer shall have been retired for at least six (6) months and less than five (5) years at the time of application in order to be eligible for appointment to the position of Detective Adviser.
- 112.2 All candidates shall meet appropriate physical, psychological and psychiatric standards for civilian employees.
- 112.3 All candidates shall be subject to a thorough drug screening and shall have a valid driver's license.
- 112.4 All candidates shall be subject to an updated background investigation and a review of their past employment record by the Chief of Police or designee.
- 112.5 The Chief of Police, or designee, shall consider an applicant's disciplinary history and past job performance with the Metropolitan Police Department.
- 112.6 Qualified candidates may be placed on a register for prospective employment.
- 112.7 In the best interest of the department and when circumstances warrant, the Chief of Police may, at his discretion, waive or vary the application of any of these rules not otherwise required by law or regulation.

## **113 Salary Entitlements And Limitations**

- 113.1 Detective Advisers shall be paid at the fifth step of the current Class 3 (Detective) schedule.
- 113.2 Detective Advisers shall be entitled to shift differentials, overtime pay, holiday pay and other leave benefits on the same terms as other excepted service civilian employees.

113.3 Detective Advisers shall not be entitled to longevity pay or Base Retention Differential (BRD) pay.

**114 Terms And Conditions**

114.1 All Detective Adviser appointments shall be for a term of thirteen (13) months, renewable for subsequent terms upon 60 days notice.

114.2 Prior service shall be counted for purposes of determining the rate of accrual of sick leave or annual leave.

114.3 All assignments of Detective Advisers are at the full discretion of the Chief of Police in keeping with the purpose and intent of the Detective Adviser Act.

114.4 The first priority to be observed in the assignment of Detective Advisers is for investigative services and to assist in the training and mentoring of new detectives.

114.5 Part-time employment is defined, for the purposes of these rules, as the availability of an employee to work an established work week of either a minimum of three 8-hour shifts (24 hours total) or a minimum of five 4-hour shifts (20 hours total).

114.6 Detective Advisers working as part-time employees shall accrue sick leave or annual leave on a pro-rata basis.

114.7 Detective Advisers shall not be entitled to promotions or step increases.

114.8 Detective Advisers shall be subject to such training as deemed necessary by the Chief of Police to prepare them for appropriate duties and functions in keeping with the purpose and intent of the Detective Adviser Act and these rules.

114.9 Detective Advisers shall be subject to the same disciplinary standards as other civilian excepted service employees.

114.10 Detective Advisers shall not be detailed to any agency of the District of Columbia government other than the Metropolitan Police Department.

**115 Collective Bargaining Rights**

115.1 As excepted service employees, Detective Advisers shall have no collective bargaining rights.

115.2 Detective Advisers, as temporary excepted service employees, shall not be entitled to any rights and/or privileges that exceed or are in conflict with the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (DCGCPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-

601.01 *et seq.*) the Detective Adviser Act, these rules, or any other applicable rules of the D.C. Office of Personnel governing temporary full-time or part-time workers.

**116 Other Benefits And Services**

- 116.1 Detective Advisers shall not earn or become entitled to additional benefits of any kind under the various provisions of the Police and Firefighters Retirement and Disability Act, as codified at D.C. Official Code § 5-741 *et seq.*, as a result of their employment as Detective Advisers.
- 116.2 Detective Advisers shall be subject to Social Security deductions under the Federal Insurance Contributions Act of 1954, 26 U.S.C. 3101 *et seq.* (FICA).
- 116.3 Detective Advisers injured as a result of or in the course of their employment will be subject to Disability Compensation pursuant to section 2301 *et seq.* of the DCGCMPA D.C. Official Code § 1-623.01 *et seq.*
- 116.4 Survivor(s) of a Detective Adviser who dies as a result of or in the course of their employment shall not be entitled to the lump sum payment provided pursuant to section 12(k) of the Police and Firefighters Retirement and Disability Act, D.C. Official Code § 5-716.
- 116.5 Detective Advisers shall not be entitled to accrue non-performance-of-duty, or Performance of Duty disability benefits under either sections 12(f) or 12(g) of the Police and Firefighters Retirement and Disability Act, D.C. Official Code §§ 5-709 or 5-710.
- 116.6 Detective Advisers shall not receive treatments and services from the Police and Fire Clinic and the Medical Services Division.
- 116.7 Detective Advisers shall be entitled to health and other similar benefits on the same basis as permanent employees in the Excepted Service.

DISTRICT OF COLUMBIA  
DEPARTMENT OF MOTOR VEHICLESNOTICE OF FINAL RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1825 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 50-904); § 206 of the Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.06); §§ 6 and 13 of the District of Columbia Traffic Act of 1925, effective March 3, 1925 (43 Stat. 1125; D.C. Official Code §§ 50-2201.03 and 50-1403.01); § 9 of the International Registration Plan Agreement Act of 1997, effective September 5, 1997 (D.C. Law 12-14; D.C. Official Code § 50-1507.07); § 2 of Title IV of the District of Columbia Revenue Act of 1937, approved September 8, 1950 (64 Stat. 792; D.C. Official Code § 50-1501.02); An Act To provide for annual inspection of all motor vehicles in the District of Columbia, approved February 18, 1938 (52 Stat. 78; D.C. Official Code § 50-1107); and Mayor's Order 03-58, effective April 21, 2003, hereby gives notice of the adoption of the following rulemaking that amended Chapters 1, 3, 4, 6, 10, 11, 13, 22 and 30 of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). The rulemaking applied requirements for obtaining duplicate or modified licenses to obtaining duplicate or modified identification cards, referenced additional suspension and revocation statutory provisions, allowed some suspensions and revocations to run concurrently and not be served cumulatively, required registrants of heavy trucks to submit proof of payment of the heavy vehicle use tax, allowed the Director to require two year registration, established that vehicles displaying irremovable commercial advertisement or insignia may be required to register as commercial vehicles, required vehicle owners to exchange their registration card whenever they change their address, added manufacturer tags to those tags that only need to be displayed on the rear of the vehicle, clarified the requirements for non-attorney representation at a hearing, established standards of conduct for representing persons contesting traffic tickets, limited the duration of trip permits for apportionable vehicles to six days, replaced all references to the Department of Public Works with the Department of Motor Vehicles with regard to inspection of motor vehicles, limited the number of inspections for vehicles for hire to one per day, established the requirement of a notarized affidavit for non-attorney representation at hearings, removed reference to repealed penalties for violating school bus driver's licensing provisions, clarified the existing fee for the reinstatement of a commercial driver's license after a disqualification, clarified the notice of infraction issuance process, and removed redundant provisions regarding representation at traffic adjudication hearings. No comments were received and no changes were made to the text of the proposed rules, as published together with a notice of proposed rulemaking in the *D.C. Register* at 52 DCR 10412, on November 25, 2005. These final rules shall be effective upon publication in the *D.C. Register*.

Title 18, DCMR, is amended as follows:

- A. Chapter 1, ISSUANCE OF DRIVER'S LICENSES, section 109, DUPLICATE OR MODIFIED LICENSES is amended as follows:
- 1) The title is amended by adding the phrase "AND SPECIAL IDENTIFICATION CARDS" at the end.
  - 2) Subsection 109.1 is amended as follows:
    - a) By inserting the phrase ", special identification card" after the phrase "provisional permit".
    - b) By striking the phrase "permit or license" wherever it appears and inserting the phrase "permit, license, or special identification card" in its place.
  - 3) Subsections 109.3 through 109.6 are amended by inserting the phrase "or special identification card" after the word "license" wherever it appears.
  - 4) Subsection 109.5 is amended by striking the word "permit" and inserting the phrase "license or special identification card" in its place.
  - 5) Subsection 109.6 is amended by removing the first symbol "§" after the phrase "as required by".
- B. Chapter 3, CANCELLATION SUSPENSION OR REVOCATION OF LICENSES, is amended as follows:
- 1) Section 301, MANDATORY REVOCATIONS, is amended by adding a new subsection 301.2 to read as follows:

301.2 The Director shall revoke, for one (1) year, the license of any person who refuses to submit to chemical testing upon receipt of an officer's sworn report as required by § 5(a) of the District of Columbia Implied Consent Act, approved October 21, 1972 (86 Stat. 1018, D.C. Official Code § 50-1905(a)).
  - 2) Section 302, SUSPENSIONS AND REVOCATIONS FOR TRAFFIC OFFENSES, is amended as follows:
    - a) Subsection 302.5 is amended to read as follows:

302.5 Operating a motor vehicle while physically or mentally unqualified to operate a motor vehicle by reason of diabetic coma, or epileptic or other seizure, is grounds for suspension or revocation.
    - b) A new subsection 302.15 is added to read as follows:

302.15 Offenses and circumstances listed in §13(a) of the District of Columbia Traffic Act of 1925, effective March 3, 1925 (43 Stat. 1125; D.C. Official Code § 50-1403.01 (a)) are grounds for license suspension or revocation.

- 3) Section 306, PERIOD OF SUSPENSION OR REVOCATION, is amended by adding a new subsection 306.14 to read as follows:

306.14 If a driver's license is suspended or revoked pursuant to § 302 of this title and is subsequently revoked again based upon a court conviction for the same underlying offense, the Director may allow the suspension and revocation periods to run concurrently or may credit time already spent in suspension or revocation status towards the duration of the revocation based on a court conviction.

- C. Chapter 4, MOTOR VEHICLE TITLE AND REGISTRATION, is amended as follows:

- 1) Section 412, REFUSAL OF REGISTRATION, subsection 412.1 is amended by adding a new paragraph (o) to read as follows:

(o) If the person is required to pay the heavy use vehicle tax, as described in section 4481 of the Internal Revenue Code of 1954, added June 29, 1956 (70 Stat. 390, 26 U.S.C. § 4481), and does not submit proof of payment as required by section 141(c) of the Federal Aid Highway Amendments of 1974, added January 4, 1975 (Pub. L 93-643, 23 U.S.C. 141).

- 2) Section 413, APPLICATION FOR REGISTRATION, is amended as follows:

- a) Subsection 413.1 and 413.2 are repealed.  
b) A new subsection 413.13 is added to read as follows:

413.13 Motor vehicles, other than buses, displaying irremovable commercial advertisement or insignia may be considered commercial vehicles by the Director for registration purposes.

- 3) Section 414, CHANGE OF ADDRESS OF REGISTRANT, is amended as follows:

- a) Subsection 414.1 is amended to read as follows:

414.1 If a registrant changes his or her address, that registrant shall, not more than thirty (30) days after relocating to the new address,

surrender the old registration card to the Director and apply for an updated registration card.

- b) Subsection 414.2 is amended by striking the phrase “, advise the registrant that the notice has been received, and authorize the registrant to change the address on the registration card”.
- 4) Section 422, DISPLAY OF IDENTIFICATION TAGS, subsection 422.2 is amended by striking the phrase “dealer’s tag” and inserting the phrase “dealer’s tag or manufacturer’s tag” in its place.
- 5) A new section 434 and subsection 434.1 are added to read as follows:

434 APPORTIONABLE VEHICLES

434.1 Trip permits for apportionable vehicles, as defined in section 2 of the International Registration Plan Agreement Act of 1997, effective September 5, 1997 (D.C. Law 12-14; D.C. Official Code § 50-1507.01), shall be valid for a six (6) day period, to begin on a day determined by the Director.

D. Chapter 6, INSPECTION OF MOTOR VEHICLES, is amended as follows:

- 1) By striking the phrases “Department of Public Works” and “Department of Public Works (DPW)” wherever they appear and replacing them with the phrase “Department of Motor Vehicles”.
- 2) Section 604, VEHICLE INSPECTION: REJECTED VEHICLES, is amended by adding a new subsection 604.8 to read as follows:

604.8 Vehicles for hire licensed under D.C. Official Code § 47-2829 shall be inspected no more than one (1) time per day.

E. Chapter 10, PROCEDURES FOR ADMINISTRATIVE HEARINGS, section 1025, APPEARANCES, is amended as follows:

- 1) By adding three new subsections 1025.7, 1025.8 and 1025.9 to read as follows:

1025.7 A respondent may be assisted by a non-attorney at the discretion of the hearing examiner.

1025.8 A non-attorney designated agent may appear in place of a respondent at the discretion of the hearing examiner.

1025.9 A respondent shall submit a notarized affidavit, provided by the Director, that the respondent authorized the non-attorney designated agent to appear

in his or her place. The sworn affidavit shall be valid for one (1) year or for a lesser period if stated on the affidavit.

2) By adding a new section 1027 to read as follows:

1027 STANDARDS OF CONDUCT FOR REPRESENTATIVES

1027.1 No representative appearing at a hearing pursuant to § 1025 shall do any of the following:

- (a) Engage in behavior that disrupts the hearing.
- (b) Refuse to obey the instructions of a hearing examiner as to procedure.
- (c) Engage in actions or verbal conduct that show disrespect for the hearing examiner.
- (f) Encourage or induce a respondent or witness to make a statement or offer evidence, that the representative knows or reasonably should have known is false, fraudulent or misleading.

1027.2 No person who entered an appearance or was named in an affidavit required by §1025.9 within the previous one (1) year period may offer any Department employee any gift, gratuity or thing of value.

1027.3 No non-attorney representative may represent to a current or prospective client that they are an attorney at law.

1027.4 No person offering advice or representation with respect to an adjudication may solicit potential clients in a building, or on the sidewalks adjacent to such a building, in which the Department offers hearings.

1027.5 For the purposes of § 1027.4, soliciting shall include offering any information to a respondent that identifies the person's services.

1027.6 No representative shall accept payment for their services inside a building occupied by the Department.

1027.7 Any person who violates any provision of this section may be barred from representing a respondent for a period to be determined by the Chief Hearing Examiner, based upon the extent of the violation(s) and whether the person was previously barred.

- 1027.8 Prior to taking the action in § 1027.7, the Chief Hearing Examiner shall send a notice, by regular mail to the person's business address or, if none can be determined, to the person's home address.
- 1027.9 The notice in § 1027.8 shall state the grounds for the action, the proposed duration of the bar, and inform the person of his or her right to a hearing.
- 1027.10 The hearing on the proposed bar shall be conducted by the Director or his or her designee.
- 1027.11 Following the hearing, the Director or his or her designee shall issue an order, which shall be sent by regular mail to the address in § 1027.8.
- 1027.12 No decision or order of the Chief Hearing Examiner or the Director or his or her designee under this section may be appealed to the Traffic Adjudication Appeals Board.

F. Chapter 11, MOTOR VEHICLE OFFENSES AND PENALTIES, section 1110, PENALTIES FOR VIOLATIONS, subsection 1110.1, paragraph (b) is repealed.

G. Chapter 13, CLASSIFICATION AND ISSUANCE OF COMMERCIAL DRIVER'S LICENSES, section 1326, FEES, subsection 1326.1 is amended by adding the following phrase under the heading "Commercial Driver's License":

Reinstatement      \$98.00

H. Chapter 22, MOVING VIOLATIONS, section 2220, RESTRICTED LANES, subsection 2220.5 is amended by striking the number "220.2" and replacing it with the number "2220.2".

I. Chapter 30, ADJUDICATION AND ENFORCEMENT, is amended as follows:

1) Section 3002, ISSUANCE OF PARKING VIOLATIONS ONLY, is amended as follows:

a) Subsection 3002.2 is repealed.

b) Subsections 3002.3 and 3002.4 are amended to read as follows:

3002.3 When information is entered on the ticket manually, the original ticket, signed by the issuing officer, constitutes a complaint.

3002.4 A copy of the signed ticket shall be issued to the respondent in the manner provided for in § 3004.

- c) Subsection 3002.5 is amended by striking the phrase "Copy B" and inserting the phrase "the copy" in its place.
  - d) Two new subsections 3002.9 and 3002.10 are added to read as follows:
    - 3002.9 Except for tickets issued through the use of a hand-held electronic device, the original ticket shall be submitted to the Department of Motor Vehicles within fifteen (15) calendar days of issuance.
    - 3002.10 The ticket information for tickets issued through the use of a hand-held electronic device shall be submitted within one (1) business day.
- 2) Section 3003, ISSUANCE OF MOVING AND NON-MOVING VIOLATIONS, is amended as follows:
- a) Subsections 3003.3 through 3003.5 are amended to read as follows:
    - 3003.3 Except for tickets issued for violations detected by an automated traffic enforcement device, the original ticket, signed by the issuing officer, constitutes a complaint for moving violations and shall be delivered to the Department of Motor Vehicles within fifteen (15) days of issuance.
    - 3003.4 A copy of the signed ticket shall be issued to the respondent in the manner provided for in § 3004.
    - 3003.5 Within fifteen (15) days of the date a violation was detected by an automated traffic enforcement device, any resulting ticket shall be mailed to the owner and the relevant information transmitted to the Department of Motor Vehicles.
  - b) Subsections 3003.2, 3003.6 and 3003.7 are repealed.
- 3) Section 3005, RETURN ON NOTICE OF SERVICE, subsections 3005.1, 3005.2, and 3005.3 are repealed.
- 4) Section 3010, LEGAL REPRESENTATION AT HEARINGS, is repealed.

## DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(D) and 9(b) 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)(D), and 50-308(b)), hereby gives notice of its final rulemaking action taken January 18, 2006, to amend § 502.1 of Chapter 5 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The notice of proposed rulemaking was published in the *DC Register* on November 4, 2005, at 52 DCR 9910. The final rulemaking no longer requires taxicab companies and associations to have a shop area for the maintenance of vehicles adjacent to their administrative offices. A public hearing was held on December 14, 2005, and comments were received by the Commission and taken into consideration. This rule will become effective on the date this notice is published in the DC Register.

Title 31 DCMR, Section 502, REQUIREMENTS OF LOCAL PLACE OF BUSINESS is amended to read as follows:

**502 REQUIREMENTS OF LOCAL PLACE OF BUSINESS**

502.1 Each company and association shall maintain an administrative office in the District of Columbia with a telephone number and address listed in the name of the company or association.

## DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(G) and 9(b) 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)(G), and 50-308(b)), hereby gives notice of its final rulemaking action taken January 18, 2006, to amend § 505.4 of Chapter 5 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The notice of proposed rulemaking was published in the *DC Register* on November 4, 2005, at 52 DCR 9911. The final rulemaking will require all independent taxicab vehicles to have the name of the owner and his/her telephone number on each rear door. A public hearing was held on December 14, 2005, and comments were received by the Commission and taken into consideration. This rule will become effective on the date this notice is published in the DC Register.

Title 31 DCMR, Section 505, INDEPENDENT TAXICABS, is amended to read as follows:

**505 INDEPENDENT TAXICABS**

505.4 Each independently operated taxicab shall have on the exterior of each rear door the name of the owner and a telephone number for contact purposes. The telephone number may be either a currently working home or cellular telephone number.

## DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(A) and 9(b) 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)(A), and 50-308(b)), hereby gives notice of its final rulemaking action taken January 18, 2006, to amend § 801.5 of Chapter 8 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The notice of proposed rulemaking was published in the *DC Register* on October 21, 2005, at 52 DCR 9442. The final rulemaking will allow for the usage of credit cards in taxicabs. A public hearing was held on December 14, 2005, and comments were received by the Commission and taken into consideration. This rule will become effective on the date this notice is published in the DC Register.

Title 31 DCMR, Section 801, PASSENGER RATES, is amended to read as follows:

**801 PASSENGER RATES**

801.5 All charges for taxicab service provided within the District of Columbia shall be in accordance with the schedule of rates established by the Commission. No person shall knowingly or intentionally charge an amount in excess of the rate established by the Commission. Taxicab operators may accept credit cards in payment of fares. If such method of payment is accepted:

- (a) no surcharge may be imposed by a company, association, or driver upon the use of a credit card so that the total charge exceeds the established rate of fare;
- (b) no minimum charge may be imposed for the use of a credit card to pay a fare;
- (c) no service may be refused to any person desiring to use a credit card on the grounds that a trip will not exceed a minimum length or generate a minimum fare; and
- (d) any operator who accepts credit cards in payment of fares must have posted on a sign in a location that is conspicuous to all passengers the type of credit cards accepted for payment.

**DISTRICT OF COLUMBIA TAXICAB COMMISSION****NOTICE OF FINAL RULEMAKING**

The Chairperson of the District of Columbia Taxicab Commission pursuant to the authority set forth under §§ 14 (a) and (d) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, (D.C. Law 6-97; D.C. Official Code §§ 50-313(a) and (d)), and Mayor's Order 87-156, dated July 1, 1987, hereby gives notice of final rulemaking action taken January 18, 2006, to add § 1201.6 to Chapter 12 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The notice of proposed rulemaking was published in the *DC Register* on October 21, 2005, at 52 DCR 9444. The final rulemaking requires limousine operators to file a change of address, telephone number, organization or vehicle owner and assesses a penalty for failure to do so within five (5) business days. A public hearing was held on December 14, 2005, and comments were received by the Chairperson and taken into consideration. This rule will become effective on the date this notice is published in the DC Register.

Title 31 DCMR, Section 1201, GENERAL REQUIREMENTS, is amended to read as follows:

**1201 GENERAL REQUIREMENTS**

1201.6 Every person holding a license to operate a limousine shall maintain at the Office of Taxicabs their correct name, residence address and telephone number, and if affiliated with an organization the organization or owner for which they drive. In the event of any change in this information, the licensee shall inform the Office of the change within five (5) business days. The licensee may elect to provide this information by certified mail with return receipt requested or by hand delivery, the Office will provide proof of filing to the licensee. Failure to do so will result in a fine of one hundred dollars (\$100.00) per offense. Any fine imposed pursuant to this section shall be collected at the time of the licensee's renewal period.

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

**and**

**Z.C. ORDER NO. 04-34**

**Z.C. Case No. 04-34**

**(Text Amendments - 11 DCMR - Use of Pervious Parking and Driveway Surfaces)**

**January 9, 2006**

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District Charter, hereby gives notice of adoption of the following amendments to §§ 2117, 2303 and 2403 of the Zoning Regulations (Title 11 DCMR). The amendments permit the use of any all-weather surface, regardless of whether the paving materials are pervious or impervious. The Commission took final action to adopt the amendments at a public meeting held on January 9, 2006.

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

Exiting Regulations

The Commission initiated this rulemaking in response to a petition from the Zoning Advisory Committee.

Pervious pavement is not currently permitted for either parking or and access to parking. All paving for open parking spaces, including accessory driveways and access lanes, and for private residential driveways is required to be "*paved and maintained with bituminous, concrete, or brick materials.*"

Description of Text Amendment

This text amendment eliminates the requirement that open parking spaces and access to these spaces be paved and maintained with bituminous, concrete or brick materials and instead allows for the use of any materials, whether impervious or not, that form an all-weather surface. The use of grass and gravel are expressly prohibited, but the use of mechanically-reinforced grass is allowed. The proposed text amendment also adds further specificity to the types of environmental benefits that could be offered by applicants for Planned Unit Developments.

### Relationship to the Comprehensive Plan

The proposed text amendments would implement § 101.1 of the General Provisions Element of the Comprehensive Plan, which calls for improving the physical character of the District; §§ 402.2 and 405.5 of the Environmental Protection Element, which calls for minimized sewage overflows and protected natural feature; and § 703.2(b), which recommends a policy to encourage appropriate design solutions that contribute to the conservation of natural resources.

### Public Hearing

The Commission held a public hearing on the proposed text amendment on June 16, 2005. The Commission discussed what would be considered pervious pavement and the properties of surfaces such as Grasscrete and gravel. Representatives of the Natural Resources Defense Council, the National Ready Mixed Concrete Association, the Federation of Citizen's Associations of the District of Columbia, the Zoning Advisory Committee and the Anacostia Watershed Society spoke in favor of the text amendment. The Commission requested that the Office of Planning prepare a supplemental report addressing whether the proposed text amendment would result in an expanded ability for homeowners in tree and slope overlay districts to develop, whether impervious surfaces can be prohibited in the W-0 Zone District and the cost difference between pervious and impervious surfaces to the District.

During the hearing, the Commission discussed using the word "paved" rather than "surfaced," and if "all-weather surface" includes surfaces such as porous or pervious concrete. The Commission determined that all-weather surfaces included porous or pervious concrete, but not grass or gravel. Mechanically-reinforced grass was determined to be acceptable. The Commission suggested using the brand name Grasscrete to describe the mechanically-reinforced grass surface contemplated, with the expectation that a non-proprietary description would be formulated when the final rule was considered.

### Proposed Action

At its July 28, 2005 meeting, the Commission took proposed action pursuant to 11 DCMR § 3027.2 to approve the advertised text. A Notice of Proposed Rulemaking was published in the *D.C. Register* on September 23, 2005, at 52 DCR 8643, for a 30-day notice and comment period.

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) pursuant to § 492 of the District of Columbia Charter. NCPC, by report dated July 28, 2005, found that the proposed text amendments would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

ACF Environmental, a distributor of environmental products, submitted a letter to the record dated September 27, 2005, stating that it supports the proposal to eliminate the prohibition of pervious surfaces for all parking spaces and access driveways. However, it found the limited examples of porous or pervious concrete, porous asphalt, Grasscrete or a generic definition of

Z.C. NOTICE OF FINAL RULEMAKING & ORDER NO. 04-34  
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Grasscrete as "allowable all weather surfaces" to be too narrow because they omit competing products that may be of superior quality.

The Natural Resources Defense Council submitted a letter to the record dated September 28, 2005 in support of the proposed text amendments.

The Zoning Advisory Committee submitted a letter to the record dated October 17, 2005, recommending that the Commission permit mechanically-supported grass, gravel, crushed concrete, rock or stone, or a combination such materials, but not unsupported grass or gravel.

No other comments were received.

#### Final Action

At its regularly scheduled public meeting held January 9, 2006, the Zoning Commission took final action to adopt the text. The Commission determined that the phrase "mechanically-reinforced grass" adequately describes the types of surfacing techniques that Grasscrete and other similar products use. No other changes were made to the text as published in the Notice of Proposed Rulemaking.

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

Based on the above, the Commission finds that the proposed amendments to §§ 2117, 2303 and 2403 of 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

Title 11 DCMR (Zoning) is proposed to be amended as follows (new text is shown in **bold** and underline and deleted text is shown with ~~strike through~~):

A. Subsections 2117.3, 2117.4 and 2117.10 of § 2117 ACCESS, MAINTENANCE, AND OPERATION are amended to read as follows:

2117.3 All required parking spaces shall be clearly striped and lined according to the dimensions specified in § 2115. Durable materials that are all-weather ~~impervious~~ shall be used. Striping shall be maintained for as long as the parking spaces requiring the striping are in existence.

2117.4 Except as provided in §§ 2117.5 and 2117.6, each required parking space shall be accessible at all times directly from improved alleys with a minimum width of ten feet (10 ft.) or improved public streets via graded and unobstructed private driveways that form an all-weather

~~impervious surface. Improved streets and alleys providing access to required parking spaces shall have a minimum width of ten feet (10 ft.) and be paved in compliance with the standards of the D.C. Department of Transportation.~~

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2117.10 All open parking spaces, including access aisles, driveways, and ramp areas shall be paved surfaced and maintained with an all-weather surface of ~~bituminous, concrete, or brick materials, or a combination of these materials, or other materials approved by the D.C. Department of Transportation as structurally equivalent or better, that form an all-weather impervious surface and that are at least four inches (4 in.) in thickness.~~ **In addition to traditional impervious surfaces, allowable all weather surfaces include porous (or pervious) concrete, porous asphalt, and/or mechanically-reinforced grass, excluding grass or gravel.**

B. Subsection 2303.1 (a) of § 2303 PARKING LOTS is amended to read as follows:

All areas devoted to driveways, access lanes, and parking areas shall be paved **surfaced** and maintained with ~~bituminous, concrete, or brick materials, or a combination of these materials, or other material approved by the D. C. Department of Transportation as structurally equivalent or better, that form an all-weather impervious surface and that are a minimum of four inches (4 in.) in thickness~~ **an all-weather surface.** **In addition to traditional impervious surfaces, allowable all weather surfaces include porous (or pervious) concrete, porous asphalt, and/or mechanically-reinforced grass, excluding grass or gravel.**

C. Subsection 2403.9 (h) of § 2403, PUD EVALUATION STANDARDS, is amended to read as follows:

(h) Environmental benefits, such as:

**(1) Storm water runoff controls in excess of those required by Stormwater Management Regulations,**

**(2) Use of natural design techniques that store, infiltrate, evaporate, treat, and detain runoff in close proximity to where the runoff is generated, and**

**(3) Preservation of open space or trees;**

Vote of the Zoning Commission taken at its public meeting on July 28, 2005, to **APPROVE** the proposed rulemaking: 5-0-0 (Carol Mitten, John G. Parsons, Anthony J. Hood, Kevin Hildebrand, and Gregory Jefferies to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on January 9, 2006, by a vote of **5-0-0** (Carol Mitten, John G. Parsons, Anthony J. Hood, Gregory Jefferies, and Kevin Hildebrand [by absentee ballot] to adopt).

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 \_\_\_\_\_.