

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D. C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1987, hereby gives notice of the adoption of the following amendments to: section 927 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Attendant Care Services"; section 994 of Chapter 9, Title 29 DCMR entitled "Respite Care Services"; section 1910 of Chapter 19, Title 29 DCMR entitled "Personal Care Services"; section 4209 of Chapter 42, Title 29 DCMR entitled "Reimbursement Rates: Personal Care Aide Services"; section 4211 of Chapter 42, Title 29 DCMR entitled "Reimbursement Rates: Respite Services"; section 5009 of Chapter 50, Title 29 DCMR entitled "Reimbursement - Personal Care Services"; and section 5109 of Chapter 51, Title 29 DCMR entitled "Reimbursement - Home Health Aides". The amendments authorize an increase in the hourly Medicaid reimbursement rate to providers for services provided by personal care and home health aides. The amendments increase the hourly reimbursement rate by \$2.80 per hour for services provided under the State Plan, the Home and Community Based Waiver Services for Persons with Mental Retardation and Developmental Disabilities, and the Home and Community Based Waiver Services for Persons who are Elderly and Individuals with Physical Disabilities.

Providers have indicated that the current hourly rate is insufficient to recruit qualified workers. Federal rules require that the state Medicaid rates be sufficient to enlist enough providers to make certain that access to services is, at a minimum, comparable between program recipients and the general population. An increase of \$2.80 per hour would make the rates comparable to the hourly rate paid in surrounding jurisdictions and would ensure that local providers receive funds sufficient to meet the requirements of the proposed mandatory wage law. The Medicaid Program projects an increase in total program expenditures of approximately \$1,600,000 for services rendered by personal care aides and \$203,831 for services rendered by home health aides during fiscal year 2006 as a result of the increased reimbursement rates.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on January 13, 2006 (53 DCR 314). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

CHAPTER 9 (Medicaid Program) of Title 29 DCMR (Home and Community Based Waiver Services for Persons with Mental Retardation and Developmental Disabilities) is amended as follows:

- A. **Section 927.17 (Attendant Care Services) is amended to read as follows:**

927.17 The reimbursement rates for attendant care services shall be sixteen dollars and thirty cents (\$16.30) per hour.

B. Section 994.12(c) (Respite Care Services) is amended to read as follows:

(c) Sixteen dollars and thirty cents (\$16.30) per billable hour, per client that requires assistance with activities of daily living one (1) to seventeen (17) hours per day; or

C. Section 994.12(d) (Respite Care Services) is amended to read as follows:

(d) Three hundred dollars (\$300.00) per billable day, per client that requires assistance with activities of daily living eighteen (18) to twenty four (24) hours per day.

Chapter 19 of Title 29 DCMR (Home and Community Based Waiver Services for Persons with Mental Retardation and Developmental Disabilities) is amended as follows:

A. Section 1910.17 (Personal Care Services) is amended to read as follows:

1910.17 Each provider shall be reimbursed sixteen dollars and thirty cents (\$16.30) per hour for personal care services.

Chapter 42 of Title 29 DCMR (Home and Community Based Waiver Services for Persons who are Elderly and Individuals with Physical Disabilities) is amended as follows:

A. Section 4209.2 (Reimbursement Rates: Personal Care Aide Services) is amended to read as follows:

4209.2 Each provider shall be reimbursed sixteen dollars and thirty cents (\$16.30) per hour for services rendered by a Personal Care Aide.

B. Section 4211.1 (Reimbursement Rates: Respite Services) is amended to read as follows:

4211.1 The reimbursement rate for respite services is sixteen dollars and thirty cents (\$16.30) per hour for individuals needing one (1) to seventeen (17) hours per day, and a flat rate of three hundred dollars (\$300.00) per day for individuals needing eighteen (18) to twenty-four (24) hours per day.

Chapter 50 of Title 29 DCMR (Personal Care Services) is amended as follows:

- A. **Section 5009.1 (Reimbursement-Personal Care Aides) is amended to read as follows:**

5009.1 Each provider shall be reimbursed sixteen dollars and thirty cents (\$16.30) per hour for services rendered by a personal care aide.

Chapter 51 of Title 29 DCMR (Home Health Services) is amended as follows:

- A. **Section 5109.1 (Reimbursement-Home Health Aides) is amended to read as follows:**

5109.1 Each provider shall be reimbursed seventeen dollars and thirty cents (\$17.30) per hour for services rendered by a home health aide.

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Dental providers have indicated that current reimbursement rates are insufficient. Federal rules require that the state Medicaid rates are sufficient to enlist enough providers such that access to services is, at a minimum, comparable between program recipients and the general population. The Medicaid Program projects an increase in total program expenditures of approximately \$1,500,000 for FY 2006 as a result of increased reimbursement rates.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on January 6, 2006 (53 DCR 128). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 9 of Title 29 DCMR (Medicaid Program) is amended as follows:

- A. **Section 936.10 (Dental Services-Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities) is amended to read as follows:**

936.10 The reimbursement rates for dental services shall be as follows:

DESCRIPTION OF SERVICE	RATE
Periodic Dental Screening	\$42.00
Limit Oral Eval Problm Focus	\$60.00
Comprehensive Oral Evaluation	\$93.00
Extensive Oral Eval Prob Focus	\$81.00
Re-Eval Est Pt. Problem Focus	\$54.00
Comp Periodontal Evaluation	\$93.00
Intraor Complete Film Series	\$109.20

DESCRIPTION OF SERVICE	RATE
Periapical XRay; First Film	\$24.00
Periapical XRay; Each Additional FL	\$19.20
Occlusal XRay	\$34.80
Bitewing, Single First Film	\$25.20
Dental Bitewings Two Films	\$48.00
Dental Bitewings Four Films	\$57.60
P.A. Film	\$120.00
Panorex	\$96.00
Cephalometric Film	\$120.00
Pulp Test	\$46.80
Study Models	\$90.00
Preventive Prophylaxis (Adult)	\$93.00
Preventive Prophylaxis (Child)	\$56.40
Topical Fluor w/o Prophy Chi	\$34.80
Topical Fluor w/o Prophy Adult	\$31.20
Dental Sealants	\$45.60
Fixed Band Type	\$276.00
Fixed, Band Type Bilat (New)	\$390.00
Amalgam One Surface, Primary	\$108.00
Amalgam Two Surfaces, Primary	\$138.00
Amalgam Three Surfaces, Primary	\$166.80
Amalgam Four Surfaces, Primary	\$198.00
Amalgam One Surface, Permanent	\$108.00
Amalgam Two Surfaces, Permanent	\$138.00
Amalgam Three Surfaces, Permanent	\$166.80
Amalgam Four Surfaces, Permanent	\$198.00
Acrylic or Plastic Restoration, III	\$127.20
Resin Two Surfaces Anterior	\$162.00
Composite Resin 3 Surfaces Restoration	\$198.00
Esthetic Restoration Class IV	\$240.00
Resin-Based Composite One Surface	\$144.00
Resin-Based Composite Two Surface	\$192.00
Resin-Based Composite Three Surface	\$240.00
Resin-Based Composite Four Surface	\$283.20
Acrylic Jacket	\$480.00
Crown Resin	\$600.00
Gold (Full Cast)	\$720.00
Replacement Crown	\$90.00
Pulp Cap Direct, Exclude Final Rest	\$66.00
Pulpotomy	\$160.80
One Canal; Excludes Final Restoration	\$597.60
Two Canals; Excludes Final Restoration	\$709.20
Three Canals; Excludes Final Restoration	\$873.60
Retreatment of Previous Root Canal	\$788.40

DESCRIPTION OF SERVICE	RATE
Apexification/Recalcification Initial Visit	\$297.60
Apicoectomy	\$560.40
Apicoectomy/Periradicular Surg (Ea Add'l)	\$297.60
Retrograde Amalgam	\$216.00
Gingivectomy or Gingivoplasty, 5 MOR.T	\$535.20
Gingivectomy or Gingivoplasty, 1 T to 3 T	\$192.00
Clinical Crown Lengthening	\$595.20
Bone Replacement Graft 1st	\$542.40
Bone Replacement Graft-Ea add'l site Quad	\$406.80
Deep Scaling	\$217.20
Full Mouth Debridement	\$156.00
Complete Upper Denture	\$1,344.00
Complete Lower Denture	\$1,350.00
Upper Partial	\$450.00
Dentures Maxill Part Resin	\$1,005.60
Dentures Maxill Part Metal	\$1,440.00
Repair Broken Complete Denture	\$174.00
Replace FX Broken & Tooth on Denture	\$150.00
Extraction Erupted Tooth	\$132.00
Extraction of Tooth, Erupted	\$230.40
Extraction of Tooth, Soft Tiss. Imp	\$252.00
Extraction of Tooth Partial Bony	\$342.00
Extraction of Tooth, Complete Bony, Impac	\$420.00
Root Tips	\$420.00
Replantation of Tooth with Splint	\$450.00
Surgical Exposure of Boney Impaction	\$409.20
Mobilization Erupted	\$422.40
Biopsy of Oral Tissue Soft	\$241.20
Alveolectomy with Extraction	\$240.00
Alveoplasty not in conj w/ext. per quad	\$354.00
Stomatoplasty per arch uncomplicated	\$762.00
Excision of Canula	\$396.00
Incision Drainage Abscess, Intraoral	\$186.00
Incision & Drainage Extraoral	\$300.00
Curettage of Fistulous Tract	\$296.40
Frenulectomy	\$375.60
Bite Plane	\$201.60
Fixed Appliance Therapy	\$812.40
Palliative Treatment of Dental Pain	\$102.00
General Anesthesia	\$312.00
Sedation Ea. Add'l 15 min	\$134.40
Nitrous	\$55.20
Consultation	\$135.00
Hospital Visit	\$39.60

DESCRIPTION OF SERVICE	RATE
Consultant Evaluation Exam	\$81.00
Occlusal Equilibration by Report	\$48.00
Occlusal Adjustment Ltd	\$139.20
Occlusal Adjustment Complete	\$568.80

B. Section 964.1 (Dental Services) is amended as follows:

964.1 The reimbursement rate for dental services provided to eligible Medicaid recipients under the age of twenty-one (21) shall be as follows:

DESCRIPTION OF SERVICE	RATE
Periodic Dental Screening	\$35.00
Limit Oral Eval Problm Focus	\$50.00
Comprehensive Oral Evaluation	\$77.50
Extensive Oral Eval Prob Focus	\$67.50
Re-Eval Est Pt. Problem Focus	\$45.00
Comp Periodontal Evaluation	\$77.50
Intraor Complete Film Series	\$91.00
Periapical XRay; First Film	\$20.00
Periapical XRay; Each Additional FL	\$16.00
Occlusal XRay	\$29.00
Bitewing, Single First Film	\$21.00
Dental Bitewings Two Films	\$40.00
Dental Bitewings Four Films	\$48.00
P.A. Film	\$100.00
Panorex	\$80.00
Cephalometric Film	\$100.00
Pulp Test	\$39.00
Study Models	\$75.00
Preventive Prophylaxis (Adult)	\$77.50
Preventive Prophylaxis (Child)	\$47.00
Topical Fluor w/o Prophy Chi	\$29.00
Topical Fluor w/o Prophy Adult	\$26.00
Dental Sealants	\$38.00
Fixed Band Type	\$230.00
Fixed, Band Type Bilat (New)	\$325.00
Amalgam One Surface, Primary	\$90.00
Amalgam Two Surfaces, Primary	\$115.00
Amalgam Three Surfaces, Primary	\$139.00
Amalgam Four Surfaces, Primary	\$165.00
Amalgam One Surface, Permanent	\$90.00
Amalgam Two Surfaces, Permanent	\$115.00

DESCRIPTION OF SERVICE	RATE
Amalgam Three Surfaces, Permanent	\$139.00
Amalgam Four Surfaces, Permanent	\$165.00
Acrylic or Plastic Restoration, III	\$106.00
Resin Two Surfaces Anterior	\$135.00
Composite Resin 3 Surfaces Restoration	\$165.00
Esthetic Restoration Class IV	\$200.00
Resin-Based Composite One Surface	\$120.00
Resin-Based Composite Two Surface	\$160.00
Resin-Based Composite Three Surface	\$200.00
Resin-Based Composite Four Surface	\$236.00
Acrylic Jacket	\$400.00
Crown Resin	\$500.00
Gold (Full Cast)	\$600.00
Replacement Crown	\$75.00
Pulp Cap Direct, Exclude Final Rest	\$55.00
Pulpotomy	\$134.00
One Canal; Excludes Final Restoration	\$498.00
Two Canals; Excludes Final Restoration	\$591.00
Three Canals; Excludes Final Restoration	\$728.00
Retreatment of Previous Root Canal	\$657.00
Apexification/Recalcification Initial Visit	\$248.00
Apicoectomy	\$467.00
Apicoectomy/Periradicular Surg (Ea Add'l)	\$248.00
Retrograde Amalgam	\$180.00
Gingivectomy or Gingivoplasty, 5 MOR.T	\$446.00
Gingivectomy or Gingivoplasty, 1 T to 3 T	\$160.00
Clinical Crown Lengthening	\$496.00
Bone Replacement Graft 1st	\$452.00
Bone Replacement Graft-Ea add'l site Quad	\$339.00
Deep Scaling	\$181.00
Full Mouth Debridement	\$130.00
Complete Upper Denture	\$1,120.00
Complete Lower Denture	\$1,125.00
Upper Partial	\$375.00
Dentures Maxill Part Resin	\$838.00
Dentures Maxill Part Metal	\$1,200.00
Repair Broken Complete Denture	\$145.00
Replace FX Broken & Tooth on Denture	\$125.00
Extraction Erupted Tooth	\$110.00
Extraction of Tooth, Erupted	\$192.00
Extraction of Tooth, Soft Tiss. Imp	\$210.00
Extraction of Tooth Partial Bony	\$285.00
Extraction of Tooth, Complete Bony, Impac	\$350.00
Root Tips	\$350.00

DESCRIPTION OF SERVICE	RATE
Replantation of Tooth with Splint	\$375.00
Surgical Exposure of Boney Impaction	\$341.00
Mobilization Erupted	\$352.00
Biopsy of Oral Tissue Soft	\$201.00
Alveolectomy with Extraction	\$200.00
Alveoplasty not in conj w/ext. per quad	\$295.00
Stomatoplasty per arch uncomplicated	\$635.00
Excision of Canula	\$330.00
Incision Drainage Abscess, Intraoral	\$155.00
Incision & Drainage Extraoral	\$250.00
Curettage of Fistulous Tract	\$247.00
Frenulectomy	\$313.00
Bite Plane	\$166.00
Fixed Appliance Therapy	\$677.00
Palliative Treatment of Dental Pain	\$85.00
General Anesthesia	\$260.00
Sedation Ea. Add'l 15 min	\$112.00
Nitrous	\$46.00
Consultation	\$112.50
Hospital Visit	\$33.00
Consultant Evaluation Exam	\$67.50
Occlusal Equilibration by Report	\$40.00
Occlusal Adjustment Ltd	\$116.00
Occlusal Adjustment Complete	\$474.00

C. Section 964.2 (Dental Services) is amended to read as follows:

964.2 The reimbursement rates for dental services provided to eligible Medicaid recipients residing in an intermediate care facility for persons with mental retardation shall be as follows:

DESCRIPTION OF SERVICE	RATE
Periodic Dental Screening	\$42.00
Limit Oral Eval Problm Focus	\$60.00
Comprehensive Oral Evaluation	\$93.00
Extensive Oral Eval Prob Focus	\$81.00
Re-Eval Est Pt. Problem Focus	\$54.00
Comp Periodontal Evaluation	\$93.00
Intraor Complete Film Series	\$109.20
Periapical XRay; First Film	\$24.00
Periapical XRay; Each Additional FL	\$19.20

DESCRIPTION OF SERVICE	RATE
Occlusal XRay	\$34.80
Bitewing, Single First Film	\$25.20
Dental Bitewings Two Films	\$48.00
Dental Bitewings Four Films	\$57.60
P.A. Film	\$120.00
Panorex	\$96.00
Cephalometric Film	\$120.00
Pulp Test	\$46.80
Study Models	\$90.00
Preventive Prophylaxis (Adult)	\$93.00
Preventive Prophylaxis (Child)	\$56.40
Topical Fluor w/o Prophy Chi	\$34.80
Topical Fluor w/o Prophy Adult	\$31.20
Dental Sealants	\$45.60
Fixed Band Type	\$276.00
Fixed, Band Type Bilat (New)	\$390.00
Amalgam One Surface, Primary	\$108.00
Amalgam Two Surfaces, Primary	\$138.00
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Amalgam Two Surfaces, Permanent	\$138.00
Amalgam Three Surfaces, Permanent	\$166.80
Amalgam Four Surfaces, Permanent	\$198.00
Acrylic or Plastic Restoration, III	\$127.20
Resin Two Surfaces Anterior	\$162.00
Composite Resin 3 Surfaces Restoration	\$198.00
Esthetic Restoration Class IV	\$240.00
Resin-Based Composite One Surface	\$144.00
Resin-Based Composite Two Surface	\$192.00
Resin-Based Composite Three Surface	\$240.00
Resin-Based Composite Four Surface	\$283.20
Acrylic Jacket	\$480.00
Crown Resin	\$600.00
Gold (Full Cast)	\$720.00
Replacement Crown	\$90.00
Pulp Cap Direct, Exclude Final Rest	\$66.00
Pulpotomy	\$160.80
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Retreatment of Previous Root Canal	\$788.40
Apexification/Recalcification Initial Visit	\$297.60
Apicoectomy	\$560.40

DESCRIPTION OF SERVICE	RATE
Apicoectomy/Periradicular Surg (Ea Add'l)	\$297.60
Retrograde Amalgam	\$216.00
Gingivectomy or Gingivoplasty, 5 MOR. T	\$535.20
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Excision of Canula	\$396.00
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Incision & Drainage Extraoral	\$300.00
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Bite Plane	\$201.60
Fixed Appliance Therapy	\$812.40
Palliative Treatment of Dental Pain	\$102.00
General Anesthesia	\$312.00
Sedation Ea. Add'l 15 min	\$134.40
Nitrous	\$55.20
Consultation	\$135.00
Hospital Visit	\$39.60
Consultant Evaluation Exam	\$81.00
Occlusal Equilibration by Report	\$48.00

DESCRIPTION OF SERVICE	RATE
Occlusal Adjustment Ltd	\$139.20
Occlusal Adjustment Complete	\$568.80

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

and

Z.C. ORDER NO. 04-27

Z.C. Case No. 04-27

**(Text & Map Amendments – H Street NE Neighborhood
Commercial Overlay Zone District -- 11 DCMR)**

January 9, 2006

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2001)); having held a public hearing as required by § 3 of the Act (D.C. Official Code 6-641.03; and having referred the proposed amendment to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District Charter; hereby gives notice of the adoption of an amendment to Chapter 13 of the Zoning Regulations (11 DCMR) to add new §§ 1320 through 1326, containing the provisions of a new neighborhood commercial overlay, the H Street Northeast Neighborhood Commercial Overlay District (HS). The HS Overlay is divided into three sub-districts (a Housing Sub-district, a Retail Sub-district, and an Arts Sub-district), and will be mapped over all lots fronting onto H Street, N.E. from 2nd Street, N.E. to 15th Street, N.E. and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B. A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 18, 2005. Non-substantive changes were made to the text for reasons explained below. The final rules shall be effective upon publication of this notice in the *D.C. Register*.

The Commission initiated this rulemaking in response to a petition from the Office of Planning to advance objectives identified in the "H Street N.E. Strategic Development Plan". In 2002, the District of Columbia began working with H Street N.E. residents and business owners to identify issues and develop strategies for revitalizing the commercial corridor. The result was the H Street N.E. Strategic Development Plan, which established guidelines, goals, and standards that need to be achieved in the areas of historic preservation, land use, urban design, and transportation. The document also included an Implementation Summary that links selected strategies with the necessary implementation actions, including the formation of the HS Overlay.

Description of Text Amendment

In accordance with guidance from the H Street N.E. Strategic Development Plan, the proposed HS Overlay is divided into three sections. The first section (Housing Sub-district) of the Overlay corresponds to the Urban Living (Western Gateway) portion of the Strategic Development Plan

and provides a moderate-density and a medium-density mixed-use area focusing on residential development with ground floor retail or other commercial uses allowed, but not required. The second section (Retail Sub-district) corresponds to the Central Retail District (Retail Core) portion of the plan and provides a moderate-density retail, office, and residential use area with a focus on retail uses. The third section (Arts Sub-district) corresponds to the Arts and Entertainment District and provides for moderate-density retail and residential use, with a focus on arts and entertainment uses. The Overlay provides common design standards, like parking in the rear, zero setback from the street, and other pedestrian-friendly design criteria to encourage transit-oriented development.

The Overlay has further provisions that relate to historic preservation and urban fabric. Each sub-district provides for a bonus to the non-residential FAR allowed on-site for preservation of a pre-1958 building façade. In addition, buildings saving a pre-1958 façade are granted a 0.5 FAR bonus to overall density to be used for residential uses.

Finally, the HS Overlay sets guidelines for development review through PUD and special exception proceedings. Development on any lot containing more than 6,000 square feet is required to receive special exception approval. Any development lot in excess of 10,000 square feet may pursue a planned unit development.

Description of Map Amendment

This rulemaking establishes the H Street N.E. Neighborhood Commercial Overlay District that applies to all lots fronting onto H Street N.E. from 2nd Street to 15th Street and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B.

In addition, within the Overlay, the following properties are rezoned from C-2-A to C-2-B:

- a. Lots fronting on the south side of H Street, N.E., in Square 752;
- b. Lots fronting on the north side of H Street, N.E., in Square 776;
- c. Lots fronting on the south side of H Street N.E., in Square 777; and
- d. Lots fronting on the north side of H Street N.E., in Square 858.

Relationship to Comprehensive Plan

The HS Overlay was designed in conformance with the Comprehensive Plan for the National Capital ("Plan"). The Generalized Land Use Map shows the entire affected corridor as a mixed-use combination of moderate-density commercial and moderate-density residential uses. The Overlay would maintain densities and uses appropriate for these categories.

H Street, N.E. is identified in the Plan as a development opportunity area on the Generalized Land Use Policies Map. It is identified specifically as an area offering "opportunities to accommodate new growth and development." The Overlay would further the goals of the Plan by promoting a retail hub and an arts and entertainment destination area within the corridor.

The Overlay would also further the goals of the Plan laid out in both the Urban Design Element and the Ward 6 Plan. The Urban Design Element specifically encourages improvement of

commercial activity corridors. The Ward 6 Plan discusses growth and residential development on H Street N.E. The Overlay responds to all of these aspects and is not inconsistent with the Plan.

Public Hearing

A Notice of Public Hearing containing the proposed text and map amendments and setting the hearing date for April 7, 2005, was published in the *D.C. Register*, at 50 DCR 915.

The Office of Planning ("OP") submitted reports concerning these amendments, dated October 15, 2004 and March 28, 2005. The October 15, 2004 report indicated OP's support for the proposed amendment and outlined the proposed text changes. Prior to the public hearing, several issues were raised by the Zoning Commission, the ANC, and community stakeholders. In addition, the Commission received a number of letters from the development community in support of the proposed amendment. The OP report dated March 28, 2005 addressed the additional issues raised, including the height impacts of the rezonings, potential planned unit developments, affordable housing, transfer of development rights, new FAR restrictions and incentives, and rezoning of Lot 860 in Square 858.

At the public hearing, further issues were raised by both the ANC and the Zoning Commission. OP was asked to submit a supplemental report that would clarify the roles of the Board of Zoning Adjustment and Historic Preservation Review Board, address ANC recommendations, provide sign guidelines, and increase the non-residential FAR bonus in the housing sub-area.

Proposed Rulemaking

Following the conclusion of the April 7, 2005 public hearing, OP submitted a supplemental report on May 24, 2005 based on the comments and concerns raised at the public hearing. OP recommended changes to §§ 1321.3, 1325.1(a), and 1325.1(e) to address these concerns. The Commission accepted these changes and also added §1325.1(f) to create sign guidelines and removed gas station expansion from the special exceptions listed in §1320.4.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 4, 2005, at 50 DCR 10002. The Notice of Proposed Rulemaking was subsequently corrected on November 18, 2005, at 50 DCR 10187, to include the proposed map amendments that were missing from the original publication.

The Office of Zoning received one comment on the Notice of Proposed Rulemaking. On December 19, 2005, the Office received a letter from the law firm of Holland & Knight requesting that the Commission "clarify that all of the lots in Square 776 currently zoned C-2-A, including lots 9, 25, 26, 27, 29, 51, 52, 53, 800, 814, 815, 816, 817, and 821, are to be rezoned to C-2-B." It is clear in the wording of the map amendment that the rezoning in Square 776 applies only to those lots "fronting on the north side of H Street, N.E." Insofar as any of the lots listed in the Holland & Knight letter do not front on the north side of H Street, N.E., the Overlay, and therefore, the rezoning, does not apply to them.

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

Final Action

At its regularly scheduled public meeting held January 9, 2006, the Zoning Commission took final action to approve the proposed map and text amendments. No changes were made to the text as published in the *D.C. Register*. The Commission did, however, resolve one question brought to its attention by the Office of the Attorney General concerning the applicability, within the H Street Overlay, of 11 DCMR § 1304, which is a "general" special exception section applicable to all Neighborhood Commercial Overlays. The H Street Overlay has its own specific special exception section, at § 1325, which sets forth the criteria to be met to obtain a special exception within the H Street Overlay. The Commission made it clear at the January 9th public meeting that both §§ 1304 and 1325 were to apply within the H Street Overlay. Therefore, applicants for special exceptions within the H Street Overlay must meet all the criteria set forth in both § 1304 and § 1325.

Based upon the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purposes of the Zoning Regulations, and not inconsistent with the Comprehensive Plan for the National Capitol.

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

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

1. Rezone from C-2-A to C-2-B:

- a. Lots fronting on the south side of H Street, N.E., in Square 752;
- b. Lots fronting on the north side of H Street, N.E., in Square 776;
- c. Lots fronting on the south side of H Street N.E., in Square 777; and
- d. Lots fronting on the north side of H Street N.E., in Square 858.

B. Title 11 DCMR (Zoning) is amended by adding new §§ 1320 through 1326 to Chapter 13, "Neighborhood Commercial Overlay District."

1320 H STREET NORTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT (HS)

1320.1 The H Street Northeast Neighborhood Commercial Overlay District (HS) applies to all lots fronting onto H Street, N.E. from 2nd Street to 15th Street, N.E. and zoned C-2-A, C-2-B, C-2-C, C-3-A, or C-3-B. The Overlay is divided into three sub-districts affecting the following squares:

- (a) H Street Northeast Overlay Housing Sub-district (HS-H) encompasses properties fronting on H Street, N.E. in Squares 751, 752, 776, 777, 808, 809, 832, 833, 858, and 859 from 2nd to 7th Streets, N.E.;
- (b) H Street Northeast Overlay Retail Sub-district (HS-R) encompasses properties fronting on H Street, N.E. in Squares 889, 890, 911, 912, 933, 958, 959, 981, and 982 from 7th to 12th Streets, N.E.;
- (c) H Street Northeast Overlay Arts Sub-district (HS-A) encompasses properties fronting on H Street, N.E. in Squares 1003, 1004, 1026, 1027, 1049N, and 1049 from 12th to 15th Streets, N.E.

1320.2 In addition to the purposes in § 1300, the purposes of the HS Overlay District are to:

- (a) Implement the policies and goals of the Comprehensive Plan and the *H Street NE Strategic Development Plan* as approved by the Council of the District of Columbia on February 17, 2004 (R15-460);
- (b) Encourage residential uses along the H Street, N.E. corridor, particularly provision of affordable units and reuse of upper floors;
- (c) Encourage the clustering of uses into unique destination districts along the corridor, specifically a housing district from 2nd Street to 7th Street, N.E.; a neighborhood-serving retail shopping district from 7th Street to 12th Street, N.E.; and an arts and entertainment district from 12th Street to 15th Street, N.E.;
- (d) Establish design guidelines for new and rehabilitated buildings that are consistent with the historic character and scale of the Overlay District; and
- (e) Encourage the reuse of existing buildings along the corridor.

1320.3 For purposes of § 1302, the designated use area shall include any lot within the HS Overlay District that fronts on H Street, N.E. In addition to the ground floor uses designated by §1302.2, the following uses are also designated in each Sub-district:

- (a) HS-H Sub-district: Residential Uses
- (b) HS-R Sub-district:

- (1) Candy store;
- (2) Computer store;
- (3) Delicatessen;
- (4) Fabric store;
- (5) Health or exercise studio;
- (6) Ice cream parlor;
- (7) Plant store or nursery;
- (8) Secondhand or consignment store;
- (9) Shoe store;
- (10) Video rental and sales; and
- (11) Other similar personal/consumer service establishment or retail use.

(c) HS-A Sub-district: Any use listed in §1323.2.

1320.4 The following buildings, structures, and uses are permitted only by special exception if approved by the Board of Zoning Adjustment, in accordance with the standards specified in §§ 3104 and 1325 of this Title.

- (a) Any use requiring a special exception in the underlying zone, except a new gasoline service station;
- (b) Accessory parking spaces located off-site from the principal use;
- (c) Fast food restaurant or food delivery service provided:
 - (1) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District, unless separated therefrom by a street or alley;
 - (2) If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line;
 - (3) Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater.

The entrance to the enclosure shall include an opaque gate and shall not face a Residence District; and

(4) This use shall occupy no more than twenty-five percent (25%) of the linear street frontage within the HS Overlay District as measured along the lots that face the designated roadway;

(d) Funeral, mortuary, or undertaking establishment;

(e) Parking garage; and

(f) Construction of a new building or enlargement of the gross floor area of an existing building by fifty percent (50%) or more, if located on a lot that has six thousand square feet (6,000 sq. ft.) or more of land area.

1320.5 The following uses are prohibited:

(a) Automobile and truck sales;

(b) Automobile laundry;

(c) Boat or marine sales;

(d) Gasoline service station;

(e) Outdoor storage of any materials; and

(f) Parking lot.

1320.6 The provisions of §1302.5 shall not apply to the HS Overlay District.

1320.7 For purposes of §1303.2, the designated roadway within the HS Overlay Districts shall be H Street, N.E.

1321 HS OVERLAY HOUSING SUB-DISTRICT (HS-H)

1321.1 The purpose of the housing sub-district is to encourage housing.

1321.2 The floor area ratio for new construction in the HS-H Sub-district may not exceed 0.5 FAR for non-residential uses, except as provided in §1321.3.

1321.3 New construction that preserves an existing façade constructed before 1958 is permitted to use an additional 1.0 FAR, for up to a maximum non-residential density of 1.5 FAR, for office uses or neighborhood-serving retail uses as permitted in §§701.1 and 701.4.

1321.4 In the event that a grocery store is constructed on Square 776, a maximum non-residential density of 1.5 FAR shall be permitted on that Square.

1322 HS OVERLAY RETAIL SUB-DISTRICT (HS-R)

1322.1 The HS Overlay Retail Sub-district is intended to encourage retail uses.

1322.2 For the purposes of §§ 1322.3 and 1326.1(a), preferred uses in the HS-R Sub-district are:

- (a) Antique store;
- (b) Apparel and accessories shop;
- (c) Appliance sales or repair;
- (d) Bakery;
- (e) Banking or financial institution (excluding check cashing services);
- (f) Bicycle shop;
- (g) Bookstore;
- (h) Café, delicatessen, or lunch counter (excluding fast food);
- (i) Candy store
- (j) Camera/photo sales;
- (k) Catering establishments;
- (l) Cobbler or shoe repair;
- (m) Collection center for dry cleaning;
- (n) Computer store;
- (o) Cosmetics or toiletries sale;
- (p) Department store;
- (q) Dressmaker or tailor;
- (r) Drug store;

- (s) Dry goods store;
- (t) Electronic sales;
- (u) Fabric store;
- (v) Film exchange or development;
- (w) Florist;
- (x) Gift or card shop;
- (y) Grocery store;
- (z) Gym or exercise studio;
- (aa) Hardware store;
- (bb) Hobby shop;
- (cc) Home furnishing sales;
- (dd) Ice cream parlor;
- (ee) Interior decorating shop;
- (ff) Jewelry shop;
- (gg) Office supplies or services store;
- (hh) Music or instrument sales;
- (ii) Pet shop;
- (jj) Pharmacy;
- (kk) Plant store or nursery;
- (ll) Professional services or office not on the ground floor;
- (mm) Restaurant (excluding fast food);
- (nn) Secondhand or consignment store;
- (oo) Shoe store;

(pp) Sporting goods; and

(qq) Video rental and sales.

1322.3 New construction that preserves an existing façade constructed before 1958 is permitted 0.5 FAR in addition to the non-residential density permitted in the underlying zone for non-residential preferred uses listed in §1322.2.

1323 HS OVERLAY ARTS SUB-DISTRICT (HS-A)

1323.1 The HS Overlay Arts Sub-district is intended to encourage arts and entertainment uses.

1323.2 For the purposes of §§ 1320.3(c), 1323.4 and 1326.1(a), preferred uses are:

- (a) Art center;
- (b) Art gallery;
- (c) Art or performing arts school;
- (d) Artist housing;
- (e) Artist studio;
- (f) Artists' supply store;
- (g) Arts services, including set design and restoration of artworks;
- (h) Bar, nightclub, or cocktail lounge;
- (i) Book store;
- (j) Cabaret;
- (k) Coffee shop, café, or delicatessen;
- (l) Concert hall or other performing arts space;
- (m) Library;
- (n) Movie theater;
- (o) Museum;
- (p) Musical instruments store;

- (q) Performing arts ticket office or booking agency;
- (r) Photographic studio;
- (s) Picture framing shop;
- (t) Printing, lithographing, or photoengraving establishment, in each case not exceeding twenty-five hundred square feet (2,500 ft.²) of gross floor area;
- (u) Record store;
- (v) Recording studio;
- (w) Restaurant; and
- (x) Theater.

1323.3 The floor area ratio in the HS-A Sub-district for new construction may not exceed 1.0 FAR for non-residential uses except as provided in §1323.4.

1323.4 New construction that preserves an existing façade constructed before 1958 is permitted 0.5 FAR in addition to the non-residential FAR permitted in the underlying zone for non-residential preferred uses listed in §1323.2.

1324 DESIGN REQUIREMENTS (HS)

1324.1 The design requirements of §§ 1324.2 through 1324.16 shall apply to any lot in the HS Overlay District for which a building permit was applied after October 25, 2004.

1324.2 Buildings shall be designed and built so that not less than seventy-five percent (75%) of the streetwall(s) to a height of not less than twenty-five feet (25 ft.) shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots shall be constructed to both property lines abutting public streets.

1324.3 New construction that preserves an existing façade constructed before 1958 is permitted to use, for residential uses, an additional 0.5 FAR above the total density permitted in the underlying zone district for residential uses.

1324.4 In C-2 Districts within the HS Overlay District, a seventy percent (70%) residential lot occupancy shall be permitted.

1324.5 For the purposes of this Section, the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin.

- 1324.6 For the purposes of § 1324.5, "residential uses" includes single-family dwellings, flats, multiple dwellings, rooming and boarding houses, and community-based residential facilities.
- 1324.7 Parking structures with frontage on H Street, N.E. shall provide not less than sixty-five percent (65%) of the ground level frontage as commercial space.
- 1324.8 Each new building on a lot that fronts on H Street, N.E. shall devote not less than fifty percent (50%) of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building.
- 1324.9 Security grilles shall have no less than seventy percent (70%) transparency.
- 1324.10 Each commercial use with frontage on H Street, N.E. shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one primary entrance on H Street directly accessible from the sidewalk.
- 1324.11 Buildings shall be designed so as not to preclude an entrance every forty feet (40 ft.) on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby.
- 1324.12 The ground floor level of each building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.).
- 1324.13 Buildings subject to § 1324.12 shall be permitted an additional 5 feet (5 ft.) of building height over that permitted in the underlying zone.
- 1324.14 Projection signs shall have a minimum clearance of eight feet (8 ft.) above a sidewalk and fourteen feet (14 ft.) above a driveway, project no more than three feet, six inches (3 ft., 6 in.) from the face of the building, and end a minimum of one foot (1 ft.) behind the curbline or extension of the curbline.
- 1324.15 Façade panel signs shall not be placed so as to interrupt windows or doors and shall project no more than twelve inches (12 in.) from the face of the building.
- 1342.16 Roof signs are prohibited.

1325 SPECIAL EXCEPTION REQUIREMENTS (HS)

- 1325.1 The buildings, structures, and uses listed in § 1320.4 and exceptions from the requirements of the H Street Overlay District shall be permitted as a special exception if approved by the Board of Zoning Adjustment after public hearing, based on § 3104, provided the following criteria and the requirements of § 1304 are met:

- (a) The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the *H Street N.E. Strategic Development Plan*;
- (b) The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board;
- (c) Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions;
- (d) Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences;
- (e) Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences; and
- (f) The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent the design guidelines of the *H Street N.E. Strategic Development Plan*.

1325.2 An applicant may demonstrate compliance with § 1325.1(f) by demonstrating that the signage will be exclusively located on upper facades, awnings, and transom windows, constructed of durable materials, and sensitively designed; and will not affect more than twenty percent (20%) of display windows, consist of backlit box signs or neon product advertisements, block visibility into a store, or be overly obtrusive.

1325.3 The Board may impose requirements pertaining to design, appearance, signs, massing, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the H Street Overlay District.

1325.4 Applicants shall demonstrate that projects requiring a special exception shall be consistent with the design intent of the design requirements, of § 1324 and the design guidelines of the *H Street N.E. Strategic Development Plan*.

1326 PLANNED UNIT DEVELOPMENT PROVISIONS (HS)

1326.1 A planned unit development (PUD) in the HS Overlay District shall be subject to the following provisions in addition to those of Chapter 24 of this Title:

- (a) The additional height and floor area above that permitted as a matter-of-right shall be used only for housing or the preferred uses listed in §§ 1322.2 and 1323.2 and

(b) The PUD process shall not be used to reduce requirements in this Chapter for designated uses, specifically retail, service, entertainment, and arts uses.

1326.2 The minimum area included within the proposed PUD, including the area of public streets or alleys proposed to be closed, shall be ten thousand square feet (10,000 ft.²).

The Zoning Commission voted to approve the proposed rulemaking during its public meeting of July 11, 2005, by a vote of 4-0-1 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, and Kevin L. Hildebrand to approve; Gregory N. Jeffries, having not participated, not voting).

The Zoning Commission, at its public meeting of January 9, 2006, adopted this Order by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Kevin L. Hildebrand [by absentee ballot] to adopt; Gregory N. Jeffries, not having participated, not voting).

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