

**DEPARTMENT OF HEALTH
NOTICE OF PROPOSED 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 his intent to take final rulemaking action to adopt the following amendments to Chapter 41 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

This rulemaking will make Chapter 41 § 4123 of Title 17 of the District of Columbia Municipal Regulations, which sets forth the procedural guidelines for the administrative appeal of a decision of an administrative law judge ("ALJ") to the health occupations board responsible for regulating that profession, applicable to persons aggrieved by an order of an ALJ issued pursuant to D.C. Official Code § 2-1831.16(b) as permitted by D.C. Official Code §§ 2-1831.03(i) and D.C. Official Code § 2-1831.16(b).

This rulemaking was published as proposed rulemaking on July 28, 2006 at 53 DCR 6107. No comments were received from the public in connection with this proposed rulemaking. However, in an effort to clarify the intent of the rulemaking, § 4123.1(c) was amended to change "persons" to "any party" to clarify that the government is also entitled to appeal an order to the Board pursuant to D.C. Official Code § 2-1831.16(b)(2001). Therefore, the rulemaking is being republished. These Proposed Rules will supercede those published on July 28, 2006.

The following rulemaking action is proposed:

17 DCMR Chapter 41, HEALTH OCCUPATIONS: ADMINISTRATIVE PROCEDURES, is amended as follows:

Section 4123.1 is amended to read as follows:

- 4123.1 This section shall apply to appeals from decisions of ALJ's under this chapter by the following persons:
- (a) Persons found by an ALJ to have committed an infraction involving a violation of this subtitle, the Act, or any other act regulating health professionals pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code § 2-1801.01 (2001);
 - (b) Persons against whom a cease and desist order has been entered pursuant to § 516 of the Act, D.C. Code § 3-1205.16 (2001); and
 - (c) Any party aggrieved by an order of an ALJ issued pursuant to D.C. Official Code § 2-1831.16(b).

A new section 4123.14 is added to read as follows:

4123.14 A party aggrieved by a final decision of a board may seek review of the decision by the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act, D.C. Code §§ 2-501 to D.C. Official Code § 2-511 (2001).

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

DEPARTMENT OF HEALTH

AMENDED NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health ("Department"), pursuant to § 307 of the AccessRx Act of 2004, effective May 18, 2004 (D.C. Law 15-164; D.C. Official Code § 48-833.07) (the Act), and Mayor's Order 2006-60, dated June 7, 2006, hereby gives amended notice of his intent to take final rulemaking action to adopt the following new chapter 18 of Title 22 of the District of Columbia Municipal Regulations (DCMR), entitled "Prescription Drug Marketing Costs" after November 14, 2006.

The Director of the Department of Health previously caused a Notice of Proposed Rulemaking to be published in the D.C. Register on September 29, 2006 indicating his intent to adopt final rules in not less than thirty (30) days from the date of publication of the September 30, 2006 notice in the D.C. Register at 53 DCR 7879. Pharmaceutical Research and Manufacturers of America has requested a fifteen day extension of the comment period so that more meaningful comments may be submitted. The Director of the Department of Health now causes this Amended Notice of Proposed Rulemaking indicating an extension of the comment period until Tuesday, November 14, 2006. No changes have been made to the substance of the proposed rules.

The adoption of Chapter 18, which had until now been reserved, is necessary to implement Title III of the Act, which requires manufacturers and labelers of prescription drugs in the District who engage in marketing in the District to report to the Department their prescription drug marketing costs.

Chapter 18 (Prescription Drug Marketing Costs) of Title 22 DCMR (Public Health and Medicine) is added as follows:

1800 MANNER OF REPORTING AND FILING FEE

- 1800.1 Each manufacturer or labeler of prescription drugs that employs directs or utilizes marketing representatives in the District shall file the annual report required by section 302 of the Act by July 1st of each year.
- 1800.2 The annual report shall include complete information regarding all funds expended by the manufacturer or labeler on marketing costs for prescription drugs in the District as required in section 303 of the Act.
- 1800.3 The annual report required in § 1800.1 is comprised of the following electronic forms located on the Department's website at <http://www.doh.dc.gov>:

- (a) **Form One: Annual Report Form** – containing general information about the manufacturer or labeler
 - b) **Form Two: Individual Recipient Form** – capturing costs spent by manufacturer or labeler to each individual recipient of those funds. A separate Form Two is required for each recipient.
- 1800.4 Both Form One and Form Two shall be filed electronically. In addition Form One and the appropriate number of the Form Two shall be printed out, completed and filed with the Department July 1st of each year, as described in §1800.8. The printed Form One must be signed by the representative of the manufacturer or labeler who has been authorized to complete the forms on behalf of the manufacturer or labeler.
- 1800.5 The manufacturer or labeler is required to file a Form Two for each recipient of funds spent for marketing
- 1800.6 Except as provided in § 1800.7, the information submitted as part of the annual report in § 1800.1 shall cover the period from January 1st to December 31st of the previous calendar year.
- 1800.7 For the first required annual report, to be filed by July 1, 2007, the information submitted in the report shall cover July 1, 2006 to December 31, 2006.
- 1800.8 Immediately upon filing the required annual report pursuant to § 1800.3, each manufacturer or labeler shall pay to the Department the required filing fee of two thousand five hundred dollars (\$2,500), by mailing a check, made out to “D.C. Treasurer,” to District of Columbia Department of Health, Chief Financial Officer, 825 North Capitol Street, N.E., Room 5100, Washington, D.C. 20002. The originals of Form One and Form two shall be included with the filing fee.
- 1801 ENFORCEMENT AND FINE**
- 1801.1 These rules may be enforced in a civil action brought by the Office of the Attorney General for the District of Columbia.
- 1801.2 Failure to timely file a complete annual report in accordance with § 1800.3 constitutes a civil violation.
- 1801.3 A fine of one thousand dollars (\$1,000), plus costs and attorney’s fees, may be adjudged for each civil violation of § 1801.2.

1801.4 Each failure to timely file either a Form One or a Form Two for each recipient in accordance with the requirements of the Act or this Chapter constitutes a separate civil violation.

1899 DEFINITIONS

1899.1 As used in this Chapter the following terms shall have the meanings ascribed:

Department – Department of Health.

Director – Director of the Department.

Labeler and Manufacturer shall have the meanings ascribed to them by sections 102(11) and 102(12) of the Act.

Marketing Representative –an individual who is employed by or is under contract to represent a manufacturer or labeler and engages in the marketing of prescription drugs in the District to any person or entity licensed to provide health care in the District.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than Tuesday, November 14, 2006. Comments should be filed with Cheryl Edwards, Chief of Staff, Office of the Director, Department of Health, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002 with a copy to Phillip Husband, Deputy General Counsel, Office of the General Counsel, Department of Health, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of these rules may be obtained free of charge at the above address during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 1301 of the Assisted Living Residence Regulatory Act of 2000 (hereinafter "the Act"), effective June 24, 2000, D.C. Law 13-127, D.C. Official Code § 44-101.01 *et seq.*, at 44-113.01, and in accordance with Mayor's Order 2005-137, dated September 27, 2005, hereby gives notice of his intent to adopt the following licensure rules for assisted living residences in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the forty-five (45) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

The purpose of this rulemaking is to protect the health and safety of individuals receiving assisted living services in the District of Columbia. These rules currently set licensing fees; subsequent amendments will set forth, as needed, standards in addition to those contained in the Act under which licensed assisted living residences must operate. Enforcement actions for violation of any provision of this Chapter shall be implemented pursuant to the procedures contained in 22 DCMR Chapter 31.

Title 22 DCMR is amended by adding the following new Chapter 101:

ASSISTED LIVING RESIDENCES

10100 GENERAL PROVISIONS

10100.1 These rules are implemented pursuant to and in accordance with the Assisted Living Residence Regulatory Act of 2000 (hereinafter "the Act"), effective June 24, 2000, D.C. Law 13-127, D.C. Official Code § 44-101.01 *et seq.* Each assisted living residence must comply with the Act and with these rules, which together constitute standards for licensing and operation of assisted living residences within the District of Columbia.

10101 FEES

10101.1 As provided in Section 302(b) of the Act, each assisted living residence facility seeking an initial license shall pay a base fee of one hundred dollars (\$100.00), plus a fee of six dollars (\$6.00) per resident based on license capacity. These fees shall be paid at the time of the facility's application for the initial license.

10101.2 As provided in Section 304(d) of the Act, each assisted living residence facility seeking a renewal of its license shall pay a base fee of one hundred dollars (\$100.00), plus a fee of six dollars (\$6.00) per resident based on license capacity. These fees shall be paid at the time of the facility's application for the renewal license.

- 10101.3 Each assisted living residence facility seeking an initial license or renewal license which fails to submit its application timely, as provided in Sections 302(a) and 304(b) of the Act, shall pay, in addition to the base fee and per-resident fee specified herein, a late fee of one hundred dollars (\$100.00). This fee shall be paid at the time of the facility's application for the license.
- 10101.4 As provided in Section 305 of the Act, each assisted living residence facility seeking a revised license as required due to changes within the facility shall pay the following fees, as applicable, which fees shall be paid at the time of the facility's request for revision of the license:
- (a) For a revision based on changes any of which require re-inspection of the facility, a base fee of one hundred dollars (\$100.00), plus a fee of six dollars (\$6.00) per resident based on license capacity; or
 - (b) For a revision based on changes which do not require re-inspection of the facility, a fee of one hundred dollars (\$100.00).

10102 – 10199 RESERVED

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be submitted to Patricia W. VanBuren, Acting Administrator, Department of Health, Health Regulation Administration, 825 North Capitol Street, N.E., Second Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained by writing to the address shown above.

DISTRICT OF COLUMBIA HOUSING AUTHORITY
NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (“DCHA”) hereby gives notice of intent to take final rulemaking action to adopt regulations to administer a rent subsidy program entitled the Local Rent Supplement Program not later than thirty (30) days after the date of publication of this notice in the D.C. Register.

The Local Rent Supplement Program is intended to increase the stock of permanent affordable housing stock in the District of Columbia and was established under Title II of the Fiscal Year 2007 Budget Support Emergency Act of 2006, effective August 8, 2006 (D.C. Act A16-0476; 53 DCR 7068), which is the D.C. Housing Authority Rent Supplement Act of 2006. The Local Rent Supplement Program is designed to provide housing assistance to extremely low income households in the District of Columbia with such housing assistance being provided in the form of tenant-based, project-based or sponsor-based housing assistance. It is the intent of Local Rent Supplement Program to be administered in accordance with the DCHA Housing Choice Voucher Program unless specified otherwise in these proposed regulations.

DISTRICT OF COLUMBIA MUNICIPAL REGISTER

TITLE 14

CHAPTER 95

RENT SUBSIDY PROGRAMS: LOCAL RENT SUPPLEMENT PROGRAM

Secs.	
9500	Introduction
9501	Purpose of the Program
9502	Eligibility Generally
9503	Admissions/Preferences and the Waiting List
9504	Project and Sponsored Based Housing Assistance
9505	Tenant Based Housing Assistance
9506	Continuing Eligibility for LRSP Funding
9507	Allocation of Annual Funding
9599	Definitions

9500 INTRODUCTION

The District of Columbia Housing Authority’s (DCHA) Local Rent Supplement Program (LRSP) is authorized and funded with annual appropriations by the District of Columbia government. The intent of the LRSP is to increase the stock of permanent affordable housing units in the District of Columbia. It is designed to

complement the Housing Choice Voucher Program (HCVP) which is funded by the federal government and administered by the DCHA. Similar to HCVP, the LRSP is designed so that households contribute thirty percent (30%) of their adjusted annual income toward the cost for housing. The LRSP will pay the difference in the cost of housing. The LRSP has three types of housing assistance: Tenant-based, Project-based, and Sponsor-based. For the most part, and unless otherwise specified in this Chapter, the LRSP follows the rules and regulations of the HCVP program as may be amended from time to time. Some of the differences between LRSP and HCVP, as specified more fully herein, are that LRSP is not for housing outside of the District of Columbia and the preferences and priorities for the housing assistance are different than those specified in the HCVP rules and regulations.

9501 PURPOSE OF THE PROGRAM

9501.1 This chapter of this title shall set forth the rules governing the operation of the Local Rent Supplement Program (LRSP) established under Title II of the Fiscal Year 2007 Budget Support Emergency Act of 2006, effective August 8, 2006 (D.C. Act A16-0476; 53 DCR 7068), which is the D.C. Housing Authority Rent Supplement Act of 2006, as amended or as provided in subsequent appropriation authority.

9501.2 LRSP is established to provide housing assistance to Extremely Low-Income Households in the District of Columbia, including, but not limited to, those who are homeless and those in need of supportive services, such as elderly individuals or those with disabilities.

9501.3 Unless provided otherwise in this Chapter, DCHA shall administer the LRSP in accordance with DCHA HCVP rules and regulations, as amended.

9502 ELIGIBILITY GENERALLY

9502.1 DCHA shall ensure that initial admission to the LRSP is limited to Extremely-Low Income Households (including 1 person households) and all households served by LRSP funding shall be located in the District of Columbia.

- 9503** **ADMISSIONS/PREFERENCES AND THE WAITING LIST**
- 9503.1 Generally, eligible households shall be selected and admitted from the DCHA's existing HCVP waiting list in accordance with the HCVP rules and regulations established by the DCHA for selection and admission for the Tenant-based, Project-based, and Sponsor-based housing assistance in the LRSP unless specified otherwise in this Chapter.
- 9503.2 DCHA shall provide preferences for the LRSP Tenant-based housing assistance according to the following:
- (a) District of Columbia residents who are homeless households with one or more children under 18 years of age shall have a preference. The percentage for this preference shall be determined each year, by DCHA, based on the total applicant number of homeless households with children on the HCVP Tenant-based wait list to the total number of applicants on the HCVP Tenant-based wait list at the end of each fiscal year.
 - (b) The remainder of the LRSP Tenant-based housing assistance not administered in accordance with §9503.2(a) shall be administered in accordance with the preferences and priorities established by the HCVP rules and regulations.
 - (c) The LRSP Tenant-based housing assistance preference percentages shall be published as a notice annually in the District of Columbia Register.
- 9503.3 DCHA shall give preferences in the selection of the Sponsor-based housing assistance to sponsors of supportive housing for individuals with special needs.
- 9503.4 DCHA shall be able to provide LRSP funding to Project-based and Sponsor-based housing assistance for Supportive Housing for otherwise eligible applicants not currently on the HCVP wait list in accordance with the following:
- (a) Residents of such rental units shall be eligible for assistance under the LRSP without being processed through the HCVP wait list but shall meet the eligibility requirements of this Chapter and HCVP as determined by DCHA; and
 - (b) The Housing Provider shall provide DCHA with written explanation for the selection of the otherwise eligible applicants not currently on the HCVP waiting list.

- 9504 PROJECT AND SPONSOR BASED HOUSING ASSISTANCE**
- 9504.1 Project-based and Sponsor-based housing shall be operated and administered in accordance with DCHA HCVP rules and regulations governing HCVP project based assistance and the Partnership Program for Affordable Housing described in Chapter 93 of Title 14 of the District of Columbia Municipal Regulations, including, but not limited to, the execution of Long Term Subsidy Contracts with the Housing Provider unless specified otherwise in this Chapter.
- 9504.2 Pending LRSP funding availability, Long Term Subsidy Contracts for Project-based and Sponsor-based rental units shall have an initial term of up to fifteen (15) years.
- 9504.3 Payments under a Long Term Subsidy Contract may be paid as each rental unit in a project is leased to an eligible household as opposed to waiting until the project is fully occupied.
- 9504.4 LRSP funding is available for up to one hundred percent (100%) of the eligible rental units in any Project-based or Sponsor-based housing or such lesser percentage as may be determined by DCHA without regard to the type of households being served.
- 9504.5 LRSP funding may be available for eligible rental units in any Project-based or Sponsor-based housing with some or all operating costs subsidized by some other source of funds besides the LRSP, but for which the other subsidy(s) alone does not make the rental units affordable to income-eligible households unless prohibited or determined by DCHA otherwise.
- 9504.6 To maintain consistency for households receiving the LRSP funding, the DCHA shall, to the extent possible given funding resources available in the LRSP, continue to fund Project-based and Sponsor-based Housing Providers at rent levels, with adjustments from year to year, in accordance with the procedures and the amount of adjustments authorized in the HCVP or as determined by DCHA. Such continued funding shall also be based on continued compliance by the Housing Provider with this Chapter and HCVP rules and regulations.
- 9504.7 Project-based and Sponsor-based funds left "unobligated" at the end of each DCHA fiscal year shall be added to the LRSP funding for next fiscal year. Funds are left unobligated when there are no applications pending and there are no outstanding Requests for

- Proposals (RFPs) in which the respondents could use LRSP funding.
- 9504.8 Dollars allocated to Project-based and Sponsor-based housing assistance shall be based on a sum of the new fiscal year funding plus any “unobligated” Project-based and Sponsor-based carryover funds from the previous fiscal year.
- 9504.9 Single Resident Occupancy (SROs) units are eligible for Project-based and Sponsor-based housing assistance.
- 9504.10 Long Term Subsidy Contracts for Project-based and Sponsor-based housing assistance shall be awarded on a competitive basis as currently provided in Chapter 93 of Title 14 of the District of Columbia Municipal Regulations, as amended, which identifies the HCVP Partnership Program for Affordable Housing application and award process. Also, in furtherance of providing Project-based and Sponsor-based housing assistance, DCHA shall coordinate with District of Columbia agencies and departments, including, but not limited to, the Department of Housing and Community Development, District of Columbia Housing Finance Agency, Department of Human Services, and Department of Mental Health.
- 9505 TENANT-BASED HOUSING ASSISTANCE**
- 9505.1 LRSP Tenant-based housing assistance shall be administered in accordance with the DCHA HCVP rules and regulations except as provided in this Chapter.
- 9505.2 Rent Supplement Voucher shall not be eligible for portability as such term is defined and utilized in 24 CFR §§ 982.351 and 982.353, as amended.
- 9505.3 LRSP Tenant-based funds left “unobligated” at the end of each DCHA fiscal year shall be added to the LRSP funding for the next fiscal year. Funds are left unobligated when there are no Extremely Low Income households who could use LRSP funding.
- 9505.4 Dollars allocated to Tenant-based housing assistance shall be based on a sum of the new fiscal year funding plus any “unobligated” carryover funds from the previous fiscal year.

- 9506 CONTINUING ELIGIBILITY FOR LRSP FUNDING**
- 9506.1 Subject to availability of LRSP funds and the terms of the Long Term Subsidy Contract and any renewals thereof after the initial term, LRSP funds for Project-based and Sponsor-based housing assistance shall continue so long as the Housing Provider is in compliance with this Chapter and HCVP rules and regulations.
- 9506.2 Subject to availability of LRSP funds and the terms of the Rent Supplement Voucher, LRSP funds for Tenant-based housing assistance shall continue so long as the household is in compliance with this Chapter and the HCVP rules and regulations subject to §9506.3, as amended.
- 9506.3 Households assisted by LRSP funds shall be entitled to Title 14 of the District of Columbia Municipal Regulations Chapter 89, as amended, Informal Hearing Procedures for Applicants and Participants of the Housing Choice Voucher and Moderate Rehabilitation Programs as well as 24 CFR §982.555, as amended, as administered by DCHA.
- 9507 ALLOCATION OF ANNUAL FUNDING**
- 9507.1 For each annual appropriation of funds for the LRSP from the Government of District of Columbia, DCHA is authorized to make LRSP housing assistance available.
- 9507.2 For the initial year of appropriation for LRSP, the annual percentage of LRSP funding that will be available for Tenant-based, Project-based, and Sponsor-based housing assistance shall be the following:
- (a) Tenant-based in an amount of sixty percent (60%); and
 - (b) Project-based and Sponsor-based in an amount of forty percent (40%).
- 9507.3 After the initial year of appropriation for LRSP, DCHA shall be able to annually amend §9507.2, through official action of its Board of Commissioners, subsequent publication of notice of such action in the District of Columbia Register, and submittal to the Council of the District of Columbia.
- 9599 DEFINITIONS**
- 9599.1 Area Median Income -
- (a) For a household of 4 persons: the area median income for a household of 4 persons in the Washington Metropolitan Statistical

Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development;

- (b) For a household of 3 persons: 90% of the area median income for a household of 4 persons;
- (d) For a household of 2 persons: 80% of the area median income for a household of 4 persons;
- (e) For a household of 1 person: 70% of the area median income for a household of 4 persons; and
- (f) For a household of more than 4 persons: the area median income for a household of 4 persons, increased by 10% of the area median income for a family of 4 persons for each household member exceeding 4 persons (e.g., the area median income for a family of 5 shall be 110% of the area median income for a family of 4; the area median income for a household of 6 shall be 120% of the area median income for a family of 4.

- 9599.2 Extremely Low Income Household - an individual or family whose gross income does not exceed 30% of the Area Median Income, as adjusted for size of household.
- 9599.3 Housing Choice Voucher Program - the federal housing program authorized by Section 8 of the United States Housing Act of 1937, approved September 1, 1937 (50 Stat. 888); 42 U.S.C. § 1737(f) et seq., as administered by the District of Columbia Housing Authority.
- 9599.4 Housing Provider - an entity or its affiliate that owns and/or operates a unit receiving LRSP funds.
- 9599.5 Local Rent Supplement Program (LRSP) - the program established under Title II of the Fiscal Year 2007 Budget Support Emergency Act of 2006, effective August 8, 2006 (D.C. Act A16-0476; 53 DCR 7068), which is the D.C. Housing Authority Rent Supplement Act of 2006, to provide housing assistance to Extremely Low-Income residents in the District of Columbia, including, but not limited to, those who are homeless and those in need of supportive services, such as elderly individuals or those with disabilities.
- 9599.6 Long Term Subsidy Contract - a long term housing assistance payment contract between DCHA and the owner of building(s) or

the Housing Provider receiving LRSP housing assistance; and shall mean the same as the Housing Assistance Payment contract under the HCVP rules and regulations unless specified otherwise in this Chapter.

- 9599.7 Project-Based Housing Assistance - LRSP funds allocated under a Long Term Subsidy Contract and attached to units in a particular building, or set of buildings, owned and operated by a private or non-profit Housing Provider; and shall have the same meaning as "Project-based assistance" under the HCVP rules and regulations unless specified otherwise in this Chapter.
- 9599.8 Rent Supplement Voucher - a document issued by DCHA to households selected for admission to LRSP and shall mean the same as the "Housing Choice Voucher" under the HCVP rules and regulations unless specified otherwise in this Chapter. This document describes the LRSP, the procedures for DCHA's approval of the dwelling unit selected by the household, and shall state the obligations of the household under the LRSP.
- 9599.9 Sponsor-Based Housing Assistance - LRSP funds allocated under a Long Term Subsidy Contract to a particular private or non-profit Housing Provider to subsidize the rent, in units owned and operated by the provider, for the number of households established by the contract.
- 9599.10 Supportive Housing - housing provided in connection with voluntary services designed primarily to help tenants maintain housing, including, but not limited to, coordination/case management, physical and mental health, substance use management and recovery support, job training, literacy, and education, youth and children's programs, and money management.
- 9599.11 Tenant-Based Housing Assistance - LRSP funds allocated for an individual or family holding a Rent Supplement Voucher issued by DCHA to the individual or family selected for admission by HCVP and shall have the same meaning as "Tenant-Based assistance" under the HCVP rules and regulations unless specified otherwise in this Chapter.

All persons desiring to comment on the subject matter of this proposed rulemaking shall file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be submitted, in writing to, Mitzie Smith, Acting General Counsel, 1133 North Capitol Street, NE, Suite 210, Washington DC 20002. Additional copies of these proposed rules are available from the above address.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
ZC CASE NO. 05-10
(Text Amendment - Capitol Gateway Overlay District)

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 and 6-641.07 (2001)), hereby gives notice of its intent to amend Chapters and 16 and 30 of the Zoning Regulations (Title 11 DCMR). The proposed amendments place limits on density transferred through combined deployments, extend the Zoning Commission review and approval process and design guidelines to additional properties within the boundaries of the CG Overlay, and establish preferred retail and entertainment use requirements and regulations along First and Half Streets SE within the area. In addition, the proposed rules would impose, within the Overlay, a 15 foot setback and a 1:1 upper story step-back above a height of 110 feet for buildings fronting South Capitol Street; an upper stories step-back for building fronting Half Street SE; and a 1:1 upper story step-back above a height of 110 feet for buildings fronting Potomac Avenue SE and SW. The proposed rules also provide for referral of all applications for the review of buildings and uses on lots that abut South Capitol Street. A technical amendment was made to section 1603 to substitute the date "January 7, 2004" in place of the references to "the effective date of this section."

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following rulemaking action is proposed:

Title 11 DCMR (Zoning) is amended as follows:

A. Chapter 16, CAPITOL GATEWAY OVERLAY DISTRICT, is amended as follows:

1. Section 1600, PREAMBLE, subsection 1600.2 is amended to add the following new purposes:

- (g) Provide for the establishment of South Capitol Street as a monumental civic boulevard;
- (h) Provide for the development of Half Street SE as an active pedestrian oriented street with active ground floor uses and appropriate setbacks from the street façade to ensure adequate light and air, and a pedestrian scale; and
- (i) Provide for the development of First Street SE as an active pedestrian oriented street with active ground floor uses, connecting M Street, the Metro Station and existing residential neighborhoods to the Ballpark site and the Anacostia Waterfront.

2. Subsection 1602.1 is amended to read as follows:

1602.1 Two (2) or more lots within the Overlay District may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot; provided, that the aggregate residential and nonresidential floor area shall not exceed the matter-of-right maximum height or density of the underlying zone district(s), except when bonus density is being constructed, subject to the following:

- (a) Within the CG/CR District, the residential and nonresidential floor area on each individual parcel shall not exceed a maximum floor area ratio of 8.0 on parcels for which a height of 110 feet is permitted under the Height Act of 1910; or 8.5 on parcels for which a height of 130 feet is permitted under by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code §§ 6-601.01 to 6-601.09) as amended ("the Height Act"), including any bonus density;
- (b) Within the CG/CR District, the amount of commercial density transferred from one parcel to another may not exceed the lesser of an FAR of 3.0 or the amount of residential density being transferred;
- (c) Maximum permitted height shall be that permitted for any site receiving combined lot density within the CG/CR District, but only to the extent necessary to accommodate any additional density received from another parcel;
- (d) The combined lot provisions may not be used to transfer density to or from any property within the CG/C-3-C, CG/W-1, CG/W-2, or CG/W-3 Districts; and
- (e) In addition to the amount of density that may be transferred in accordance with §1602.1 (a), the Zoning Commission may, at its discretion, grant an additional transfer of density of 1.0 FAR maximum to or within Squares 700 and 701 and 702, subject to the applicant addressing to the satisfaction of the Zoning Commission the objectives and guidelines of §§1601 and 1604-1607, as applicable

3. Sections 1603 is amended to read as follows:

1603 BUILDINGS, STRUCTURES, AND USES IN THE CG/W-2 DISTRICT

1603.1 The following provisions apply to new buildings, structures, or uses within the G/W-2 District.

1603.2 No private driveway to any parking or loading berth areas in or adjacent to a building or structure constructed after January 7, 2004 shall directly face the waterfront.

- 1603.3 All buildings or structures constructed after January 7, 2004 on a lot that faces or abuts the Anacostia River shall be set back by no less than seventy-five (75) feet from the bulkhead, unless the Commission finds that such setback creates an undue economic hardship for the owner of the lot and in no case less than fifty (50) feet from the bulkhead.
- 1603.4 In the CG/W-2 District, the Zoning Commission, at its discretion, may grant bonus density for residential development in a building or a combined lot development, using a guideline of 1.0 FAR in excess of the normally allowed maximum of 4.0 FAR and an additional ten (10) feet in excess of the normally allowed maximum height of sixty (60) feet; provided that:
- (a) The building or combined lot development shall include at least 2.0 FAR of residential development;
 - (b) The Zoning Commission, at its discretion, may allow construction of such bonus density on the property zoned CG/W-2 or may allow only for the bonus density to be transferred off-site to a lot or lots zoned CG/CR; and
 - (c) The provisions of §§ 1709.6 through 1709.12 and § 1709.14 shall govern the procedures for transferring bonus density off-site if permitted by the Commission.
- 1603.5 The Zoning Commission, at its discretion, may also provide for additional on-site or off-site bonus density to be earned for setbacks required under this section, based on the land area of the setback and the proposed features for public open space uses; provided, that 2.0 FAR based on the land area of the open space setback shall be used as a general guideline.
4. Section 1604 is amended to read as follows:
- 1604 BUILDINGS AND STRUCTURES ON M STREET, S.E.**
- 1604.1 The following provisions apply to new buildings, structures, or uses with frontage on M Street S.E. within the CG Overlay.
- 1604.2 No driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building.
- 1604.3 The streetwall of each new building shall be set back for its entire height and frontage along M Street not less than fifteen (15) feet measured from the face of the adjacent curb along M Street, S.E.
- 1604.4 Each new building shall devote not less than thirty-five percent (35%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title; provided, that the following uses shall not be permitted: automobile, laundry, drive-

through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building). Such preferred uses shall occupy 100% of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control.

- 1604.5 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1604.4 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses.
- 1604.6 Not less than fifty percent (50%) of the surface area of the streetwall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses or the building.
- 1604.7 The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet.
- 1604.8 A building that qualifies as a Capitol South Receiving Zone site under § 1709.18 and for which a building permit has been applied for prior to August 31, 2001, shall not be subject to the requirements of this section.
- 1604.9 Where preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply.
5. The existing text of §§ 1605 and 1606 is redesignated as §§ 1611 and 1612.
6. New §§ 1605 through 1610 are added to read as follows:

1605 BUILDINGS, STRUCTURES, AND USES ON SOUTH CAPITOL STREET

- 1605.1 The following provisions apply to new buildings, structures, or uses with frontage on South Capitol Street within the CG Overlay.
- 1605.2 Each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than 15 feet, provided that a minimum of 60% of the street-wall shall be constructed on the setback line.
- 1605.3 Any portion of a building or structure that exceeds 110 feet in height shall provide an additional one-to-one (1:1) step back from the building line along South Capitol Street.
- 1605.4 No private driveway may be constructed or used from South Capitol Street to any parking or loading berth areas in or adjacent to a building or structure constructed after [effective date of this section].

1606 BUILDINGS, STRUCTURES, AND USES ON FIRST STREET S.E, SOUTH OF M STREET SE

- 1606.1 The following provisions apply to new buildings, structures, or uses with frontage on First Street S.E. south of M Street SE, within the CG Overlay.
- 1606.2 Each new building shall devote not less than seventy percent (75%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title; provided, that the following uses shall not be permitted: automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building).
- 1606.3 Preferred uses shall occupy 100% of the building's street frontage along First Street SE, except for space devoted to building entrances or required to be devoted to fire control.
- 1606.4 The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet.
- 1606.5 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1606.2 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses."
- 1606.6 Where preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply

1607 BUILDINGS, STRUCTURES, AND USES ON HALF STREET S.E., SOUTH OF M STREET SE

- 1607.1 The following provisions apply to new buildings, structures, or uses with frontage on Half S.E. south of M Street SE, within the CG Overlay.
- 1607.2 Any portion of a building or structure that exceeds 65 feet in height shall provide a minimum step back of 20 feet in depth from the building line along Half Street SE. Pursuant to §3104, the Zoning Commission may grant relief from this requirement, to a maximum of 15 feet in height and 8 feet in depth, for the provision of reasonable development footprints.
- 1607.3 Each new building shall devote not less than seventy percent (75%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of this Title; provided, that the following uses shall not be permitted: automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building).

- 1607.4 Preferred uses shall occupy 100% of the building's street frontage along Half Street SE, except for space devoted to building entrances or required to be devoted to fire control.
- 1607.5 The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet.
- 1607.6 For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1607.2 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses.
- 1607.7 No private driveway may be constructed or used from Half Street SE to any parking or loading berth areas in or adjacent to a building or structure constructed after *{effective date of this section}*.
- 1607.8 Where preferred use retail space is required under this section and provided, the provisions of DCMR 11 §633 shall not apply

1608 STEP BACK FOR CERTAIN BUILDINGS AND STRUCTURES ON POTOMAC AVENUE

- 1608.1 The following provisions apply to new buildings, structures, or uses with frontage on Potomac Avenue within the CG Overlay.
- 1608.2 Any portion of a building or structure that exceeds 110 feet in height shall provide an additional one-to-one (1:1) step back from the building line along Potomac Avenue.

1609 PRIVATE DRIVEWAYS ON P STREET SW

- 1609.1 No private driveway may be constructed or used from P Street SW to any parking or loading berth areas in or adjacent to a building or structure subject to the provisions of this chapter that is constructed after *{the effective date of this section}*.

1610 ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES AND USES

- 1610.1 The following provisions apply to properties located:

- (a) Within the CG/W-2 District;
- (b) On a lot that abuts M Street SE;
- (c) On a lot located within Squares 700 or 701, north of the Ballpark site;
- (d) On a lot that abuts South Capitol Street;
- (e) On a lot within Square 601, 656, or 657; or

- (f) Any lot that is the recipient of density through the combined lot provisions of §1602.
- 1610.2 With respect to those properties described in § 1610.1, all proposed uses, buildings, and structures, or any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the exterior design, shall be subject to review and approval by the Zoning Commission in accordance with the following provisions:
- 1610.3 In addition to proving that the proposed use, building, or structure meets the standards set forth in § 3104, an applicant requesting approval under this section must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will:
- (a) Help achieve the objectives of the CG Overlay District as set forth in §1600.2;
 - (b) Help achieve the desired mixture of uses in the CG Overlay District as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail or service uses;
 - (c) Be in context with the surrounding neighborhood and street patterns;
 - (d) Minimize conflict between vehicles and pedestrians;
 - (e) Minimize unarticulated blank walls adjacent to public spaces through facade articulation; and
 - (f) Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards.
- 1610.4 With respect to a building or structure to be constructed on a lot within the CG/W-2 District:
- (a) The building or structure shall provides suitably designed public open space along the waterfront;
 - (b) A plan shall be included in the application for suitable open space treatment of the setback area for such uses as walkway and bikeway, passive or active recreational use, and including provisions assuring private maintenance of the space, convenient and permanent public access to the space, and suitable connections to adjacent public space along the waterfront; and
 - (c) The application shall include view analysis that assesses openness of waterfront views and vistas, and views and vistas toward the Capitol Dome, other federal monumental buildings, existing neighborhoods, South Capitol Street, and the Frederick Douglas Bridge.

- 1610.5 With respect to a building or structure which has frontage on Half Street SE south of M Street SE or Front Street SE south of M Street SE:
- (a) The building or structure shall provide for safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses including retail, entertainment, cultural, and pedestrian concourse space;
 - (b) The building or structure shall provide for safe and convenient movement to and through the site, including to public transit, the Ballpark, and to the Anacostia River; and
 - (c) The application shall include view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront.
- 1610.6 With respect to a building or structure which has frontage on South Capitol Street SE:
- (a) The building or structure shall incorporate massing, materials, and buildings and streetscape landscaping to further the design and development of properties in a manner that is sensitive to the establishment of South Capitol Street as a monumental civic boulevard;
 - (b) The building or structure shall incorporate massing, location of access to parking and loading, and location of service areas to recognize the proximate residential neighborhood use and context, as applicable; and
 - (c) The application shall include view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront.
- 1610.7 The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.
- 1610.8 At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in § 3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of § 3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal as a preliminary matter to hearing the application.
- 1610.9 A building that qualifies as a Capitol South Receiving Zone site under § 1709.18 and for which a building permit has been applied for prior to August 31, 2001, shall not be subject to the requirements of this section.

Z.C. NOTICE OF PROPOSED RULEMAKING

Z.C. CASE NO. 05-10

PAGE 9

B. Chapter 30, ZONING COMMISSION PROCEDURES, § 3012.1 (a) is amended to read as follows (new text is shown in bolded and underlined and deleted text is shown with strikethrough):

- (a) The National Capital Planning Commission of all Chapter 18 applications and those applications for approval pursuant to 11 DCMR § ~~1603~~ **1610 (a) and (d)**;

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Washington D.C. 20001. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. A copy of this proposal may be obtained, at cost, by writing to the above address.