

## DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

The Acting Director of the District Department of the Environment, pursuant to authority conferred by section 6 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1305 (2001)); Mayor's Order 2005-70, dated April 19, 2005 (52 DCR 5495); Section 107 of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4) (2001)); and Mayor's Order 2006-61, dated June 14, 2006 (53 DCR 5684), hereby gives notice of her intent to take proposed rulemaking action to amend the Hazardous Waste Regulations in chapters 42 and 43 of Title 20 of the District of Columbia Municipal Regulations (DCMR) in not less than forty-five (45) days from the date of publication of this notice in the *D.C. Register*. Further, these rules shall not become effective until approved or disapproved by the Council of the District of Columbia, or forty-five (45) days after submission to the Council, not including Saturdays, Sundays, legal holidays, and days of Council recess, if the Council has not disapproved these rules.

The proposed rules would amend the Hazardous Waste Management Regulations in Title 20, DCMR, to incorporate, by reference, the most current corresponding federal Resource Recovery and Conservation Act (RCRA) regulations, published at 40 Code of Federal Regulations (CFR) Parts 124, 260 through 266, 268, 270, 273 and 279. The proposed amendments would change citations in the Hazardous Waste Management Regulations to remove references to superseded supplements of the D.C. Official Code. The proposed rules would also provide definitions for the CFR and D.C. Official Code to direct readers to the appropriate annual updates published after the effective date of these regulations. In addition, the proposed rules would change the references to the District of Columbia Department of Health to the newly established District Department of the Environment. Finally, with regard to permit fees, the proposed rules would: 1) clarify that permit fees paid by March 1 apply to the year in which they are paid rather than to the following calendar year, and 2) delete 20 DCMR § 4390.12 that provided for a hazardous waste generation fee exemption for District Government agencies, such that all government agencies, whether District or federal, would be required to pay these permit fees.

Deletions are shown in strikethrough and new language in bold and underlined.

Title 20 (Environment) of the District of Columbia Municipal Regulations is amended as follows:

A. Chapter 42, STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL, is amended as follows:

- 1) By striking the phrases "2004 Supp." and "2005 Supp." wherever they appear and inserting the figure "(2001)" in their place.

- 2) By striking the phrase "Department of Health" wherever it appears and inserting the phrase "District Department of the Environment" in its place.
- 3) Section 4201, RULES OF INTERPRETATION FOR FEDERAL REGULATIONS INCORPORATED BY REFERENCE, is amended as follows:
- a) Subsection 4201.3 is amended to read as follows:
- 4201.3 Unless specified otherwise, whenever a provision in the Hazardous Waste Management Regulations refers to Volume 40 of the *Code of Federal Regulations* (40 CFR), the provision shall refer to ~~Volume 40 revised as of July 1, 2004~~ **the most recently updated Volume 40 in publication and any amendments thereto.**
- b) Subsection 4201.4 is amended to read as follows:
- 4201.4 Unless specified otherwise, whenever a provision in the Hazardous Waste Management Regulations refers to a volume of the *Code of Federal Regulations* other than Volume 40, the ~~provision citation shall refer to the volume published as of July 1, 2004, and any amendments to the volume since its last revision date that were published in the Federal Register on or before June 30, 2004~~ **most recently updated volumes in publication and any amendments thereto.**
- 4) Section 4206, RECORD-RETENTION AND REPORTING REQUIREMENTS, subsection 4206.2 is amended to read as follows:
- 4206.2 Whenever the RCRA regulations in 40 CFR Parts 124, 260 through 266, 268, 270, 273, and 279 require that a document be sent to EPA, DOT, or another federal agency, the person required to send the document to EPA, DOT, or other federal agency shall, at the same time, send a copy to the Department's Hazardous Waste Division at the following address:

~~DOH/EHA~~**District Department of the Environment**  
**Bureau of Hazardous Material and Toxic Substances BHMTS**  
Hazardous Waste Division  
51 N Street, N.E., Third Floor  
Washington, D.C. 20002.

ADMINISTRATION AND ENFORCEMENT, is amended as follows:

- 1) By striking the phrases "2004 Supp." and "2005 Supp." wherever they appear and inserting the figure "(2001)" in their place.
- 2) Section 4300.1 is amended by striking the phrase "Department of Health" and inserting the phrase "District Department of the Environment" in its place.
- 3) Section 4390, FEE SCHEDULE, is amended as follows:

a) Subsections 4390.1 through 4390.4 are amended to read as follows:

- 4390.1 Except as provided in § 4390.5, each conditionally exempt small quantity generator shall pay an annual permit fee of two hundred dollars (\$200) for each generating site on or before March 1 of each year, ~~for the following calendar year or any portion thereof.~~
- 4390.2 Except as provided in § 4390.5, each small quantity generator of one hundred (100) to one thousand (1000) kilograms of hazardous waste per calendar month shall pay an annual permit fee of five hundred dollars (\$500) for each generating site on or before March 1 of each year, ~~for that following calendar year or any portion thereof.~~
- 4390.3 Except as provided in § 4390.5, each large quantity generator shall pay an annual permit fee of one thousand dollars (\$1000) for each generating site on or before March 1 of each year, ~~for that following calendar year or any portion thereof.~~
- 4390.4 Except as provided in § 4390.5, each owner or operator of a universal waste transfer facility, used oil transfer facility, or used oil processor or re-refiner shall pay an annual permit fee of five hundred dollars (\$500) on or before March 1 of each year, ~~for that following calendar year or any portion thereof.~~

b) Subsection 4390.8 is amended to read as follows:

- 4390.8 The owner or operator of a facility or unit permitted under § 4270 shall pay an annual facility permit fee of two thousand, five hundred dollars (\$2500) on or before March 1 of each year, for that following calendar year or any portion thereof.

- c) Subsection 4390.12 is deleted.
- 4) Section 4399, DEFINITIONS, is amended as follows:
- a) To add the following definitions:
- i) **CFR - the Code of Federal Regulations, which includes the most recently updated volumes in publication and any amendments thereto.**
  - ii) **D.C. Code - the District of Columbia (D.C.) Official Code. All D.C. Official Code citations are to the volumes published in 2001 as revised by the codifier through annual supplements.**
  - iii) **D.C. Official Code - the District of Columbia (D.C.) Official Code. All D.C. Official Code citations are to the volumes published in 2001 as revised by the codifier through annual supplements.**
- b) The definition of "Department" is amended to read as follows:
- Department – the District Department of ~~Health~~ the **Environment** or a successor agency.
- c) The definition of "Director" is amended to read as follows:
- Director – the Director of the District **Department of the Environment** ~~Department of Health~~ or his or her designee.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Corey Buffo, General Counsel, District Department of the Environment, 51 N Street, N.E., Room 6022, Washington, D.C. 20002. Comments must be received no later than forty-five (45) days after publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained by writing to the above address.

## DEPARTMENT OF HEALTH

NOTICE OF PROPOSED 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, 1997 hereby gives notice of the intent to adopt the following new sections 950 and 951 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Payment for Reserved Beds".

The proposed rulemaking will authorize the Department of Health, Medical Assistance Administration (MAA) to amend the policy governing reserved bed days in intermediate care facilities for persons with mental retardation (ICFs/MR). Vendor payment for reserved bed days under the current policy is limited to 18 days per year. The proposed rules will increase the number of reserved bed days for ICFs/MR by providing a maximum of 15 hospitalization and 45 therapeutic leave days during a 12 month period for which the provider would be paid the facility per diem rate, excluding the cost for one-to-one services. These rules shall also clarify that payment for reserved bed days in nursing facilities and ICFs/MR is to occur only after a Medicaid eligible individual resides in the facility for at least one day. Based on discussions with consumer advocates, family members and providers, MAA determined that an increase in the number of reserved bed days for therapeutic leaves of absence for persons residing in ICFs/MR would be in the best interests of both the individual receiving services and family. The increase in the number of days for therapeutic leave is adopted with the goal of enhancing the quality of life for ICF/MR residents.

The corresponding amendment to the District of Columbia State Plan for Medical Assistance ("State Plan") was approved by the Council of the District of Columbia. The corresponding State Plan amendment has been submitted to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services for approval. These rules shall become effective for services rendered on or after February 1, 2007.

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

Title 29 DCMR is amended by adding the following new sections 950 and 951 of Chapter 9 to read as follows:

**950 PAYMENT FOR RESERVED BEDS**

- 950.1 Vendor payment for reserved bed days for hospitalization or therapeutic leaves of absence, for a resident of a nursing facility, when provided in the resident's plan of care, shall not exceed eighteen (18) days during any fiscal year, if there is a reasonable expectation that the resident will return to the nursing facility.
- 950.2 Vendor payment for reserved bed days for hospitalization, for a resident of an intermediate care facility for persons with mental retardation (ICFs/MR) shall not exceed fifteen (15) days during any fiscal year, if there is a reasonable expectation that the resident will return to the facility.
- 950.3 Vendor payment for reserved bed days for therapeutic leaves of absence, for a resident of an ICF/MR, when provided in the resident's plan of care shall not exceed forty-five (45) days during any fiscal year, if there is a reasonable expectation that the resident will return to the facility.
- 950.4 Payment for reserved bed days authorized in accordance with section 950.1 shall equal 100 percent of the facility's per diem rate.
- 950.5 Payment for reserved bed days authorized in accordance with sections 950.2 and 950.3 shall equal the facility's per diem rate and shall not include reimbursement for one to one services.
- 950.6 Each resident shall reside in the nursing facility or ICF/MR for at least one day as a condition of vendor payment for reserved bed days.
- 950.7 Each provider shall require the family member or caregiver to sign a leave and request form upon exit and return to the facility. The provider shall ensure that each family member or caregiver provide contact information.
- 950.8 Each provider shall discuss the resident's medical regimen with the family member or caregiver. The provider shall ensure that each family member or caregiver is provided a sufficient quantity of the resident's medication for the leave period.
- 950.9 Each provider shall report to MAA any unusual incident that occurred during any therapeutic leave of absence.

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**951 MONTHLY REPORTING REQUIREMENTS FOR RESERVED BED DAYS**

951.1 Each provider shall submit to MAA on a monthly basis a status report reflecting the total number of reserved bed days used for each resident during the month and the cumulative total for the fiscal year, including the additional hospitalization days authorized pursuant to these rules. The report shall include the following information:

- (a) Resident's name;
- (b) Medicaid identification number;
- (c) Number of hospitalization reserved bed days used in previous months;
- (d) Number of therapeutic leave reserved bed days used in previous months;
- (e) Number of hospitalization reserved bed days used in the current month;
- (f) Number of therapeutic leave reserved bed days used in the current month;
- (g) Cumulative hospitalization reserved bed days used to date in the fiscal year; and
- (h) Cumulative therapeutic leave reserved bed days used to date in the fiscal year.

951.2 The monthly status report shall be submitted to MAA no later than the 10<sup>th</sup> day of each month unless the 10<sup>th</sup> day is on a weekend or a District of Columbia government holiday. In the case of a weekend or holiday, the report shall be submitted the first business day following the weekend or holiday.

951.3 The Medicaid Program shall seek repayment from the provider for any reserved bed days in excess of the limitations set forth in section 950.

**951.99 DEFINITIONS**

When used in sections 950 and 951 of this Chapter, the following terms and phrases shall have meanings ascribed:

**Fiscal Year (FY)** - Shall have the same meaning as the District of Columbia government fiscal year, October 1 through September 30.

**Therapeutic Leave**- Includes visits with relatives and friends as well as leave to participate in State-approved therapeutic and rehabilitative programs.

All persons wishing to comment on these proposed rules shall submit written comments no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5<sup>th</sup> Floor, Washington, DC 20002. Copies of the proposed rules may be obtained from the same address between the hours of 9:00 am and 5:00 pm, Monday through Friday, excluding holidays.

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

**Z.C. Case No. 04-33A**

**(Text Amendment – Inclusionary Zoning – Locations)**

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2001)), hereby gives notice of its intent to amend the §§ 1402.1, 1904.2., 1999.2, 2601.1, 2602.1, 2602.3, and 2608.1 of the Zoning Regulations (Title 11 DCMR) to specify the locations where the requirements and incentives of Chapter 26, Inclusionary Zoning (“IZ”), will apply.

The proposed text would apply the IZ requirements to all Residence Districts zoned R-3 through R-5-D; all Commercial Districts zoned C-1 through C-3-C; all Waterfront Districts zoned W-1 through W-3; all properties zoned Mixed Use (CR) or Special Purpose (SP); and all overlay districts, except the Downtown Development and Southeast Federal Center Overlay Districts. Also exempted from compliance are properties located in the existing five Transferable Development Rights Receiving Zones; the W-2 zoned portions of the Georgetown Historic District; the R-3 zoned properties of the Anacostia Historic District; or the C-2-A portion of the Naval Observatory Precinct District.

Amendments to the text of the Reed-Cooke and Uptown Arts-Mixed Use Overlay District are also proposed to eliminate provisions allowing additional height and bonus density if affordable housing is provided. Since properties in those overlays will be subject to mandatory affordable housing requirements, there is no longer a need to offer incentives to achieve an equivalent result.

Because the geographic reach of the IZ program is easily described in text, and because so much of the District would be subject to its requirements, there is no need to map the subject properties within an overlay. The proposed rules therefore eliminate the references to an Inclusionary Zoning Overlay within Chapter 26.

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 of the DCMR, ZONING, is amended as follows (new language shown in **bold and underlined**; deleted language in strikethrough):

A. Chapter 14, REED-COOKE OVERLAY DISTRICT, § 1402.1, is amended to read as follows:

- 1402.1 The maximum height permitted in the RC Overlay District shall not exceed forty feet (40 ft.) plus roof structure as defined in this title; ~~provided, that in the RC/C-2-B Overlay District, the Board of Zoning Adjustment may approve a maximum height of fifty feet (50 ft.) with appropriate setbacks from the street, plus roof structures, subject to determination by the Board that the project will provide for~~

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~~the on-site construction or substantial rehabilitation of low and moderate income household units, as defined by the regulations of the D.C. Department of Housing and Community Development, of a total gross floor area equal to fifty percent (50%) of the additional gross floor area made possible by this exception.~~

B. Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, is amended as follows:

1. By amending the table following § 1904.2 to remove the reference to “Below-market housing” as follows:

	<b>Gross floor area devoted to the bonus use</b>		<b>Proportionate number of square feet of additional gross floor area earned for on-site or off-site development</b>
(a) Below market housing;	1	to	3

2. By striking the definition “Below-market housing” from § 1999.2.

C. Chapter 26, INCLUSIONARY ZONING, is amended as follows:

1. Section 2601, DEFINITIONS, § 2601.1, is amended by deleting the definition “Inclusionary Zoning Overlay.”

2. Section 2602, APPLICABILITY, is amended as follows:

(a) By amending § 2602.1(a) to read as follows:

2602.1 Except as provided in § 2602.3, the requirements and incentives of this Chapter shall apply to developments that:

(a) ~~Are mapped within the Inclusionary Zoning Overlay; and the R-3 through R-5-D, C-1 through C-3-C, CR, SP, or W-1 through W-3 zone districts, unless exempted pursuant to § 2602.3;~~

(b) By amending § 2602.3 to read as follows:

2602.3 This Chapter shall not apply to:

(a) Hotels, motels, inns, or dormitories;

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- (b) Housing developed by or on behalf of a local college or university exclusively for its students, faculty or staff;
- (c) Housing that is owned or leased by foreign missions exclusively for diplomatic staff;
- (d) Rooming houses, boarding houses, community-based residential facilities, single room occupancy developments, or ~~developments in R-1, R-2 and C-4 Districts.~~

**(e) Properties located in any of the following areas:**

- (1) The Downtown Development or Southeast Federal Center Overlay Districts;**
- (2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South receiving zones;**
- (3) The W-2 zoned portions of the Georgetown Historic District;**
- (4) The R-3 zoned portions of the Anacostia Historic District; and**
- (5) The C-2-A zoned portion of the Naval Observatory Precinct Districts.**

(c) Subsection 2608.1 is amended to read as follows:

2608.1 The provisions of this Chapter shall become effective following the issuance of the first purchase/rental schedule<sup>1</sup> or the publication date in the *D.C. Register* of Zoning Commission Order 04-33A, establishing the ~~Inclusionary Zoning Overlay~~ **locations subject to this chapter**, whichever is the last to occur.

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 4<sup>th</sup> 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.

<sup>1</sup> If this schedule is not published by the time the Commission considers this matter for final action, it is likely that the Commission will delete the reference to ZC Order that will contain the final text.