

OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF PROPOSED RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings, pursuant to the authority set forth in section 8(b)(7) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.05(b)(7)), hereby gives notice of his intent to take final rulemaking action to adopt the following rules that will amend Title 1, Chapter 29 of the District of Columbia Municipal Regulations by changing the title of that Chapter, by adding sections 2950 to 2958 to that Chapter, and by adding a definition to section 2999. The proposed rules will establish procedures for cases arising under the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3401 *et seq.*) that will be heard by the Office of Administrative Hearings beginning on January 1, 2006. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register in accordance with section 6(a) of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-505(a).

1 DCMR Chapter 29 is amended as follows:

The title of the Chapter is changed to “Office of Administrative Hearings: Rules Applicable in Specific Classes of Cases.”

The following sections are added:**2950 Conversion and Sale Act Cases: Scope**

2950.1 The rules in sections 2950 to 2958 govern petitions for declaratory relief filed at the Office of Administrative Hearings pursuant to § 503a of the Conversion and Sale Act.

2950.2 Notices that are required or permitted pursuant to the Act shall not be filed with the Office of Administrative Hearings, except as exhibits in proceedings.

2950.3 If the rules in this chapter are silent on an issue relating to procedures before the Office of Administrative Hearings, the rules found in chapter 28 of this title shall apply.

2951 Conversion and Sale Act Cases: Petitions for Declaratory Relief

2951.1] An aggrieved owner, tenant or tenant organization may file a petition for a declaratory order determining the applicability of the Act to a specific transaction.

- 2951.2 A petition for a declaratory order shall be on a form approved by the Chief Administrative Law Judge, and shall state the specific declaratory and other relief that the petitioner requests.
- 2951.3 The form of the petition shall include, on the first page, a notice of the deadline for filing an answer to the petition and a statement that the declaratory relief sought by the petitioner may be granted without further notice if an answer is not received by the deadline.
- 2952 Conversion and Sale Act Cases: Service of Petitions**
- 2952.1 An aggrieved owner who files a petition for declaratory relief shall serve a copy of the petition upon every tenant in the housing accommodation, and shall serve an additional copy upon any tenant organization that has been formed for the housing accommodation.
- 2952.2 A tenant organization that files a petition for declaratory relief shall serve a copy of the petition upon the owner of the housing accommodation and upon every tenant in the housing accommodation.
- 2952.3 A tenant who files a petition for declaratory relief shall serve a copy of the petition upon the owner of the housing accommodation, upon any tenant organization that has been formed for the housing accommodation and upon every other tenant in the housing accommodation.
- 2952.4 An aggrieved owner, tenant, or tenant organization that files a petition for declaratory relief shall serve a copy of the petition upon a transferee or prospective transferee of the housing accommodation whose identity and address are known to that person or entity.
- 2952.5 Petitions for declaratory relief shall be served by priority mail with delivery confirmation requested or by commercial overnight delivery service that maintains proof of delivery. Service shall be complete upon mailing or delivery of the petition to the delivery service. An affidavit describing the service of each copy shall be filed with the petition. This affidavit shall give the name and address of each person or entity served, along with the date and manner of service.
- 2952.6 A person or entity that files a petition for declaratory relief shall post a notice, on a form approved by the Chief Administrative Law Judge, in at least two conspicuous locations in the common area of the housing accommodation. The notice shall inform the tenants of the filing of the petition and of the deadline for filing an answer.
- 2952.7 Actual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service.

2952.8 A tenant organization shall be served by serving any of the following persons:

- (a) Any officer of the tenant organization;
- (b) Any person authorized by any by-laws of the tenant organization to receive service for the tenant organization;
- (c) Any person who appears before the Office of Administrative Hearings on behalf of the tenant organization.

2953 Conversion and Sale Act Cases: Answer to a Petition

2953.1 A person or entity that opposes a petition for declaratory relief shall file an answer to the petition within eleven (11) calendar days of the date of service. The answer may be on a form approved by the Chief Administrative Law Judge.

2953.2 The answer shall state all factual and legal grounds upon which the responding party opposes the petition for declaratory relief.

2953.3 The answer shall be served upon the petitioner in the manner provided in section 2952.5.

2954 Conversion and Sale Act Cases: Hearings

2954.1 Upon the filing of an answer, an Administrative Law Judge shall set the case for an evidentiary hearing, or for a status conference as appropriate, and shall give notice of the date of the hearing or status conference to all persons or entities who have appeared.

2955 Conversion and Sale Act Cases: Defaults

2955.1 If no answer to a petition is filed by the deadline established in section 2953.1, the petitioner may file a motion for a default order.

2955.2 A motion for default order shall be accompanied by an affidavit identifying all persons and entities who were required to be served with the petition, along with proof of delivery of copies of the petition to each such person or entity, or an explanation of why the service copies were not delivered.

2955.3 A motion for a default order shall also be accompanied by a copy of the notice required by section 2952.6, along with an affidavit describing the circumstances and location of its posting.

2955.4 The Chief Administrative Law Judge shall provide a form to be used in moving for a default order.

2955.5 A motion for a default order shall be served upon each person or entity identified in section 2952.5 and in the manner described in that section.

- 2955.6] A response to a motion for default order shall be filed within seven (7) calendar days of service of the motion, and must be served upon each person or entity identified in section 2952.5 and in the manner described by that section.
- 2955.7 Upon review of the motion, the presiding Administrative Law Judge shall grant the motion if no answer was filed within the deadline and the petitioner has established that proper service was made upon all parties required to be served, unless an opposing party files a response that establishes good cause for failing to answer and shows the existence of a colorable ground for opposing the petition.
- 2955.8 If no answer is filed and no motion for a default order is filed within twenty (20) days of the filing of the petition, the petition shall be dismissed without prejudice for lack of prosecution.
- 2956 Conversion and Sale Act Cases: Consolidation of Petitions**
- 2956.1 On motion of a party, or upon his or her own motion, an Administrative Law Judge may consolidate two (2) or more petitions where they present identical or similar issues, where they involve the same housing accommodation or in any other circumstance in which consolidation would expedite the processing of the petitions and would not adversely affect the interests of the parties.
- 2957 Conversion and Sale Act Cases: Appearances and Representation**
- 2957.1 Persons authorized to appear before the Office of Administrative Hearings by 1 DCMR 2838 and 2839 may represent parties in declaratory relief cases filed under the Conversion and Sale Act.
- 2957.2 In addition, a tenant organization may be represented by a member or members selected by the organization.
- 2957.3 The provisions of §§ 2838 and 2839, concerning discipline of persons appearing before the Office of Administrative Hearings, apply to representatives in declaratory relief cases filed under the Conversion and Sale Act.
- 2958 Conversion and Sale Act Cases: Final Orders and Reconsideration**
- 2958.1 A final order issued after a hearing shall contain findings of fact and conclusions of law on all material issues.
- 2958.2 Motions for reconsideration shall be governed by D.C. Official Code § 2-1831.16(a) and by § 2832. A motion for reconsideration shall be filed within ten (10) days of the service date of the final order
- 2958.3 A motion for reconsideration shall be granted only for the following reasons:
- (a) There has been an intervening change in the law;

- (b) New evidence has been discovered that previously was not reasonably available to the party seeking reconsideration;
- (c) There is a clear error of law in the Final Order; or
- (d) A party shows that there was a good reason for not attending the hearing.

2958.4 As required by D.C. Official Code § 2-1831.16(a), the filing of a motion for reconsideration shall not stay a final order unless the Administrative Law Judge grants a stay.

Section 2999 of 1 DCMR Chapter 29 is amended by adding the following definition:

“Conversion and Sale Act” means the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980, D.C. Law 3-86, D.C. Official Code §§ 42-3401.01 *et seq.*

Comments on these proposed rules should be submitted in writing to Mr. Michael Williams, Executive Director, Office of Administrative Hearings, 825 North Capitol Street, Suite 4150, Washington, DC 20002-4210, within thirty (30) days of the publication of this notice in the *D.C. Register*. Copies of these proposed rules are available without charge at that address.

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 D.C. Health Occupations Revision Act of 1985, effective March 15, 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 new rules to Title 17 DCMR, Chapter 48 in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. These rules provide standards of conduct for chiropractors in the practice of chiropractic in the District of Columbia as it relates to patient care and ethical conduct.

Chapter 48 (Chiropractic) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended as follows:

A new section 4803 is added to read as follows:

4803 LICENSURE BY ENDORSEMENT

4803.1 An applicant who has completed educational requirements and holds an active license to practice in another jurisdiction for the past ten (10) years may apply for licensure by endorsement in the District of Columbia in the following manner:

- (a) If the applicant graduated prior to September 1987 the applicant shall have successfully passed parts 1 and 2 of the national exam; or
- (b) If the applicant graduated prior to January 1, 1996 the applicant shall have successfully passed parts 1, 2, and 3 of the national examination; and
- (c) The applicant shall successfully pass the District of Columbia Chiropractic Exam and the National Boards SPEC Exam.

4803.2 An applicant applying for licensure under this section shall also comply with § 4805.1.

A new section 4809 is added and reads as follows:

4809 STANDARDS OF CONDUCT

- 4809.1 A licensee shall not engage in sexual conduct with a patient with whom he or she has a patient-chiropractor relationship.
- 4809.2 A patient-chiropractor relationship exists unless:
- (a) Professional services are terminated and the patient receives written notice of the termination, whether the termination was initiated by the patient or licensee;
 - (b) The patient has been appropriately referred to another health professional in writing;
 - (c) The patient has accepted treatment by another health professional and the licensee documents the patient's chart prior to closing the file; or
 - (d) The patient has not received professional services for six (6) consecutive months and has not contacted the chiropractor for treatment.
- 4809.3 Sexual conduct includes the following:
- (a) Any behavior, gestures, or verbal or nonverbal expressions, which may reasonably be interpreted as seductive or sexual in nature; and
 - (b) Sexual comments or discussions about a patient or a former patient to the patient being treated that are not related to chiropractic care or treatment.
- 4809.4 A patient shall be provided with privacy and examination conditions which prevent the exposure of the unclothed body of the patient unless it is necessary for the chiropractic exam or treatment.
- 4809.5 A licensee shall not engage in sexually harassing behavior in the practice of chiropractic of a single extreme act or multiple acts toward a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee or not.
- 4809.6 A licensee may have a chiropractor-patient relationship with a spouse, family member or an individual with whom he or she has a mutually committed relationship and perform chiropractic treatment, provided the treatment is within accepted standards of chiropractic care and the performance of the services are not utilized to exploit the patient for sexual arousal or sexual gratification.
- 4809.7 A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-chiropractic relationship or in exchange for

professional services.

- 4809.8 A licensee may not raise the following defenses to any action under this section:
- (a) The licensee was in love with or had affection for the patient; and
 - (b) The patient solicited or consented to the sexual contact with the licensee.
- 4809.9 A licensee shall exercise independent professional judgment in the treatment or evaluation of the patient regardless of whether the patient was referred by another healthcare provider.
- 4809.10 A licensee shall not advertise free or discounted services.
- 4809.11 A licensee shall prepare a written or verbal report for consultative purposes for another chiropractor, another healthcare provider, hospital or agency that currently provides or has provided service to the patient upon request.
- 4809.12 A licensee shall terminate a professional relationship with a patient shall in an appropriate and timely manner so as not to adversely impact the health of the patient.
- 4809.13 A licensee shall continue a professional relationship for emergency treatment with a current patient for a reasonable period of time to allow the patient time to obtain another healthcare provider.
- 4809.14 A licensee shall arrange for adequate coverage of his or her patients during absences when the chiropractor is unavailable to the patients.
- 4809.15 A licensee shall not:
- (a) Accept a patient for treatment or continue with treatment when the treatment is unnecessary and the patient cannot be reasonably expected to benefit from treatment within normal standards of chiropractic care.
 - (b) Attempt to treat or make misrepresentations about his or her ability to treat patients beyond his or her scope of expertise and/or area of specialty certification.
 - (c) Refer a patient to a diagnostic or treatment facility or prescribe goods and services to be purchased from another facility, in which the chiropractor has a pecuniary interest, without first disclosing that interest in writing to the patient or third party payor.

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the D.C. Register. Comments should be sent 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 from the Department at the same address during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday excluding holidays.

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Rental Housing Commission and the Chief Administrative Law Judge of the Office of Administrative Hearings, pursuant to the authority set forth in section 202(a)(1) of the Rental Housing Act of 1985, D.C. Law 6-10, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.02(a)) and section 8(b)(7) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.05(b)(7)), jointly give notice of their intent to take final rulemaking action to adopt the following rules that will amend Title 1, Chapter 29 of the District of Columbia Municipal Regulations by adding sections 2920 to 2941, and by adding certain definitions to section 2999. The proposed rules will establish procedures for cases arising under the Rental Housing Act of 1985 that will be heard by the Office of Administrative Hearings beginning on January 1, 2006. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the *D.C. Register* in accordance with section 6(a) of the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-505(a).

1 DCMR Chapter 29 is amended by adding the following sections:**2920 Rental Housing Cases: Scope**

2920.1 The rules in sections 2920-2941 govern proceedings before the Office of Administrative Hearings in rental housing cases. The rules in 14 DCMR Chapter 38 shall govern proceedings before the Rental Housing Commission, and the rules in 14 DCMR Chapters 39 through 43 shall continue to be applicable, except that those rules shall not be interpreted to govern procedure in the Office of Administrative Hearings.

2920.2 If these rules are silent on a procedural issue before the Office of Administrative Hearings, the issue shall be decided by following the rules found in 1 DCMR Chapter 28.

2921 Rental Housing Cases: Filing Petitions and Other Documents

2921.1 All petitions to commence a rental housing case shall be filed with the Rent Administrator in accordance with 14 DCMR 3901.

2921.2 The timeliness of the filing of any petition shall be measured from the date it is properly filed with the Rent Administrator.

- 2921.3 The Rent Administrator may refuse to accept a petition for filing as provided in 14 DCMR 3901.
- 2921.4 If the Rent Administrator accepts a petition for filing, he or she shall promptly forward it, along with all accompanying documents, to the Office of Administrative Hearings.
- 2921.5 In every case forwarded to the Office of Administrative Hearings, all documents other than a petition and accompanying documents shall be filed with the Office of Administrative Hearings, in accordance with 1 DCMR 2810.
- 2922 Rental Housing Cases: Docketing and Notice**
- 2922.1 Upon receipt of a petition, the Office of Administrative Hearings shall, by certified mail or other form of service which assures delivery of the petition, notify the adverse parties named in the petition of their right to make a written request for a hearing on the petition within 15 days after receipt of the notice.
- 2922.2 In the case of tenant petitions, the Office of Administrative Hearings shall send a copy of the petition to the housing provider of the housing accommodation at issue, if not named in the petition as an adverse party, in the manner described in section 2922.1.
- 2922.3 In the case of petitions filed by a housing provider, the housing provider shall provide for each tenant in the housing accommodation one (1) copy of the petition, and an envelope, with priority mail postage prepaid, addressed to each tenant by name and containing the return address of the Office of Administrative Hearings. The Office of Administrative Hearings shall mail the copies to each tenant.
- 2922.4 In the case of petitions filed by a housing provider concerning a building with 10 or more rental units, the housing provider also shall provide a service list containing the name and address of each tenant. There shall be a hard copy of the list, along with a computerized version in Microsoft Word format, arranged so that it may be printed onto labels measuring 1 inch by 2 5/8 inches.
- 2923 Rental Housing Cases: Right to a Hearing and Disposition of Petitions Without Hearings**
- 2923.1 If a hearing is timely requested by any party, the Office of Administrative Hearings shall send notice of the time and place of the hearing by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing. The notice shall inform each party of the party's right to retain legal counsel to represent the party at the hearing.
- 2923.2 After notice to the parties and an opportunity for them to be heard, the Administrative Law Judge on his or her own motion may dismiss any petition that

does not state a claim for which relief may be granted under the Rental Housing Act.

2923.3 The Administrative Law Judge may, without holding a hearing, refuse to adjust the rent ceiling for any rental unit, and may dismiss any petition for adjustment, if a final decision has been issued on a petition filed under the Act for adjustment to the same rental unit or units within six (6) months prior to the filing of the petition, unless the previous ruling was without prejudice to refileing.

2924 Rental Housing Cases: Parties

2924.1 Individual tenants involved in any proceeding shall be individually identified.

2924.2 If a tenant association seeks to be a party, the Administrative Law Judge shall determine the identity and number of tenants who are represented by the association.

2924.3 If a majority of tenants are represented by the association, the association shall be a party, and shall be listed in the caption.

2924.4 The housing provider as listed on the registration statement, if any, shall be a party, and shall be named on the caption. If a management agent represents the housing provider in the proceeding, the managing agent also shall be a party, and shall be identified as the agent and named on the caption.

2925 Rental Housing Cases: Substitution or Addition of Parties

2925.1 Upon the death of a party, or the dissolution, reorganization, or change of ownership or interest of a party, or a change in the registration statement resulting from an amendment filed under 14 DCMR 4103, the Administrative Law Judge may, upon the motion of a party, the motion of a person seeking to become a party, or the Administrative Law Judge's own motion, substitute or add a party.

2925.2 If it appears to the Administrative Law Judge that the parties have been incorrectly named, the Administrative Law Judge may substitute or add the correct parties upon the motion of a party, the motion of a person seeking to become a party, or the Administrative Law Judge's own motion.

2925.3 No substitution or addition of parties may occur unless all parties, and all persons that may be substituted or added as parties, are given notice and an opportunity to file written arguments in support of, or in opposition to, the substitution or addition of parties.

2925.4 An evidentiary hearing or oral argument on a motion for substitution of parties may be scheduled at the discretion of the Administrative Law Judge.

2926 Rental Housing Cases: Intervenors

- 2926.1 There shall be no intervention as a matter of right in rental housing cases. Intervention by permission may be granted to persons or entities if the proceeding will directly affect their rights or duties and is otherwise appropriate.
- 2926.2 Persons seeking to intervene shall file a motion for intervention stating the reasons why intervention should be permitted, and must serve a copy of the motion upon all parties to the proceeding.
- 2926.3 If a motion for leave to intervene is granted, intervenors may participate only with respect to the issues affecting them, as determined by the Administrative Law Judge.
- 2927 Rental Housing Cases: Consolidation of Petitions and Expanding the Scope of a Proceeding**
- 2927.1 On motion of a party, or upon his or her own motion, an Administrative Law Judge may consolidate two (2) or more petitions where they present identical or similar issues, where they involve the same rental unit or housing accommodation, or in any other circumstance in which consolidation would expedite the processing of the petitions and would not adversely affect the interests of the parties.
- 2927.2 If the Administrative Law Judge determines that the issues raised in a tenant petition affect other tenants or all tenants in the housing accommodation, the Administrative Law Judge may expand the scope of the proceeding to include all affected tenants; provided, that notice shall be given to the additional tenants that they have the right to participate in the proceeding.
- 2927.3 The notice to other tenants shall state the issues to be decided in the proceeding and that any decision shall be binding upon them.
- 2927.4 The Administrative Law Judge shall also provide notice to the housing provider of the determination to expand the scope of the proceeding.
- 2927.5 Tenants and the housing provider shall have a reasonable opportunity to present any arguments in support of or opposition to the Administrative Law Judge's determination.
- 2928 Rental Housing Cases: Service**
- 2928.1 All documents required to be served upon any person under this chapter shall be served upon that person or upon the representative designated by that person, or by law, to receive service of documents.
- 2928.2 When a party has a representative of record, service shall be made upon the representative.

- 2928.3 Service shall be completed in accordance with § 904 of the Act, D.C. Official Code § 42-3509.04.
- 2928.4 Actual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service.
- 2928.5 Service by mail shall be complete upon mailing.
- 2928.6 All documents filed with the Office of Administrative Hearings shall be served on the other parties on the same day they are filed with the Office of Administrative Hearings.
- 2928.7 A certificate of service shall be filed with every document filed with the Office of Administrative Hearings. The certificate of service shall state the date of service, the persons served, the address at which service was made, and the manner of service.
- 2929 Rental Housing Cases: Computation of Time**
- 2929.1 The rules governing computation of time are found at 1 DCMR 2811.
- 2930 Rental Housing Cases: Conciliation, Arbitration and Mediation**
- 2930.1 The parties may request conciliation or arbitration of any dispute by the RACD in accordance with 14 DCMR 3913 and 3914.
- 2930.2 The parties may request mediation of any dispute pursuant to 1 DCMR 2815.
- 2930.3 The deadline for issuance of any decision by the Office of Administrative Hearings shall be extended by the number of days during which the parties engage in conciliation, arbitration or mediation pursuant to this section.
- 2931 Rental Housing Cases: Hearings**
- 2931.1 Upon the filing of a petition, or an order to show cause, an Administrative Law Judge shall issue a Case Management Order setting a hearing date. In addition to, or instead of, a hearing date, the Administrative Law Judge may set a date for a status conference.
- 2931.2 All hearings before the Office of Administrative Hearings shall be open to the public.

2932 Rental Housing Cases: Burden of Proof

- 2932.1 Unless otherwise provided in this Section, the proponent of an order shall have the burden of establishing each fact essential to the order by a preponderance of the evidence.
- 2932.2 In show cause hearings, the burden of proof shall rest upon the Rent Administrator.
- 2933.3 In retaliation cases, the burden of proof shall be as stated in 14 DCMR 4303.

2933 Rental Housing Cases: Appearances and Representation

- 2933.1 Persons authorized to appear before the Office of Administrative Hearings by 1 DCMR 2838 and 1 DCMR 2839 may represent parties in rental housing cases.
- 2933.2 In addition, a member or members selected by the members of a tenant association may represent the association and its members.
- 2933.3 The provisions of 1 DCMR 2838 and 2839, concerning discipline of persons appearing before the Office of Administrative Hearings, apply to representatives in rental housing cases.
- 2933.4 If it appears to the Administrative Law Judge at any time during the proceedings that the matter under review is so complicated or that the potential liabilities are so great that in the interest of justice a party ought to be represented by an attorney, the hearing examiner shall explain to the party the advantages of obtaining an attorney, and shall explain the party's right to a continuance to obtain an attorney.
- 2933.5 If the party agrees to obtain the services of an attorney, the opposing party shall be so advised, and the hearing on the matter shall be continued for a reasonable time in order to allow the party to retain counsel and prepare for a hearing. The continuance shall not exceed thirty (30) days.

2934 Rental Housing Cases: Documents Filed with the RACD

- 2934.1 Any party that wishes the Administrative Law Judge to review any document concerning a rental housing accommodation that has been filed with the RACD must introduce a copy of that document into evidence. The document shall be admitted into evidence only in the following circumstances:
- (a) If a copy with an original file stamp (not a copy of the file stamp) is provided; or
 - (b) If a copy certified by the Rent Administrator or an authorized employee of RACD is provided.

An Administrative Law Judge shall permit a reasonable continuance to enable a party to obtain a copy of any such document.

2935 Rental Housing Cases: Interlocutory Appeals

2935.1 A ruling of an Administrative Law Judge in a rental housing proceeding may not be appealed before issuance of a final order unless the presiding Administrative Law Judge certifies the ruling for review by the Commission.

2935.2 A party may move the Administrative Law Judge to certify to the Commission an interlocutory appeal of any ruling other than a final order.

2935.3 The Administrative Law Judge shall certify an interlocutory appeal only if he or she determines that the issue presented is of such importance to the proceeding that it requires the immediate attention of the Commission, and only if the following are shown:

(a) The ruling involves an important question of law or policy requiring interpretation of the Act, and about which there is substantial basis for difference of opinion; and

(b) Either of the following applies:

(1) An immediate ruling will materially advance the completion of the proceeding; or

(2) Denial of an immediate ruling will cause undue harm to the parties or the public.

2935.4 A party seeking review by interlocutory appeal shall file a motion for certification within two (2) days of service of a ruling by the Administrative Law Judge. The Administrative Law Judge shall rule on the motion within five (5) days following the filing of the motion.

2935.5 If certification is denied, the ruling may be reviewed on appeal from a final order of the Administrative Law Judge.

2935.6 The Administrative Law Judge may stay the proceeding while an interlocutory appeal is pending.

2936 Rental Housing Cases: Final Orders

2936.1 The Office of Administrative Hearings shall serve all final orders in rental housing cases upon the parties, by certified mail or by other form of service that assures delivery of the decision to the parties.

2936.2 The Office of Administrative Hearings also shall serve copies of all final orders in rental housing cases upon the Rent Administrator and the Commission.

2937 Reconsideration

- 2937.1 Any party served with a final order may file a motion for reconsideration within ten (10) days of service of that decision.
- 2937.2 A motion for reconsideration shall be granted only for the following reasons:
- (a) if there has been an intervening change in the law;
 - (b) if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration;
 - (c) if there is a clear error of law in the final order;
 - (d) if the final order contains typographical, numerical, or technical errors; or
 - (e) if a party shows that there was a good reason for not attending the hearing.
- 2937.3 As required by D.C. Official Code § 2-1831.16(a), the filing of a motion for reconsideration shall not stay a final order unless the Administrative Law Judge grants a stay or applicable law requires a stay.
- 2937.4 A motion for reconsideration shall be decided by the Administrative Law Judge within thirty (30) days of its filing.
- 2937.5 If an Administrative Law Judge fails to act upon a motion for reconsideration within the time limit established by section 2937.4, the motion shall be denied by operation of law.
- 2937.6 If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion is decided, or denied by operation of law.

2938 Rental Housing Cases: Show Cause Hearings

- 2938.1 A show cause hearing is a proceeding initiated by the Rent Administrator after an investigation by the Rent Administrator has resulted in a determination that there are substantial grounds to believe that violations of the Act may have occurred.
- 2938.2 If an investigation by the Rent Administrator finds substantial grounds to believe that possible violations of the Act have occurred, the Rent Administrator may file with the Office of Administrative Hearings an order to show cause, and shall serve the notice upon the alleged violator.
- 2938.3 The order to show cause shall state clearly the section of the Act or applicable rules that allegedly have been violated, along with a brief statement of the

evidence found during the investigation that supports the determination that a violation has occurred.

2938.4 The order to show cause also shall set forth the proposed corrective action that the Rent Administrator seeks, or the sanction that the Rent Administrator seeks to have imposed upon the alleged violator.

2938.5 Upon the filing of an order to show cause, the case shall proceed in accordance with the procedures set forth in this chapter.

2939 Rental Housing Cases: Official Record of a Proceeding

2939.1 The record of a proceeding in a rental housing case shall consist of the following:

- (a) The final order and any interlocutory orders of the Administrative Law Judge;
- (b) The recordings or any transcripts of the hearings before the Administrative Law Judge;
- (c) All documents and exhibits offered into evidence at the hearing;
- (d) Notices of hearings and proofs of service; and
- (e) All pleadings or other documents filed by the parties or the Rent Administrator at the Office of Administrative Hearings.

2940 Rental Housing Cases: Relief from a Final Order

2940.1 Motions for relief from a final order are governed by 1 DCMR 2833.

2941 Rental Housing Cases: Attorney's Fees

2941.1 All motions for an award of attorney's fees in a rental housing case shall be filed within ten (10) days of service of the final order.

2941.2 The award of attorney's fees shall be governed by 14 DCMR 3825.

Section 2999 of 1 DCMR Chapter 29 is amended by adding the following definitions:

"Commission" means the Rental Housing Commission.

"RACD" means the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs.

“Rental Housing Act” means the Rental Housing Act of 1985, D.C. Law 6-10, effective July 17, 1985, D.C. Official Code §§ 42-3501.01 *et seq.*

“Rental housing cases” means cases initiated pursuant to the Rental Housing Act, but does not include petitions for declaratory orders pursuant to the Rental Housing Conversion and Sale Act of 1980, as amended, D.C. Law 3-86, effective September 10, 1980, D.C. Official Code §§ 42-3401.01 *et seq.*

Comments on these proposed rules should be submitted in writing to Mr. Michael Williams, Executive Director, Office of Administrative Hearings, 825 North Capitol Street, Suite 4150, Washington, DC 20002-4210, within thirty (30) days of the publication of this notice in the *D.C. Register*. Copies of these proposed rules are available without charge at that address.

THE STATE EDUCATION OFFICE

AND

THE EDUCATION LICENSURE COMMISSION

NOTICE OF PROPOSED RULEMAKING

The State Education Officer of the District of Columbia and the Education Licensure Commission, pursuant to the authority set forth in section 3 of the Education Licensure Commission Act of 1976 (ELC Act), effective April 6, 1977 (D.C. Law 1-104, D.C. Official Code § 38-1303 (2001)), as amended by section 2(f) of the Educational Institution Licensure Commission Amendments Act of 1988, effective March 16, 1989, (D.C. Law 7-217; D.C. Official Code §38-1306 (2001)), and the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176, D.C. Official Code §38-2601 *et seq.* (2001)), as amended by section 302(c) of Title III of the Fiscal Year 2004 Budget Support Act of 2003, effective November 13, 2003, (D.C. Law 15-039, 50 DCR 5668), hereby give notice of proposed amendments to the provisions for initial licensure and renewal of non-degree postsecondary school licenses granted by the Education Licensure Commission (the Commission) as set forth in Chapter 22 of Title 16 of the *D.C. Municipal Regulations*.

Pursuant to D.C. Official Code §38-1306(a)(3)(2001), this rulemaking must be submitted to the Council for a forty-five (45)-day review period. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period the proposed rules shall be deemed approved. The State Education Officer and the Education Licensure Commission hereby give notice of their intent to issue final rules after the completion of both the required thirty (30) day comment period and the forty-five (45)-day Council review period.

The proposed amendments will change the license term to allow non-degree postsecondary licenses to be issued throughout the year and renewed upon the expiration of the license. This change will allow for regular service to applicants throughout the year while increasing administrative efficiency.

Subsection 2202.4 and 2202.5 of Title 16 DCMR are amended to read as follows:

- 2202.4 The Commission shall issue the following:
- (a) Initial or renewal licenses for a period of not more than one (1) year;
 - (b) A renewal license for a period of not more than two (2) years, provided the licensee has completed the initial one-year licensure period and is in full compliance with the provisions of this Chapter; and

- (c) A renewal license for a period of not more three (3) years, provided the licensee has completed a five-year period of continuous licensure, during which time the licensee has been in good standing and full compliance with the provisions of this Chapter.

2202.5 A school shall file an application for renewal of its license at least sixty (60) days prior to the expiration date of the license.

Subsection 2202.6 is deleted.

Section 2222 is amended as follows:

2222.1 No less than sixty (60) days prior to the expiration date of the license was issued, a licensee wishing to renew a license shall submit to the Commission an application for renewal of the license in such form as the Commission may require.

2222.2 An application for renewal of a license shall include:

- (a) A renewal application form;
- (b) A copy of the institution's catalogue published within two years of the date of submission to the Commission, unless otherwise authorized by the Commission upon request by the institution;
- (c) If the licensee is incorporated, a copy of the most recent Certificate of Good Standing;
- (d) The licensure fees and sureties required by this chapter;
- (e) A description of any differences in its ownership, locations, organization, program, officers or faculty since the previous licensure action by the Commission;
- (f) A description of any such changes proposed during the period of license renewal.
- (g) A description of the means whereby the school has satisfied any conditions of the current license by the Commission, or a statement justifying the renewal of the license in view of all such conditions not having been satisfied;
- (h) A copy of the most recent financial statement of the school, prepared within twelve (12) months of the application by a

- certified public accountant, or other financial statement acceptable to the Commission;
- (i) A statement of the calculation of the school's retention and placement rates; and
 - (j) Such other information as the Commission may require.

All persons desiring to comment on the subject matter of the 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 filed with the Education Licensure Commission, ATTN: Executive Director, 441 Fourth Street NW, Room 350 North, Washington, DC 20001. Copies of these proposed rules may be obtained from the State Education Office at the same address.

**DISTRICT OF COLUMBIA TAXICAB COMMISSION
PANEL ON RATES AND RULES**

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(D) and 9(b) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, (D.C. Law 6-97; D.C. Official Code §§ 50-307(b) (1)(D), and 50-308(b) (2001)), hereby gives notice of its proposed rulemaking action taken October 12, 2005, to amend § 502.1 of Chapter 5 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The proposed rulemaking amends the local place of business requirement for taxicab companies and associations. Companies and associations will no longer be required to have a shop area for maintenance of vehicles adjacent to their administrative office. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Title 31 DCMR, Section 502.1 is amended as follows:

502 REQUIREMENTS OF LOCAL PLACE OF BUSINESS

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

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

**DISTRICT OF COLUMBIA TAXICAB COMMISSION
PANEL ON RATES AND RULES**

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), by its Panel on Rates and Rules, pursuant to the authority set forth under sections 8(b)(1)(G) and 9(b) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, (D.C. Law 6-97; D.C. Official Code §§ 50-307(b) (1)(G), and 50-308(b) (2001)), hereby gives notice of its proposed rulemaking action taken October 12, 2005, to amend § 505.4 of Chapter 5 of Title 31 of the District of Columbia Municipal Regulations ("DCMR"). The proposed rulemaking will require all independent taxicab vehicles to have the name of the owner and his/her telephone number on each rear door. Final rulemaking action shall not be taken in less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Title 31 DCMR, Section 505.4 is amended as follows:

505 INDEPENDENT TAXICABS

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

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

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

Z.C. Case No. 04-27

**(Text and Map Amendments to Establish and Map the H Street, N.E. Neighborhood
Commercial Overlay District)**

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2001)), hereby gives notice of its intent to amend Chapter 13 of the Zoning Regulations (Title 11 DCMR) by adding 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.

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

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 adopted by the Council of the District of Columbia on February 17, 2004 (R15-460);
- (b) Encourage residential uses along the H Street NE 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 NE; a neighborhood-serving retail shopping district from 7th Street to 12th Street NE; and an arts and entertainment district from 12th Street to 15th Street NE;
- (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 NE. 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 preferred use listed in §1323.2.

1320.4 The following buildings, structures, and uses shall be permitted as a 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 gas 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 designated roadways.
- (d) Funeral, mortuary, or undertaking establishment; and
- (e) Parking Garage.

1320.5 The following uses are prohibited:

- (a) Automobile and Truck Sales;
- (b) Automobile laundry;
- (c) Boat or marine sales;
- (d) Gasoline Station;

- (e) Outdoor storage of any materials; and
- (f) Commercial parking lots.

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 District shall be H Street NE.

1320.8 With respect to a lot that has six thousand square feet (6,000 ft.²) or more in land area, construction of a new building or enlargement of the gross floor area of an existing building by fifty percent (50%) or more, shall be permitted, subject to review and approval as a special exception by the Board of Zoning Adjustment, pursuant to the standards and criteria in §§1325 and 3104.

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 nonresidential uses, except as provide 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 FAR of 1.5 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 nonresidential FAR of 1.5 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 §§ 1322.2 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 stores;
- (bb) Hobby shop;
- (cc) Home furnishing sales;

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- (dd) Ice cream parlor;
- (a) Interior decorating shop;
- (b) Jewelry shop;
- (c) Office supplies or services store;
- (d) Music or instrument sales;
- (e) Pet shop;
- (f) Pharmacy;
- (g) Plant store or nursery;
- (h) Professional services or office not on the ground floor;
- (i) Restaurant (excluding fast food);
- (j) Secondhand or consignment store;
- (k) Shoe store;
- (l) Sporting goods; and
- (m) Video Rental and Sales.

1322.3 New construction that preserves an existing façade constructed before 1958 is permitted to use an additional 0.5 FAR over the non-residential FAR 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 §§ 1323.4 and 1326.1 (a), preferred uses in the HS-A Sub-district 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 sq. ft.) 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 nonresidential uses except as provided in §1323.4.

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

1324 H STREET NORTHEAST COMMERCIAL CORRIDOR DESIGN REQUIREMENTS

1324.1 The design requirements of §§ 1324.2 through 1324.14 shall apply to any lot in the HS Overlay District.

1324.2 New 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 FAR permitted in the underlying zone district for residential uses.

1324.4 In C-2-A Districts within the HS Overlay District a 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 NE shall provide not less than 65% of the ground level frontage as commercial space.

1324.8 Each new building on a lot that fronts on H Street 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 and to entrances to commercial uses or to the building, provided the windows shall be clear glass, or clear/low-emissivity glass, except for decorative or architectural accent.

1324.9 Security grilles shall have no less than 70% transparency.

1324.10 Each commercial use with frontage on H Street shall have an individual public entry directly accessible from the public sidewalk. Multiple-unit buildings shall have at least one primary entrance on H Street NE 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 permitted ground floor uses and the main lobby.

1324.12 The ground floor level of each new building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.).

1324.13 For new construction, buildings with a minimum clear floor-to-ceiling height of fourteen feet (14 ft.) on the ground floor level consistent with §1324.12 shall be permitted an additional 5 feet (5 ft.) of building height over that permitted in the underlying zone for new construction.

1324.14 The following sign guidelines shall apply in the HS Overlay:

- (a) Projection Signs shall have a minimum clearance of eight feet (8') above a sidewalk and fourteen feet (14') above a driveway, project no more than three feet, six inches (3'6") from the face of the building, and be a minimum of one foot (1') behind the curbline or extension of curbline.
- (b) Façade Panel Signs shall not be placed so as to interrupt windows or doors and shall project no more than twelve inches (12") from the face of the building.
- (c) Roof Signs are prohibited.

1325 H STREET NORTHEAST COMMERCIAL CORRIDOR OVERLAY DISTRICT SPECIAL EXCEPTIONS

1325.1 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, in accordance with §3104, and subject to the following criteria:

- (a) The architectural design of the project will 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.
- (b) Safe and efficient pedestrian movement will be provided by locating and designing vehicular access and egress so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions;
- (c) Parking and traffic conditions associated with the operation of a proposed use will not adversely affect adjacent or nearby residences;
- (d) Noise associated with the operation of a proposed use will not adversely affect adjacent or nearby residences;
- (e) 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; and

- (f) The size, type, and location of signs will be compatible with the surrounding corridor and consistent with the H Street design guidelines. Signage is encouraged on upper facades, awnings, and transom windows. Signage should be of durable materials and sensitive design. Signage that affects more than twenty percent (20%) of display windows is discouraged. Backlit box signs and neon product advertisements are discouraged. Signs should not block visibility into a store or be overly obtrusive.

1325.2 Applicants must show that projects requiring a Special Exception shall be consistent with the design intent of the design requirements of §1324 and generally compatible with 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) Any additional height and floor area above matter-of-right shall be used only for residential or preferred uses; and
- (b) The PUD process shall not be used to reduce requirements in the HS Overlay District 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).

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