

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC
DEVELOPMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Deputy Mayor for Planning and Economic Development, pursuant to the authority set forth in sections 5 and 14 of the Retail Incentive Act of 2004, effective September 8, 2004, D.C. Law 15-185, 51 DCR 5941 and Mayor's Order 2004-146 (August 26, 2004), hereby gives notice of the adoption on an emergency basis of the following rules to be included in Title 10 of the *District of Columbia Municipal Regulations*. The purpose of the new chapter is to set forth the rules of operation for the Downtown Retail Priority Area under the Act.

This emergency action is necessary for the immediate preservation of the public welfare, which will be achieved by the completion of the first two Downtown Retail Projects at a signature building in the Downtown Retail area by the end of calendar year 2005. Notice of Emergency and Proposed Rulemaking is being republished pursuant to § 510 of the Rules of the Office of Documents. The prior notice was published at 51 DCR 9326 (October 1, 2004). The rules are being republished as proposed because the previous emergency rules have expired, permanent rules have not been adopted, and the emergency rules are needed to expedite the completion of the aforementioned Downtown Retail Projects. The changes from the previous rulemaking are designed to eliminate redundant iterations within the approval process.

This rulemaking was adopted on an emergency basis on November 21, 2005, and became immediately effective on that date. The emergency rulemaking will remain in effect for up to one hundred twenty (120) days from November 21, 2005, unless superseded by another rulemaking notice.

The Deputy Mayor for Planning and Economic Development also gives notice of intent to take final rulemaking action to adopt the proposed rulemaking in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

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

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

6100 Public Purpose Of the Retail Incentive Act of 2004

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

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

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

6101 Eligible Retail Development Projects

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

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

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

6102 Application of Rules of Operation

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

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

6103 Downtown Retail Committee

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

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

Downtown Retail Committee and may designate the Chairperson and Vice Chairperson of the Committee.

- 6103.3 Members of the Downtown Retail Committee may not participate in connection with the evaluation of a Retail Development Project in which they may have any ownership or financial interest in either the entity serving as the Retail Project Developer or the retail tenant.
- 6103.4 Each Downtown Retail Committee member serves at the pleasure of the Mayor and the Mayor may replace any member at any time for any reason.
- 6103.5 The duties of the Downtown Retail Committee are to:
- (a) Apply the rating system (Rating System) provided in Appendix 2 for proposed Retail Development Projects; review and revise the Rating System from time to time as necessary to respond to market conditions;
 - (b) Compute the Bond allocation (Bond Allocation Amount) based on a numeric formula (Bond Allocation Formula) for each Retail Development Project and adjust the Bond Allocation Formula, as necessary or appropriate, to maximize the use of Bond proceeds to achieve the purposes of the Act;
 - (c) Recommend Retail Development Projects to the Mayor for designation as TIF Areas in the Downtown Retail Priority Area;
 - (d) Review Downtown Retail Development Projects applications and recommendations of the Office of the Deputy Mayor for Planning and Economic Development (DMPED) as prescribed in section 6106.6 and vote whether to recommend to the Mayor (i) the Retail Development Project in the Downtown Retail Priority Area for designation as a TIF Area and (ii) a Bond Allocation Amount with respect to such Retail Development Project;
 - (e) In the event that the Downtown Retail Committee votes to recommend to the Mayor (i) the Retail Development Project for designation as a TIF Area and (ii) a Bond Allocation Amount with respect to such Retail Development Project, direct DMPED, subject to the Mayor's approval and certification of the Retail Development Project, to send a written approval letter (Approval Letter) to the Applicant, as further described in section 6106.7;
 - (f) Take such other actions as the Mayor may consider necessary or appropriate to facilitate the selection and funding of TIF Areas in the Downtown Retail Priority Area.
- 6103.6 A simple majority shall constitute a quorum for any meeting or for purposes of any vote. All recommendations to the Mayor with respect to any Retail Development Project shall be by a two-thirds vote of the Downtown Retail Committee.
- 6103.7 All meetings shall take place in person or by teleconference.

- 6103.8 Voting may be evidenced in person during a meeting or orally during a teleconference. No member may vote on any issue that was considered at any meeting that such member did not attend.
- 6103.9 The Chairperson or Vice Chairperson of the Downtown Retail Committee or their designee is to provide prior written notice to each member at least three (3) business days prior to any meeting of the Downtown Retail Committee. Such notice may be provided by e-mail, telecopy (provided the sender receives confirmation that such notice was received), hand delivery, or by United States first-class, certified mail, postage prepaid. Notice shall be deemed received: (1) on the date the e-mail or telecopy is transmitted (provided the sender has electronic or telegraphic evidence of successful transmission) or on the date of hand delivery (with a signed receipt); or (2) two (2) business days following receipt of proof of service by United States first class certified mail.
- 6103.10 The Downtown Retail Committee may request technical assistance from DMPED at any time for any reason, including but not limited to, the evaluation of any Application or any proposed revision of the Rating System or the Bond Allocation Formula.
- 6104 Rating System for Ranking Retail Development Projects for Downtown Retail Priority Area**
- 6104.1 The Application will be scored in conformance with the Rating System as provided in Appendix 2. The Rating System is based on the following objective criteria:
- (a) Likelihood of Bond repayment based on projected Tax Incremental Revenues from the Retail Development Project;
 - (b) Uniqueness of the retailer(s) (i.e. type of product, anticipated demand, likelihood of success based on market or feasibility study, experience and public recognition of "brand name" or product(s)) that will be in the Retail Redevelopment Project;
 - (c) The market position of each retailer and whether each retailer is first in its market to locate in the Downtown Retail Priority Area;
 - (d) Likelihood that each retailer will attract other retailers to locate nearby (i.e. confidence of other retailers in success and stability of the retailer(s), "draw" factor of the retailer(s), hours and days of operation);
 - (e) Extent to which each retailer will promote the Downtown Retail Priority Area in its advertising (each retailer to submit a marketing plan for first two years of operation, including prototype of marketing materials (print and radio/TV), types of window displays, etc.);
 - (f) Vertical integration of retailer(s) (the portion of the product mix that is sold under the retailer's brand);
 - (g) Intention of each retailer in a given Retail Development Project to locate on more than one level of the building in which it is located;

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

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

(j) Square footage of retail space; and

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

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

6105 **Bond Allocation Formula**

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

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

6106 **Application Process**

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

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

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

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

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

(b) Following DMPED's preliminary scoring of the Application, DMPED will forward the Application, together with DMPED's recommendation for each Retail Development Project, including the score received and the recommended Bond Allocation Amount,

and any comments, concerns or further recommendations with respect to such Retail Development Project, to the Downtown Retail Committee.

- 6106.6 Upon receipt by the Downtown Retail Committee from DMPED of an Application and the recommendations of DMPED, the Downtown Retail Committee shall review the Application and the recommendations of DMPED pursuant to Section 6103.5 and shall vote whether to recommend to the Mayor (i) the Retail Development Project in the Downtown Retail Priority Area for designation as a TIF Area and (ii) a Bond Allocation Amount with respect to such Retail Development Project. In reviewing the Application, the Downtown Retail Committee shall apply the Rating System and compute the Bond Allocation Amount. The Downtown Retail Committee shall have the right to accept, reject or revise any or all of the recommendations of DMPED.
- 6106.7 In the event that the Downtown Retail Committee votes to recommend to the Mayor (i) the Retail Development Project for designation as a TIF Area and (ii) a Bond Allocation Amount with respect to such Retail Development Project, the Downtown Retail Committee shall direct DMPED, subject to the Mayor's approval and certification of the Retail Development Project, to send a written Approval Letter to the Applicant indicating that such Retail Development Project has been approved by the Mayor and stating the reserved Bond Allocation Amount that the Applicant shall receive, subject to the Applicant meeting all program criteria and all requirements necessary for issuance of the Bonds as set forth in the Development Agreement required by section 5(b)(5) of the Act.

6106 Mayor's Approval and Certification

- 6106.1 Upon receipt of the recommendation of the Downtown Retail Committee with respect to a Retail Development Project, the Mayor may approve and certify the rating of the Retail Development Project, the designation of the Retail Development Project as a TIF Area, the issuance of Bonds in an amount equal to the Bond Allocation Amount and such other matters as the Mayor considers necessary or appropriate to achieve the goals and objectives of the Downtown Retail Priority Area.
- 6106.2 DMPED shall facilitate and manage the financing process with the Owner, including negotiating the Development Agreement and any other related documents.
- 6106.3 In connection with the issuance of the Bonds, the Owner shall enter into a Development Agreement with the District, such Development Agreement to be satisfactory to the Mayor, and consistent with the requirements of the Act and any other applicable laws of the District of Columbia. Such Development Agreement shall also include, among other things, the terms and conditions relative to the issuance of the Bonds.

6199 DEFINITIONS

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

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

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

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

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

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

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

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

Sources and Uses:

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

Certification of Application:

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

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

[Applicant's legal name]

By: [_____]

List of Exhibits:

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

Appendix 2 - Rating System

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

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

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

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

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

RATING FACTOR

RATING SCALE

RATING

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

10732

0 /square foot

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

4 Dominates category or 1st in market

Yes	No
5	0

4a Fulfills clustering goal 5 (must be part of a 3+ store deal)

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

5 Advertises in region

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

(\$ of advertising / square feet of store)

6 Vertically integrated retailer

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

(percentage of goods carried under the retailers label)

7 Highly expressive retail façade

Yes	No
2	0

8 Second floor occupied (75% of 1st) 1 0

9 DC owned business 2 0

10 Square footage of retail store (Anchor ability)

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

square feet =

11 Unique circumstances (awarded by Deputy Mayor)

Grand Total

If subtotal on line 4b is >= 10, then multiply grand total by \$2.55 Incentive/sq. foot

MAXIMUM ALLOWABLE TIF INCENTIVE \$0.00

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

Comments on these proposed rules should be submitted, in writing, to Cyril Crocker, Project Manager, 1350 Pennsylvania Avenue, Suite 317, Washington, D.C. 20004, within 30 days of the date of publication of this notice in the D.C. Register. Additional copies of these proposed rules are available from the above address.

DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLESNOTICE OF EMERGENCY RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1825 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 50-904); Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)); § 10 of the Uniform Classification and Commercial Driver's License Act of 1990, effective September 20, 1990 (D.C. Law 8-161; D.C. Official Code § 50-409); and Mayor's Order 03-58, effective April 21, 2003, hereby gives notice of the adoption, on an emergency basis, of amendments to Chapters 13 Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). These amendments update the commercial driver's license regulations as required by the Federal Motor Carrier Safety Administration to establish conformity with federal law.

This emergency rule will expire on March 28, 2005, one hundred and twenty (120) days after its adoption, or upon publication of a notice of final rulemaking covering these provisions, whichever occurs first.

The emergency circumstances are as follows:

Public Law 106-159, the Motor Carrier Safety Improvement Act (MCSIA), required that, by September 30, 2005, the District of Columbia enforces all the MCSIA provisions and implementing regulations, all of which pertain to the issuance of a Commercial Driver's License (CDL). The Federal Motor Carrier Safety Administration recently sent DMV a detailed assessment of the District of Columbia's CDL program and its compliance with MCSIA. The report identified what it considered to be necessary rulemaking, to be promulgated by the DMV, aimed at implementing and enforcing all of the MCSIA provisions. That rulemaking is below.

A letter from the Federal Motor Carrier Safety Administration to DMV states that this rulemaking must be in place by September 30, 2005, to avoid "sanctions". The DMV understands from discussions with FMCSA that the sanctions referenced would be the withholding of a portion of federal highway funds.

The Department published a notice of emergency rulemaking on May 27, 2005 (52 DCR 5084), which expired on November 27, 2005. This rulemaking was then forwarded to the Council, together with a host of proposed customer service improvement provisions. During the scheduled hearing on the resolution approving this rulemaking, the Committee on Public Works and the Environment voiced support for the CDL provisions, but had objections to one or more of the customer service provisions, which led to a disapproval resolution. Therefore, the proposed CDL provisions were again forwarded to the Council in November, 2005, absent the

customer service provisions. The previous emergency must be extended to allow the regulations to continue to be in effect as the permanent rules undergo a Council-review period.

Immediate action is necessary not only to ensure that MCSIA is properly implemented, but that the District's federal highway funds are not jeopardized, funds that are necessary to help ensure the safety of those who travel on the District's roads.

Title 18, DCMR, Chapter 13, CLASSIFICATION AND ISSUANCE OF COMMERCIAL DRIVER'S LICENSES, is amended as follows:

- 1) Section 1301, APPLICATION FOR A COMMERCIAL DRIVER'S LICENSE, subsection 1301.01, paragraph (d) is amended to read as follows:

- (d) Applicant's certification that he or she is not subject to any disqualification, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction.

- 2) Section 1302, COMMERCIAL DRIVER'S INSTRUCTION LICENSE, subsection 1302.2 is amended by striking the figure "eighteen (18)" and inserting the figure "twenty-one (21)" in its place.

- 3) Subsection 1305, COMMERCIAL DRIVERS LICENSE REQUIRED, subsection 1305.2 is amended to read as follows:

1305.2 No resident under the age of twenty-one (21) may be issued a commercial driver's instruction license or commercial driver's license.

- 4) Section 1306, DISQUALIFICATION, is amended as follows:

- a) Subsection 1306.1, paragraphs (a), (c), (d) and (f) are amended by striking the phrase "a commercial" wherever it appears and inserting the word "any" in its place.

- b) Subsection 1306.2 is amended by adding a new paragraph (h) to read as follows:

- (h) Driving a commercial motor vehicle while not in possession of a commercial driver's license.

- c) Subsection 1306.10 is amended by adding at the end of the sentence the phrase "; unless the disqualification is imposed by the federal government pursuant to 49 CFR 383.52".

- d) New subsections 1306.12 and 1306.13 are added to read as follows:

1306.12 Any person failing to submit the medical documentation in the time period provided by § 1327 shall be disqualified until that information is submitted.

1306.13 The Department shall act expeditiously in imposing disqualifications under this section and posting them to the driver's record.

5) Section 1311, DURATION OF COMMERCIAL DRIVER'S LICENSE, is amended by adding a new subsection 1311.3 to read as follows:

1311.3 Any endorsement issued pursuant to this Chapter shall not expire before the date that the license expires.

6) Section 1312, DRIVER'S LICENSE TYPE AND CLASS, subsection 1312.2(a) is amended by striking the phrase "or is a semi-trailer or trailer with two (2) or more axels".

7) Section 1314, PROCEDURES FOR LICENSING ACTIONS, is amended as follows:

a) Subsection 1314.4 is amended by striking the phrase "possesses a commercial driver's license" and inserting the phrase "possesses a driver's license" in its place.

b) Subsection 1314.6 is amended by striking the phrase "of any licensing action taken against such person's driving privileges" and inserting the phrase "or conviction for a violation that may result in the disqualification, revocation, suspension, or cancellation of the person's commercial driver's license" in its place.

c) Subsection 1314.7 is amended to read as follows:

1314.7 Whenever a person who does not hold a commercial driver's license, but who is licensed to drive by another State, is convicted of a violation in a commercial motor vehicle of any law relating to motor vehicle traffic control (other than a parking violation), the Department shall notify the licensing entity in the State where the driver is licensed of this conviction as follows:

(a) Beginning on September 30, 2005, the notification will be made within thirty (30) days of the conviction.

(b) Beginning on September 30, 2008, the notification will be made within ten (10) days of the conviction.

d) A new subsection 1314.8 is added to read as follows:

1314.8 The Department shall make driver record information available as required by 49 CFR § 225(c).

8) Section 1315 COMMERCIAL DRIVER'S LICENSE KNOWLEDGE TEST, subsection 1315.1 is amended by adding a new paragraph (i) to read as follows:

(i) An air brake test, which shall be administered to persons who apply to operate a vehicle with air brakes.

9) Section 1328, USA PATRIOT ACT, is amended by inserting a new subsection 1328.3 to read as follows:

1328.3 Upon receipt of a finding by the Transportation Security Administration that an applicant or permittee represents a security threat, the Director shall refuse to issue, or shall immediately revoke any hazardous materials endorsement effective 5 days after mailing a notice of revocation to the permittee's address in the Department's records.

10) Section 1329, EXEMPTIONS TO THE COMMERCIAL DRIVER'S LICENSE REQUIREMENTS, subsection 1329.1 is amended to read as follows:

1329.1 Persons on active military duty; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel are exempt from the requirements of D.C. law 8-161 and this Chapter.

11) Section 1399, DEFINITIONS, is amended as follows:

a) The definition of "Driving a Commercial Motor Vehicle While Under the Influence of Alcohol" is repealed.

b) By adding the following new definition:

"Conviction – means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

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

Case No. 05-20

(Text Amendment – Asphalt Plants)

November 21, 2005

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.01) and the authority set forth in D.C. Official Code §2-505(c) hereby gives notice of the adoption, on an emergency basis, of amendments to Title 11 of the District of Columbia Municipal Regulations (“DCMR”) to permit the asphalt plant, now located at 60 P Street, S.E., Square 705, Lot 802 to relocate as a matter of right within D.C. Village on the part of parcel 253/26 west of Shepherd Parkway, S.W. and east of the Anacostia Freeway, subject to certain conditions.

Emergency rulemaking action is required in order to minimize the period of time during which the District Department of Transportation will have one source of asphalt. The asphalt plant located in Square 705, lot 802 (“the plant”) is one of only two asphalt plants within the District of Columbia. Because delivery of the asphalt from processing plant to site must occur in thirty minutes or less, DDOT is unable to rely on sources located beyond the District. As a result of the District’s recent exercise of its eminent domain authority, the plant must relocate. The District has identified a relocation site within D.C. Village, but the plant’s owner cannot begin the process of planning and financing the relocation until it has some degree of certainty as to its ability to operate at the new location. At present, asphalt plants are prohibited in all zone districts. The current proceeding that is considering the relocation request is not likely to be completed until late January at the earliest. Each day between now and then will be one more day that the District Department of Transportation must rely on a single source of asphalt. With winter fast approaching, the need to maintain the integrity of the District’s roadways becomes critical. A cessation or slowdown of asphalt supply from the one remaining plant would clearly jeopardize public safety. Therefore, the Commission must take emergency action to permit the plant’s relocation process to begin at the earliest possible time, with the understanding the final action to permanently allow the use must still be taken. A notice of proposed rulemaking with respect to the relocation request, together with additional provisions relating to new asphalt plants, is published elsewhere in this edition of the *D.C. Register*.

The emergency rulemaking took effect immediately upon its adoption on November 21, 2005 and will expire 120 days thereafter, i.e. March 21, 2006.

Title 11 (DCMR) is amended as follows:

Chapter 8, INDUSTRIAL DISTRICTS, is amended by adding new § 801.7(m) to read as follows:

- 801.7(m) An asphalt plant located in D.C. Village on the part of parcel 253/26 west of Shepherd Parkway, S.W., and east of the Anacostia Freeway (D.C. Village site”) if the plant was located in Square 705, Lot 802 on

November 21, 2005 and was relocated to the D.C. Village site, provided that the plant:

- (i) Meets the requirements of 802.17 (a) through (h); and
- (ii) Displays no signs visible from the Anacostia Freeway.