

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS****NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code §§ 47-2836, 47-2851.03a(o), and 47-2851.20, hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the D.C. Register, a new Chapter 12 (Sightseeing Tour Companies and Guides) of Title 19 of the District of Columbia Municipal Regulations (DCMR). This rulemaking amends Sightseeing Tour Guide licensing rules and administrative procedures in order to reflect changes in the law and the profession.

19 DCMR Chapter 12 is amended to read as follows:

**CHAPTER 12 SIGHTSEEING TOUR COMPANIES AND GUIDES**

Secs.

1200	Sightseeing Tour Guide Licenses
1201	Application for Sightseeing Tour Company License
1202	Application for Sightseeing Tour Guide License
1203	Requirements for Sightseeing Tour Companies
1204	Requirements for Sightseeing Tour Guides
1205	Denial, Suspension, or Revocation of Licenses
1206	Penalties
1207	Notice of Proposed Action and Appeal Rights
1208	Hearings and Appeal

**1200. SIGHTSEEING TOUR GUIDE LICENSES**

- 1200.1 Whenever used in this chapter, the term “guide” shall mean any person who engages in the business of guiding or directing people to any place or point of interest in the District, or who, in connection with any sightseeing trip or tour, describes, explains, or lectures concerning any place or point of interest in the District to any person, or seeks to obtain the patronage of any person for such a trip.
- 1200.2 No person shall offer to act as a sightseeing tour guide on the roads, sidewalks, public spaces or waterways of the District of Columbia unless application for a license has been made to the Department of Consumer and Regulatory Affairs (Department).
- 1200.3 No licensee shall engage in business or do business with any company or individual not properly licensed by the Department to conduct sightseeing tours.
- 1200.4 No vending of any articles of merchandise shall be allowed by any licensee in a sightseeing tour vehicle.

**1201. APPLICATION FOR SIGHTSEEING TOUR COMPANY LICENSE**

- 1201.1 Application for license to engage in business as a sightseeing tour company shall be made to the Director of the Department of Consumer and Regulatory Affairs (Director) on a form prescribed by the Director.
- 1201.2 Each applicant for a sightseeing tour company license shall provide the following information:
- (a) Contact information for the company's registered agent;
  - (b) The total number and description of vehicles the company will operate in the District for sightseeing tours;
  - (c) Affirmation that each vehicle the company will operate in the District is properly licensed for such operation by all relevant government agencies;
  - (d) The number of sightseeing tour guides the company estimates will provide sightseeing tours in the District;
  - (e) For companies using motor vehicles in conducting tours, the following proof of insurance:
    - (1) Companies with tour vehicles seating 15 persons or less, including the driver, shall maintain minimum insurance coverage of \$1,500,000, combined single limit (bodily injury, death, and property damage), per accident; or
    - (2) Companies with tour vehicles seating 16 persons or more, including the driver, shall maintain minimum insurance coverage of \$5,000,000, combined single limit (bodily injury, death, and property damage), per accident.
- 1201.3 Each applicant shall obtain a Certificate of Occupancy from the Department and pay all required fees related to licensure.
- 1201.4 For the information required under §§ 1201.2 (a), (b), and (c), the sightseeing tour company shall notify the Department in writing within thirty (30) days of any change.
- 1201.5 The Director is authorized, in connection with the consideration of license applications and from time to time during the license term, during regular business hours, to require any applicant or licensee to make available to the Director, or the Director's agent, such information as the Director considers necessary in determining or verifying whether the applicant or licensee has or retains the qualifications necessary for obtaining or retaining a license, or has violated or failed to comply with any applicable statute or provision of this chapter.
- 1201.6 The investigation by the Director may include the determination or verification of the identity of any person associated with the applicant or licensee in the business, and the extent, if any, of that person's control, either directly or indirectly, over the business activities of the applicant or licensee.
- 1201.7 Failure to make information available to the Director; failure to furnish to the Director the information the Director is authorized to request by this chapter; or

failure to furnish to the Director or to permit the Director to make copies of such records maintained by the applicant or licensee as the Director may specify, shall be grounds for denial, suspension, or revocation of license.

## **1202. APPLICATION FOR SIGHTSEEING TOUR GUIDE LICENSE**

- 1202.1 Each person making application for a sightseeing tour guide license shall have three (3) sets of his or her fingerprints taken by the Metropolitan Police Department. These fingerprints shall become part of the application. Fingerprints may be submitted to the Federal Bureau of Investigation, or to any other authorities as the Director may deem advisable, for comparison and record.
- 1202.2 Each person making application for a sightseeing tour guide license shall meet the following requirements:
- (a) Be at least eighteen (18) years of age;
  - (b) Be a citizen of the United States, or otherwise authorized to work in the United States;
  - (c) Be able to read, write, and speak the English language;
  - (d) Not be covered by diplomatic immunity;
  - (e) Not be on parole or probation;
  - (f) Not have been convicted or have served all or any part of a sentence within the past ten (10) years for any felony or an attempt to commit any felony; and
  - (g) Not have been convicted within the past five (5) years of a misdemeanor involving turpitude.
- 1202.3 Each applicant shall make a sworn statement as to the veracity of the statements contained in his or her application and pay all required fees related to licensure.
- 1202.4 Each applicant shall submit separate personal reference letters from three (3) persons who have known the applicant for a period of two (2) years or more and who will vouch for the applicant's general good character.
- 1202.5 Each applicant shall submit the certificate of a physician licensed in his or her home community certifying that the physician has examined the applicant within one (1) month prior to the date of application and that, to the best of the physician's knowledge and belief, the applicant is not suffering from any disease or infirmity which would render him or her unfit as a guide.
- 1202.6 Each applicant shall include with his or her application a copy of the applicant's police record in the community in which he or she resides on the date of the application, which is certified by the chief of police of that community.
- 1202.7 Each applicant shall be required to pass an examination under the supervision of the Director, or the Director's designated agent, covering the applicant's knowledge of public buildings and points of historical and general interest in and about the District.

**1203. REQUIREMENTS FOR SIGHTSEEING TOUR COMPANIES**

- 1203.1 No sightseeing tour company license shall be issued to any person, firm, corporation, partnership, or association engaged in the operation of sightseeing tour vehicles unless it has received the proper approval of the District Department of Transportation, the District Department of Motor Vehicles, and the Washington Metropolitan Area Transit Commission to operate in the District.
- 1203.2 The approval of sightseeing tour vehicles required by § 1203.1 shall be evidenced by the display of the applicable license(s) or certificate(s) issued by the relevant government agencies.
- 1203.3 Each vehicle operated by a licensed sightseeing tour company shall have at least one (1) licensed sightseeing tour guide on board the vehicle during its sightseeing tours in the District. This requirement shall not apply to those vehicles that utilize only audio recordings during the sightseeing tour; provided, that any driver of sightseeing tour vehicles who talks, lectures, or otherwise provides sightseeing information to passengers while the vehicle is in motion must be licensed as a sightseeing tour guide.
- 1203.4 Sightseeing tour companies that conduct walking tours or that allow customers to operate self-balancing personal transport vehicles, mopeds, or bicycles shall be subject to this chapter.
- 1203.5 Each sightseeing tour company shall ensure that its sightseeing tour vehicles comply with all District parking and traffic regulations.

**1204. REQUIREMENTS FOR SIGHTSEEING TOUR GUIDES**

- 1204.1 Each sightseeing tour guide, while engaged in performing services as a guide, shall conspicuously wear a badge bearing the licensee's license number that shall be issued to the licensee with the license.
- 1204.2 No person other than a licensed sightseeing tour guide shall, by the use of a uniform or part of a uniform, or by the use of insignia, device, word or words, or sign, indicate that he or she is engaged in the business of furnishing any sightseeing tour guide service, either on his or her own behalf or on behalf of another.
- 1204.3 No person, other than a licensed sightseeing tour company or sightseeing tour guide may use the words "sightseeing," "tours," "guide," or any combination of these words, to advertise the availability of sightseeing tour services. This prohibition shall not apply to the use of these words as part of the identifying lettering on vehicles coming into the District.
- 1204.4 No sightseeing guide shall take to a point of interest a person issued a sightseeing tour ticket covering that point of interest, or cause or allow a person to be taken, and to leave that person at the point of interest without providing that the person shall be taken from that point of interest to the next point of interest to be visited in the course of sightseeing tour for which the person has contracted.
- 1204.5 No person shall, on any street, highway, sidewalk, footway, or public space, stop or attempt to stop any other person for the purpose of soliciting that other person to

- employ him, her, or any person represented by him or her as a sightseeing tour guide or as a chauffeur and sightseeing tour guide.
- 1204.6 A schedule of rates for each type of sightseeing tour conducted by sightseeing tour guides shall be filed with the Department by the licensee. Such schedule shall be broken down by rates charged per hour, per half-day, and per full-day of sightseeing tours.
- 1204.7 No licensed sightseeing tour guide shall issue a sightseeing tour ticket unless:
- (a) The fees for the sightseeing tour have been disclosed in writing and prior to the start of any tour;
  - (b) The fees for each type of sightseeing tour shall be conspicuously displayed at the starting point of the sightseeing tour; and
  - (c) A schedule of fees for each type of sightseeing tour shall be permanently kept in each vehicle used for sightseeing tours and shall be presented upon request.
- 1204.8 All sightseeing tour companies or sightseeing tour guides shall furnish each person on sightseeing tours with a card or ticket containing the following:
- (a) The name of the guide conducting the tour;
  - (b) The name, address, and phone number of a person or office authorized to receive complaints relative to the non-performance by the guide or any part of any sightseeing tour contract;
  - (c) The name, address, and phone number of the person, firm, or corporation responsible for the conduct and management of the tour;
  - (d) A statement that, "Price of ticket includes admission charge where required"; and
  - (e) The reverse of each ticket shall bear, on the part to be retained by the person to whom it was issued upon completion of the tour, a statement that, "The following points of interest are open to the public without charge for admission", followed by a list of the points of interest covered by the ticket to which the statement applies.
- 1204.9 The authorized person or office under § 1204.8(c) shall be available to receive complaints during regular business hours of each day the sightseeing tours are conducted.
- 1204.10 The card or ticket required under § 1204.8 need not be furnished to any child or children under sixteen (16) years of age when the ticket has been furnished to the parent or guardian accompanying the child or children on the sightseeing tour.
- 1204.11 Sightseeing tour guides conducting one (1) or more persons on sightseeing tours of two (2) or more public buildings or points of interest shall furnish a ticket to each person conducted for gain on any sightseeing tour. Forms of the ticket shall be submitted to the Director who shall disapprove of the form if it fails to comply with the provisions of this chapter.

1204.12 Notwithstanding the requirements of § 1204.11, whenever any sightseeing tour guide is employed to conduct a sightseeing tour for one (1) or more groups of persons (with each group consisting of two (2) or more persons traveling as a party), the guide may, in lieu of furnishing a separate ticket to each person conducted on the tour, furnish one (1) ticket complying with the requirements of this section to the person who contracts for the services of the guide on behalf of the group. In any case in which the size of a group requires transportation in more than one (1) vehicle, a sufficient number of tickets shall be furnished to the person contracting for the services of the guide to provide one (1) ticket for each vehicle used for transporting the group. A ticket shall be carried by a group representative riding in each vehicle.

## **1205. DENIAL, SUSPENSION, OR REVOCATION OF LICENSES**

1205.1 The Director may refuse to issue or renew, or may suspend or revoke, a license issued under this chapter for any reason set forth in this chapter or D.C. Official Code § 47-2844.

1205.2 The Director also may refuse to issue or renew, or may suspend or revoke, a license issued under this chapter on any of the following grounds:

- (a) Conviction of the business license holder for any criminal offense involving fraudulent conduct arising out of or based on the business being licensed; or
- (b) Willful or fraudulent circumvention by the business operator of any provision of District statute or regulation relating to the conduct of the business.
- (c) Employment of any fraudulent or misleading device, method, or practice relating to the conduct of the business.
- (d) The making of any false statement in the license application.

1205.3 All qualifications set forth in this chapter as prerequisite to the issuance of a license shall be maintained for the entire license period. Failure to maintain any qualification for license shall be cause for suspension or revocation of the license.

## **1206. PENALTIES**

1206.1 Each licensee shall be liable for all penalties provided for violation of any of the provisions of this chapter, whether the violations are committed by the licensee or the licensee's agent or employee.

1206.2 Pursuant to D.C. Official Code § 47-2846, any person violating any provision of this chapter shall, upon conviction, be fined not more than three hundred dollars (\$300) or imprisoned for not more than thirty (30) days, or both.

1206.3 Any person whose license as a sightseeing tour company or sightseeing tour guide has been suspended or revoked as provided by this section, and who, after due notice in writing of the suspension or revocation, fails or refuses to surrender the license and badge as directed, or who violates any of the provisions of this chapter, shall, upon conviction, be fined not more than two thousand dollars (\$2000), or imprisoned not more than ninety (90) days.

1206.4 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this chapter pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this chapter shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

### **1207. NOTICE OF PROPOSED ACTION AND APPEAL RIGHTS**

1207.1 If the Department proposes to deny, suspend or revoke a license, a written notice shall be provided to the applicant or licensee, which states the proposed action and the basis for the proposed action.

1207.2 The notice required under § 1207.1 shall advise the applicant or licensee of the right to request a hearing within ten (10) business days (excluding Saturdays, Sundays, and legal holidays) from the date of the service of the notice.

1207.3 The notice shall advise that the action proposed or recommended will be taken at the expiration of ten (10) calendar days after service of the notice unless an appeal is taken.

1207.4 The notice shall be:

- (a) Served personally upon the applicant or licensee, or the applicant or licensee's agent; or
- (b) Sent by first class mail to the home or business address of the applicant or licensee, or the applicant or licensee's agent, appearing on the application or license.

1207.5 A notice that is returned by the post office for reason of refusal of the addressee to accept delivery, or incorrect address, is deemed to have been properly served on the addressee by mail.

1207.6 An applicant or licensee may not file a separate application for licensure under this chapter during the appeal process.

### **1208. HEARINGS AND APPEAL**

1208.1 Any licensee on whom a notice has been served pursuant to § 1207 may file a written notice of appeal with the Office of Administrative Hearings (OAH).

1208.2 All hearings and appeals shall be conducted pursuant to the regulations promulgated by OAH. Any stay of an OAH decision that results in the revocation of a license shall be issued pursuant to the procedures set forth by OAH.

All persons desiring to comment on these proposed regulations should submit comments in writing to Helder Gil, Legislative Affairs Specialist, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, NE, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the D.C. Register. Copies of the proposed rules can be obtained from the address listed above.

**D.C. DEPARTMENT OF HUMAN RESOURCES  
METROPOLITAN POLICE DEPARTMENT**

**NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Department of Human Resources, and the Chief, Metropolitan Police Department, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with sections 801 (e), 859 (a), 906 (f), and 957 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-608.01 (e), 1-608.59 (a), 1-609.06 (f), and 1-609.57) (2006 Repl.), and D.C. Law 17-108, the Jobs for D.C. Residents Amendment Act of 2007 (Act), effective February 6, 2008 (D.C. Act 17-172; 54 DCR 10993, November 16, 2007), hereby give notice of the intent to adopt the following rules in not less than thirty (30) days from the publication of this notice in the *D.C. Register*. Pursuant to section 801 (e)(6) of the CMPA (D.C. Official Code §§ 1-608.01 (e)(6)) (2007 Supp.), proposed changes to this chapter are subject to approval by the Council of the District of Columbia (Council). Accordingly, a rulemaking approval resolution has been submitted to the Council for that purpose along with this Notice of Proposed Rulemaking. The main purpose of these rules is to amend sections 301, 302, 306, and 309 of Chapter 3, Residency, of Title 6 of the District of Columbia Municipal Regulations (DCMR), to implement the provisions of the Act. The main provisions of the Act are: (1) a bona fide District resident may be awarded a residency preference of ten (10) points at the time of application for competitive employment, unless the person declines the preference points; (2) a ranking system based on a scale of one hundred (100) points shall be used for all competitive employment decisions; (3) the ten (10) preference points shall be in addition to any points awarded on the one hundred-point (100-point) scale; (4) a person who is awarded the ten-point (10-point) residency preference and is selected for the position shall agree in writing at the time of appointment to maintain bona fide District residency for a period of seven (7) consecutive years from the effective date of appointment; and (5) a person who is awarded the ten-point (10-point) residency preference and is selected for the position shall submit no less than eight (8) proofs of bona fide District residency to the personnel authority. In addition to the changes necessitated to implement the Act, changes are being made to sections 304, 305, 307, and 399 of the chapter. Upon approval of the rules by the Council and adoption, these rules will amend Chapter 3, Residency, of Title 6 of the DCMR, published at 37 DCR 851 (January 26, 1990) and amended at 37 DCR 4117 (June 22, 1990), 40 DCR 2485 (April 16, 1993), 47 DCR 2416 (April 7, 2000), 50 DCR 6993 (August 22, 2003), 51 DCR 9309 (October 1, 2004), 52 DCR 2069 (March 4, 2005), and 55 DCR 6159 (May 30, 2008).

**CHAPTER 3**

**RESIDENCY**

*Chapter 3 of the D.C. Personnel Regulations is amended as follows:*

*The heading of section 301 is changed from “Residency Preference;” and the section is amended to read as follows:*

**301 RESIDENCY PREFERENCE FOR EMPLOYMENT IN THE CAREER, EDUCATIONAL, LEGAL, AND MANAGEMENT SUPERVISORY SERVICES**

- 301.1 Pursuant to D.C. Law 17-108, the Jobs for D.C. Residents Amendment Act of 2007, effective February 6, 2008 (D.C. Act 17-172; 54 DCR 10993, November 16, 2007), a person who applies for competitive employment in the Career Service, Educational Service, Legal Service other than the Senior Executive Attorney Service, or Management Supervisory Service and who is a bona fide resident of the District of Columbia may be awarded a residency preference of ten (10) points at the time of application, unless the person declines the preference points.
- 301.2 An employee who applies for a competitive promotion in the services listed in section 301.1 of this section who is a bona fide resident of the District of Columbia may be awarded a residency preference of ten (10) points at the time of application, unless the employee declines the preference points.
- 301.3 When residency preference is awarded pursuant to sections 301.1 or 301.2 of this section, proof of bona fide residency shall be submitted upon selection for the position.
- 301.4 Except as provided in section 301.13 of this section, an applicant for a position in the services listed in section 301.1 of this section who is awarded the ten-point (10-point) residency preference and is selected for the position shall agree in writing at the time of appointment to maintain bona fide District residency for a period of seven (7) consecutive years from the effective date of appointment.
- 301.5 Except as provided in section 301.13 of this section, an employee who is awarded the ten-point (10-point) residency preference in applying for a competitive promotion and is selected for the position shall agree in writing no later than the day before the effective date of appointment to maintain bona fide District residency for a period of seven (7) consecutive years from the effective date of appointment.
- 301.6 The requirement to maintain bona fide District residency as provided in sections 301.4 and 301.5 of this section shall be applicable to any applicant or employee who claims a residency preference and is selected for the position on or after February 6, 2008.
- 301.7 Failure to maintain bona fide District residency as provided in sections 301.4, 301.5, or 301.6 of this section shall result in forfeiture of employment.
- 301.8 The personnel authority shall use a ranking system based on a scale of one hundred (100) points (scale) for all competitive employment decisions; and the ten (10) preference points shall be in addition to any points awarded on the scale.

- 301.9 To fill a position in any of the services listed in section 301.1 of this section where two (2) or more applicants are equally qualified, the applicant awarded the ten-point (10-point) preference shall be listed and selected ahead of the non-preference candidate, with the determination as to equal qualifications made as follows:
- (a) For an unassembled examining procedure, all applicants with the same categorical ranking; and
  - (b) For an assembled examining procedure, all applicants with the same numerical rating.
- 301.10 Each applicant for a position in any of the services listed in section 301.1 of this section shall be informed in writing by the personnel authority of the provisions of sections 301.1 through 301.9 of this section.
- 301.11 Each person who is awarded a ten-point (10-point) residency preference and who is competitively selected for a position in any of the services listed in section 301.1 of this section shall be informed, in writing, by the personnel authority, no later than the effective date of the appointment, of the requirement to maintain bona fide District residency for a period of seven (7) consecutive years from the effective date of appointment and that failure to do so shall result in forfeiture of employment.
- 301.12 For the purpose of this section, in order to be a bona fide resident of the District of Columbia, a person must maintain a place of abode in the District of Columbia as his or her actual, regular, and principal place of residence and must have the intent to remain in the District for a minimum of seven (7) consecutive years from the date of appointment.
- 301.13 Notwithstanding any other provision of this chapter, any person who meets either of the following criteria shall be granted a residency preference upon application for a competitive promotion in any of the services listed in section 301.1 of this section:
- (a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or
  - (b) Pursuant to the provisions of section 7 of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (Pub. L. No. 98-621; 98 Stat. 3376; 24 U.S.C. § 225e (b)) (Pub. L. No. 98-621), any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.
- 301.14 Each applicant for appointment or promotion shall be required to indicate at the time of application his or her claim or entitlement to residency preference in a manner prescribed by the Mayor.

**302 RESIDENCY PREFERENCE IN EMPLOYMENT FOR ATTORNEYS IN THE EXCEPTED SERVICE**

- 302.1 Pursuant to D.C. Law 17-108, the Jobs for D.C. Residents Amendment Act of 2007, effective February 6, 2008 (D.C. Act 17-172; 54 DCR 10993, November 16, 2007), a person who applies for competitive employment, including promotion, as an attorney in the Excepted Service and who is a bona fide resident of the District of Columbia may be awarded a residency preference of ten (10) points at the time of application, unless the person declines the preference points.
- 302.2 Each applicant for appointment as an attorney in the Excepted Service shall be required to indicate at the time of application his or her claim to residency preference.
- 302.3 When residency preference is awarded pursuant to section 302.2 of this section, proof of bona fide District residency shall be submitted upon selection for the position.
- 302.4 Except as provided in section 302.8 of this section, an applicant as described in section 302.1 of this section who is awarded a residency preference and is selected for the position shall agree in writing to maintain bona fide District residency for a period of seven (7) consecutive years from the effective date of appointment.
- 302.5 Any person who is appointed as an attorney in the Excepted Service after being awarded the residency preference and who thereafter fails to maintain bona fide District residency shall forfeit his or her position.
- 302.6 When two (2) or more applicants for one (1) attorney position in the Excepted Service are equally qualified, the personnel authority shall list the applicant awarded the residency preference ahead of the non-preference candidate.
- 302.7 Each applicant for an Excepted Service attorney position shall be informed of the residency preference system as described in this section.
- 302.8 Notwithstanding any other provision of this chapter, any person who was employed by the District of Columbia government on December 31, 1979 and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date shall be granted a residency preference upon application for an attorney position in the Excepted Service.
- 302.9 The transition provisions of section 301.6 of this chapter shall apply to applicants to and employees in attorney positions in the Excepted Service selected for a position after being awarded the ten-point (10-point) preference.

***Section 304.6 is amended to read as follows:***

- 304.6 Upon request, the Director of the D.C. Department of Human Resources (DCHR) may waive the residency requirement set forth in this section for a new hire appointed to a hard to fill position in the Senior Executive Attorney Service SEAS), as follows:

- (a) The Attorney General for the District of Columbia and any independent personnel authority subject to D.C. Official Code §§ 1-608.51 *et seq.* (2007 Supp.), may request a waiver of the residency requirement to the Director, DCHR, for a new hire appointed to a hard to fill position in the SEAS.
- (b) For the purposes of this section, the term “hard to fill position” shall have the meaning ascribed in section 399 of this chapter, except that a SEAS position shall be designated as hard to fill only by the Director, DCHR.
- (c) Any request for a waiver shall be in writing, made and granted before the effective date of appointment of the candidate for the waiver.
- (d) Any request for a waiver shall include appropriate documentation and information to demonstrate that the position is hard to fill and justify consideration of the request. Appropriate documentation and information demonstrating that the position is hard to fill shall include but not be limited to:
  - (1) A statement containing the qualification requirements for the position, and explaining the uniqueness of the duties and responsibilities of the position and the unusual combination of highly specialized qualification requirements which make it hard to fill;
  - (2) A copy of the position description or statement of duties for the position;
  - (3) A copy of the recruitment plan for the position or a statement explaining the recruitment plan;
  - (4) Copies of any vacancy announcements or other types of advertisement issued and published for the position;
  - (5) A statement detailing any special outreach and recruitment efforts undertaken in trying to fill the position and the date on which recruitment efforts to fill the position began;
  - (6) The employment application or résumé of the person for which the waiver is being requested; and
  - (7) A statement explaining the reasons why the waiver should be granted.

*Section 304.7 is amended to read as follows:*

- 304.7 Upon receipt of a request for a waiver pursuant to this section, the Director, DCHR, shall promptly determine whether to grant the waiver and notify the requestor of the decision, in writing.

*Section 305.9 is amended to read as follows:*

305.9 As specified in this subsection, the personnel authority may grant a waiver of the domicile requirement to a person appointed to a position in the Excepted Service on or after October 1, 2002 under the authority of section 903 (a)(1) and (2) of the CMPA (D.C. Official Code § 1-609.03 (a)(1) and (2)) (2007 Supp.), who is appointed to a hard-to-fill position or presents exceptional circumstances. The Mayor (or designee) may grant a waiver of the domicile requirement to a person appointed to a position in the Executive Service on or after October 1, 2002 under the authority of Title X-A of the CMPA (D.C. Official Code § 1-610.51 *et seq.*) (2006 Repl. And 2007 Supp.), who is appointed to a hard-to-fill position or presents exceptional circumstances. The provisions for the granting of waivers of the domicile requirement under this subsection are as follows:

- (a) In the case of a hard-to-fill position in the Excepted Service, an agency head may request a waiver of the domicile requirement for the appointee to the position by submitting written justification to the personnel authority that the position is hard-to-fill. The request shall include appropriate documentation and information to demonstrate that the position is hard-to-fill and justify consideration of the request for the waiver. Appropriate documentation and information shall include, but not be limited to:
  - (1) A statement containing the qualification requirements for the position and explaining the uniqueness of the duties and responsibilities of the position and the unusual combination of highly specialized qualification requirements which make it hard-to-fill;
  - (2) A copy of the position description or statement of duties for the position;
  - (3) A copy of the recruitment plan for the position or a statement explaining the recruitment plan;
  - (4) Copies of any vacancy announcements or other types of advertisement issued and published for the position;
  - (5) A statement detailing any special outreach and recruitment efforts undertaken in trying to fill the position and the date on which recruitment efforts to fill the position began;
  - (6) The employment application or résumé of the person for which the waiver is being requested; and
  - (7) A statement setting forth the reasons that the waiver should be granted.
- (b) Financial hardship associated with becoming a domiciliary of the District of Columbia shall not be considered as a basis for designating a position as hard-to-fill for the purpose of granting a waiver of the domicile requirement pursuant to this subsection.

- (c) Upon receiving a request for a waiver of the domicile requirement for an appointee to a position in the Excepted Service deemed as hard-to-fill by the agency making the request, the personnel authority shall promptly consider the factors enumerated in subsections 305.9 (a)(1) through (7) and 305.9 (b) above, and any other applicable factors; determine if the position shall be designated as hard-to-fill and the waiver granted to the person appointed to the position; and notify the agency of the decision.
- (d) In designating an Executive Service position as hard-to-fill and granting a waiver of the domicile requirement to the appointee to the position in question, the Mayor (or his or her designee) shall consider the factors enumerated in subsection 305.9 (a)(1) through (7) above, as applicable, subsection 305.9 (b) of this section, and any other factors he or she deems applicable.
- (e) Any waiver of the domicile requirement granted based on the designation of a position as hard-to-fill for that purpose shall remain in effect only for as long as the employee occupies the position for which the waiver was granted.
- (f) A determination to grant a waiver of the domicile requirement due to exceptional circumstances shall be based on personal circumstances of the appointee to the position, or a member of his or her immediate family, of such a nature that would cause extreme hardship to the person if he or she were required to become a domiciliary of the District of Columbia. Financial hardship associated with becoming a domiciliary of the District of Columbia shall not be considered as a personal circumstance for which a waiver should be granted. The determining factor for consideration by the personnel authority authorized to grant a waiver due to exceptional circumstances should be that the particular circumstances of the appointee, combined with his or her qualifications for the position and the benefit to the District government, outweigh the need to require that the person become a domiciliary of the District of Columbia.
- (g) When considering the appointment of a non-District domiciliary who is deemed as presenting exceptional circumstances to a position in the Excepted Service, the agency head (or designee) shall submit a request for a waiver of the domicile requirement for the appointee to the personnel authority, in writing, before the effective date of the appointment. The request shall include appropriate documentation and information to substantiate the claim that the appointee to the position presents exceptional circumstances that may warrant the granting of a waiver of the domicile requirement.
- (h) Upon receiving a request for a waiver of the domicile requirement for an appointee to a position in the Excepted Service due to exceptional circumstances, the personnel authority shall promptly consider the documentation and information submitted by the agency; determine if the waiver should be granted; and notify the agency of the decision.

- (i) A waiver of the domicile requirement due to exceptional circumstances granted by the Mayor (or his or her designee) to an appointee to an Executive Service position shall be based on the criteria specified in subsection 305.9 (f) of this section.
- (j) Any waiver of the domicile requirement granted due to exceptional circumstances shall remain in effect only for as long as the employee occupies the position for which the waiver was granted.

*Section 306 is amended to read as follows:*

**306 PROOFS, CERTIFICATION, AND DOCUMENTATION OF DISTRICT RESIDENCY**

- 306.1 The provisions of this section apply to any person required to submit proof of bona fide District residency or, in the case of persons appointed to the Excepted and Executive Services on or after October 1, 2002, proof of District of Columbia domicile.
- 306.2 Documentation, certification, and affidavits required by this section shall be in a form prescribed by the personnel authority.
- 306.3 No single document is conclusive in order to determine bona fide residency; however, the following may be considered:
- (a) Voter registration, if any;
  - (b) Motor vehicle registration, if any;
  - (c) Motor vehicle driver permit, if any;
  - (d) Withholding and payment of individual income taxes including:
    - (1) Copies of District of Columbia tax returns certified by the D.C. Office of Tax and Revenue; and
    - (2) Copies of certified federal tax returns filed with the U.S. Internal Revenue Service;
  - (e) Certified deed or lease or rental agreement for real property;
  - (f) Cancelled checks or receipts for mortgage or rental payments;
  - (g) Utility bills and payment receipts;
  - (h) A copy of a bank account statement in the District of Columbia in the name of the employee;
  - (i) Copies of credit card or brokerage account statements mailed to the employee's principal place of residence in the District of Columbia; and

- (j) Copies of automobile insurance statements for the employee based upon the employee's principal place of residence in the District of Columbia.

306.4 When a person is required to submit documents to support a claim of bona fide District residency, no less than eight (8) of the documents set forth in section 306.3 of this section shall be submitted to the personnel authority.

306.5 For each Excepted or Executive Service appointee subject to the domicile requirement pursuant to section 305 of this chapter, proof of District domicile or of the intent of the appointee to change his or her domicile to the District of Columbia and acquire a principal place of residence in the District of Columbia shall include the following documents in addition to a minimum of four (4) of the documents set forth in section 306.3 of this section:

- (a) A copy of a change of address form filed with the United States Postal Service containing the address of the employee's principal place of residence in the District of Columbia;
- (b) A copy of an executed contract of sale for the real property that was the employee's principal place of residence at the time of accepting the employment, if the employee owns a principal place of residence outside of the District of Columbia; or a copy of a change in the public records of the state where the employee was domiciled to show that the residence outside of the District of Columbia is no longer the employee's principal place of residence;
- (c) Copies of utility bills, including electric, gas, telephone, cable, water or other residency bills associated with occupying real property in the District of Columbia, where the billing and mailing address are the same as the principal place of residence;
- (d) A copy of a bank account statement in the District of Columbia in the name of the employee;
- (e) A copy of District of Columbia and federal income tax returns that use the District of Columbia address which is the employee's principal place of residence;
- (f) Copies of professional dues statements mailed to the employee's principal place of residence in the District of Columbia;
- (g) A sworn affidavit from the employee that the administration of the employee's estate is subject to District of Columbia probate and estate taxes;
- (h) Copies of credit card or brokerage account statements mailed to the employee's principal place of residence in the District of Columbia;
- (i) Copies of automobile, health, and life insurance contracts for the employee based upon the employee's principal place of residence in the District of Columbia;

- (j) Copies of mortgage statements for the employee's principal place of residence in the District of Columbia, or an executed lease for the employee's principal place of residence in the District of Columbia; and
  - (k) A sworn affidavit from the employee that the employee's income, from any source, is subject to District of Columbia withholding tax and taxation.
- 306.6 An Excepted or Executive Service employee subject to the domicile requirement shall fulfill the requirements of section 306.5 of this section by filing a sworn affidavit with the personnel authority that affirms that the employee has undertaken affirmative acts to comply with each requirement, and when the requirement is not applicable, the reasons why the requirement does not apply.
- 306.7 A person who claims a residency preference as provided in sections 301.1 or 301.2 of this chapter and who is selected for the position shall, on or before the effective date of appointment or promotion, sign a statement that certifies the following:
- (a) That the person has received written notification of the residency preference requirement;
  - (b) That the person has read the notice, has been given an opportunity to ask questions about the residency preference requirement, and understands the residency preference requirement;
  - (c) That the person understands that failure to maintain bona fide residency in the District of Columbia for a period of seven (7) consecutive years from the effective date of appointment will result in forfeiture of the position; and
  - (d) That the place of residence stated in the certification is the person's actual, regular, and principal place of residence.
- 306.8 A person who is appointed to a position in the Excepted or Executive Services on or after October 1, 2002 and who claims that he or she is a District domiciliary shall sign a statement on or before the effective date of appointment to the position, whether it is an initial appointment or other appointment, which certifies the following:
- (a) That the person has received written notification of the domicile requirement;
  - (b) That the person has read the notice, has been given an opportunity to ask questions about the domicile requirement, and understands the domicile requirement;
  - (c) That the person understands that failure to remain a District domiciliary for the duration of employment shall result in forfeiture of the position; and
  - (d) That the place of residence stated in the certification is the person's domicile.
- 306.9 Unless exempted pursuant to section 305.8 and 305.9 of this chapter, each

Excepted or Executive Service appointee or employee who is not a domiciliary of the District of Columbia on the date of appointment to a position, whether it is an initial appointment or other appointment, shall sign a statement when appointed, which certifies the following:

- (a) That the person has received written notification of the domicile requirement;
- (b) That the person has read the notice, has been given an opportunity to ask questions about the domicile requirement, and understands the domicile requirement;
- (c) That the person intends to become a domiciliary of the District of Columbia within one hundred eighty (180) days of the date of appointment;
- (d) That the person understands that failure to become a domiciliary of the District of Columbia within one hundred eighty (180) days from the date of appointment shall result in forfeiture of the position; and
- (e) That the person understands that failure to remain a District domiciliary for the duration of employment shall result in forfeiture of the position.

306.10 Each Excepted or Executive Service appointee subject to the requirements of section 305.1 of this chapter who is not a domiciliary of the District of Columbia on the date of appointment shall provide to the personnel authority, within one hundred eighty (180) days of the date of appointment, sufficient documentation, as provided in sections 306.3, 306.5 and 306.6 of this section, which demonstrates that he or she has become a domiciliary of the District of Columbia.

306.11 Each agency head or independent personnel authority shall designate an agency representative to fulfill the requirements specified in sections 306.12, 306.13, 307, and 309 of this chapter.

306.12 Between November 1 and November 30 of each year after the first year of employment, up to the end of the required period of bona fide District residency or District domicile, each employee required to be a bona fide resident or District domiciliary shall submit to the agency representative an affidavit which certifies at least the following:

- (a) That he or she is currently, and has been continuously for the preceding twelve-month (12-month) period, in compliance with the provisions of the residency or domicile requirements, as applicable;
- (b) The home address(es) for the preceding twelve-month (12-month) period;
- (c) The address used on the individual income tax return filed with the District of Columbia during the preceding twelve-month (12-month) period; and
- (d) The address used on the individual income tax return filed with the United States Internal Revenue Service during the preceding twelve-month (12-month) period.

- 306.13 The agency representative, at a time he or she shall determine, but within one (1) year following the date on which the employee became subject to the residency or domicile requirements, shall request, and the employee shall provide, sufficient documentation to demonstrate that the employee is in compliance.

*Section 307.2 is amended to read as follows:*

- 307.2 The notice to show cause why employment should not be forfeited shall be issued only during the period of time that the employee is required to maintain bona fide District residency or be a District domiciliary.

*Section 307.3 is deleted.*

*Section 307.5 is renumbered as 307.3 and amended to read as follows:*

- 307.3 The personnel authority shall designate a hearing officer or officers to conduct residency determination hearings.

*Section 307.11 is renumbered as 307.4 and amended to read as follows:*

- 307.4 The standard of proof in a residency or domicile determination case shall be by a preponderance of the evidence.

*Section 307.7 is renumbered as 307.5 and amended to read as follows:*

- 307.5 The agency representative bears the burden of proof and persuasion concerning the employee's alleged non-compliance with the residency or domicile requirement.

*Section 307.9 is renumbered as 307.6:*

- 307.6 If the hearing officer determines that the agency representative has established reasonable cause to believe that the employee is not in compliance with the residency or domicile requirements, then the burden of persuasion shall shift to and be borne by the respondent employee.

*Section 307.8 is renumbered as 307.7 and amended to read as follows:*

- 307.7 The respondent employee shall have an opportunity to rebut the evidence presented by the agency representative, cross-examining any witness called by the agency, and by presenting evidence that demonstrates compliance with the residency or domicile requirements.

*Section 307.6 is renumbered as 307.8 and amended to read as follows:*

- 307.8 The respondent employee may be represented at the pre-hearing conference and evidentiary hearing by counsel if he or she so chooses.

*Section 307.10 is renumbered as 307.9 and amended to read as follows:*

- 307.9 The agency representative shall have an opportunity to cross-examine any

witness called by the respondent employee, and any witness who testifies on behalf of the respondent employee, including the respondent employee.

*Section 307.4 is renumbered as 307.10 and amended to read as follows:*

307.10 If a full evidentiary hearing is ordered, it shall be held within a reasonable period of time following the pre-hearing conference.

*Section 307.12 is renumbered as 307.11 and amended to read as follows:*

307.11 After the pre-hearing conference, the hearing officer shall issue a proposed written determination on the residency status of the respondent employee within a reasonable period of time and shall serve a copy of the proposed determination on the agency representative and on the respondent employee.

*Section 307.13 is deleted.*

*Section 307.14 is renumbered as 307.12 and amended to read as follows:*

307.12 The employee shall have a period of ten (10) days from the receipt of the proposed determination to file written exceptions with the hearing officer and serve a true copy upon the employee in response to a proposed determination of noncompliance with the residency or domicile requirements.

*Section 307.15 is renumbered as 307.13 and amended to read as follows:*

307.13 Upon review of the record, including any timely filed pleadings, the hearing officer shall order an evidentiary hearing or issue a proposed final decision on compliance with the residency or domicile requirements.

*Section 307.16 is renumbered as 307.14 and amended to read as follows:*

307.14 The personnel authority shall issue a written final decision on the issue of compliance with the residency or domicile requirement to the employee, the agency representative, and the agency head.

*Section 307.17 is renumbered as 307.15 and amended to read as follows:*

307.15 A final decision by the personnel authority of noncompliance with the residency domicile requirements shall result in forfeiture of employment by the employee.

*Section 307.18 is renumbered as 307.16 and amended to read as follows:*

307.16 The Director, D.C. Department of Human Resources, shall notify a subordinate agency head, and the Mayor, when there is reasonable cause to believe that a subordinate agency head is not in compliance with the residency or domicile requirements, as applicable. Upon notification, the Mayor shall determine the appropriate course of action to be taken.

*New sections 309.6 through 309.8 are added to read as follows:*

- 309.6 Each subordinate agency head shall submit to the Mayor and the Council of the District of Columbia (Council) quarterly reports detailing the names of all new employees and their pay schedules, titles, and place of residence. The report shall explain the reasons for employment of non-District residents.
- 309.7 The Mayor shall integrate into each subordinate agency's annual performance objectives the rate of success in hiring District of Columbia residents.
- 309.8 The Mayor shall conduct audits of each subordinate agency's personnel records to ensure that all persons claiming a residency preference at the time of hiring comply with the provisions. Audit reports shall be submitted annually to the Council.

*The definition of the terms "assembled examining procedure" and "unassembled examining procedure" are added; the definition of the terms "Director of Personnel," "entitlement," and "residency preference" are deleted; and the following definitions are amended in section 399 of the chapter:*

**Assembled examining procedure** – a computerized or multiple-choice written examination or test which may include a typing or data-entry skills test.

**Claim** – completion of *Form DC-2000RP, Residency Preference for Employment*, by a bona fide District resident at the time of application for competitive employment or competitive promotion who agrees in writing that, if selected, he or she will maintain bona fide District residency for seven (7) consecutive years from the date of appointment or promotion.

**Competitive promotion** – the change of an employee to a position at a higher grade or class level within the same job classification system and pay schedule, or to a position with a higher representative rate in a different job classification system and pay schedule, as a result of open competitive procedures.

**Immediate family** – a person who is related to the appointee to a position in the Excepted Service pursuant to section 903 (a)(1) and (2) of the CMPA (D.C. Official Code § 1-609.03 (a)(1) and (2)) (2007 Supp.) or the Executive Service as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

**Personnel authority**—an individual or entity authorized by D.C. Official Code § 1- 604.06 (2006 Repl.) to implement personnel rules and regulations for employees of an agency or group of agencies of the District of Columbia; or persons delegated that authority by that individual or entity.

**Subordinate agency** – any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in section 301 (q) of the CMPA (D.C. Official Code § 1-603.01(17)) (2007 Supp.).

**Unassembled examining procedure** – an examination that does not require a written test.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4<sup>th</sup> Street, N.W. Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.