

**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 § 47-2853.10(a)(12) and Mayor’s Order 2000-70, dated May 2, 2000, 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*, amendments to Title 17, Chapter 35 (Occupational and Professional License Fee Schedule) of the District of Columbia Municipal Regulations (DCMR). This rulemaking clarifies Section 3500.1 as setting the fees for health occupation licenses and amends the fee schedule in Sections 3500.2, 3500.3, 3500.4, and 3500.5 to include the non-health related occupations and professions licensed by the Department of Consumer and Regulatory Affairs.

Title 17 DCMR, Chapter 35 is amended to read as follows:

**The first sentence in Section 3500.1 is amended to read as follows:**

3500.1 The examination and annual license fees for each class of health occupation license issued by the Department of Health shall be as follows:

**Section 3500.2 is amended to read as follows:**

3500.2 The examination and annual license fees for each class of non-health occupation license issued by the Department of Consumer and Regulatory Affairs (DCRA) shall be as follows:

DESCRIPTION OF SERVICE	FEE	TERM
<b>(a) ARCHITECTS:</b>		
Application	\$65.00	
License	\$120.00	(up to 2 years)
Renewal	\$155.00	(up to 2 years)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.3	
Reinstated License	\$155.00	(up to 2 years)
Inactive Status	\$155.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
<b>(b) ASBESTOS:</b>		
Application	\$65.00	
License:		
(1) Asbestos Worker	\$110.00	
(2) Supervisor	\$110.00	

Renewal	\$110.00
Late Renewal Fee	\$50.00
Examination/Re-examination	See § 3500.3
Reinstated License	\$110.00
Inactive Status	\$110.00
Duplicate License	\$30.00
Verification of Records	\$30.00

(c) BARBERS:

Application	\$65.00	
License:		
(1) Barber	\$110.00	(up to 2 years)
(2) Manager	\$110.00	(up to 2 years)
(3) Instructor	\$110.00	(up to 2 years)
(4) Owner	\$110.00	(up to 2 years)
Renewal:		
Renewal (Barber & Owner)	\$110.00	(up to 2 years)
Renewal (Barber, Manager & Instructor)	\$155.00	
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.3	
Reinstated License	\$155.00	(up to 2 years)
Inactive Status	\$155.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

(d) BOXERS & WRESTLERS:

Application and License Fees:	
(1) Amateur	\$7.00
(2) Amateur Show	\$25.00
(3) Manager	\$110.00
(4) Permit	\$50.00
(5) Professional Contestant	\$25.00
(6) Professional Show	\$50.00
(7) Promoter	\$130.00
(8) Referee	\$50.00
Matchmaker	\$110.00
Timekeeper	\$110.00
Inspector	\$110.00
Judges	\$110.00
Announcer	\$110.00
Physician	\$110.00
Seconds	\$25.00
Verification of Records	\$30.00

(e) CERTIFIED PUBLIC ACCOUNTANTS:

Application		\$65.00	
License		\$110.00	(up to 2 years)
Renewal		\$110.00	(up to 2 years)
Late Renewal Fee		\$50.00	
Examination/Re-examination		See § 3500.3	
Reinstated License		\$110.00	(up to 2 years)
Inactive Status		\$110.00	
Duplicate License		\$30.00	
Verification of Records		\$30.00	
Permit to Practice		\$110.00	(up to 2 years)

**(f) COSMETOLOGISTS:**

Application		\$65.00	
License		\$110.00	(up to 2 years)
Renewal		\$110.00	(up to 2 years)
Renewal	(Managers & Instructors)	\$155.00	
Renewal	(Specialty Managers & Instructors)	\$155.00	
Late Renewal Fee		\$50.00	
Examination/Re-examination		See § 3500.3	
Reinstated License		\$110.00	(up to 2 years)
Reinstated License	(Managers & Instructors)	\$155.00	
Reinstated License	(Specialty Managers & Instructors)	\$155.00	
Inactive Status	(All categories)	\$110.00	
Inactive Status	(Managers, Instructors & Specialty)	\$155.00	
Duplicate License		\$30.00	
Verification of Records		\$30.00	
Temporary License	(All operators except electrologists)	\$110.00	

**(g) ELECTRICIANS:**

Application		\$65.00	
Temporary License	(Journeyman)	\$110.00	(up to 60 days)
License:			
(1) Apprentice		\$110.00	(up to 2 years)
(2) Journeyman	(All types)	\$110.00	(up to 2 years)
(3) Master	(All types)	\$120.00	(up to 2 years)
(4) Contractor	(All types)	\$120.00	(up to 2 years)
Renewal:			
(1) Apprentice		\$110.00	(up to 2 years)
(2) Journeyman	(All types)	\$110.00	(up to 2 years)

(3) Master	(All types)	\$155.00	(up to 2 years)
(4) Contractor	(All types)	\$180.00	(up to 2 years)
Late Renewal Fee		\$50.00	
Examination/Re-examination		See §3500.3	
Reinstated License:			
(1) Apprentice		\$110.00	(up to 2 years)
(2) Electrician	(All types)	\$110.00	(up to 2 years)
(3) Master	(All types)	\$155.00	(up to 2 years)
(4) Contractor	(All types)	\$180.00	
Inactive Status:			
(1) Journeyman	(All types)	\$110.00	
(2) Master	(All types)	\$155.00	
Duplicate License		\$30.00	
Verification of Records		\$30.00	

(h) FUNERAL DIRECTORS AND APPRENTICES:

Application		\$65.00	
License:			
(1) Apprentice		\$110.00	(up to 4 years)
(2) Funeral Director		\$120.00	(up to 2 years)
Renewal	(Funeral Director)	\$130.00	(up to 2 years)
Late Renewal Fee		\$50.00	
Examination/Re-examination		See § 3500.3	
Reinstated License	(Funeral Director)	\$120.00	(up to 2 years)
Inactive Status	(Funeral Director)	\$120.00	
Courtesy Card	(Funeral Director)	\$100.00	
Duplicate License		\$30.00	
Verification of Records		\$30.00	

(i) INTERIOR DESIGNERS:

Application		\$65.00	
License		\$110.00	(up to 2 years)
Renewal		\$120.00	(up to 2 years)
Late Renewal Fee		\$50.00	
Examination/Re-examination		See § 3500.3	
Reinstated License		\$120.00	(up to 2 years)
Inactive Status		\$120.00	
Duplicate License		\$30.00	
Verification of Records		\$30.00	

(j) PLUMBERS/GASFITTERS:

Application		\$65.00	
License:			
(1) Apprentice		\$110.00	(up to 2 years)
(2) Journeyman	(All types)	\$110.00	(up to 2 years)
(3) Master	(All types)	\$120.00	(up to 2 years)

(4) Contractor	\$120.00	(up to 2 years)
Renewal:		
(1) Apprentice	\$110.00	(up to 2 years)
(2) Journeyman (All types)	\$110.00	(up to 2 years)
(3) Master (All types)	\$155.00	(up to 2 years)
(4) Contractor	\$180.00	(up to 2 years)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.3	
Reinstated License:		
(1) Apprentice	\$110.00	(up to 2 years)
(2) Journeyman	\$110.00	(up to 2 years)
(3) Master	\$155.00	
(4) Contractor	\$180.00	
Inactive Status:		
(1) Apprentice	\$110.00	
(2) Journeyman	\$110.00	
(3) Master	\$155.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

(k) PROFESSIONAL ENGINEERS/ENGINEERS IN TRAINING:

Application	\$65.00	
License:		
(1) Professional Engineer	\$120.00	(up to 2 years)
(2) Land Surveyor	\$120.00	(up to 2 years)
Renewal:		
(1) Professional Engineer	\$155.00	(up to 2 years)
(2) Land Surveyor	\$155.00	(up to 2 years)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.3	
Reinstated License	\$155.00	(up to 2 years)
Inactive Status	\$155.00	
Engineer in Training Certificate	\$120.00	
Land Surveyor Intern	\$120.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

(l) PUBLIC ACCOUNTANTS:

Renewal	\$110.00	
Late Renewal Fee	\$50.00	
Examination/Re-examination	See §3500.3	
Inactive Status	\$110.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

(m) REAL ESTATE:

Application	\$65.00	
License	\$170.00	(up to 2 years)*
Renewal:		
(1) Associate Broker	\$170.00	(up to 2 years)*
(2) Broker	\$170.00	(up to 2 years)*
(3) Property Manager	\$170.00	(up to 2 years)*
(4) Salesperson	\$130.00	(up to 2 years)*
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.3	
Reinstated License:		
(1) Associate Broker	\$210.00	(up to 2 years)*
(2) Broker	\$210.00	(up to 2 years)*
(3) Property Manager	\$210.00	(up to 2 years)*
(4) Salesperson	\$130.00	(up to 2 years)*
Inactive Status:		
(1) Associate Broker	\$210.00	
(2) Broker	\$210.00	
(3) Property Manager	\$210.00	
(4) Salesperson	\$130.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
Transfer/License Exchange/Status Change	\$30.00	

\* In addition, a fee of \$60.00 for two years and \$30.00 for one year (payable by cashier's check, certified check, or money order) shall be submitted for the Real Estate Guaranty and Education Fund, unless such payments are suspended.

(n) REAL ESTATE APPRAISERS:

Application	\$65.00	
License	\$170.00	(up to 2 years)*
Renewal:		
(1) Residential Appraiser	\$195.00	(up to 2 years)*
(2) Certified General Appraiser	\$195.00	(up to 2 years)*
Late Renewal Fee	\$50.00	
Examination/Re-examination	See § 3500.3	
Inactive Status:		
(1) Residential Appraiser	\$195.00	(up to 2 years)*
(2) Certified General Appraiser	\$195.00	(up to 2 years)*
Temporary License for Practice in D.C.	\$150.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	
Real Estate Appraiser Federal Registration	\$50.00	(up to 2 years)**

\* In addition, a fee of \$130.00 (payable by cashier's check, certified check, or money order) shall be submitted for the Appraisal Education Fund, unless such payments are suspended.

\*\* Federal regulations require that local regulatory agencies collect a fee for Federal registration. This fee is in addition to all other fees and is the current Federal fee.

(o) REFRIGERATION AND AIR CONDITIONING MECHANICS:

Application	\$65.00	
License:		
(1) Mechanic	\$110.00	(up to 2 years)
(2) Contractor	\$120.00	(up to 2 years)
Renewal:		
(1) Mechanic	\$155.00	(up to 2 years)
(2) Contractor	\$180.00	(up to 2 years)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See §3500.3	
Reinstated License:		
(1) Mechanic	\$155.00	
(2) Contractor	\$180.00	
Inactive Status:		
(1) Mechanic	\$155.00	
(2) Contractor	\$180.00	
Duplicate License	\$30.00	
Verification of Records	\$30.00	

(p) STEAM AND OTHER OPERATING ENGINEERS:

Application	\$65.00	
License	\$110.00	(up to 2 years)
Renewal	\$110.00	(up to 2 years)
Late Renewal Fee	\$50.00	
Examination/Re-examination	See §3500.3	
Reinstated License	\$110.00	(up to 2 years)
Inactive Status	\$110.00	(up to 2 years)
Duplicate License	\$30.00	
Verification of Records	\$30.00	

(q) ALL OCCUPATIONS/PROFESSIONS:

List of licensees	\$0.05 per name
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**Section 3500.3 is amended to read as follows:**

3500.3 The types of examinations utilized for professional licensing are as follows: national examinations, standard examinations, and local examinations. National examinations are examinations developed and administered by third parties. Standard examinations are examinations developed by third parties and administered by DCRA. Local examinations are examinations developed and

administered by DCRA or the Board or Commission regulating the individual occupation. Because the examination fees for national examinations and standard examinations change regularly, the DCRA examination/re-examination fees are as follows:

- (a) National examinations: Actual cost;
- (b) Standard examinations: Actual cost + \$25.00 DCRA administrative fee; and
- (c) Local examinations: \$25.00 DCRA administrative fee.

**Section 3500.4 is amended to read as follows:**

3500.4 If a Board or Commission does not require applicants to take an examination after submitting an application for licensure, or the applicable rules require applicants to pass a national examination before submitting an application for licensure, an applicant does not need to include an examination fee with his or her license application.

**A new section 3500.5 is added to read as follows:**

3500.5 Unless otherwise specified, fees apply to all license types within a category.

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.

THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

REVISED NOTICE OF PROPOSED RULEMAKING

The Deputy Mayor for Planning and Economic Development ("Deputy Mayor"), pursuant to the authority set forth in § 107 of the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.07) ("Inclusionary Zoning Act") and Mayor's Order 2008-59, dated April 2, 2008, hereby gives notice of intent to adopt a new Chapter 22 entitled "Inclusionary Zoning Implementation" of Title 14 (Housing) of the District of Columbia Municipal Regulations ("DCMR").

These proposed rules would establish procedures for implementing the Inclusionary Zoning Act and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 of Title 11 (Zoning) of the DCMR.

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

The Deputy Mayor also intends that the final rules shall not become effective until sixty (60) days after publication of the Notice of Final Rulemaking in the D.C. Register in order to allow a transition period between publication and implementation.

An initial notice of proposed rulemaking on this matter was published in the D.C. Register on April 11, 2008. Because significant changes to the proposed rules have been made in response to comments received after the initial notice, the Deputy Mayor is issuing this revised notice of proposed rulemaking. This revised notice of proposed rulemaking replaces the initial notice of proposed rulemaking.

Included as Appendix A to this Notice of Proposed Rulemaking is a draft Maximum Rent and Purchase Price Schedule ("Schedule"). The draft Schedule is being published for public comment at the discretion of the Deputy Mayor. As authorized under section 103(b) of the Act (D.C. Official Code § 6-1041.03(b)), revised Schedules may be issued without a prior public comment period.

Title 14 (Housing) of the DCMR is amended by adding a new Chapter 22 to read as follows:

CHAPTER 22 INCLUSIONARY ZONING IMPLEMENTATION

- Secs.
2200 General Provisions
2201 Prerequisites for Obtaining Building Permits for an Inclusionary Development
2202 Application for Certificate of Inclusionary Zoning Compliance
2203 Review and Approval of Application for Certificate of Inclusionary Zoning Compliance

- 2204 Inclusionary Development Covenants
- 2205 Certificates of Occupancy for Inclusionary Units
- 2206 Notice of Availability; Housing Locator Website Registration
- 2207 Designation of Maximum Purchase Price or Rent
- 2208 Method of Selection of Households
- 2209 District Lottery – Registration for Lottery
- 2210 District Lottery – Conduct of Lotteries
- 2211 District Lottery – Notification of Households and Owners
- 2212 District Lottery – Marketing of Inclusionary Units to Households Selected Pursuant to the Lottery
- 2213 Verification of Household Eligibility; Required Certifications
- 2214 Certifying Entity
- 2215 Closing Procedures
- 2216 Responsibilities of Rental Inclusionary Development Owners and Tenants; Lease Renewals
- 2217 Responsibilities of Inclusionary Unit Owners
- 2218 Determination of Maximum Resale Price
- 2219 Rental of a For Sale Inclusionary Unit
- 2220 Conversion of a Rental Inclusionary Development to a For Sale Inclusionary Development
- 2221 Designated Housing Providers
- 2222 Sale by Heirs and Lenders
- 2223 Violations and Opportunity to Cure
- 2224 Waiver
- 2225 Effective Date
- 2299 Definitions

**2200 GENERAL PROVISIONS**

- 2200.1 The purpose of this Chapter is to implement the Zoning Commission’s Inclusionary Zoning Regulations (Title 11 DCMR, Chapter 26) and the Inclusionary Zoning Act.
- 2200.2 Subject to certain exemptions, the Zoning Commission’s Inclusionary Zoning Regulations mandate that, in applicable zone districts, Inclusionary Units be provided in new residential buildings of ten (10) or more dwelling units or when the construction of ten (10) or more dwelling units represents an expansion of an existing building’s gross floor area by fifty percent (50%) or more.
- 2200.3 The Zoning Commission’s Inclusionary Zoning Regulations establish a formula to determine the minimum and maximum amount of gross floor area that must be reserved for Inclusionary Units, but leave the establishment of maximum prices and rents for the Inclusionary Units to the Council and the Mayor.
- 2200.4 Subject to certain exceptions, the Inclusionary Zoning Act requires Inclusionary Units be sold or leased only to persons authorized by the Mayor at a price or rent no greater than the maximum established by the Mayor.

2200.5 The Inclusionary Zoning Act also provides that:

- (a) No building permit shall be issued for an Inclusionary Development unless the Mayor approves a Certificate of Inclusionary Zoning Compliance and a covenant signed by the Owner of the Inclusionary Development;
- (b) No certificate of occupancy for a Market Rate Unit in an Inclusionary Development shall be issued unless the application includes a written statement signed by the Mayor and dated no earlier than six (6) months before the date of the application indicating that the Inclusionary Development is in compliance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance; and
- (c) A violation of the Inclusionary Zoning Program constitutes grounds for the revocation of any building permit and certificate of occupancy for the market rate portions of the Inclusionary Development.

2200.6 This Chapter implements these aspects of the Inclusionary Zoning Act by establishing, among other things:

- (a) The process and prerequisites for obtaining building permits and certificates of occupancy for Inclusionary Developments;
- (b) The process for selecting households for referral to the owner of an Inclusionary Unit; and
- (c) The responsibilities of and limitations on Inclusionary Unit Owners and Tenants.

2200.7 All timeframes established in this Chapter for an Agency to take an action are guidelines only. An Agency's failure to act within a timeframe established in this Chapter shall not constitute a default by the Agency and shall not permit any person to take or refuse to take any action governed by the Inclusionary Zoning Program.

2200.8 In computing a period of time specified in this Chapter, calendar days shall be counted unless otherwise provided.

2200.9 In computing a period of time specified in this Chapter, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period of time so computed shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which case the period of time shall run until the end of the next day that is neither a Saturday, Sunday, nor official District of Columbia holiday.

2200.10 When, under this Chapter, a person has the right or is required to perform an act within a prescribed period of time after the sending of or the date of a notice or other paper, and the paper or notice is sent by mail, three (3) days shall be added to the prescribed period of time.

2200.11 In the event of a conflict between the provisions of this Chapter and the provisions of the Inclusionary Zoning Act or the Zoning Commission's Inclusionary Zoning Regulations, the most stringent provision shall apply.

**2201 PREREQUISITES FOR OBTAINING BUILDING PERMITS FOR AN INCLUSIONARY DEVELOPMENT**

2201.1 No building permit shall be issued for an Inclusionary Development unless:

- (a) The Agency receives and approves an application for a Certificate of Inclusionary Zoning Compliance, signed by the Owner of the Inclusionary Development, demonstrating that the Inclusionary Development will meet the requirements of the Inclusionary Zoning Program; and
- (b) The Inclusionary Development Owner files in the land records of the District the Inclusionary Development Covenant approved by the Agency pursuant to § 2204.

**2202 APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE**

2202.1 The Inclusionary Development Owner shall file a written application for a Certificate of Inclusionary Zoning Compliance with the Agency no later than the date upon which the first application for a building permit is filed for the Inclusionary Development.

2202.2 The Inclusionary Development Owner shall include with its application for a Certificate of Inclusionary Zoning Compliance payment of an application fee of one hundred dollars (\$100).

2202.3 The Inclusionary Development Owner shall file its application for a Certificate of Inclusionary Zoning Compliance on a form prescribed by the Agency and shall provide such information as is requested on the form.

2202.4 The application form for a Certificate of Inclusionary Zoning Compliance shall include:

- (a) The name of the Inclusionary Development, its marketing name if different, and the apartment house or condominium name, if applicable;
- (b) The street address of the Inclusionary Development;

- (c) The zone district and, if applicable, overlay district in which the Inclusionary Development is located;
- (d) The current and proposed square, suffix, and lot numbers on which the Inclusionary Development will be located;
- (e) A list of all Inclusionary Units in the Inclusionary Development. Each Inclusionary Unit shall be identified by unit number, net square footage, and the number of bedrooms. The list shall also include, and separately identify, any Inclusionary Units that will serve as the location for the offsite compliance of another Inclusionary Development, as approved by the Board of Zoning Adjustment, together with a copy of the Board of Zoning Adjustment order approving the offsite compliance;
- (f) A certification from the Inclusionary Development’s architect or engineer that the size of each Inclusionary Unit is at least ninety-eight percent (98%) of the average size of the same type of Market Rate Unit in the development or at least ninety-eight percent (98%) of the size indicated in the following table, whichever is lesser:

<b>Types of Dwelling</b>	<b>Type of Unit</b>	<b>Minimum Unit Size (square feet)</b>
Multiple Family Dwelling	Studio/ Efficiency	400
	One Bedroom	550
	Two Bedroom	800
	Three Bedroom	1000
	Four Bedroom	1050
One or Two Household Dwellings	Two Bedroom	1000
	Three Bedroom	1200
	Four Bedroom	1400

- (g) A copy of the site plan, front elevation or block face, and all residential floor plans for the Inclusionary Development. The floor plans shall show the location of each Inclusionary Unit and each Market Rate Unit and shall identify each by unit number;
- (h) A copy of the building plat required by 12A DCMR § 106.1.12;
- (i) An unsigned copy of the Inclusionary Development Covenant described in § 2204;
- (j) A deed of trust, if required by the Agency pursuant to § 2204.2;
- (k) A plan for the phasing of construction that demonstrates compliance with 11 DCMR § 2605.5, which requires that all Inclusionary Units in an Inclusionary Development be constructed prior to or concurrently with the construction of

Market Rate Units, except that in a phased development, the Inclusionary Units shall be constructed at a pace that is proportional with the construction of the Market Rate Units;

- (l) The total land area of all of the lots included in the Inclusionary Development;
- (m) The total gross square footage of the Inclusionary Units in the Inclusionary Development, the net residential square footage of the Inclusionary Development, and the gross residential square footage of the Inclusionary Development;
- (n) The total net floor area that will be set aside for Inclusionary Units as calculated by multiplying the total gross square footage of the Inclusionary Units required by 11 DCMR § 2603 by the ratio of the net residential square footage to the gross residential square footage of the Inclusionary Development;
- (o) The total gross floor area of Inclusionary Units that will be set aside for Low-Income Households, if such Inclusionary Units are required by 11 DCMR § 2603.3, calculated pursuant to the method set forth in paragraph (n) of this subsection;
- (p) A proposed schedule of standard finishes, fixtures, equipment, and appliances for both Inclusionary Units and Market Rate Units;
- (q) For each Inclusionary Unit, the approximate date by which the Inclusionary Development Owner will provide a Notice of Availability pursuant to § 2206;
- (r) If construction of the Inclusionary Development will result in the temporary displacement of tenants who are entitled by law to return to comparable units, a list of the Inclusionary Units for which a right of return exists; and
- (s) Such other information as may be requested by the Agency.

**2203 REVIEW AND APPROVAL OF APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE**

2203.1 If the Agency determines that an application for a Certificate of Inclusionary Zoning Compliance does not demonstrate compliance with the Inclusionary Zoning Program or the information provided is insufficient, the Agency shall provide to the Inclusionary Development Owner a written notice of the deficiency and shall allow the Inclusionary Development Owner a period of time, designated in the written notice, to cure the deficiency.

2203.2 If the Inclusionary Development Owner fails to cure the deficiency within the period of time set forth in the written notice, the Agency may deny the application.

2203.3 If the application for a Certificate of Inclusionary Zoning Compliance demonstrates compliance with the Inclusionary Zoning Program, and the proposed Inclusionary Development Covenant is satisfactory to the Agency, the Agency shall issue the Certificate of Inclusionary Zoning Compliance.

**2204 INCLUSIONARY DEVELOPMENT COVENANTS**

2204.1 The proposed Inclusionary Development Covenant submitted in accordance with § 2202.4(i) shall bind all persons with a property interest in any or all of the Inclusionary Development, and all assignees, mortgagees, purchasers, and other successors in interest, to such declarations as the Agency may require, but, at a minimum, shall include:

- (a) A provision requiring that the present and all future Owners of a Rental Inclusionary Development shall construct or maintain and reserve Inclusionary Units at such affordability levels and in such number, square footage, and level of finish as indicated on the Certificate of Inclusionary Zoning Compliance and shall rent such Inclusionary Units in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
- (b) A provision requiring that the present and all future Owners of a For Sale Inclusionary Development shall construct and maintain Inclusionary Units at such affordability levels and in such number, square footage, and level of finish as indicated on the Certificate of Inclusionary Zoning Compliance and shall sell each Inclusionary Unit in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
- (c) A provision binding all assignees, mortgagees, purchasers, and other successors in interest to the Inclusionary Development Covenant; and
- (d) A provision providing for the release or extinguishment of the Inclusionary Development Covenant if the District revokes or rescinds the building permit, the building permit expires, or the Inclusionary Development Owner relinquishes its right to construct under the building permit; and
- (e) A provision requiring that the sale or resale of an Inclusionary Unit shall be only to:
  - (1) A Household selected by the Agency or otherwise authorized by this Chapter, at a price that does not exceed the Maximum Resale Price established in accordance with § 2218; or
  - (2) A housing provider designated by the Agency pursuant to § 2221 at a price equal to or greater than the Maximum Resale Price, as may be

agreed to by the Inclusionary Unit Owner and the designated housing provider.

2204.2 The Agency may require, in its sole discretion, the use of a deed of trust to ensure compliance by an Inclusionary Development Owner with the Inclusionary Development Covenant.

**2205 CERTIFICATES OF OCCUPANCY FOR INCLUSIONARY UNITS**

2205.1 An Inclusionary Development Owner shall obtain a certificate of occupancy for each Inclusionary Unit in the Inclusionary Development.

2205.2 Prior to the issuance of a certificate of occupancy for an Inclusionary Unit, an Inclusionary Development Owner shall provide to the Agency an update of all information provided in its application for a Certificate of Inclusionary Zoning Compliance, if there has been any substantive change to such information since the filing of the application. The Agency shall review the updated information pursuant to the procedures set forth in § 2203.

2205.3 After the submission of the application for a certificate of occupancy for an Inclusionary Unit, the Agency shall inspect the Inclusionary Unit for compliance with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.

2205.4 The Agency shall make good faith efforts to complete its compliance inspection within ten (10) business days after receipt of the Inclusionary Development Owner's notification.

2205.5 No certificate of occupancy for an Inclusionary Unit shall be issued unless there is a certification of the Agency indicating that the Inclusionary Unit is in compliance with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.

2205.6 The Agency may authorize third parties to certify an Inclusionary Unit's compliance with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.

**2206 NOTICE OF AVAILABILITY; HOUSING LOCATOR WEBSITE REGISTRATION**

2206.1 The provisions of this section govern the process by which:

- (a) The owner of a For Sale Inclusionary Development or For Sale Inclusionary Unit fulfills its obligation to notify the Agency that an Inclusionary Unit is available for purchase; and

- (b) The owner of a Rental Inclusionary Development fulfills its obligation to notify the Agency that an Inclusionary Unit is available for lease.
- 2206.2 An Owner shall provide the notification described in § 2206.1 to the Agency by filing a written Notice of Availability in accordance with the provisions of this section.
- 2206.3 An Inclusionary Development Owner shall file the initial Notice of Availability for an Inclusionary Unit at least forty-five (45) days before the date the Inclusionary Development Owner expects to apply for a certificate of occupancy for the Inclusionary Unit.
- 2206.4 An Owner of a Rental Inclusionary Unit shall file all subsequent Notices of Availability no later than ten (10) days after a Tenant gives notice of its intent to vacate the Inclusionary Unit, including a notice of intent provided pursuant to § 2216.1, or the Owner becomes aware that the Tenant has vacated or will vacate the Inclusionary Unit, whichever is earliest.
- 2206.5 An Owner of a For Sale Inclusionary Unit shall file all subsequent Notices of Availability at least forty-five (45) days before the date the Owner intends to market the Inclusionary Unit to eligible Households or, if the Inclusionary Unit is to be offered pursuant to a lottery performed pursuant to § 2210, at least thirty-five (35) days before the Owner wishes to have the lottery conducted.
- 2206.6 The Notice of Availability shall include:
  - (a) The Inclusionary Unit's street address and unit number;
  - (b) The estimated date upon which the Inclusionary Unit will be available for occupancy;
  - (c) If the Inclusionary Unit is a Rental Inclusionary Unit, a copy of the proposed lease to be furnished to an eligible Household, which shall be for at least a one (1)-year term and shall be renewable at the option of the Tenant unless:
    - (1) The Tenant fails to provide a Certification of Income, Affordability, and Housing Size in accordance with § 2216.1;
    - (2) The Tenant fails to provide a Declaration of Eligibility in accordance with § 2216.1;
    - (4) The Inclusionary Unit is not the principal residence of all persons who occupy the Inclusionary Unit; or
    - (5) The Agency has advised the Owner that the Tenant made misrepresentations to the Agency that resulted in the erroneous referral of the Tenant;

- (d) For each initial Notice of Availability for a For Sale or Rental Inclusionary Unit, a list of any optional or required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking. For each such fee or cost, the following information shall be provided:
  - (1) The amount of the fee or cost;
  - (2) A description of the fee or cost and how it will be charged; and
  - (3) If applicable, the budget for the condominium, cooperative, or homeowner association, the condominium, cooperative, or homeowner association fee for each Market Rate Unit and each Inclusionary Unit, and the formula by which such fee is assessed;
- (e) For each subsequent Notice of Availability for a For Sale or Rental Inclusionary Unit, a list of any required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking, and the amount of each such fee or cost;
- (f) For each subsequent Notice of Availability for a For Sale Inclusionary Unit, an itemized list of all capital improvements and upgrades made to the Inclusionary Unit that the Owner wishes the Agency to consider when establishing the Maximum Resale Price pursuant to § 2218. The Inclusionary Unit Owner shall document each cost or value claimed with receipts, contracts, or other supporting evidence;
- (g) For each subsequent Notice of Availability for a Rental Inclusionary Unit, the method by which a Household shall be selected for the rental or sale of the Inclusionary Unit, which method shall be consistent with § 2208;
- (h) Such other information as may be required by the Agency.

2206.7 Within twenty-four (24) hours after the Owner files a Notice of Availability, the Owner shall register the Inclusionary Unit for which the Notice of Availability was filed with the housing locator website established by the District pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; 55 DCR 5313).

**2207 DESIGNATION OF MAXIMUM PURCHASE PRICE OR RENT**

2207.1 Within ten (10) business days after the receipt of a Notice of Availability, the Agency shall notify the Owner of the maximum purchase price or rent for each Inclusionary Unit listed in the Notice of Availability.

2207.2 Except as provided in § 2207.5, the initial maximum purchase price or rent for an Inclusionary Unit shall be the greater of:

- (a) The purchase price or rent in the Rent and Price Schedule in place on the filing date of the application for the Certificate of Inclusionary Zoning Compliance issued for the Inclusionary Development in which the Inclusionary Unit is located; or
- (b) The purchase price or rent in the Rent and Price Schedule in place on the filing date of the Notice of Availability for the Inclusionary Unit, whichever purchase price or rent is greater.

2207.3 The maximum purchase price for all subsequent sales of an Inclusionary Unit Owner shall be the Maximum Resale Price determined by the Agency pursuant to § 2218.

2207.4 Except as provided in § 2207.5, the maximum rent for all subsequent rentals shall be the rent set forth in the Rent and Price Schedule in place on the date that the Notice of Availability for the Inclusionary Unit is filed.

2207.5 If the costs provided for a For Sale Inclusionary Unit in response to §2206.6(d) exceed by ten percent (10%) or more the cost assumptions in the applicable Rent and Price Schedule, the Agency may lower the initial maximum purchase price to the extent needed to maintain the affordability standard set forth in § 103(a) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(a)) and this Chapter.

**2208 METHOD OF SELECTION OF HOUSEHOLDS**

2208.1 Except as provided in § 2208.3, a Household shall be selected for the initial or subsequent sale and for the initial lease of an Inclusionary Unit through a lottery conducted pursuant to § 2210.

2208.2 No lottery is required for the initial or subsequent sale or the initial lease of an Inclusionary Unit if the Inclusionary Unit is to be:

- (a) Leased or sold to a household displaced from and entitled by law to return to the Inclusionary Unit;
- (b) Leased or sold as a replacement unit as part of the New Communities Initiative; or

- (c) Sold to a Designated Housing Provider if the Designated Housing Provider is referred to the Owner pursuant to § 2221;
- (d) Sold by an Inclusionary Unit Owner to the Inclusionary Unit Owner's spouse, domestic partner, parent, or child who is eighteen (18) years of age or older, if the spouse, domestic partner, parent, or child submits the information and documents required by § 2213.1; or

2208.3 A Household may be selected for the subsequent lease of a Rental Inclusionary Unit through:

- (a) A lottery conducted pursuant to § 2210;
- (b) A method described in § 2208.2(b) or (c) (and set forth in the Notice of Availability pursuant to § 2206.6(g)); or
- (c) A method established by the Owner (and set forth in the Notice of Availability pursuant to § 2206.6(g)), if the method meets the following standards:
  - (1) The Owner maintains a selection list or waiting list ("Owner List") for the Inclusionary Unit or the Inclusionary Development in which the Inclusionary Unit is located that is open to the general public and includes the information listed in § 2209.3;
  - (2) The Owner markets the Inclusionary Unit to the first four (4) Households on the Owner List that qualify for the Inclusionary Unit based on Household size and Household income, as ranked in the following order:
    - (A) Households residing in the District of Columbia, who shall then be ranked by the length of time each has been on the Owner List;
    - (B) Households with a least one (1) member employed in the District of Columbia, who shall then be ranked by the length of time each has been on the Owner List; and
    - (C) Other Households, who shall then be ranked by the length of time each has been on the Owner List.
  - (3) The Owner allows each Household at least ten (10) days to indicate its interest in leasing the Inclusionary Unit.
  - (4) The Owner does not lease the Inclusionary Unit before thirty (30) days after the Owner begins to market the Inclusionary Unit to the four (4) Households, unless the Inclusionary Unit is leased to the highest-

ranked Household that has indicated its interest in leasing the Inclusionary Unit.

- (5) After the thirty (30) day period designated in paragraph (d) of this subsection, the Owner may lease the Inclusionary Unit to any of the four (4) Households; provided, if there are two (2) or more such Households that are ready and eligible to lease the Inclusionary Unit, and meet the Owner's non-income based rental or sale criteria, the Owner shall lease the Inclusionary Unit to the highest-ranked such Household.
- (6) If none of the first four (4) Households leases the unit after a reasonable period of time, the Owner may market the Inclusionary Unit to the next four (4) Households ranked in the same order as set forth in paragraph (b) of this subsection and lease the Inclusionary Unit pursuant to the standards established by paragraphs (c) through (e) of this subsection.

**2209 DISTRICT LOTTERY — REGISTRATION FOR LOTTERY**

2209.1 In order to be eligible to participate in the District-conducted lottery for the purchase or rent of an Inclusionary Unit, a Household shall register with the Agency.

2209.2 The Agency shall maintain at least the two (2) following lottery registration lists:

- (a) The District List, consisting of Households whose members live in, or at least one (1) of whose members works in, the District of Columbia; and
- (b) The Miscellaneous List, consisting of Households that do not qualify to be placed on the District List.

2209.3 A Household seeking to be placed on a registration list shall provide the following information to the Agency on such form as may be prescribed by the Agency:

- (a) The name, address, and telephone number of the Household member who will serve as the principal contact for the Agency;
- (b) The Household's size and estimated annual income;
- (c) If the Household consists entirely of a person enrolled as a full-time student in a college or university, the annual income of the person's parent or guardian; and
- (d) For each Household member:

- (1) The current principal residence of the Household member;
- (2) If employed, the name and address of the employer; and
- (3) If a college or university student, the name and address of the college or university.

2209.4 Registration shall become effective on the date the application for registration is, after review by the Agency, considered complete and shall expire two (2) years thereafter, unless renewed prior to expiration.

2209.5 The Agency shall notify each registrant of the date upon which their registration became effective and the date upon which the registration will expire.

2209.6 An application to renew a registration shall indicate any change in any information that was required to be provided in the initial application.

**2210 DISTRICT LOTTERY – CONDUCT OF LOTTERIES**

2210.1 No later than ten (10) business days after receiving a Notice of Availability for an Inclusionary Unit to be offered pursuant to a District lottery, the Agency shall hold a lottery of those Households on the District List that meet the size and Annual Income requirements for the Inclusionary Unit as described in section § 2211.3.

2210.2 Unit size eligibility shall be determined based upon the following standards:

<b>Unit Size (Bedroom)</b>	<b>Minimum Number of Persons in Unit</b>	<b>Maximum Number of Persons in Unit</b>
0	1	1
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10
6	10	12

2210.3 For each Inclusionary Unit, the Agency shall randomly select at least four (4) Households through a lottery from the District List. If fewer than four (4) Households on the District List meet the Household size and Annual Income standards applicable to the Inclusionary Unit, the Agency shall hold a lottery from the Miscellaneous List in order to select at least four (4) Households which meet the Household size and Annual Income standards applicable for the Inclusionary Unit.

2210.4 The Households chosen shall then be ranked in the following order:

- (a) Households residing in the District of Columbia, who shall then be ranked by the length of time each has been on the District List;
- (b) Households with a least one (1) member employed in the District of Columbia, who shall then be ranked by the length of time each has been on the District List; and
- (c) Households on the Miscellaneous List, who shall then be ranked by the length of time each has been on the Miscellaneous List.

2210.5 If more than one (1) Household has been on the registration list for the same period of time, their ranking shall be in the order in which the Households were selected in the lottery.

2210.6 If none of the Households selected through a lottery purchase or rent the Inclusionary Unit, the Agency shall continue to hold lotteries pursuant to the procedures set forth in this section until a Household purchases or leases the Inclusionary Unit or the Inclusionary Unit is leased or sold; except, the Agency may permit the rental or sale of the Inclusionary Unit to a Household that is not registered for the lottery if:

- (a) More than six (6) months has passed since the Notice of Availability was submitted for the Inclusionary Unit;
- (b) No eligible Household or Designated Housing Provider has executed a pre-sale or purchase contract or lease within that period; and
- (c) The Owner submits a written statement that demonstrates good faith efforts on the part of the Owner to sell or lease the unit to Households or Designated Housing Providers referred by the Agency.

2210.7 With respect to each Household selected pursuant to a lottery under this section, the Agency shall provide a notice under § 2211.

**2211 DISTRICT LOTTERY – NOTIFICATION OF HOUSEHOLDS AND OWNERS**

2211.1 No later than ten (10) business days after a lottery is held, the Agency shall provide to the Owner a written list of the Households selected pursuant to the lottery, along with the lottery rank of each Household.

2211.2 Not later than ten (10) business days after a lottery is held, the Agency shall provide a notice to each of the Households selected in the lottery of their selection and shall provide to each Household their rank, the address, unit type, and maximum rent or purchase price of the Inclusionary Unit for which the lottery was held and the means by which the Household may provide to the Owner the confirmation and information required by § 2211.3.

2211.3 The notice provided pursuant to § 2211.2 shall inform each Household that the Household is required to confirm its interest in the Unit to the Owner within ten (10) business days after the date of the notice and to provide the following to the Owner within forty-five (45) calendar days after the date of the notice:

- (a) A Declaration of Eligibility, as described in § 2213;
- (b) A Certification of Income, Affordability, and Housing Size, as described in § 2213;
- (c) If purchasing a For Sale Inclusionary Unit, a pre-qualification letter from a lender indicating the Household's credit worthiness and ability to afford the purchase price; and
- (d) Any other documents requested by the Agency.

2211.4 The notice shall also state that the Household must execute a pre-sale contract or lease for the Inclusionary Unit no later than sixty (60) days after the date of the notice.

2211.5 A Household that fails to meet a deadline set forth in § 2211.3 or § 2211.4 shall be ineligible to purchase or rent the Inclusionary Unit, unless the Owner extends the deadline.

**2212 DISTRICT LOTTERY — MARKETING OF INCLUSIONARY UNITS TO HOUSEHOLDS SELECTED PURSUANT TO THE LOTTERY**

2212.1 The Owner shall market an Inclusionary Unit to each of the Households referred to the Owner under § 2211.1 that has confirmed its interest in the Inclusionary Unit pursuant to § 2211.3.

2212.2 The Owner shall not sell or lease the Inclusionary Unit to an Interested Household before forty-five (45) days after the Agency provides notice to Households under § 2211.2, unless the Inclusionary Unit is leased or sold to the highest-ranked Interested Household.

2212.3 After the forty-five (45) day period designated in § 2212.2, the Owner may lease or sell the Inclusionary Unit to any of the Interested Households referred to the Owner; provided, if there are two (2) or more such Households that are ready and eligible to lease or purchase the Inclusionary Unit, and meet the Owner's non-income based rental or sale criteria, the Owner shall lease or sell the Inclusionary Unit to the highest-ranked such Household.

**2213 VERIFICATION OF HOUSEHOLD ELIGIBILITY; REQUIRED CERTIFICATIONS**

2213.1 In order to be eligible to rent or purchase an Inclusionary Unit, a Household shall provide to the Owner of the Inclusionary Unit a Declaration of Eligibility and a Certification of Income, Affordability, and Housing Size.

2213.2 Except as set forth in § 2208.1(a), an Owner shall sell or rent an Inclusionary Unit only to a Household which:

- (a) Has provided a Certification of Income, Affordability, and Housing Size, obtained from a Certifying Entity, that complies with the requirements of this section; and
- (b) Has executed and provided a Declaration of Eligibility that complies with the requirements of this section.

2213.3 A Declaration of Eligibility required by this section shall be made on a form promulgated by the Agency and shall include a notarized statement of the Household that:

- (a) The Certification of Income, Affordability, and Household Size provided to the Owner was obtained from a Certifying Entity approved by the Agency;
- (b) The Household provided accurate and complete information to the Certifying Entity;
- (c) Each member of the Household will occupy the Inclusionary Unit as its principal residence;
- (d) The Household does not have an ownership interest in any other housing or will divest such interest before closing on the purchase of, or signing the lease for, the Inclusionary Unit;
- (e) The Household has satisfactorily completed a housing counseling class for homebuyers or renters approved by the Agency and evidence of such satisfactory completion is attached to the Declaration of Eligibility;
- (f) The Household has been informed of, and understands, its rights and obligations under the Inclusionary Covenant or lease riders required pursuant to § 2216.1; and
- (g) Any other representations required by the Agency as part of the form.

2213.4 The Inclusionary Unit Owner shall provide the Inclusionary Covenant or lease riders to the Household within three (3) business days after a request from the Household.

2213.5 A Certification of Income, Affordability, and Housing Size required by this section means a document signed by an authorized representative of a Certifying Entity approved by the Agency, certifying:

- (a) The Household's Annual Income;
- (b) That the Household's Annual Income qualifies it as being either a Low-Income Household or Moderate-Income Household;
- (c) That the Household's Annual Income does not exceed the limit imposed by the Inclusionary Development Covenant applicable to the Inclusionary Unit;
- (d) The Household's size;
- (e) That the Household's size is within the size range applicable to the Inclusionary Unit under § 2206.3;
- (f) For a For Sale Inclusionary Unit, that the Household will not expend more than forty-one percent (41%) of the its Annual Income on mortgage payments, insurance, taxes, and condominium and homeowner association fees for the applicable Inclusionary Unit; and
- (g) For a Rental Inclusionary Unit, that the Household will not expend more than thirty-eight percent (38%) of its Annual Income on rent and utilities if not included in the rent for the applicable Inclusionary Unit.

**2214 CERTIFYING ENTITY**

2214.1 A Household shall obtain, and an Owner shall accept, a Certification of Income, Affordability, and Housing Size only from a Certifying Entity approved by the Agency.

2214.2 The Agency may approve a Certifying Entity pursuant to a request for proposals process or through an application process.

2214.3 The Agency shall approve a Certifying Entity based on the entity's experience in successfully implementing activities similar to those described in § 2214.4, the capacity and experience of the entity's staff and management, the capacity and support of the entity's board of directors, the strength of the entity's financial and management systems, and any other factors the Agency deems relevant.

2214.4 A Certifying Entity shall be responsible for certification of a Household's Annual Income, certification of a Household's household size, certification that the rent or purchase price of an Inclusionary Unit is affordable to the Household, counseling and

training Households for homeownership, reporting data to the Agency, compliance with relevant regulations, and any other activities required by the Agency.

**2215 CLOSING PROCEDURES**

2215.1 Prior to closing, the Owner shall attach as exhibits to the deed used to convey an Inclusionary Unit both the Declaration of Eligibility and the Certification of Income, Affordability, and Housing Size provided to the Owner by Household purchasing the Inclusionary Unit, or such portions of the documents designated by the Agency.

2215.2 The Owner shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN INCLUSIONARY DEVELOPMENT COVENANT, DATED AS OF \_\_\_\_\_, 20\_\_, RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER \_\_\_\_\_, ON \_\_\_\_\_ 20\_\_, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

2215.3 Within ten (10) days after closing, the new Inclusionary Unit Owner shall provide the Agency with a signed copy of the United States Department of Housing and Urban Development Settlement Statement and a copy of the new deed (including the Declaration of Eligibility and the Certification of Income, Affordability, and Housing Size).

**2216 RESPONSIBILITIES OF RENTAL INCLUSIONARY DEVELOPMENT OWNERS AND TENANTS; LEASE RENEWALS**

2216.1 All Inclusionary Unit leases shall have a lease rider attached to the lease with the following requirements:

(a) No later than sixty (60) days before each anniversary of the first day of the lease, a Household leasing a Rental Inclusionary Unit shall submit to the Inclusionary Development Owner the following information and documents on or with such form as may be prescribed by the Agency:

(1) A statement as to whether the Tenant intends to renew the lease; and

(2) If the Tenant states that he or she intends to renew the lease:

(A) A certification that the Household continues to occupy the unit as its principal residence;

- (B) The names of each person residing in the unit;
  - (3) A Certification of Income, Affordability, and Household Size that meets the requirements of § 2213; and
  - (4) A Declaration of Eligibility that meets the requirements of § 2213.
- 2216.2 The Owner may, in the Owner's discretion, extend the deadline established by § 2216.1; provided, the deadline shall not be extended beyond the last day of the Tenant's lease.
- 2216.3 If a Tenant is ineligible to renew a lease because the Tenant no longer meets the Household size or Annual Income requirements for the Inclusionary Unit, the Inclusionary Development Owner shall provide to the Tenant a notice of the non-renewal of a lease within ten (10) days after the Tenant provides the information and documents required by § 2216.1.
- 2216.4 If a Tenant is ineligible to renew a lease because the Tenant no longer occupies the Inclusionary Unit as its principal residence or does not meet the Household size or Annual Income requirements for the Inclusionary Unit, the Inclusionary Development Owner shall permit the Household to continue to occupy the unit at the current rent for not less than three (3) and no more than six (6) months after the Inclusionary Unit Owner provides to the Tenant the notice required by § 2216.3.
- 2216.5 If a Tenant does not provide the information and documents required by § 2216.1 in the time period set forth in § 2216.1 (as such time period may be extended in the discretion of the Owner), the Owner shall provide to the Tenant a notice of the non-renewal of a lease and the Owner may file a Notice of Availability with the Agency.
- 2216.6 An Inclusionary Unit Tenant shall not close on the purchase of residential property before the Tenant has provided notice of the intent to terminate its lease of the Inclusionary Unit in accordance with the terms of the lease.
- 2216.7 A renewed lease may not require payment of rent greater than the applicable maximum rent set forth in the Price and Rent Schedule in effect on the date the lease is renewed.
- 2216.8 Annually within fifteen (15) days after the anniversary of the issuance date of the first certificate of occupancy for an Inclusionary Unit in a Rental Inclusionary Development, the Owner shall submit a report to the Agency setting forth the following information for the entire Rental Inclusionary Development:
  - (a) The number of Rental Inclusionary Units, by bedroom count, that are occupied;

- (b) The number of Rental Inclusionary Units, by bedroom count, that were vacated during the previous twelve (12) months;
- (c) For each Rental Inclusionary Unit vacated during the previous twelve (12) months, the unit number of the unit that was vacated, the number of days the unit was vacant (or a statement that the unit is still vacant), and the date on which a Notice of Availability was provided to the Agency pursuant to § 2206;
- (d) For each occupied Rental Inclusionary Unit, the names of all occupants, the Household size, and the Household's Annual Income as of the date of the most recent Certification of Income, Affordability, and Housing Size;
- (e) A sworn statement that to the best of the Owner's information and knowledge, the Annual Income and size of each Household occupying each Rental Inclusionary Unit complies with the size and income limits applicable to the Rental Inclusionary Unit; and
- (f) A copy of each new and revised Certification of Income, Affordability, and Housing Size provided in accordance with § 2216.1.

**2217 RESPONSIBILITIES OF INCLUSIONARY UNIT OWNERS**

- 2217.1 Annually on the anniversary of the closing date for an Inclusionary Unit, the Owner of a For Sale Inclusionary Unit shall submit to the Agency certification that it continues to occupy the unit as its principal residence. The certification shall be submitted on or with such form as may be prescribed by the Agency.
- 2217.2 An Inclusionary Unit Owner shall not close on the purchase of other residential property before the Owner has sold the Inclusionary Unit in conformity with the requirements of the Inclusionary Zoning Act and this Chapter.

**2218 DETERMINATION OF MAXIMUM RESALE PRICE**

- 2218.1 The Maximum Resale Price ("MRP") of a For Sale Inclusionary Unit shall be determined through use of the formula  $MRP = P \times (1 + F) + V$  ("Formula"), where:
  - (a)  $P$  = the price the Owner paid for the Inclusionary Unit;
  - (b)  $V$  = the value of capital improvements as determined by the Agency pursuant to this section; and
  - (c)  $F$  = the average Ten Year Compound Annual Growth Rate of the Area Median Income ("AMI") for all of the years since the prior sale of the Inclusionary Unit. The Ten Year Compound Annual Growth Rate for one (1)

year shall be calculated as  $[(\text{AMI for the year in question} / \text{AMI ten (10) years earlier})^{(1/10)} - 1]$  or as otherwise published by the Agency.

2218.2 For the purposes of determining the value of “V” in the Formula, the following improvements made to an Inclusionary Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

- (a) Eligible capital improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and
- (b) Eligible replacement and repair costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.

2218.3 Ineligible costs shall not be included in the determining the value of “V” in the Formula.

2218.4 The value of improvements may be determined by the Agency based upon documentation provided by the Inclusionary Unit Owner or upon a standard value established by the Agency.

2218.5 The Agency may disallow an improvement if the Agency finds that the improvement diminished or did not increase the fair market value of the Inclusionary Unit.

2218.6 The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

2218.7 The Owner shall permit a representative of the Agency to inspect the Inclusionary Unit upon request to verify the existence and value of any capital improvements that are claimed by the Owner.

2218.8 No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the Inclusionary Unit.

2218.9 The value of personal property transferred to a purchaser in connection with the resale of a For Sale Inclusionary Unit shall not be considered part of the sales price of the For Sale Inclusionary Unit for the purposes of determining whether the sales price of the For Sale Inclusionary Unit exceeds the MRP.

**2219 RENTAL OF A FOR SALE INCLUSIONARY UNIT**

2219.1 An Inclusionary Unit Owner may temporarily lease a For Sale Inclusionary Unit to a Household referred to it by the Agency in accordance with the provisions of this section if such lease is not prohibited by applicable condominium or homeowner association rules.

- 2219.2 Except as set forth in § 2219.5, the lease term may not exceed twelve (12) months and may not be renewed.
- 2219.3 Except as set forth in § 2219.5, no more than one (1) temporary rental may occur with a five (5) year period.
- 2219.4 The Owner and Agency shall follow the notice of availability, website registration, and Household selection, notification, referral, and verification processes set forth in § 2206 and §§ 2209 through 2213.
- 2219.5 Upon written submission of a request substantiating substantial hardship, the Agency may grant an extension of the twelve (12)-month period established by § 2219.2 or the one (1)-time limitation established by § 2219.3. The Agency shall approve or disapprove the request, in its sole discretion based on the evidence before it, within a reasonable time period. Substantial hardship may include military service, Peace Corps service, or another reason causing the Owner to be required to leave the District metropolitan area temporarily.

**2220 CONVERSION OF A RENTAL INCLUSIONARY DEVELOPMENT TO A FOR SALE INCLUSIONARY DEVELOPMENT**

- 2220.1 No condominium or cooperative documents may be filed to convert a Rental Inclusionary Development to a condominium or cooperative until a new application for a Certificate of Inclusionary Zoning Compliance is filed by the Inclusionary Development Owner and approved by the Agency and a Certificate of Inclusionary Zoning Compliance is issued by the Agency pursuant to the provisions set forth in § 2203.
- 2220.2 Prior to the issuance of a Certificate of Inclusionary Zoning Compliance under this section, the Inclusionary Development Owner shall record a new or amendatory Inclusionary Development Covenant, applicable to a For Sale Inclusionary Development, that complies with § 2204.
- 2220.3 The application for a Certificate of Inclusionary Zoning Compliance filed under this section shall demonstrate that the location and size of the Inclusionary Units will not change from those approved under the Certificate of Inclusionary Zoning Compliance issued for the Rental Inclusionary Development.
- 2220.4 Tenants occupying Rental Inclusionary Units shall receive the same rights and have the same opportunity to purchase their unit as is provided in the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3401.01 *et seq.*) (“Conversion Act”).
- 2220.5 The offered sales price for a Rental Inclusionary Unit converted to a For Sale Inclusionary Unit shall not exceed the applicable maximum purchase price stated on

the Price and Rent Schedule that is in effect on the date that the Tenant receives the first notice of conversion pursuant to the Conversion Act.

- 2220.6 If the tenant does not purchase the Inclusionary Unit within the time provided in the Conversion Act, the Inclusionary Development Owner shall furnish the Agency with a Notice of Availability pursuant to § 2206 and register the Unit with the website established by the District pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; 55 DCR 5313).

**2221 DESIGNATED HOUSING PROVIDERS**

- 2221.1 The Agency may authorize housing providers, such as the District of Columbia Housing Authority, land trusts, or District-qualified nonprofit organizations (“Designated Housing Providers”), to purchase Inclusionary Units for the purpose of reselling the units to Households selected by the Agency in accordance with §§ 2209 through 2213, subject to the limitation set forth in 11 DCMR § 2603.5.

- 2221.2 To be eligible to be a Designated Housing Provider, the housing provider shall demonstrate to the satisfaction of the Agency its ability to acquire, maintain on a temporary basis, and sell the Inclusionary Unit to Households. The Agency may consider the relative needs and requirements of the housing providers and their clientele, readiness and ability of the housing provider to acquire, maintain on a temporary basis, and sell an Inclusionary Unit, and the number of units previously obtained by the housing provider in determining whether to authorize a housing provider to act as a Designated Housing Provider.

- 2221.3 The Agency may provide notice to Designated Housing Providers of the availability of an Inclusionary Unit prior to a lottery or at the request of an Owner. The Agency may provide the Designated Housing Providers up to ninety (90) days after the date of the notice to enter into a contract with the Owner to purchase the Inclusionary Unit.

- 2221.4 Upon purchase of the Inclusionary Unit, the Designated Housing Provider shall be the Owner of the Inclusionary Unit and shall be subject to the provisions of this Chapter that apply to Owners.

**2222 SALE BY HEIRS AND LENDERS**

- 2222.1 If an Inclusionary Unit Owner dies, at least one (1) heir, legatee, or other person taking title to the Inclusionary Unit by will or by operation of law shall occupy the Inclusionary Unit or shall provide the Agency with a Notice of Availability in accordance with § 2206.

- 2222.2 In the event of foreclosure, the Inclusionary Development Covenant and Inclusionary Unit Covenant shall not be released and the mortgage holder shall provide the Agency with a Notice of Availability in accordance with § 2206.

**2223 VIOLATIONS AND OPPORTUNITY TO CURE**

- 2223.1 Prior to exercising the authority to revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act, the Agency shall provide to the person who is alleged to have violated the Inclusionary Zoning Act or this Chapter a written notice setting forth with particularity the alleged violation and shall provide to that person at least thirty (30) days to cure the alleged violation. If the person cures the violation within the thirty (30) day period, the Agency shall not exercise its authority to revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act. The Agency may extend the thirty (30) day period for good cause shown.
- 2223.2 The Agency shall not revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act except for a willful, substantial violation of the Inclusionary Zoning Act or this Chapter.

**2224 WAIVER**

- 2224.1 The Agency may, upon the request of an agency of the District or the written request of an Inclusionary Development Owner, waive the application of any of the provisions of this Chapter if:
  - (a) The Inclusionary Development is participating in a District or federal program to provide affordable housing to low or moderate-income households, including the New Communities Program, Community Development Block Grant Program, Low-Income Housing Tax Credit Program, and Housing Production Trust Fund Program;
  - (b) The waived provision is not required by the Zoning Commission's Inclusionary Zoning Regulations or the Inclusionary Zoning Act; and
  - (c) Application of the provision is burdensome when combined with other District or federal regulations or standards, the goal of the provision is adequately addressed by other District or federal regulations or standards, or waiver of the provision is in the best interests of the District.

**2225 EFFECTIVE DATE**

- 2225.1 These rules shall become effective sixty (60) days after the date of publication in the *D.C. Register* of the Notice of Final Rulemaking.

**2299 DEFINITIONS**

- 2299.1 When used in this Chapter, the following words and phrases shall have the meanings ascribed below:

**Agency** – the Agency to which the Mayor has delegated the program authority over subject matter being described in the specific text in which the term appears.

**Annual Income** – annual income as defined in 24 C.F.R. § 5.609 as of [the date of publication of this Chapter in the *D.C. Register*].

**Area Median Income** – the area median income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for household size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers. Adjustments of Area Median Income for household size shall be made in the same manner as is prescribed in section 2(1) of the Housing Production Trust Fund Act, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code §§ 42-2801(1)).

**Bedroom** – a room with immediate access to an exterior window and a closet that is designated as a “bedroom” or “sleeping room” on construction plans submitted in an application for a building permit for an Inclusionary Development.

**Certifying Entity** – means an entity certified by the Agency pursuant to § 2214.

**Designated Housing Provider** – an entity authorized by the Agency pursuant to § 2221 to purchase Inclusionary Units from Owners of Inclusionary Developments or Units for sale to Households selected by the Agency.

**Eligible Capital Improvement** – major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Inclusionary Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods.

**Eligible Replacement and Repair Cost** – in-kind replacement of existing amenities and repairs and general maintenance that keep an Inclusionary Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system.

**For Sale Inclusionary Development** – the portion of an Inclusionary Development that includes or will include Inclusionary Units that will be sold to Households.

**For Sale Inclusionary Unit** – an Inclusionary Unit that will be or has been sold to a Household.

**Household** – all persons who will occupy the Inclusionary Unit, all persons over eighteen (18) years of age whose names will appear on the lease or deed whether or not such persons will occupy the Inclusionary Unit, and the lessee’s spouse or domestic partner and children under eighteen (18) years of age, whether or not such persons will occupy the Inclusionary Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

**Inclusionary Development** – a development subject to the provisions of the Inclusionary Zoning Program.

**Inclusionary Development Covenant** – the Inclusionary Development Covenant described in § 2204.

**Inclusionary Development Owner** – a person, firm, partnership, association, joint venture, or corporation, or government with a property interest in land or improvements that is or will be occupied by an Inclusionary Development, but excluding Inclusionary Unit Owners.

**Inclusionary Unit**– a dwelling unit set aside for sale or rental to Low-Income or Moderate-Income Households as required by the Inclusionary Zoning Program.

**Inclusionary Unit Owner** – a Household or Designated Housing Provider that owns an Inclusionary Unit.

**Inclusionary Zoning Act** – the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*).

**Inclusionary Zoning Program** – all of the provisions of the Zoning Commission’s Inclusionary Zoning Regulations, the Inclusionary Zoning Act, and this Chapter.

**Ineligible Costs** – means normal maintenance, general repair work, personal or decorative items or work, cosmetic enhancements, installations with limited useful life spans, and non-permanent fixtures not eligible for capital improvement credit as determined by the Agency. Such costs generally include: (i) cosmetic enhancements such as fireplace tiles and mantels, decorative wall coverings or hangings, window treatments (for example, blinds, shutters, and curtains), installed mirrors, shelving, and refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, and portable appliances; and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, and light bulbs.

**Low-Income Household** – a Household with a total Annual Income equal to or less than fifty percent (50%) of the Area Median Income, adjusted for household size.

**Market Rate Unit** – a unit in an Inclusionary Development that is not an Inclusionary Unit.

**Moderate-Income Household** – a Household with a total Annual Income greater than fifty percent (50%) and less than or equal to eighty percent (80%) of the Area Median Income adjusted for household size.

**Notice of Availability** – the notice required to be provided to the Agency by an Owner in accordance with § 2206.

**Owner** – both an Inclusionary Development Owner and an Inclusionary Unit Owner.

**Rent and Price Schedule** – the rent and price schedule published in the *D.C. Register* pursuant to § 103(b) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(b)).

**Rental Inclusionary Development** – the portion of an Inclusionary Development that includes, or will include, Inclusionary Units that will be leased to Households.

**Rental Inclusionary Unit** – an Inclusionary Unit that will be or has been leased to a Household.

**Tenant** – a Household that occupies a Rental Inclusionary Unit.

APPENDIX A

DRAFT MAXIMUM RENT AND PURCHASE PRICE SCHEDULE

This Maximum Rent and Purchase Price Schedule is established pursuant to the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) (“the Act”) and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 Title 11 of the DCMR.

**Multi-Family Inclusionary Developments**

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	1	\$108	250	\$866	\$93,100	\$1,386	\$166,300
1	2	1 - 2	\$150	313	\$990	\$101,700	\$1,584	\$185,300
2	3	2 - 4	\$192	425	\$1,114	\$103,300	\$1,782	\$197,400
3	5	4 - 6	\$233	525	\$1,361	\$155,400	\$2,178	\$239,000

**Single-Family Inclusionary Developments**

					50% of AMI Units		80% of AMI Units	
Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	3	2 - 4	NC	110	\$1,114	\$139,900	\$1,782	\$234,000
3	5	4 - 6	NC	130	\$1,361	\$171,900	\$2,178	\$286,900
4	7	6 - 8	NC	150	\$1,609	\$203,900	\$2,574	\$339,800

The Maximum Purchase Price or Rent is based on the Washington Metropolitan Statistical Area 2008 Area Median Income of \$99,000 for a family of four (4) as published by the United States Department of Housing and Urban Development. It takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

Maximum Allowable Rent is equal to the rent published minus any utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above. Actual costs to be deducted for each utility are as described in the District of Columbia Housing Authority’s Utility Schedule.

An Inclusionary Development Owner may lower the rents or prices to achieve a larger marketing band of incomes for marketing purposes to assure occupancy.

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Board at [www.fhfb.gov](http://www.fhfb.gov) (6.12% as of November 25, 2008) plus a one percent (1%) cushion to protect for future interest rate increases and a five (5%) down payment.
2. Real estate property taxes assessed at the control price at current real estate tax rates and homestead deductions.
3. Condominium fees are estimated at fifty cents (\$0.50) per square foot per month applied to the assumed unit square footages. Single-family homeowner association fees are estimated at ten cents (\$0.10) per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

<b>Multi-Family Inclusionary Development</b>				<b>Single-Family Inclusionary Development</b>		
Studio	1-Bedroom	2-Bedroom	3-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom
500	625	850	1,050	1,100	1,300	1,500

4. Monthly hazard insurance on single-family units is estimated at one half of one percent (0.5%) of replacement value.

NOTE 1. If the actual homeowner/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fee assumed in the Maximum Price or Rent Schedule and/or hazard insurance is not included in the condominium fees, then the actual fees and insurance costs shall be used to determine the maximum sales price of the Inclusionary Unit..

NOTE 2. For unit types larger than listed above contact the Agency.

NOTE 3. NC — Not calculated. Contact the Agency.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Martine Combal, Manager, Property Acquisition and Disposition Division, Department of Housing and Community Development, 801 North Capitol Street, NE, Washington, DC 20002. Copies of these proposed rules may be obtained from the Office of the Deputy Mayor for Planning and Economic Development at the same address.

**DEPARTMENT OF HEALTH**

**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in section 3(a) of the Preventive Health Services Amendments Act of 1985 ("Act"), effective February 21, 1986, D.C. Law 6-83, D.C. Official Code § 7-131(a) (2001) and Mayor's Order 98-141, dated August 20, 1998, section 5 of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 (the "Act") effective February 24, 1984 (D.C. Law 5-48, D.C. Official Code § 44-501 (b) and 44-504), and Mayor's Order 98-137, dated August 20, 1998, hereby gives notice of his intent to adopt the following amendments to Chapters 2, 20, and 32 of Title 22 of the District of Columbia Municipal Regulations (DCMR) in not less than fourteen (14) days from the date of publication of this notice in the *D.C. Register*. Shortened notice is being given because a full thirty-day notice was previously given and because the action affects a relatively small group of facilities that are part of the infectious disease work group that helped develop them. The rules would add reporting requirements and procedures for minimizing patient infection by methicillin-resistant staphylococcus aureus (MRSA). A notice of proposed rulemaking was previously published October 31, 2008, at 55 DCR 11324 which elicited one comment. The Director of the Department of Health has chosen to adopt the suggestions of the commenter, and the rules are being republished for additional comment.

**Title 22 DCMR (Public Health & Medicine) (August 1986) is amended as follows:**

**Chapter 2 is amended as follows:**

Amend the table of contents by adding the following after the description for section 206

207 MRSA Infection

Section 201.3 is amended as follows:

Amend paragraphs (g) and (h) to read as follows:

- (g) Relapsing fever, louse borne;
- (h) Salmonella infections, including typhoid fever and paratyphoids;

Add new paragraphs (i) and (j) to read as follows:

- (i) VISA; and
- (j) VRSA.

Add a new section 207 to read as follows:

207 MRSA Infection.

- 207.1 Each healthcare facility shall report the aggregate number of patients with MRSA bloodstream infections. The report shall be submitted annually.
- 207.2 Each healthcare facility shall report an outbreak of MRSA. For the purposes of this section, an outbreak is three (3) or more nosocomially-acquired cases that are epidemiologically linked by person, place or time, or a substantial increase in the number of cases in a facility with endemic MRSA.
- 207.3 Each healthcare facility shall conduct active surveillance testing and annually report the findings of that surveillance as the percentage of MRSA isolates in relation to all Staphylococcus aureus isolates for the patient population or for areas identified as at-risk for MRSA. Targeted high risk populations may vary by institution, but may include intensive care units, surgical patients, dialysis patients, patients with prolonged duration of stay, patients with a recent hospitalization or nursing home stay, patients with history of MRSA infection or colonization, and patients transferred from another facility.

Amend section 299.1 by adding the following new definitions to read as follows:

**Methicillin-resistant staphylococcus aureus (MRSA)**—a bacterium that is resistant to antibiotics known as beta-lactams. These antibiotics include methicillin, amoxicillin, oxacillin, and penicillin.

**Vancomycin-intermediate staphylococcus aureus (VISA)**—a bacterium that is intermediate to vancomycin as per current CDC guidelines.

**Vancomycin-resistant staphylococcus aureus (VRSA)**—a bacterium that is resistant to vancomycin as per current CDC guidelines.

**Chapter 20 is amended as follows:**

Amend the table of contents for Chapter 20 by adding the following after the heading for section 2037 Housekeeping and Maintenance:

2038 MRSA Infection Prevention

Add a new section 2038 to read as follows:

2038 MRSA Infection Prevention

2038.1 Each hospital shall have written infection prevention and control policies and procedures.

- 2038.2 Each hospital shall identify MRSA colonized patients in an intensive care unit or other at-risk unit.
- 2038.3 Each patient colonized or infected with MRSA shall be isolated in an appropriate manner consistent with guidelines for best practices. A patient in a long-term care facility who is infected or colonized shall be permitted to participate in group activities provided that any draining wounds are covered, bodily fluids are contained, and the patient is observed to have proper hygiene practices.
- 2038.4 Each hospital shall adhere to hand hygiene best practices to ensure, through education and monitoring, that healthcare personnel properly cleanse hands between patient care activities.
- 2038.5 Each hospital shall monitor trends in the incidence of MRSA in the hospital over time and enhance infection control interventions if rates do not decrease.
- 2038.6 Each hospital shall maintain a mechanism for identifying a MRSA patient who is readmitted to the hospital (i.e. flagging).
- 2038.7 Each hospital shall have a worker education requirement regarding modes of transmission, use of personal protective equipment, disinfection policies and procedures, and other preventive measures in accordance with current CDC guidelines on the use of “Standard Precautions” and “Transmission-Based Precautions”.
- 2038.99 When used in this section, the following terms shall have the meanings ascribed:

**Colonized**—having a bacterial organism present on or in the body that is not causing illness.

**Long-term care facility**—a component of a hospital intended for the treatment of patients who require extended stays in a hospital setting to complete their treatment.

**Methicillin-resistant staphylococcus aureus (MRSA)**—a bacterium that is resistant to antibiotics known as beta-lactams. These antibiotics include methicillin, amoxicillin, oxacillin, and penicillin.

**Chapter 32 is amended as follows:**

Amend the table of contents by adding after the heading for section 3266 the following:

3267 MRSA Infection Prevention

Add a new section 3267 to read as follows:

3267 MRSA Infection Prevention

- 3267.1 Each nursing facility shall have written infection prevention and control policies and procedures.
- 3267.2 Each nursing facility shall identify MRSA colonized patients in an intensive care unit or other at-risk unit.
- 3267.3 Each patient colonized or infected with MRSA shall be isolated in an appropriate manner consistent with guidelines for best practices. A patient who is infected or colonized shall be permitted to participate in group activities provided that any draining wounds are covered, bodily fluids are contained, and the patient is observed to have proper hygiene practices.
- 3267.4 Each nursing facility shall adhere to hand hygiene best practices to ensure, through education and monitoring, that healthcare personnel properly cleanse hands between patient care activities.
- 3267.5 Each nursing facility shall monitor trends in the incidence of MRSA in the nursing facility over time and enhance infection control interventions if rates do not decrease.
- 3267.6 Each nursing facility shall maintain a mechanism for identifying a MRSA patient who is readmitted to the nursing facility (i.e. flagging).
- 3267.7 Each nursing facility shall have a worker education requirement regarding modes of transmission, use of personal protective equipment, disinfection policies and procedures, and other preventive measures in accordance with current CDC guidelines on the use of “Standard Precautions” and “Transmission-Based Precautions”.

Amend section 3299.1 by adding the following terms with the meanings ascribed:

**Colonized**—having a bacterial organism present on or in the body that is not causing illness.

**Methicillin-resistant staphylococcus aureus (MRSA)**—a bacterium that is resistant to antibiotics known as beta-lactams. These antibiotics include methicillin, amoxicillin, oxacillin, and penicillin.

Persons desiring to comment on these proposed rules should submit comments in writing to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4<sup>th</sup> Floor, Washington, D.C. 20002, no later than fourteen (14) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules and related information may be obtained between 8:30 A.M. and 5:00 P.M. Monday through Friday, excluding holidays, at the address stated above.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

ERRATA

The Director of the Department of Health published in the D.C. Register at 49 DCR 473, on January 18, 2002, a Notice of Final Rulemaking adopting a new Chapter 32, Nursing Facilities, of Title 22 of the District of Columbia Municipal Regulations.

There were errors in two (2) provisions of the Final Rulemaking. The corrected text is set forth below:

- 3227.8 Each refrigerator that is used for storage of medications shall operate at a temperature between thirty-six degrees (~~34~~ 36 [degrees]) and forty-six degrees (~~48~~ 46 [degrees]) Fahrenheit; each refrigerator shall be equipped with a thermometer that is easily readable, accurate and in proper working condition.
- 3238.3 Each room that is used by a resident shall be maintained at a minimum temperature of seventy-one degrees Fahrenheit (71 [degrees] F) and a maximum of ~~seventy-eight~~ eighty-one degrees Fahrenheit (81 [degrees] F) at all times when the room is occupied.

## D.C. DEPARTMENT OF HUMAN RESOURCES

## NOTICE OF PROPOSED RULEMAKING

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with section 1103 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 § 1-611.03) (2006 Repl.), as amended by the District of Columbia Government Comprehensive Merit Personnel Act of 1978 Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Amendment Act of 2008 (Act), effective March 26, 2008 (D.C. Law 17-135; D.C. Official Code § 1-611.03 (a)(7)(A)) (2008 Supp.), hereby gives notice of the intent to adopt the following rules, upon their approval by the Council of the District of Columbia (Council), and in not less than thirty (30) days from the publication of this notice in the *D.C. Register*. These rules would amend Chapter 11, Classification and Compensation, of Title 6 of the D.C. Municipal Regulations (DCMR), to add a new section 1155, *Operation Enduring Freedom and Operation Iraqi Freedom Pay Differential*, to the chapter. The rules would add provisions to the chapter granting permanent authorization for the payment of a pay differential to full-time permanent, indefinite, or term District government employees called to active duty from reserve units of the United States Armed Forces as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom. The Act requires that rules be issued to implement its provisions. Because Council approval of these rules is required, a rulemaking approval resolution has been submitted to the Council for that purpose, along with these rules. While a Notice of Proposed Rulemaking was published in the *D.C. Register* on June 27, 2008 (55 DCR 007115), there is a need to make revisions to that rulemaking to delete the language stating that employees on "*Temporary Appointments Pending Establishment of a Register*" (TAPER), are eligible to receive the pay differential. Because of these revisions, a new rulemaking notice is being published, which supersedes the rulemaking notice published in the *D.C. Register* on June 27, 2008. Upon adoption, these rules will amend Chapter 11, Classification and Compensation, of Title 6 of the DCMR, published at 28 DCR 2318 (May 22, 1981), and amended at 29 DCR 1225 (March 19, 1982), 37 DCR 6361 (October 5, 1990), 39 DCR 2072 (March 27, 1992), 47 DCR 2421 (April 7, 2000), 48 DCR 4179 (May 11, 2001), 48 DCR 5004 (June 1, 2001), 52 DCR 934 (February 4, 2005), 52 DCR 2729 (March 18, 2005), and 55 DCR 6461 (June 13, 2008).

## CHAPTER 11

## CLASSIFICATION AND COMPENSATION

*A new section 1155 is added to Chapter 11 of the D.C. Personnel Regulations, to read as follows:*

**1155 OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM PAY DIFFERENTIAL**

1155.1 (a) Any full-time permanent, indefinite, or term employee who serves in a reserve

component of the armed forces and who has been ordered to active duty, or was retained for duty as a result of Operation Enduring Freedom, or in preparation for a potential conflict with Iraq, or as a result of Operation Iraqi Freedom, shall be entitled to apply for and receive, or continue to receive, as applicable, a pay differential to compensate the employee for any difference between the employee's District government basic pay and basic military pay.

- (b) For the purposes of this section, the phrase "any full-time permanent employee, indefinite, or term employee" in section 1151.1 (a) of this section shall include at-will employees.

1155.2 An employee as described in section 1155.1 of this section shall not be required to be released from active duty before making application for and receiving the pay differential. However, if the employee has not been released from active duty when he or she makes application for the pay differential, the employee shall provide all documentation required in section 1155.9 of this section, except that in lieu of providing a copy of the military orders releasing the employee from active duty, the employee shall provide a letter from his or her commanding officer attesting to the fact that the employee, as of the date of application for the pay differential, is still in an active duty status.

1155.3 A pay differential received pursuant to this section shall not be considered basic pay for any purpose.

1155.4 Any eligible employee, upon making application for the pay differential and upon approval of the application by his or her department or agency head, shall receive a pay differential that equals the difference between the employee's District government basic pay reduced by the employee's basic military pay.

1155.5 The estate of any eligible employee who has been killed while in active duty or who is missing in action as a result of active duty shall be eligible to collect any pay differential to which the employee would have been entitled upon making application on behalf of the employee and upon approval of the application by the employee's department or agency head.

1155.6 The period of entitlement to the pay differential shall not exceed:

- (a) The period following the formal inception of Operation Enduring Freedom through the date the employee is released from active duty occasioned by Operation Enduring Freedom; or
- (b) The period following the formal inception of the preparations for a potential conflict with Iraq and the period following the formal inception of Operation Iraqi Freedom through the date the employee is released from active duty occasioned by, the preparation for, or, Operation Iraqi Freedom.

1155.7 The pay differential shall not be payable for any period following the employee's release from active duty and the employee's return to his or her District government position.

1155.8 The pay differential shall not be payable for any days for which the employee received pay by reason of any annual leave, military leave, compensatory time, or any other form of paid leave taken by the employee.

1155.9 In making application for the pay differential, the employee shall:

- (a) Provide a copy of the military orders activating the employee for full-time active military service for the Operation Enduring Freedom conflict, or, in preparation for, or, as a result of, the Operation Iraqi Freedom conflict;
- (b) Provide a copy of the military orders releasing the employee from full-time active military service for the Operation Enduring Freedom conflict, or, for the preparation for, or, the Operation Iraqi Freedom conflict; and
- (c) Provide all military pay documentation required to calculate the differential amount.

1155.10 A pay differential under this section shall be paid by the agency that last employed the eligible employee before the employee was ordered to active duty as specified in section 1155.1 of this section, out of the agency's funds or appropriations then currently available for salaries and expenses.

#### **1155.99 DEFINITIONS**

**Active duty** – full-time duty in the active military service of the United States for the Operation Enduring Freedom conflict, or, in preparation for, or, for the Operation Iraqi Freedom conflict.

**Armed forces** – has the meaning prescribed in 10 U.S.C. § 101 (a)(4).

**Basic military pay** – the basic pay under 37 U.S.C. § 204.

**Basic pay** – the employee's scheduled rate of pay plus any additional pay that is defined as basic pay for annuity computation purposes in the retirement system in which the employee is a participant.

**Employee** – any full-time permanent, indefinite, or term employee who serves in a reserve component of the United States Armed Forces and who has been called to active duty as a result of the Operation Enduring Freedom conflict, or in preparation for, or as a result of the Operation Iraqi Freedom conflict.

**Operation Enduring Freedom** – the period encompassed within Executive Order 13223 Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain

Authorities to the Secretary of Defense and the Secretary of Transportation, effective September 14, 2001, and amended by Amendment to Executive Order 13223, effective January 16, 2002 and ending on the date the employee is released from active duty occasioned by Operation Enduring Freedom.

**Operation Iraqi Freedom** – the period encompassed within the Joint Resolution entitled Authorization for Use of Military Force Against Iraq Resolution of 2002, approved October 16, 2002 (P.L. 107-243) and ending on the date the employee is released from active duty occasioned by Operation Iraqi Freedom.

**Reserve component** – has the meaning prescribed in 37 U.S.C. § 101 (24).

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 330S, 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.

**OFFICE OF TAX AND REVENUE**

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**NOTICE OF PROPOSED RULEMAKING**

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The Office of Tax and Revenue (OTR), pursuant to the authority set forth in the D.C. Official Code § 47-885, as amended by Section 155 of the District of Columbia Appropriations Act 2001, approved November 22, 2000 (114 Stat. 2476; Pub. L. 106-522) and the Office of the Chief Financial Officer, Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of its intent to amend Chapter 3, REAL PROPERTY TAXES, of Title 9 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Currently, the date for filing the real property income-expense form is April 1st, whereas the D.C. personal income tax return is due on the April 15th. The purpose of the amendments below is to harmonize the date for filing the real property income-expense form with the filing of the D.C. personal income tax return; thereby, making the filing date for the real property income-expense form April 15th. Amending the date will accommodate and simplify the filing requirements for those practitioners and taxpayers who have to prepare both returns. There will be no hardship to OTR by amending the date of filing for the income-expense form. Additionally, the amendments will change the location for hand-delivery of the form from Judiciary Square, 441 4<sup>th</sup> Street, N.W., Washington D.C. 20001 to the Customer Service Center, Office of Tax and Revenue, 941 North Capitol Street, N.E., 1st floor, Washington, D.C. 20002. Furthermore, forms which are hand-delivered will be accepted until 5:00 p.m., as opposed to 4:45 p.m.

**Amendments:**

Section 9 DCMR § 330.6(a) is amended by striking “April 1st” and inserting “April 15th.”

Section 9 DCMR § 330.6(b) is amended by striking “April 1st” and inserting “April 15th.”

Section 9 DCMR § 330.12 is amended by striking “Office at the Real Property Tax Administration, One Judiciary Square, 441 4th Street, N.W., Washington, D.C. 20001, on or before the close of business (4:45 p.m.)” and inserting “Customer Service Center, Office of Tax and Revenue, 941 North Capitol Street, N.E., 1st floor, Washington, D.C. 20002, on or before the close of business (5:00 p.m.)”

Section 9 DCMR § 332.1 is amended by striking “April 1st” and inserting “April 15th.”

Comments on this proposed rulemaking should be submitted in writing to Aaishah Hashmi, Assistant General Counsel, General Counsel Office, Office of Tax and Revenue, 941 North Capitol Street, N.E., 8th Floor, Washington, DC 20002, not later than thirty (30) days after

publication of this notice in the *D.C. Register*. Copies of this rule and related information may be obtained by writing to the person at the address stated herein.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
 NOTICE OF PROPOSED RULEMAKING  
 Z.C. Case No. 03-10A  
 (Text Amendment – 11 DCMR)  
 (Technical correction to Z.C. Order 03-10A)**

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), hereby gives notice of its intent to amend the § 2104.1 of the Zoning Regulations (Title 11 DCMR).

The proposed text amendment clarifies that the parking space reduction authorized by § 2104.1 is available as a matter of right, and does not require approval by the Board of Zoning Adjustment. Since the amendment is technical in nature, no hearing was held, nor will the amendment be referred to the National Capital Planning Commission for its review.

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

The following rulemaking action is proposed (new text is shown **bolded** and underlined, deleted text is shown in ~~strikethrough~~ text):

Chapter 21, OFF-STREET PARKING REQUIREMENTS, § 2104.1 is amended to read as follows:

- 2104.1        Except as ~~otherwise~~ provided in § 2104.2, ~~the Board of Zoning Adjustment is authorized to reduce the number of parking spaces required under § 2101.1 for a nonresidential building or structure located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance may be reduced by up to twenty five percent (25%)~~ **shall be seventy-five percent (75%) of the amount otherwise ordinarily required under § 2101.1 if the building is located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance and** ~~provided:~~
- (a)        The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
  - (b)        The Metrorail station is currently in operation or is one for which a construction contract has been awarded.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PROPOSED RULEMAKING  
Z.C. Case Nos. 08-16 and 08-16A  
(Text Amendment – 11 DCMR)  
(Text amendments to Modify Definitions of Child Development Home and Child  
Development Center)**

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), hereby gives notice of its intent to amend the definitions of “Child development home” and “Child/Elderly development center” in § 199 of the Zoning Regulations (Title 11 DCMR).

The proposed text amendments modify the definitions of Child development home and Child/Elderly development center to make the zoning definitions consistent with the definitions found in the regulations governing the licensure and inspection of these facilities found in Title 29 of the District of Columbia Municipal Regulations, Chapter 3.

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

The following rulemaking action is proposed (new text is shown **bolded** and underlined, deleted language is shown in ~~striketrough~~ text):

CHAPTER 1, THE ZONING REGULATIONS, §199 Definitions, is amended by modifying the definitions of Child development home and Child/Elderly development center as follows:

**Child development home** - a dwelling unit used in part for the licensed care, education, or training of no more than ~~five (5)~~ six (6) individuals fifteen (15) years of age or less. Those individuals receiving care, education, or training who are not related by blood, marriage, or adoption to the caregiver shall be present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as a child care center, day-care center, pre-school, nursery school, before-and-after school programs, and similar programs and facilities.

**Child/Elderly development center** - a building or part of a building, other than a child development home or elderly day care home, used for the non-residential licensed care, education, counseling, or training of individuals ~~two (2) years old or older but~~ under the age of fifteen (15) years of age and/or for the non-residential care of individuals age 65 or older, totaling ~~six (6)~~ seven (7) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities. A child/elderly development center includes the following accessory uses: counseling, education, training, and health and social services for the person or persons with legal charge of individuals attending the center, including, but not limited to, any parent, spouse, sibling, child, or legal guardian of such individuals.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.