

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF FINAL RULEMAKING

The Attorney General for the District of Columbia, pursuant to section 9 of the District of Columbia Poverty Lawyer Loan Assistance Repayment Program Act of 2006 (“Act”), effective March 2, 2007, D.C. Law 16-203, D.C. Official Code § 1-308.21 *et seq.* (2007 Supp.), and Mayor’s Order 2006-161, dated November 8, 2006, hereby gives notice of the final adoption of the following amendments to Chapter 24 of Title 1 of the *District of Columbia Municipal Regulations* (“DCMR”). These amendments were originally adopted, on an emergency basis, on August 12, 2008, and a Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 22, 2008 at 55 DCR 9133. They updated the existing rules in Chapter 24 to reflect changes to the Act included in the Fiscal Year 2008 Budget Support Act of 2007, effective September 18, 2007, D.C. Law 17-20, 54 DCR 7052. These statutory changes limited the Council’s designation of the District of Columbia Bar Foundation as the Administrator of the District of Columbia Poverty Lawyer Loan Assistance Repayment Program (“Program”) to fiscal year 2008, which required the Office of the Attorney General (“OAG”) to conduct a competitive process for designating a third party Administrator and awarding a grant to fund the Program in fiscal year 2009. The emergency amendments gave effect to the Council’s changes to the Act and established procedures for designating the Administrator and awarding the grant. Final action to adopt the rules was taken on March 25, 2009, and the final rules shall become effective upon publication in the *D.C. Register*.

Chapter 24 of Title 1 DCMR is amended as follows:**I. Section 2401.3 is amended to read as follows:**

2401.3 The Attorney General shall establish the Program in accordance with this chapter and the District of Columbia Poverty Lawyer Loan Assistance Repayment Program Act of 2006 (Act), effective March 2, 2007, D.C. Law 16-203, D.C. Official Code § 1-308.21 *et seq.* (2008 Supp.). The Attorney General may serve as the Administrator of the Program or may designate a third party to serve as the Administrator. If the Attorney General designates a third party as the Administrator, the Attorney General may provide funding for the Program by awarding a grant to the third party.

II. Section 2402.1 is amended to read as follows:

2402.1 The District of Columbia Bar Foundation is appointed as the Administrator for the Program for fiscal years 2007 and 2008. Thereafter, if the Attorney General designates a third party Administrator, the Attorney General shall select the third party according to the procedures stated in § 2411.

III. Section 2405 is amended as follows:**A. Section 2405.1 is amended to read as follows:**

2405.1 Eligible employment shall consist of employment as an attorney with a non-profit organization that provides direct civil legal services to low-income or under-served District of Columbia residents. Qualifying organizations shall consist of organizations that provide direct legal services to the poor or under-served and that are approved by the Administrator.

B. Section 2405.3 is repealed.**IV. A new section 2411 is added to read as follows****2411 DESIGNATION AND DUTIES OF THE ADMINISTRATOR**

2411.1 If the Attorney General decides to designate a third party to serve as the Administrator of the Program in a specific fiscal year, the Attorney General shall solicit applications for this purpose. The Attorney General shall make the designation and award the associated grant competitively, according to the procedures stated in this section. The Administrator's performance shall be governed by the provisions of this section, this chapter, the Act, and the grant agreement.

2411.2 The Attorney General may designate the Administrator and award a grant to operate the Program for a period of up to five (5) years, provided that: 1) District payments under the grant for any fiscal year shall not exceed actual appropriations for that fiscal year; and 2) nothing in these rules, the grant agreement, or the solicitation process shall be construed as a promise that Congress will appropriate funds to support the Program for the entire duration of the grant.

2411.3 The Attorney General shall announce the availability of the position of Administrator and the associated grant for the Program by one (1) of the following methods:

- (a) Publication in a newspaper of general circulation in the District of Columbia;
- (b) Publication in the District of Columbia Register; or
- (c) Any other officially established form of notice, including the Office of Partnerships and Grant Services' Funding Alert, designed to reach prospective applicants.

2411.4 The announcement shall include the following:

- (a) A brief description of the Program;
- (b) The estimated total funds available;
- (c) A statement setting forth who is eligible to apply for the position of Administrator and for the grant;
- (d) A statement of the application requirements, including a budget and appropriate certifications and assurances;
- (e) The deadline for submission of applications;
- (f) The review factors to be used in selecting the Administrator;
- (g) The source of funds and estimated time the funds are available;
- (h) An address where detailed information may be obtained and where the application may be filed; and
- (i) The time and place of a pre-application information session for prospective applicants, if the Attorney General determines that such a session would be useful.

2411.5 A review panel selected by the Attorney General shall review each application to determine if it meets the applicable requirements and if the applicant is eligible to serve as the Administrator. The review panel shall advise the Attorney General of all those applications which satisfy the application and eligibility requirements, rate the applications according the review factors, and recommend an applicant to serve as the Administrator.

2411.6 The Attorney General shall consider the review panel's ratings and recommendation and designate the Administrator. The Attorney General shall also appoint a Grant Officer within the Office of the Attorney General to monitor the Administrator's performance and administer the grant. The Grant Officer shall notify the successful applicant in writing of the decision. The Attorney General's decision is final and may not be appealed.

2411.7 The grant award and the designation of the Administrator shall be in the form of a written grant agreement between the Attorney General and the designee. It shall include, but not be limited to the following:

- (a) A statement designating the successful applicant as the Administrator
- (b) A statement of the purpose of the grant;
- (c) The amount of the grant award;

- (d) The duration of the grant;
- (e) References to provisions of statutes, rules, and regulations (including provisions of this chapter) particularly applicable to the Program, as well as a statement that the grantee shall comply with all applicable federal and District laws and regulations;
- (f) The scope of work for the grant and the Program, a statement of all deliverables and performance measures, and a schedule of expected performance;
- (g) Reporting requirements, both program and financial;
- (h) A payment schedule;
- (i) The name, address and telephone number of the Grant Officer and the point of contact for the Administrator;
- (j) The address to which all written communications from the Grant Officer to the Administrator may be sent, including payments due under the grant, and
- (k) A provision that the grant may be modified by agreement of both parties.

2411.8 The Administrator shall make complete disclosure of all financial transactions involving grant funds in accordance with the reporting requirements of the grant agreement and shall maintain records which identify adequately the source and application of all funds received and utilized in connection with the Program.

2411.9 The Administrator shall maintain effective control and accountability for all grant assets, shall adequately safeguard all property, and shall assure that all grant assets are used solely for authorized purposes. The Administrator's records shall compare the actual and budgeted amounts of expenditures, and shall be supported by source documentation such as canceled checks, paid bills, payrolls, contract and award documents.

2411.10 The Administrator shall submit timely programmatic and financial reports to the Grant Officer, as required by the grant agreement, and shall participate in all District or federal audit activities applicable to the Program.

V. The definition of "Act" in section 2499.1 is amended to read as follows:

Act – the District of Columbia Poverty Lawyer Loan Assistance Repayment Program Act of 2006, effective March 2, 2007, D.C. Law 16-203 (Act), D.C. Official Code § 1-308.21 *et seq.* (2008 Supp.).

OFFICE OF THE CITY ADMINISTRATOR**NOTICE OF FINAL RULEMAKING**

The City Administrator, pursuant to section 4(c)(1) of An Act to prevent cruelty to children or animals in the District of Columbia, and for other purposes, approved June 25, 1892 (27 Stat. 61 D.C. Official Code § 22-1004(c)(1)), and Mayor's Order 1988-16 (January 22, 1988), hereby gives notice of the adoption of the following final rulemaking. This rulemaking amends Title 24 of the *D.C. Municipal Regulations* (DCMR) to add a new Chapter 15 to establish hearing procedures at the Washington Humane Society for the owner of a seized animal to be able to contest the seizure, detention, and terms of release and treatment of the animal, the allegation of cruelty, abandonment, or neglect, and the imposition of the lien and costs assessed for caring and providing for the animal.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on January 9, 2009 (56 DCR 316). On March 3, 2009, the Hearing Procedures for Washington Humane Society Approval Resolution of 2009 was approved by the Council. No substantive changes have been made to the proposed rules. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Title 24 of the DCMR is amended by adding a new Chapter 15 to read as follows:

**CHAPTER 15 HEARING PROCEDURES FOR WASHINGTON
HUMANE SOCIETY**

1500 SCOPE AND PURPOSE

1500.1 The purpose of these rules is to establish a notice and hearing process for the owner of an animal seized pursuant to section 4(b)(1) of An Act to prevent cruelty to children or animals in the District of Columbia, and for other purposes, approved June 25, 1892 (27 Stat. 61 D.C.; Official Code § 22-1004(b)(1)) (2001), to contest the seizure, detention, and terms of release; the treatment of the animal; any allegation of cruelty, abandonment, or neglect; and the imposition of any lien and costs assessed for caring and providing for the animal.

1500.2 Copies of these rules shall be available from WHS upon request.

1501 NOTICE OF ACTION OR INTENDED ACTION

1501.1 The President of WHS or his or her designee shall send written notice by certified mail, return receipt requested, to the owner of the animal, within three (3) days of WHS taking possession of the animal under D.C. Official Code § 22-1004(b)(1).

1501.2 The President or his or her designee shall send the written notice to:

- (a) The owner's residential address, if known;
- (b) The owner's business address, if known and the owner's residential address cannot be determined; or
- (c) The address where the seizure took place, if neither the last known residential address nor the last known business address can be determined.

1501.3 The written notice shall include:

- (a) A statement setting forth the action WHS intends to take or has taken;
- (b) A brief description of the facts underlying the action or proposed action, including the time, place and issues involved;
- (c) The specific statute, regulation, rule, or policy supporting the action;
- (d) An explanation of the right to and method for requesting a hearing, including the name to whom a request for a hearing shall be directed, the proper means of contacting that individual, and the deadline for making the request;
- (e) An explanation of the right to be represented by legal counsel or by an individual who is not a lawyer, at the owner's own expense, or to represent himself or herself. A representative shall not be a WHS employee or a District employee whose work assignment includes investigation or adjudicating the District's animal cruelty or animal control laws or regulations;
- (f) An explanation of the right to present documents and witnesses in support of the appeal;
- (g) An explanation of the right to examine the case record; and
- (h) A statement that if the respondent is deaf or cannot readily understand or communicate the English language, he or she may apply to WHS for the appointment of a qualified interpreter.

1502 REQUEST FOR HEARING

1502.1 The owner of the animal may request, in writing, a hearing to appeal one or more of the actions or intended actions described in § 1501.3(a). The request must be directed to the person specified by the President or his or her designee in its written notice pursuant to § 1501.3(d).

- 1502.2 A request for a hearing must be received within twenty (20) days of the date of the seizure.
- 1502.3 The owner of the animal shall include in the request for hearing his or her current home mailing address and phone number.
- 1502.4 The owner of the animal may designate another individual to be his or her representative. The owner of the animal shall include in the request for hearing a signed letter designating that individual as his or her representative. The designated representative may sign the request for hearing on behalf of the owner of the animal.

1503 DENIAL OR DISMISSAL OF REQUEST FOR HEARING

- 1503.1 The President or his or her designee may deny a request for a hearing if:
- (a) The sole issue raised by the respondent concerns the plain language of a District statute, regulation, or policy; or
 - (b) The request is not filed within the time period set forth in § 1502.2.
- 1503.2 The President or his or her designee may dismiss a request for a hearing if:
- (a) The respondent or his or her representative:
 - (1) Withdraws the request in writing;
 - (2) Dies; or
 - (3) Without good cause, does not appear at the hearing.
 - (b) The animal is humanely destroyed prior to the hearing pursuant to § 1510.2.

1504 REVIEW OF REQUEST FOR HEARING

- 1504.1 The President or his or her designee may, at any time before or after the hearing, schedule a conference with the respondent and/or his or her representatives, either in person or by phone, to attempt to reach an agreement on conditions for the return of the animal to the owner. The conference shall not delay the scheduling and holding of the hearing.
- 1504.2 The President or his or her designee shall grant a formal hearing to any owner of an animal seized under D.C. Official Code § 22-1004(b)(1) who complies with the provisions of § 1502, unless:

- (a) The President dismisses or denies the request for a hearing pursuant to § 1503;
- (b) The President and the respondent agree on conditions for the return of the animal to the owner prior to the formal hearing; or
- (c) The respondent withdraws the request for a formal hearing.

1505 WRITTEN SUMMARY OF REASONS SUPPORTING SEIZURE AND CUSTODY

1505.1 The WHS humane officer who seized the animal shall prepare a written summary explaining the reasons why the humane officer seized the animal and why WHS continues to retain custody of the animal. An incident report qualifies as a written summary under this chapter provided that it complies with § 1505.2.

1505.2 The written summary shall include:

- (a) The facts supporting the humane officer's determination that seizure was necessary to protect the animal from neglect or cruelty, if the seizure was made pursuant to D.C. Official Code § 22-1004(b)(1);
- (b) The actions that the owner must take in order to regain custody of the animal, and
- (c) If the humane officer determines that WHS cannot return the animal to the owner without subjecting the animal to ongoing neglect or cruelty, the facts supporting a determination that WHS should retain permanent custody of the animal.

1505.3 The humane officer may append to the written summary:

- (a) Documentary evidence collected during the course of the investigation, including written notes taken by the humane officer or other WHS employees;
- (b) Physical evidence collected during the course of the investigation;
- (c) Written statements by other WHS employees or third-party witnesses; and
- (d) Medical reports based on first-hand examinations of the animal.

1505.4 The humane officer may seek assistance from other WHS employees in the preparation of the written summary.

1505.5 The written summary, and any evidence appended to the summary, shall be completed at least three (3) days before the date of the scheduled hearing. The completed written summary, and any evidence appended to the summary, shall be made available to the respondent and his or her representative for examination and/or duplication. Any duplication costs shall be paid for by the respondent.

1505.6 The failure to make available to the respondent and his or her representatives the written summary and any evidence appended to the summary is good cause for a continuance of the hearing pursuant to § 1507.4.

1506 WRITTEN SUMMARY OF EXPENSES FOR CARE AND PROVISION OF ANIMAL

1506.1 The WHS humane officer who seized the animal shall prepare a written summary of the expenses undertaken by WHS for the care and provision of the animal during the custodial period, if WHS intends to collect expenses from the owner as authorized pursuant to D.C. Official Code § 22-1004.

1506.2 The written summary of expenses shall include:

- (a) The expenses for feeding of the animal during the custodial period;
- (b) The expenses for lodging of the animal during the custodial period;
- (c) The expenses for medical care of the animal during the custodial period, along with the medical records justifying the expenses;
- (d) Incidental expenses for the care and provision of the animal during the custodial period; and
- (e) The projected expenses from the date on which the written expense summary is filed to the date on which WHS expects to relinquish custody of the animal.

1506.3 The humane officer may seek assistance from other WHS employees in the preparation of the written summary of expenses.

1506.4 The written summary of expenses shall be completed at least three (3) days before the date of the scheduled hearing. The completed written expenses summary shall be made available to the respondent and his or her representative for examination and/or duplication. Any duplication costs shall be paid for by the respondent.

1506.5 The failure to make available to the respondent and his or her representatives the written summary of expenses is good cause for continuing the hearing under § 1507.4.

1507 PRE-HEARING PROCEDURES

- 1507.1 The President or his or her designee shall notify the respondent, both in writing and, if possible, by phone, of the date, time, and place of the hearing. The notice shall be provided at least three (3) days in advance of the hearing.
- 1507.2 The hearing shall be held within ten (10) days of the date of the hearing request, unless the time is extended for good cause.
- 1507.3 The notice of hearing shall:
- (a) Include a summary of or a copy of the rules governing the hearing process;
 - (b) Advise the respondent:
 - (1) Of his or her right to be represented by a lawyer or other person at the hearing, at the respondent's own expense;
 - (2) Of the right to present documents and witnesses, including WHS employees, in support of the appeal;
 - (3) Of the right to examine and duplicate, at respondent's expense, the written summary, and any evidence appended to the summary, described in § 1505 at least three (3) days prior to the date of the hearing;
 - (4) Of the right to examine and duplicate, at respondent's expense, the written summary of expenses described in § 1506 at least three (3) days prior to the date of the hearing;
 - (5) Of the right to examine any part of the case record, except for information that the President or his or her designee classifies as confidential, at least three (3) days prior to the hearing;
 - (6) That if the respondent or a witness is deaf or cannot readily understand or communicate the spoken English language, the respondent may apply to WHS for the appointment of a qualified interpreter and such services will be provided;
 - (7) Of the name and telephone number of the person to call if the respondent cannot attend the hearing; and
 - (8) That failure to attend the hearing without good cause may result in dismissal of the appeal.

- 1507.4 The respondent may request a change of the date, time, or place of the hearing. If the President or his or her designee finds that good cause for a change exists, he or she shall set another date, time, or place for the hearing. The time limit established by § 1502.2 shall be extended by the period of delay.
- 1507.5 The respondent may request, in writing, assistance to secure the attendance at the hearing of any WHS employee. The request shall state the reasons why the employee's attendance is required. If the President or his or her designee decides that the employee's attendance is necessary for the fair determination of the issues on appeal, the President or his or her designee shall require the employee, if still employed by WHS, to be present at the hearing.
- 1507.6 The President or his or her designee may require the presence at the hearing of any WHS employee.
- 1507.7 The respondent may examine and/or duplicate the written summary, and any evidence appended to that summary, described in § 1505 at least three (3) days prior to the hearing.
- 1507.8 The respondent may examine and/or duplicate the written summary of expenses described in § 1506 at least three (3) days prior to the hearing.
- 1507.9 The respondent may examine any part of the case record, except for information that the President or her designee classifies as confidential, at least three (3) days prior to the hearing.

1508 HEARING PROCEDURES

- 1508.1 The hearing shall be presided over by the President or his or her designee. The designee may not have been involved in the initial seizure of the animal or in the preparation of the summaries described in § 1505 and § 1506.
- 1508.2 The President or his or her designee shall receive written and oral documentary evidence, but shall exclude irrelevant, immaterial, and unduly repetitious evidence.
- 1508.3 The WHS shall present its evidence at the hearing either with the assistance of counsel or through the WHS humane officer who seized the animal and prepared the summaries described in § 1505 and § 1506. The President or his or her designee and the respondent may examine the humane officer. The summaries described in § 1505 and § 1506 shall be submitted into evidence.
- 1508.4 The President or his or her designee may:
- (a) Examine witnesses introduced on behalf of WHS;

- (b) Examine witnesses introduced by the respondent;
- (c) Examine any documentary evidence introduced by the respondent; and
- (d) Request that the humane officer testify again after the respondent presents his or her case.

1508.5 Either WHS or the respondent may:

- (a) Call and examine witnesses;
- (b) Introduce documentary evidence;
- (c) Examine any documentary evidence introduced by the humane officer;
- (d) Cross-examine witnesses presented by the WHS on any matter relevant to the issues under review even if that matter was not covered in the direct examination; and
- (e) Submit rebuttal evidence.

1508.6 Each hearing shall be recorded. The hearing need not be transcribed unless a copy of such record is timely requested by the respondent, who shall bear the costs.

1508.7 The recording, exhibits, all papers, requests, and other documents filed in the proceedings, the decisions, and the findings and conclusions constitute the exclusive record of the hearing. The record shall be available to the respondent for a period of two years or until any litigation relating to the decision has ended, whichever is later.

1509 FINAL DECISION OF WHS PRESIDENT

1509.1 The President or his or her designee shall prepare a final written decision within five (5) days after the hearing, which shall be mailed to the respondent within three (3) days after the decision. The President or her designee may also call the respondent to inform him or her of the decision.

1509.2 The decision shall:

- (a) Be based solely upon the record;
- (b) Make final determinations whether:
 - (1) The animal was subject to neglect or cruelty at the time of the seizure;

- (2) The animal would be subject to ongoing neglect or cruelty if the owner of the animal regained custody and if so, whether there are any conditions that the owner can satisfy to protect the animal from ongoing neglect or cruelty; and
 - (3) The expenses undertaken by WHS during the custodial period were reasonably necessary to maintain the health of the animal, if WHS intends to collect expenses from the owner as authorized pursuant to D.C. Official Code § 22-1004.
- (c) Be supported by, and in accordance with, reliable, probative, and substantial evidence; and
 - (d) Inform the respondent of his or her right to appeal the decision pursuant to § 1513.

1509.3 Consistent with confidentiality requirements, WHS shall prepare periodic compilations of fair hearing decisions and shall make them accessible to the public. The compilations shall not include any identifying information about the owner of the animal.

1510 AUTHORITY OF WHS UNDER D.C. OFFICIAL CODE § 22-1004(B)(2)

1510.1 Except as provided in § 1510.2, WHS may not take any action authorized by D.C. Official Code § 22-1004(b)(2):

- (a) During the period in which the owner maintains a right to request a hearing pursuant to § 1502;
- (b) During the period after the owner has requested a hearing pursuant to § 1502 and before the President or his or her designee has issued a final decision pursuant to § 1509;
- (c) During the period in which the owner maintains a right to request an appeal pursuant to § 1513;
- (d) During the period after which the owner has requested an appeal pursuant to § 1512 and before the District of Columbia Superior Court has issued a decision; and
- (e) During the periods described in § 1511.3; and
- (f) During the period described in § 1514.

1510.2 Notwithstanding § 1510.1, WHS may humanely destroy the animal at any time pursuant to a written determination by a veterinarian that destroying the animal is the only humane way to relieve the animal's suffering.

1511 RETURN OF ANIMAL ON CONDITION OF PROTECTIVE ACTION

1511.1 The President or his or her designee may condition the return of an animal on the owner's agreement to undertake specified actions to protect the animal against ongoing neglect and cruelty.

1511.2 The President or his or her designee may reach agreement with the owner on the conditions for return outside of the formal hearing process or may impose conditions for return in its final decision pursuant to § 1509.

1511.3 WHS may enforce the conditions of return by:

- (a) Requiring that the owner comply with the conditions after the return of the animal. The President or his or her designee may specify a time period, lasting no fewer than fifteen (15) and no more than thirty (30) days, during which the owner must demonstrate compliance with the conditions of the return; or
- b) Requiring that the owner comply with the conditions prior to the return of the animal. The President or his or her designee may specify a time period, lasting no fewer than fifteen (15) and no more than thirty (30) days, during which the owner must demonstrate compliance with the conditions of the return.

1511.4 If the owner has failed to comply with the requirements of release, the President or his or her designee may make a written determination that the owner has failed to comply with the conditions of the animal's release pursuant to § 1511.3, which shall be mailed or delivered to the owner within three (3) days. Such a determination authorizes WHS to retake or maintain custody of the animal pursuant to D.C. Official Code § 22-1004(b)(1).

1512 RETURN OF ANIMAL ON CONDITION OF PAYMENT

1512.1 WHS may require the owner to pay the reasonable expenses incurred by WHS during the custodial period. The reasonableness of the expenses shall be determined by the President or his or her designee, as set forth in § 1509.2(b)(3).

1512.2 WHS may retain custody of the animal until the owner reimburses WHS for such expenses.

1513 APPEAL

1513.1 An owner may seek judicial review before the District of Columbia Superior Court within five (5) days of:

(a) The President or his or her designee mailing notice of a final decision under § 1509.1; or

(b) The President or his or her designee mailing or delivering notice that the owner has failed to comply with the conditions of release pursuant to § 1511.

1514 PENDING CRIMINAL INVESTIGATION OR ACTION

1514.1 The hearing process described in this chapter shall be stayed during the pendency of any criminal investigation or action arising out of the treatment of an animal seized by WHS. The President or his or her designee shall send written notice by certified mail informing the owner that WHS will maintain possession of the animal during the pendency of the criminal investigation or action.

1514.2 At the conclusion of the criminal investigation or action, the President or his or her designee may initiate the hearing process described in this chapter by sending notice to the owner of the animal under § 1501.

1514.3 If the President or his or her designee chooses not to initiate the hearing process under § 1514.2, the President or his or her designee shall send written notice to the owner of the animal setting forth the action WHS intends to take or has taken with the animal.

1515 DEFINITIONS

1515.1 For purposes of this Chapter, the following terms and phrases shall have the meanings ascribed:

“Animal” - the animal or animals seized by a WHS humane officer pursuant to D.C. Official Code § 22-1004.

“Custodial Period” - the period during which WHS maintains custody of the animal after the WHS humane officer seizes the animal pursuant to D.C. Official Code § 22-1004.

“Designee” - any WHS employee designated by the President of WHS to act on behalf of the President under any sub-chapter authorizing or requiring the President to act.

“Owner” - the record owner of the animal or animals seized by a WHS humane officer pursuant to D.C. Official Code § 22-1004.

“President” - the President of WHS.

“Representative” - the individual(s) designated by the respondent to represent the respondent during the hearing process prescribed in this chapter.

“Respondent” - the owner of the animal who requests a hearing under § 1502.

“Washington Humane Society or WHS” - the entity authorized by law to protect animals from neglect or cruelty.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Section 3(b)(3) of the District of Columbia State Education Office Establishment Act of 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(3)) (2008 Supp.), Title IV, Section 403 of the Public Education Reform Amendment Act of 2007, June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-2652)(2008 Supp.), and Section 9 of the District of Columbia Non resident Tuition Act of 1960, effective December 7, 2004 (74 St. 853; D.C. Official Code § 38-306)(2008 Supp.), gives notice of a final rulemaking repealing Chapter 50 of Title 5, of the District of Columbia Municipal Regulations (DCMR), and adding a new Chapter A50 to Title 5 of the DCMR entitled "Residency Verification for Public Schools and Public Charter Schools." Chapter A50 is effective as a final rule the date of publication in the District of Columbia Register.

The proposed regulation was published for public comment in the District of Columbia Register at 56 DCR 1493 (February 13, 2009). On March 4, 2009, The State Board of Education held a public hearing on the proposed regulation. All comments and testimony received have been considered. The State Board of Education approved the rule as final at a regularly scheduled public meeting on March 18, 2009. The final regulation is being adopted in substantially the same form as proposed, including a provision enabling the District of Columbia Public Schools and public charter schools to begin the residency verification process beginning April 1, of each year.

CHAPTER A50**RESIDENCY VERIFICATION FOR PUBLIC SCHOOLS
AND PUBLIC CHARTER SCHOOLS****A5000 General Policy**

A5000.1 Public education in the District of Columbia includes the District of Columbia Public Schools system and all public charter schools. All students in such schools must have proof of residency in the District of Columbia or pay tuition. A determination of residency status shall be made annually for each student.

A5000.2 District residency shall be determined pursuant to the District of Columbia Nonresident Tuition Act of 1960, effective September 8, 1960 (74 Stat. 853; D.C. Official Code §§38-301 to 38-312).

A5001 Students Entitled to Enrollment without Payment of Non-Resident Tuition

A5001.1 Students entitled to enrollment without payment of non-resident tuition are either:

- (a) A student under eighteen (18) years of age who is otherwise eligible for admission to the District of Columbia Public School system (DCPS) or a public charter school, and who qualifies for free instruction under one of

the following categories:

- (1) A student who is in the care or control of a parent, guardian, custodian, or primary caregiver who is a resident of the District of Columbia;
 - (2) A student who is a resident of the District of Columbia and does not have a living parent, guardian, custodian, or other primary caregiver;
 - (3) A student who is a ward of the District of Columbia;
 - (4) A student who is homeless; or
 - (5) A student who is living with his or her spouse, when the spouse is eighteen (18) years of age or older and is a resident of the District of Columbia; or
- (b) An adult student who is otherwise eligible for admission to DCPS or a public charter school and a resident of the District of Columbia. For the purposes of this chapter, the residence of an adult student is the address of the adult student, not the address of the adult student's parent, custodian, guardian or other primary caregiver.

A5002 Establishment or Verification of Residency: Timing

A5002.1 The residency status of each student enrolled in a public school in the District of Columbia shall be verified annually at the school attended by the student no earlier than April 1 and no later than October 5 for the school year that begins on or after July 1 of each year.

A5002.2 The residency status of each student enrolling in a public school after the beginning of a school year shall be established by October 5, or no later than ten (10) days following enrollment, whichever is later.

A5002.3 The residency status of a student, who attends a school other than a public school in the District of Columbia and whose tuition is paid by the District of Columbia, shall be verified in conformance with the procedures set forth in Sections A5002.1 and A5002.2 above.

A5002.4 A student shall be permitted to attend and remain enrolled in a school while his or her residency verification is pending.

A5003 Establishment or Verification of Residency: Documentation

A5003.1 A parent, guardian, custodian, other primary caregiver, or adult student shall

provide documentation in compliance with District of Columbia laws, including District of Columbia Official Code §§ 38-308 through 38-310.

A5003.2 Documentation to establish or verify residency may be presented in the following manner:

- (a) Provided to the school by the parent, guardian, custodian, primary care giver, an adult student, in person or through other appropriate means specified by the LEA; or
- (b) Subject to implementation of an interagency data sharing process, pursuant to such a process with the consent of the parent, guardian, primary caregiver, or adult student.

A5004 Other Primary Caregiver: Documentation of Status

A5004.1 An other primary caregiver seeking to enroll a student in school shall provide documentation that establishes his or her status as an other primary caregiver in addition to documentation that establishes the caregiver's residency status.

A5004.2 The primary caregiver status of each person other than a parent, custodian, or guardian seeking to enroll a student in a school shall be established through the use of documentation set forth in D.C. Official Code § 38-310.

A5005 Exceptional Circumstances

A5005.1 Exceptional circumstances exist when documentation to establish or verify residency or status of "other primary caregiver" pursuant to District of Columbia law and Sections A5003 and A5004 above is not available.

A5005.2 Policies and procedures shall address and verify residency and caregiver status in exceptional circumstances in conformance with D.C. Official Code §§ 38-311, when documentation set forth in D.C. Official Code §§ 38-309 and 38-310 is unavailable.

A5005.3 The policies and procedures for exceptional circumstances shall be designed to facilitate rather than hinder the residency verification process and may include home visits. These policies shall designate one or more individuals authorized to determine residency and primary caregiver status in the event of exceptional circumstances in conformance with District law.

A5005.4 The policies and procedures for exceptional circumstances shall be submitted to and approved or disapproved by the Office of the State Superintendent of Education thirty days after submission, no later than July 1, 2009 or within 30 days after any material revision to a previously approved policy and procedure. An LEA shall amend policies in conformance with comments from the OSSE for

approval.

A5005.5 Upon evidence satisfactory to the OSSE, that a child is self-supporting or that care, custody and substantial support are supplied by a person(s) with whom a child is residing in the District of Columbia, and that the parent or guardian of such child is unable to supply such care, custody, and support, such child shall be considered a resident of the District of Columbia for purposes of this Chapter.

A5099 Definitions

“Adult student” means a student who is eighteen (18) years of age or older, or who has been emancipated from parental control by marriage, operation of statute, or the order of a court of competent jurisdiction.

“Chartering Authority” means a District of Columbia entity authorized to grant charters for the establishment of charter schools, pursuant to either the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.01 (2001) et seq.), or the Public Charter School Act of 1996, effective May 29, 1996 (D.C. Law 11-135; D.C. Official Code § 1701.01 (2001) et seq.) as amended.

“Custodian” means a person to whom physical custody has been granted by a court of competent jurisdiction.

“District of Columbia Public Schools system” (DCPS) means the District of Columbia Public Schools system, not including public charter schools.

“District law” in this chapter refers to the specific provisions of the District of Columbia Official Code, including without limitation Sections 38-301 through 312 and other applicable statutes or regulations.

“Enroll and enrollment” include attending classes and participating fully in school activities.

“Guardian” means a person who has been appointed legal guardian of a student by a court of competent jurisdiction.

“Homeless” means an individual who lacks a fixed, regular, and adequate nighttime residence. These individuals shall include children and youth who are between the ages of five (5) and eighteen (18) years of age:

- (a) Sharing the housing of other persons due to loss of housing, economic hardship or similar reasons;
- (b) Living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodation;
- (c) Living in emergency or transitional shelters, (including D.C. transitional housing);

- (d) In a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- (e) Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
- (f) Living in a hospital due to abandonment;
- (g) Awaiting foster care placement;
- (h) Migratory children, as defined in section 1309 of the Elementary and Secondary Education Act of 1965, who qualify as homeless because they live in circumstances described above;
- (i) Unaccompanied youth, including youths who are not in physical custody of a parent or guardian, who qualify as homeless because they live in circumstances described above.

“Local Education Agency or LEA” means the District of Columbia Public School system and/or any individual or group of public charter schools operated under a single charter in the District of Columbia.

“Other primary caregiver” means a caregiver to a student who submits evidence, pursuant to §§ A5004 or A5005, that he or she is the primary caregiver of the student.

“Parent” means a natural parent, stepparent, or parent by adoption that has custody or control of a student, including joint custody.

“Public Charter School” means a District of Columbia public school authorized by a chartering authority.

“School” means a public charter school, a school within the District of Columbia Public Schools system, a school in another state or a non public school in the District of Columbia enrolling a student funded by the District of Columbia.



Repeal of Chapter 50.

Chapter 50 of Title 5 DCMR is repealed. Residency regulations will now be governed by Chapter A50.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 08-18
Z.C. Case No. 08-18
(Text Amendment -- 11 DCMR)
(Text Amendments – Use of former public school buildings)
January 26, 2009**

The Zoning Commission for the District of Columbia (the “Commission”), 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); having held a public and thereafter having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter, hereby gives notice of the adoption of the following amendments to Chapter 1, § 199, Chapter 2, §§ 201 and 222, Chapter 21, § 2101, and Chapter 31, § 3104, of the Zoning Regulations (Title 11 DCMR).

The text amendments will allow re-use of former public school buildings located in residential zone districts for various uses deemed appropriate by the Commission.

A hearing on the proposed text amendments was held and concluded on July 28, 2008. The record was held open until September 2, 2008 to allow the receipt of further information requested by the Commission.

A Revised Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on December 12, 2008, at 55 DCR 12501.¹ The Revised Notice was referred to the National Capital Planning Commission (“NCPC”) under the terms of § 492 of the District of Columbia Charter. NCPC, through a delegated action dated October 7, 2008, found that the proposed text amendments would not adversely affect any identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Commission took final action to adopt the amendments at a public meeting on January 26, 2009 without making changes to the revised proposed text. This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

The existing regulations (11 DCMR) make all re-use of former public school buildings in residential zones subject to the granting of a special exception by the Board of Zoning Adjustment (“BZA”) and limit such re-use only to historic buildings listed in the District’s Inventory of Historic Sites or located within a district, site, area, or place listed in this inventory.

¹An earlier Notice of Emergency and Proposed Rulemaking had been published in the June 27, 2008 edition of the *D.C. Register* at 55 DCR 7159. In that Notice, the Commission proposed to amend §§ 199, 201, 222, and 2101 of the Zoning Regulations (Title 11 DCMR). The Revised Notice of Proposed Rulemaking proposed amending these same provisions, but in somewhat different ways, and also proposed a conforming amendment to § 3104.

Description of Text Amendments

The text amendments set forth herein will broaden the possibilities for re-use of former public school buildings, benefitting both the District as a whole and the neighborhoods within which such school buildings are located. The following five uses, some with conditions, will be allowed as a matter-of-right in such buildings: an administrative office of a District government agency, a medical clinic, a community service use, a child/elderly development center, and a community college. A definition of “community service use” is also provided in the text amendments. Uses falling within three categories will be allowed as special exceptions, if permitted by the BZA. These categories are: a District government use not allowed as a matter-of-right, a use which is permitted as a matter-of-right but which cannot meet a required condition, and a not-for-profit use. The text amendments prohibit the expansion of former public school buildings containing these uses unless permitted by the BZA and also permit the BZA to impose conditions deemed necessary to protect the neighborhood within which the former school buildings are located. Lastly, the text amendments establish parking requirements for the new uses permitted in former school buildings and include a conforming amendment to § 3104.

Relationship to Comprehensive Plan

The text amendments would not be inconsistent with the Comprehensive Plan for the National Capital (“Plan”). In fact, the amendments further several policies of the Plan, in both the Land Use and Education categories. The amendments create a broader spectrum of re-use possibilities for all former public school buildings, furthering Plan Policies LU-1.1.2 (Reuse of Large Publicly-Owned Sites) and LU-2.1.12 (Reuse of Public Buildings). Many of the uses permitted in the former school buildings by the text amendments would provide immediate, as well as long-term, public benefits, in keeping with Plan Policies LU-1.2.5 (Public Benefit Uses on Large Sites) and EDU-1.5.2 (Reuse of School Surplus Space). The conditions imposed on the matter-of-right uses and the necessity to obtain a special exception for other uses foster the stated policy requiring that the re-use of former school buildings be “sensitive to neighborhood context” and “mitigate impacts on parking, traffic, noise, and other quality of life factors.” Plan Policy EDU-1.5.5 (Adaptive Re-Use).

The text amendments also indirectly further other elements of the Plan, including Plan Policy EDU-1.5.3 (Long-Term Leases), which encourages long-term leases instead of sales of former school buildings in order to maintain District ownership of these buildings, and Plan Policy EDU 1.5.4 (Preserving Sites Near Transit), which recommends preserving school sites well-served by public transit for educational use.

Great Weight

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to issues and concerns raised in the affected Advisory Neighborhood Commission’s (“ANC”) written recommendation. Although the text amendments could affect all ANC’s, only ANC 6B filed a written report with the Commission. ANC 6B voted to oppose the text amendments as originally drafted. The ANC’s report was dated July 17, 2008, and it reflects ANC 6B’s concern

that, as the amendment was then drafted, all proposed uses in former public school buildings were to have been allowed as matter-of-right uses. The ANC recommended that the uses listed be allowed as special exceptions, which would permit community input during the special exception process. The Commission agrees with this recommendation as to some of the proposed uses and the text amendment language was changed to make certain of the listed uses subject to the special exception process.

The ANC report also expresses a concern that the District agency office uses and not-for-profit office uses permitted by the text amendments, either as a matter-of-right or a special exception, would have impacts similar to those of a commercial office use, which is prohibited in a residential zone. The Commission has considered the ANC's concern about the possible impacts of office uses, but concludes that under the final text amendment language, the concern is ameliorated. The final language makes not-for-profit office uses a special exception and imposes certain conditions on the offices of a District government agency in order to control and/or mitigate any impacts on the surrounding neighborhood.

Final Action

At its properly noticed January 26, 2009 public meeting, the Commission took final action to adopt the proposed text amendments. No substantive changes were made to the text amendments set forth in the Revised Notice of Proposed Rulemaking.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purposes of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission **APPROVES** the following amendments to the Zoning Regulations, Title 11 DCMR:

1. CHAPTER 1, THE ZONING REGULATIONS, §199 Definitions, is amended by adding the following definition and inserting it alphabetically:

Community service use - A not-for-profit use established primarily to benefit and serve the population of the community in which it is located.

2. CHAPTER 2, R-1 RESIDENCE DISTRICT USE REGULATIONS, § 201.1, is amended as follows:

A. By adding the following new paragraph:

- (v) The following uses are permitted as a matter of right if located in a building owned by the District of Columbia that formerly served as the location of a public school:

- (1) Administrative offices of District government agencies not part of the criminal justice system, provided:
 - (A) The use shall not extend outside the building unless accessory and incidental to the principal administrative use; and
 - (B) Any storage shall be fully enclosed.
 - (2) Clinic for humans, provided that the use shall not be a substance abuse treatment facility or a community-based residential facility;
 - (3) Community service use or uses, provided:
 - (A) The application for a certificate of occupancy include evidence demonstrating that the established mission of the use will serve the community, neighborhood, or District of Columbia population;
 - (B) There is no outdoor storage of materials; and
 - (C) The use shall not be a community- based residential facility, a part of the criminal justice system, or a substance abuse treatment facility;
 - (4) Child/Elderly development center; and
 - (5) Community college, up to 50,000 sq. ft. of building area, provided:
 - (A) There shall be no external activities after 9:00 PM; and
 - (B) There shall be no use of the college space after midnight.
- B. By deleting current § 222 in its entirety and amending § 222 to read as follows:

222 USE AND EXPANSION OF FORMER PUBLIC SCHOOL BUILDINGS R-1).

222.1 The following uses, if located in a building owned by the District of Columbia that formerly served as the location of a public school (“former school building”), shall be permitted as a special exception in the R-1 District if approved by the Board of Zoning Adjustment under §3104:

- (a) A District government use disallowed or not listed in § 201.1(v);

- (b) A use permitted by § 201.1(v) that does not meet one or more conditions or provisions that apply to it; and
- (c) A not-for-profit use that is not permitted as a matter-of-right pursuant to §201.1(v)(3).

222.2 No former school building housing a use permitted by § 201.1(v) or by this section may be expanded without the approval of the Board of Zoning Adjustment under § 3104.1.

222.3 In addition to any other conditions of approval, the Board of Zoning Adjustment may impose setbacks, screening, lighting requirements, or other safeguards that the Board deems necessary for the protection of the neighborhood.

3. CHAPTER 21, OFF-STREET PARKING REQUIREMENTS, § 2101, Schedule of Requirements for Parking Spaces, § 2101.1, is amended by adding the following to the chart under the heading entitled “Schools”:

<p style="text-align: center;"><u>Uses in former public school buildings authorized by 11 DCMR §§ 201.1 (v) or 222</u></p> <p>R Districts</p>	<p>Parking requirements will be those that apply in the most restrictive zone district in which the use is otherwise first permitted as a matter of right.</p>
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4. CHAPTER 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE: the table of special exceptions following § 3104.1 is amended by inserting the following special exceptions in alphabetical order:

Type of Special Exception	Zone District	Sections in which the Conditions are Specified
District government use in former public school buildings.	R-1 District	§ 222
Expansion of former public school buildings with District government uses, or other permitted uses.	R-1 District	§ 222
Not-for-profit use in former public school buildings.	R-1 District	§ 222

On September 8, 2008, upon the motion of Chairman Hood, as seconded Commissioner Etherly, the Zoning Commission **APPROVED** the proposed rulemaking at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Peter G. May, and Michael G. Turnbull to approve).

On January 26, 2009, upon the motion of Chairman Hood, as seconded Commissioner May, the Zoning Commission **ADOPTED** the final rulemaking at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to adopt; Third Mayoral Appointee position vacant at the time of final action, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
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Z.C. ORDER NO. 08-18
Z.C. Case No. 08-18
(Text Amendment -- 11 DCMR)
(Text Amendments – Use of former public school buildings)
January 26, 2009**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.