

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (“Board”), pursuant to the authority set forth in D.C. Official Code § 25-211 (b) (2008 Supp.), hereby gives notice of the adoption of proposed rules that create a new section 2102 of Title 23 of the DCMR, for the purpose of defining what constitutes a minimal lack of compliance and a substantial lack of compliance with the statutory food sales requirements set forth in D.C. Official Code §§ 25-101(43) (2008 Supp.) and 25-113 (2008 Supp.). The proposed rules also seek to define the terms “minimal lack of compliance” and “substantial lack of compliance”, which are currently contained in 23 DCMR § 2101 (2004).

The Board gives notice of its intent to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. Pursuant to D.C. Official Code § 25-211(b) (2008 Supp.), these proposed rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until the expiration of the ninety (90) day period of Council review or upon approval by Council resolution, whichever occurs first.

Title 23 DCMR, Chapter 21 (Restaurant and Hotel Food Sales Requirements), is amended by adding a new section 2102 to read as follows:

2102. FOOD SALES REQUIREMENT DEFINITIONS

- 2102.1 A “minimal lack of compliance” under this Chapter shall be defined as:
(1) licensed establishments, class C/R, and C/H, whose annual food sales requirements meet or exceed 25% but are below 45% and/or meet or exceed \$1,500 but are below \$2,000 per occupant, or (2) licensed establishments, class D/R and D/H, whose annual food sales requirements meet or exceed 25% but are below 45% and/or meet or exceed \$1,000 but are below \$2,000 per occupant.
- 2102.2 A “substantial lack of compliance” under this Chapter shall be defined as:
(1) licensed establishments, class C/R and C/H, whose annual food sales requirements are less than both 25% and \$1,500 per occupant, or (2) licensed establishments, class D/R and D/H, whose annual food sales requirements are less than both 25% and \$1,000 per occupant.

This rulemaking was adopted by the Board on July 8, 2009 by a 4-1 vote. Board Member Mital M. Gandhi dissented from the position taken by the majority of the Board with regard to this rulemaking. Board Member Gandhi was in favor of adopting an alternative threshold for licensed establishments. Specifically Board Member Gandhi was in favor of requiring class C/R and C/H licensees to meet or exceed \$1,100 per occupant to be held minimally noncompliant as this is mathematically equivalent to the calculation of the percentage figure. Board Member Gandhi was in favor of defining the threshold for

substantial non-compliance by C/R and C/H licensees as food sales below \$1,100. For licensed establishments, class D/R and D/H to be held minimally noncompliant, it is Board Member Gandhi's position that the threshold should meet or exceed \$825 per occupant. Food sales below \$825 per occupant for licensed establishments, class D/R and D/H would be deemed to be substantially noncompliant. A public hearing on this proposed rulemaking will occur on August 12, 2009 at 1 p.m. at 941 North Capitol Street, N.E., 7th Floor.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, Acting General Counsel, Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., 7th Floor, Washington, D.C. 20002. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGFORMAL CASE NO. 1002, IN THE MATTER OF THE JOINT APPLICATION OF PEPCO AND THE NEW RC, INC. FOR AUTHORIZATION AND APPROVAL OF MERGER TRANSACTION

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,¹ of its intent to act upon the proposed tariff amendment of the Potomac Electric Power Company (“Pepco” or “Company”)² in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking (“NOPR”) in the *D.C. Register*.

2. In its filing, Pepco asserts that the revisions reflect “the current Federal Energy Regulatory Commission (“FERC”) approved transmission rates, which went into effect June 1, 2009.”³ Pepco also indicates that the new rate schedules for retail transmission rates “reflect the changes in the wholesale transmission rates in the Company’s retail transmission rates.”⁴

3. According to the Company, Pepco “posted on the PJM website and filed informational copies to the FERC of the 4th annual update of its formula transmission rate.”⁵ Pepco indicates that the “updated Network Integrated Transmission Service rate is based on the data in the 2008 FERC Form 1 for Pepco, which was filed with the FERC on April 20, 2009.”⁶ In addition, the Company notes that the “filed wholesale transmission rate for the Pepco Zone effective June 1, 2009 is \$13,229 per megawatt-year for Network Integrated Transmission Service, which is currently reflected in Attachment H-9 of the PJM Open Access Transmission Tariff and \$886.35 per megawatt-year for Transmission Enhancement Charges assigned to the load serving entities in the Pepco Zone shown in Schedule 12 of the PJM Open Access Transmission Tariff.”⁷

¹ D.C. Official Code § 2-505 (2001 Ed.).

² *Formal Case No. 1002, In the Matter of the Joint Application of PEPCO and the New RC, Inc. for Authorization and Approval of Merger Transaction*, Letter from Deborah M. Royster, Deputy General Counsel, PEPCO, to Dorothy Wideman, Secretary, Public Service Commission of the District of Columbia (July 15, 2009).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* Pepco indicates that these charges are shown on Attachment D of its July 15, 2009 filing and that Attachment E “provides the treatment for incorporating the cost responsibilities and revenue credits for these projects in the development of the Pepco retail transmission rates.” In addition, the Company states that the “FERC jurisdictional wholesale transmission rates and corresponding retail transmission revenue requirements” are at Attachment A. The proposed tariff containing the revised retail rates for Transmission Service is provided at Attachment B. Also included in Attachment B are tariff pages showing the additions and deletions to the current

4. Specifically, Pepco proposes to amend the following thirteen (13) tariff pages:

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Forty - Seventh Revised Page No. R-1
Forty - Seventh Revised Page No. R-2
Fortieth Revised Page No. R-2.1
Sixteenth Revised Page No. R-2.2
Tenth Revised Page No. R-41
Tenth Revised Page No. R-41.1
Tenth Revised Page No. R-41.2
Tenth Revised Page No. R-41.3
Tenth Revised Page No. R-41.4
Tenth Revised Page No. R-41.5
Tenth Revised Page No. R-41.6
Tenth Revised Page No. R-41.7
Ninth Revised Page No. R-41.8

5. The filing may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. A copy of the proposed tariff amendment is available upon request, at a per-page reproduction cost from the Office of the Commission Secretary or via the Commission's website at www.dcpsec.org.

6. Comments on Pepco's proposed tariff amendment must be made in writing to Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within thirty (30) days of the date of publication of this NOPR in the *D.C. Register*. Persons wishing to file reply comments may do so no later than forty-five (45) days of the date of publication of the NOPR in the *D.C. Register*. Once the comment period has expired, the Commission will take final rulemaking action on Pepco's filing.

tariff. Finally, Pepco indicates that "[w]orkpapers showing the details of the rate design calculations are provided as Attachment C."

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGTT00-5, IN THE MATTER OF VERIZON WASHINGTON, DC INC.'S PUBLIC OCCUPANCY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 201

1. The Public Service Commission of the District of Columbia (“Commission”) pursuant to its authority under D.C. Official Code § 2-505,¹ hereby gives notice of its intent to act upon the Application of Verizon Washington, DC Inc. (“Verizon” or “Verizon DC”)² in the above-captioned matter in not less than thirty (30) days after the date of publication of this Notice of Proposed Rulemaking (“NOPR”) in the *D.C. Register*.

2. On July 1, 2009, pursuant to D.C. Official Code Section 10-1141.06,³ Verizon DC filed with the Commission an updated Rights-of-Way (“ROW”) Surcharge Rider. In the tariff filing, Verizon DC sets forth the process used to recover from its customers the D.C. Public ROW fees paid by Verizon DC to the District Columbia Government in accordance with the following tariff page:

GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 201
Section 1A
Original Page 2

3. Verizon DC’s Application compares the current ROW Surcharge Rider, implemented July 1, 2006, against the updated ROW Surcharge Rider.⁴ The Application indicates that the ROW Surcharge Rider will increase by \$0.41 for Non-Centrex lines and \$0.05 for Centrex lines.⁵ Additionally, Verizon DC states that it intends to implement the

¹ D.C. Official Code § 2-505 (2006 Repl.).

² *TT00-5, In The Matter Of Verizon Washington, DC Inc.’s Public Space Occupancy Surcharge General Regulations Tariff, P.S.C.-D.C. No. 201 (“TT00-5”)*, Letter to Dorothy Wideman, Commission Secretary, from J. Henry Ambrose, Vice President for State Public Policy of Verizon DC, re: TT00-5, filed July 1, 2009 (“hereinafter referred to as “Application”).

³ D.C. Official Code, 2001 Ed. § 10-1141.06, states that “Each public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer’s monthly billing statement.”

⁴ *TT00-5, Application* at 1.

⁵ *TT00-5, Application* at 1.

updated surcharge on August 1, 2009.⁶ Because any erroneous calculation is subject to reconciliation, the Commission will not prevent Verizon DC from implementing the proposed surcharges.

4. The General Regulations Tariff is on file with the Commission. The proposed tariff revisions may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday or on the Commission's website at www.dcpsc.org. Copies of the tariffs are available upon request, at a per-page reproduction cost.

5. All persons interested in commenting on the proposed tariff must submit written comments to Dorothy Wideman, Commission Secretary, at 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005. Comments must be received no later than thirty (30) days after the date of publication of this NOPR in the *D.C. Register*. Persons who wish to file reply comments may do so no later than forty-five (45) days after the date of publication of this NOPR in the *D.C. Register*. Once the comment and reply comment periods have expired, the Commission will take final rulemaking action.

⁶ *TT00-5, Application at 1.*

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The Acting State Superintendent of Education, pursuant to the authority set forth in Sections 3(b)(11) and 7c(c)(2)(A) of State Education Office Establishment Act of 2000, effective September 18, 2007 (D.C. Law 17-20; D.C. Official Code §38-2602(b)(11), and §38-2609(c)(2)(A) (2008 Supp.)), and Article II, Sections 1 and 4 of an Act to provide compulsory education and school attendance, and for the purposes approved February 4, 1925 (43 Stat. 806; D.C. Official Code §§38-202 through 206 (2001)); hereby gives notice of her intent to amend Title 5, Chapter 21, *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*.

The proposed rule revises school attendance and reporting requirements for students enrolled in educational institutions within the District of Columbia. Children receiving home schooling in conformance with District of Columbia laws and regulations will not be subject to the reporting requirements set forth in this chapter.

The proposed rule creates a new chapter A21 in Title 5 of the DCMR entitled “Compulsory Education and School Attendance”. Upon final adoption of this proposal, portions of Title 5, Chapter 21 and Chapter 3 of the DCMR will be repealed as noted herein.

A proposed rule to address truancy, published at 55 *D.C. Register* 11917, November 14, 2008, will become part of this new Chapter A21 as Section 2103 upon final promulgation.

This notice includes a conforming revision to the term “unexcused absence” found in DCMR Title 5, Section 2099 of Chapter 20, to align with proposed new Chapter A21.

A new Chapter A21 of Title 5 of the DCMR is added to read as follows:

**CHAPTER A21 COMPULSORY EDUCATION AND
SCHOOL ATTENDANCE**

A2100 GENERAL PROVISIONS

A2100.1 The compulsory attendance requirements of the District of Columbia shall be governed in accordance to this chapter. Each school-age child who is a resident of the District of Columbia shall be expected to attend a public, independent, private, or parochial school, or receive private instruction.

A2100.2 A school-age child and his or her parents or guardian shall be exempt from this chapter in the event the child:

- (a) Has earned a high school diploma or its equivalent; or

- (b) Participates in a home schooling program in compliance with all District of Columbia laws and regulations.

A2100.3 A school year for attendance purposes shall include a minimum of one hundred eighty (180) regular instructional days. Student attendance days shall be based upon the actual number of days the student is in attendance in the school during the entire year.

- (a) Instructional days shall be at least six (6) hours in length for students, including time allotted for lunch periods, recess, and class breaks; provided the six-hour minimum instructional day requirement shall not be applicable to an evening school program, prekindergarten program, or a kindergarten program.

A2100.4 Attendance days shall include in-school suspensions, school sponsored field trips, participation in an off-site school-sponsored or approved activity during a regularly scheduled school day, and the number of days a student receives instructional services while expelled or while serving an out-of-school suspension.

A2101 ATTENDANCE RECORDS

A2101. 1 Each educational institution shall maintain an accurate daily record of attendance and absences, consistent with data and reporting requirements specified by the Office of the State Superintendent of Education for each school age-child. The attendance and absence record for each student shall include:

- (a) Date(s) of enrollment;
- (b) Current grade level assignment and date(s) of promotion to each grade level;
- (c) Daily attendance;
- (d) Daily absence or late arrival time, with an explanation from parents or guardians;
- (e) Date and brief description of communications with parents or guardians with regard to school attendance and absences, including the record of or a cross reference to the record documenting:
 - (1) Contact with parents, guardians, or other primary caregivers; and
 - (2) Interventions, services and referrals related to absences pursuant to this chapter; and

- (f) Date of withdrawal from or transfer to another school including the name and location of the school to which a student transfers; and follow up notation(s) to confirm the child's new placement.

A2101.2 Each educational institution shall maintain accurate attendance and absence records as required in this chapter and is encouraged to maintain these records in an electronic format.

A2102 ABSENCES

A2102.1 Any absence, including an absence from any portion of the day, without a valid excuse shall be presumed to be an unexcused absence.

A2102.2 As required by this chapter, an educational institution shall define categories of valid excuses for an absence, including the following:

- (a) Illness or bona fide medical cause experienced by the student;
- (b) Exclusion, by direction of the authorities of the District of Columbia, due to quarantine, contagious disease, infection, infestation, or other condition requiring separation from other students for medical or health reasons;
- (c) Death in the student's family;
- (d) Necessity for a student to attend judiciary or administrative proceedings as a party to the action or under subpoena;
- (e) Observance of a religious holiday;
- (f) Lawful suspension or exclusion from school by school authorities;
- (g) Temporary closing of facilities or suspension of classes due to severe weather, official activities, holidays, malfunctioning equipment, unsafe or unsanitary conditions, or other condition(s) or emergency requiring a school closing or suspension of classes;
- (h) Employment or other volunteer work approved by the school, provided that the student is 17 years of age. Any excused absences under this subsection shall not adversely impact the student's academic performance or timely graduation;
- (i) Failure of the District of Columbia to provide transportation in cases where the District of Columbia has a legal responsibility for

the transportation of the student;

- (j) Medical or dental appointments for the student; and
- (k) Emergencies or other set of circumstances as approved in writing and in conformance with published policies distributed to parents and guardians; implemented by an LEA, independent, private or parochial school.

A2102.3 Educational institutions shall publish and make available to parents and students the list of valid excused absences.

A2102.4 Educational institutions shall require a written statement from the student's parent or guardian verifying the reason for an absence provided in advance if practicable or upon the student's return to school.

A2103 TRUANCY PROCEDURE

[Proposed Rule published at *55 D.C. Register 11917* (November 14, 2008)]

A2104 REPORTING REQUIREMENTS

A2104.1 An educational institution shall submit to the Office of the State Superintendent of Education, upon request, information relating to attendance and compulsory education in conformance with this chapter.

A2104.2 Each educational institution subject to this chapter shall provide to the State Superintendent of Education, upon request, information with regard to a report of enrollments and withdrawals in conformance with D.C. Official Code § 38-205.

A2104.3 The reports required under this chapter shall, to the extent practicable, conform to the format requested by the Office of the State Superintendent of Education and include: the name, address, sex, and date of birth and student identification number as appropriate, of each minor residing permanently or temporarily in the District of Columbia who enrolls in, withdraws from, or transfers from an educational institution.

A2104.4 An educational institution shall notify the Office of the State Superintendent immediately upon information, reason, or belief that a school-age child who has been withdrawn from a school has not been re-enrolled in a school following withdrawal from school or is not receiving private instruction.

A2199 DEFINITIONS

A2199.1 All definitions set forth in Title 5, Section 2099 are incorporated herein by reference and shall apply to the terms used in this chapter unless modified by definitions listed in this chapter. For purposes of this Chapter:

Educational institution means a school in the District of Columbia Public Schools system, a public charter school, or an independent, private or parochial school or a private instructor.

Local Education Agency or **LEA** means the District of Columbia Public Schools (DCPS) or a District of Columbia public charter school.

Minor means a child who has not yet reached 18 years of age.

School-age child means a child who is five (5) years of age on or before September 30 of the current school year until the child reaches the age of eighteen (18) years.

Truant means a school-age child who is absent without a valid excuse as defined in (cite truancy chapter) for a school day or portion of it.

Unexcused absence means an absence of a school age child from any portion of the day that results in less than the six-hour required minimum instructional time without a valid excuse as defined by the LEA attended by the student.

Title 5 DCMR Chapter 20 Section 2099 is amended to read as follows:

Unexcused absence means an absence of a school age child from any portion of the day that results in less than the six-hour required minimum instructional time without a valid excuse as defined by the LEA attended by the student.

Title 5 DCMR Chapter 21 will be amended to delete the following:

§ 2100.1
§ 2100.5
§ 2100.7
§ 2100.8
§ 21009
§ 2100.10
§ 2101

Title 5, DCMR Chapter 3 will be amended to delete the following:

§ 305.7
§ 305.8

Persons wishing to comment on these proposed rules should submit their comments in writing to Kerri L. Briggs, PhD, the Office of the State Superintendent of Education, 441 4th Street NW, suite 350 North, Washington, D.C., 20001 or to osse.publiccomment@dc.gov, Attn: Jessica Morffi. All comments must be received by the Office of the State Superintendent of Education not later than thirty (30) days after publication of this notice in the *DC Register*. Copies of the proposed rules may be obtained on the State Superintendent of Education's website at osse.dc.gov or by writing to the above address and contact person; or calling the Office of the State Superintendent of Education at (202) 727-6436.

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

Z.C. Case No. 08-17

(Text Amendment – 11 DCMR)

(Prohibition of Certain Accessory Uses in Reed-Cooke Overlay)

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), hereby gives notice of its intent to amend § 1401 of the Zoning Regulations (Title 11 DCMR). That provision lists uses that are prohibited in the Reed-Cooke Overlay. The proposed amendment adds a new § 1401.2 to indicate if a principal use is prohibited by § 1401.1; the accessory form of the use is prohibited as well. Proposed new § 1401.3 would exempt the off-premises wine and beer sales accessory use in the grocery store located in Square 2572, Lot 36 subject to a cap on the amount of floor space that the accessory use could occupy. That grocery store and accessory use were the subject of *Appeal No. 17675 of the Reed-Cooke Neighborhood Association*, 55 DCR 12552 (2008), in which the Board of Zoning Adjustment (“BZA”) found, “that the sale of off-premises alcoholic beverages as an accessory use is not prohibited by § 1401.1(b) and is therefore allowed as a matter of right.” This proceeding was initiated by the Office of Planning (“OP”) in response to that holding, because OP believed that the Commission intended to prohibit all forms of a prohibited use when it established the overlay

The grocery store’s owner requested the exemption set forth in proposed § 1401.3 so that the adoption of the prohibition would not change the nature of the accessory use from conforming to non-conforming. If a non-conforming use is abandoned, any subsequent use must conform to the regulations of the district in which the use is located. (11 DCMR § 2005.) Advisory Neighborhood Commission 1C, through its adoption of a resolution dated July 3, 2009, stated its opposition to the exemption, but indicated that, in the event the Commission agreed to it, the accessory use should be confined to the location it occupied on July 1, 2009, and only to the extent it occupied that location on that date.

At the time the Commission authorized the publication of this notice, it agreed to include the exemption within the proposed text as well as a cap, but requested that the public comment on the extent of the cap as well as the appropriateness of the exemption. The Commission noted that in finding of fact number 6 of Appeal No. 17675, the BZA found that: “According to the plans submitted with the building permit application, the area to be devoted to the sale of beer and wine would comprise approximately 4% of the store’s total floor area.” With this figure as a baseline, the Commission requested that the Zoning Administrator measure the total floor area currently occupied by the accessory use and report his findings prior to the Commission’s scheduled public meeting of September 14, 2009.

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:

Z.C. NOTICE OF PROPOSED RULEMAKING

Z.C. CASE NO. 08-17

PAGE 2

The Zoning Regulations, DCMR Title 11, § 1401 is amended by adding new §§ 1401.2 and 1401.3 to read as follows:

- 1401.2 Except as provided in §1401.3, if any of the principal uses prohibited by § 1401.1 would be permitted as an accessory use in the underling zone district, that accessory use is also prohibited in the RC Overlay District.
- 1401.3 Notwithstanding § 1401.2, the off-premises beer and wine sales accessory use in the grocery store located in Square 2572, Lot 36 may continue as a matter of right provided that it shall not occupy more than _____ square feet of the store's gross floor area.

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 4th 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.