

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs and the Construction Codes Coordinating Board, pursuant to the authority set forth in Mayor's Order 2009-22, dated February 25, 2009, hereby give notice of the adoption of amendments to Chapter 6 (Building Code Advisory Committee) of Title 1 of the District of Columbia Municipal Regulations (DCMR).

This rulemaking is necessary to comply with the provisions of Mayor's Order 2009-22, which rescinded Mayor's Order 89-257, dated November 7, 1989, and replaced the Building Code Advisory Committee with the Construction Codes Coordinating Board. The rulemaking replaces the existing Chapter 6, including renaming the chapter, in order to reflect the new name of the Construction Codes Coordinating Board and its function.

These rules were previously published as a proposed rulemaking in the *D.C. Register* on October 30, 2009 (56 DCR 8597). One comment was received and non-substantive changes were made to clarify that meeting notice requirements are applicable to any technical advisory group and working group established by the Construction Codes Coordinating Board. These final rules will be effective upon publication of this notice in the *D.C. Register*.

1 DCMR Chapter 6 is amended to read as follows:

CHAPTER 6. CONSTRUCTION CODES COORDINATING BOARD

Secs.

| | |
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| 600 | Purpose |
| 601 | Notice of Meetings |
| 602 | Conduct of Meetings |
| 603 | Public Comments |

600. PURPOSE

600.1 This chapter establishes the procedures by which the Construction Codes Coordinating Board ("Board") and the Department of Consumer and Regulatory Affairs ("Department") shall comply with the requirements of Mayor's Order 2009-22, dated February 25, 2009, in implementing the promulgation of revisions to the District of Columbia Construction Codes (D.C. Official Code §§ 6-1401 *et seq.* and Title 12 of the District of Columbia Municipal Regulations) ("Construction Codes").

601. NOTICE OF MEETINGS

601.1 The Board shall publish in the *District of Columbia Register* and on the Department website a notice of each Board meeting at which it will consider proposed changes to the Construction Codes.

601.2 Each notice shall contain the following:

- (a) The date, time, and location of the meeting;
- (b) A website address at which interested persons can review the meeting agenda and Board minutes; and
- (c) The mailing address or electronic mail address to which may be sent written proposals to amend the Construction Codes.

601.3 The Board shall publish on the Department website a notice of each meeting of a Board technical advisory group or working group at which proposed changes to the Construction Codes will be considered. The notice shall contain the information required by § 601.2.

602. CONDUCT OF MEETINGS

602.1 The Chairperson of the Board shall conduct each meeting.

602.2 If the Chairperson is unable to serve, the Vice Chairperson shall do so.

602.3 The Chairperson may, at his or her discretion, allow members of the public to make statements at any meeting where the statements address:

- (a) Any Construction Codes provisions under consideration by the Board; or
- (b) Any procedures employed by the Board in considering amendments to the Construction Codes.

603. PUBLIC COMMENTS

603.1 The Board shall allow members of the public the opportunity to comment in writing on any Construction Codes provisions under consideration by the Board, technical advisory group, or working group.

603.2 The Board, at the discretion of the Chairperson, may allow oral comments on any Construction Codes provisions under consideration to be presented orally at its meetings; provided, that oral comments on a particular Construction Codes provision under consideration may be made only at a Board meeting at which that Construction Codes provision is under consideration.

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES**NOTICE OF FINAL RULEMAKING**

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to the authority set forth in the District of Columbia Documents Act, effective March 6, 1979 (D.C. Law 2-153; D.C. Official Code § 2-611 *et seq.* (2006 Repl.)), hereby gives notice of her adoption of the following amendments to Chapter 3 of Title 1 of the *District of Columbia Municipal Regulations*. The purpose of the amendments is to outline technical changes made to the District of Columbia Municipal Regulations (DCMR) during the process of digitizing and updating the entire DCMR. The updating process included: inserting into the text of the regulations all of the outstanding amendments; updating terminology that had been changed pursuant to Mayor's Orders, regulations, and the D.C. Code; recodifying several titles to ensure a uniform structure of the regulations; and updating numerous D.C. Code and D.C.M.R. citations. The recodification was necessary to provide clarity and a flexible codification structure for future regulations. This effort is the first phase and review to update the D.C.M.R. ODAI will continue to make updates and revisions to reflect changes made to the rules by rulemakings, orders, and code provisions. ODAI will continue to publish technical rulemakings to notify the public of any changes and updates in the future.

There have been no changes to the text of the rulemaking as published in the D.C. Register on October 2, 2009 (56 DCR 007861). These amendments shall become effective upon publication of this notice in the D.C. Register.

The following subsections of 1 DCMR Chapter 3, Rules of the Office of Documents, are amended or repealed as follows:

300 OFFICE OF DOCUMENTS: GENERAL PROVISIONS

300.6 All publications of ODAI will be considered "published" when posted to the website of the Office of the Secretary, <http://os.dc.gov> or www.dcregs.org. ODAI will contemporaneously retain a paper copy of each official electronic publication.

303 SERVICES TO DISTRICT GOVERNMENT AGENCIES

303.6 Repealed

306 SUBMISSION OF DOCUMENTS: PUBLICATION SCHEDULES, DEADLINES AND, SUBMISSION PROCEDURES.

306.1 All documents shall be submitted electronically by designated DC government agency personnel on the e-rulemaking system that can be found at www.dcregs.org.

306.8 Repealed

306.9 Repealed

306.10 Repealed

306.20 Requests for emergency publication shall be made in writing to DCdocuments&dc.gov.

307 FORMATTING AND PREPARATION OF DOCUMENTS

307.1 ODAI shall accept electronic submissions of documents. A person seeking to submit a document to ODAI shall sign onto the e-rulemaking system at www.dcregs.org and submit the document. Submissions should be in Microsoft Word format. Rulemaking submissions should adhere to the rules in §307.9-307.15 of this chapter.

307.9 All documents submitted for publication in the *D.C. Register* shall be submitted on the e-rulemaking system. Anyone wishing to submit documents must obtain a log-on and password from the Office of Documents and Administrative Issuances. The request for a log-on and password shall be submitted in writing to dcdocuments@dc.gov. The request shall include the name of the agency, the name of the person with rulemaking authority for the agency, and the contact information for the agency liaison requesting the information and access to the e-rulemaking system. The Administrator of ODAI will create the log-on and password for the rulemaking authority and deliver the information. The rulemaking authority may create additional profiles for his or her agency staff.

307.10 In place of a transmittal form, the agency drafter shall sign on to the e-rulemaking system with the drafter's individual password. Electronic submissions will be taken as a confirmation that the document was submitted by the designated agency drafter. Any submissions not personally executed by the authorized official and submissions by those not legally vested with authority to adopt rules or attest to the adoption of rules by a rulemaking body will not be accepted.

307.11 The Office of the Attorney General will electronically submit approval of rulemakings to the Office of Documents and Administrative Issuances through the e-rulemaking system. Signed transmittal forms are no longer required by ODAI for electronic submissions on the e-rulemaking system. However, any paper submissions by offices unable to access the e-rulemaking system must be submitted with a transmittal form that contains the signature of the Office of the Attorney General or Agency Counsel, designated Assistant Attorney General, or approved agency counsel certifying that the substance of the text of the rule(s) has been reviewed and is, in the opinion of legal counsel, legally sufficient.

307.13 Certification of the form and contents of notices of proposed, final, and emergency rulemaking shall be made by the Office of Documents and Administrative Issuances, pursuant to the provisions of §§309 through 311 of this chapter.

307.14 The Administrator will not certify and publish rulemaking notices in the *D.C. Register* unless it is clear that the promulgator of the rule or proposed rule named on the electronic submission has legal authority to issue the rules.

307.15 Repealed

313 D.C. MUNICIPAL REGULATIONS: STRUCTURE AND FORMAT

313.1 The major divisions of the *D.C. Municipal Regulations* (DCMR) are titles, each of which brings together broadly related rules and regulations by subject matter categories.

313.2 Titles of the *D.C. Municipal Regulations* are designated by the Office of Documents and Administrative Issuances. Assignment of rules and regulations to the various titles of the *D.C. Municipal Regulations* by the Office of Documents and Administrative Issuances will be based on the structure set forth in §313.3.

313.3 The structure of the *D.C. Municipal Regulations* is the following:

1 MAYOR AND EXECUTIVE AGENCIES

3 ELECTIONS AND ETHICS

4 HUMAN RIGHTS

5 BOARD OF EDUCATION

SUBTITLE A: Office of the State Superintendent of Education (OSSE) (formerly parts of Title 5)

SUBTITLE B: District of Columbia Public Schools (DCPS) (formerly parts of Title 5)

SUBTITLE C: Charter Schools

SUBTITLE D: School Maintenance

SUBTITLE E: Former Title 5

6 D.C. PERSONNEL REGULATIONS

SUBTITLE A: Police Personnel (formerly Title 6A)

SUBTITLE B: Personnel (formerly parts of Title 6)

7 EMPLOYMENT BENEFITS

**8 UNIVERSITY OF THE DISTRICT OF COLUMBIA & DISTRICT OF COLUMBIA
LAW SCHOOL**

SUBTITLE A: District of Columbia Law School (formerly Title 8A)

SUBTITLE B: University of the District of Columbia (formerly Title 8)

9 TAXATION AND ASSESSMENTS

10 PLANNING AND DEVELOPMENT

SUBTITLE A: Comprehensive Plan (formerly Part 1 of Title 10)

SUBTITLE B: Planning and Development (formerly Part 2 of Title 10)

SUBTITLE C: Historic Preservation (formerly 10A)

11 ZONING

12 CONSTRUCTION CODES

13 TECHNOLOGY (new title)

14 HOUSING

15 PUBLIC UTILITIES & CABLE TELEVISION

16 CONSUMERS, COMMERCIAL PRACTICES & CIVIL INFRACTIONS

17 BUSINESS, OCCUPATIONS & PROFESSIONALS

18 VEHICLES & TRAFFIC

19 AMUSEMENTS, PARKS & RECREATION

20 ENVIRONMENT

21 WATER & SANITATION

22 PUBLIC HEALTH & MEDICINE

SUBTITLE A: Mental Health (formerly Title 22A)

SUBTITLE B: Health (formerly Title 22)

23 ALCOHOLIC BEVERAGES

24 PUBLIC SPACE AND SAFETY

25 FOOD AND FOOD OPERATIONS AND COMMUNITY HYGIENE FACILITIES

SUBTITLE A: Retail Food Code Regulations (formerly 25 DCMR)

SUBTITLE B: Food Processing Operations Code (formerly 25A DCMR)

SUBTITLE C: Swimming Pool and Spa Regulations (formerly Title 22 DCMR, Chapter 64)

SUBTITLE D: Massage Establishment and Health Spa Facility

SUBTITLE E: Barbering, Cosmetology, and Personal Grooming Facility Regulations

SUBTITLE F: Tanning Facility Regulations

SUBTITLE G: Tattoo, Body Art, and Body-Piercing Facility Regulations

SUBTITLE H: Bedding and Upholstered Furniture (formerly Title 22, chap.1, sec.115, 117)

SUBTITLE I: Health Nuisances, Rodent and Vector Control Regulations (formerly Title 22 DCMR, chapter 1, sections 100, 107)

SUBTITLE J: Animal Welfare and Facility Regulations (formerly Title 22, chap.1, sec. 103, 104, chap.7)

26 INSURANCE

SUBTITLE A: Insurance (formerly Title 26)

SUBTITLE B: Securities (formerly chapters 18,19, and 81 of Title 17)

SUBTITLE C: Banking (formerly Title 26A)

27 CONTRACTS AND PROCUREMENT

28 CORRECTIONS, COURTS & CRIMINAL JUSTICE

29 PUBLIC WELFARE

30 LOTTERY AND CHARITABLE GAMES

31 TAXICABS & PUBLIC VEHICLES FOR HIRE

DISTRICT OF COLUMBIA RETIREMENT BOARD**NOTICE OF FINAL RULEMAKING**

The District of Columbia Retirement Board (the “Board”), pursuant to the authority set forth in section 121(e) of the District of Columbia Retirement Reform Act (the “Reform Act”), Pub. L. 96-122, 93 Stat. 866, November 17, 1979 (codified at D.C. Code § 1-711(e) (2001)), hereby gives notice of the adoption of final rulemaking to amend Chapter 18 of Title 7 of the District of Columbia Municipal Regulations (“DCMR”). The purpose of the final rule is to allow the Board to establish an enhanced retirement benefit for its staff.

The Board stated its intent to publish the proposed rule as final in the Notice of Proposed Rulemaking published in the *D.C. Register* on November 27, 2009 (56 DCR 009097). No comments were received and no substantive changes were made to the proposed rulemaking. This rule will become final upon publication of this notice in the *D.C. Register*.

CHAPTER 18**DISTRICT OF COLUMBIA RETIREMENT BOARD CLASSIFICATION AND
COMPENSATION PROGRAM REGULATIONS**

*Section 1805 of Chapter 18 of the District of Columbia Retirement Board
Classification and Compensation Program Regulations is amended as follows:*

A new subsection 1805.3 is added to read as follows:

1805.3 In addition to the District of Columbia Government retirement plans that employees of the Retirement Board participate in or may participate in, the Retirement Board may provide a supplemental 401(a) defined contribution retirement plan for eligible employees described as follows:

- (a) The Retirement Board may, at its discretion, make nonelective contributions to the plan on behalf of an eligible employee either as a percentage of the employee’s compensation or as a flat dollar amount which percentage or amount need not be uniform among all participating eligible employees;
- (b) Employees may make voluntary after-tax contributions to the plan;
- (c) The contributions shall be subject to the limitation on contributions as set forth in section 415 of the Internal Revenue Code (“Code”), as amended, and all applicable rules and regulations issued thereunder;

- (d) Those employees eligible to participate in the plan and the date such employees are be eligible to participate in the plan shall be determined by the Retirement Board and such provisions for eligibility shall be set forth in the plan document;
- (e) Participating employees shall vest in contributions in accordance with a schedule set forth in the plan document;
- (f) The plan document shall contain the official summary description of the plan and shall include the terms, conditions and provisions of the plan;
- (g) The plan shall be a governmental plan as defined in section 414(d) of the Code and shall be tax qualified under section 401(a) of the Code.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District of Columbia Department of Transportation, pursuant to the authority of section 3(b) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.02(b)); sections 103(a)(1) and 107(b) of the Urban Forest Preservation Act of 2002 (UFPA), effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code §§ 8-651.03(a)(1) and 8-651.07(b)); and Mayor's Order 2003-173 (December 1, 2003), hereby gives notice of the adoption of the following amendments to Chapter 37 of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations. New section 3706 establishes an income-contingent program to assist District residents with the removal of hazardous Special Trees (*i.e.*, hazardous trees that have a minimum circumference of fifty-five inches (55 in.)).

A Notice of Proposed Rulemaking (Notice) was published on April 3, 2009 (56 DCR 2605). No comments were received on this Notice.

Pursuant to section 103(b) of the UFPA (D.C. Official Code § 8-651.03(b)), the Director submitted the Notice to the Council of the District of Columbia for approval. The Council approved the Notice, pursuant to Resolution No. 18-140, on June 2, 2009.

These final rules will become effective upon publication of this notice in the *D.C. Register*.

Chapter 37 (Special Trees) of Title 24 DCMR is amended as follows:

Adding a new section 3706 to read as follows:

3706 INCOME CONTINGENT PROGRAM FOR HAZARDOUS TREE REMOVAL

- 3706.1 The owner of a single-family dwelling in the District of Columbia that receives a homestead deduction on the single-family dwelling from the District of Columbia Office of Tax and Revenue may apply to the Department on an application provided by the Department for assistance with the removal of a hazardous tree on the owner's private property on which the single-family dwelling is located or on the public parking area abutting the owner's private property.
- 3706.2 To be eligible for hazardous tree removal assistance, the owner must meet the income eligibility requirements of, and provide evidence of enrollment in, an income-contingent District government assistance program.
- 3706.3 Within thirty (30) calendar days of the Department's receipt of a complete application submitted by the owner pursuant to § 3706.1, an Urban Forestry Administration arborist, with the consent of the owner, shall inspect the tree to determine whether the tree is a hazardous tree.

- 3706.4 If, during the inspection, the Urban Forestry Administration arborist determines that the tree is not a hazardous tree, the Department shall notify the owner within fifteen (15) calendar days of the inspection explaining the determination.
- 3706.5 If the Urban Forestry Administration arborist determines that the tree is a hazardous tree, the Urban Forestry Administration may remove any or all of the hazardous tree, at the sole discretion of the Urban Forestry Administration. The Department shall provide notice to the owner of the hazardous tree of the date of removal of any or all of the hazardous tree. Removal of any or all of the hazardous tree shall be completed by the Urban Forestry Administration within thirty (30) calendar days notice of removal to the owner. Removal of any or all of the hazardous tree shall be completed within one-hundred twenty (120) calendar days of the date of the inspection.
- 3706.6 The Department shall not be responsible for the removal of any part of the hazardous tree that cannot be safely accessed by tree removal equipment or personnel in the sole discretion of the Urban Forestry Administration. The Department shall not be responsible for removing any hazardous tree debris from the owner's private property or the abutting public parking when the hazardous tree debris cannot be safely removed in the sole discretion of the Urban Forestry Administration.
- 3706.7 The owner shall hold harmless the District of Columbia and its officers, employees, and agents for any loss or damage to persons or property arising out of or in any way related to the Department's activities contemplated under this section.
- 3706.8 Funding in a fiscal year from the Tree Fund for the income-contingent program for hazardous tree removal shall be predicated on the availability of funds in the Tree Fund, and shall be limited to fifteen percent (15%) of the ending balance of the Tree Fund from the prior fiscal year.
- 3706.9 When used in this section, the following terms and phrases shall have the meanings ascribed below:

Department – the District Department of Transportation.

Fiscal Year – a twelve (12) month period beginning on October 1 and ending on the following September 30.

Owner – the owner of a single-family dwelling in the District of Columbia who receives a homestead deduction on the single-family dwelling from the District of Columbia Office of Tax and Revenue.

Single-family dwelling – a structure housing one family or household.