

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code § 47-2853.10(a)(12), and Mayor's Order 2000-70, dated May 2, 2000, hereby gives notice of the adoption of amendments to Chapter 37 (Barber and Cosmetology) of Title 17 of the District of Columbia Municipal Regulations.

This rulemaking action will reconfigure the current Esthetician license into a two-tiered license: a Basic Esthetician license and a Master Esthetician Manager's license. Current licensees that can demonstrate to the Board of Barber and Cosmetology that they have sufficient experience will have two years to obtain a Master Esthetician Manager's license by waiver. In addition, esthetician applicants for an instructor license will now be required to possess a Master Esthetician Manager's license prior to becoming eligible to sit for the instructor examination.

Proposed regulations were published in a Notice of Proposed Rulemaking on September 25, 2009, in the *D.C. Register* at 56 DCR 7647. In response to comments received, the regulations were revised to: (1) amend section 3711.1 to clarify licensure by reciprocity; (2) add section 3711.5 to establish a list of national certifying organizations to be recognized by the Board of Barber and Cosmetology; and (3) amend the definition of "cosmetologist." A revised Notice of Proposed Rulemaking was published in the *D.C. Register* on December 11, 2009, at 56 DCR 50. No comments were received and no changes have been made to the rulemaking. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Title 17 DCMR Chapter 37 is amended as follows:

Section 3702.1(c) is amended to read as follows:

- (c) Specialty cosmetology operators, which include:
 - (1) Braider;
 - (2) Electrologist;
 - (3) Esthetician Operator, Master Esthetician Manager, and Master Esthetician Instructor (only a Master Esthetician Manager may become an instructor of esthetics); and
 - (4) Manicurist;

Section 3703.17 is amended to read as follows:

3703.17 Applicants for an Esthetician Operator license by examination shall furnish proof, satisfactory to the Board, that the applicant has completed six hundred (600) hours of instruction at a licensed school, or school otherwise acceptable to the Board, in the following:

- (a) Infection control;
- (b) Physiology and anatomy;
- (c) Skin histology;
- (d) Skin diseases and disorders;
- (e) Hair and its growth cycle;
- (f) Basic chemistry and cosmetic ingredients;
- (g) Basic facials;
- (h) Facial massage;
- (i) Electricity and facial machines;
- (j) Methods of hair removal;
- (k) Make-up;
- (l) Advanced topics and treatments; and
- (m) Scope of practice and regulatory rules.

Section 3703.21 is amended to read as follows:

3703.21 Braider, Electrologist, and Manicurist applicants for a license by examination as a manager of a specialty cosmetology salon in the applicant's specialty shall furnish proof, satisfactory to the Board, that the applicant:

- (a)
 - (1) Possesses at least two (2) years experience as a licensed operator within the applicant's limited specialty in a licensed cosmetology or specialty salon; or
 - (2) Served as a licensed operator within the applicant's specialty in a licensed cosmetology or specialty salon for six (6) months or more, completed five hundred (500) hours of training in a manager's course in a licensed school, and completed all of the hours of study necessary to become a specialty cosmetologist. The manager's course shall include:
 - (A) Shop management: 300 hours;
 - (B) Ethics and salesmanship: 50 hours; and
 - (C) Courtesy, conduct, and District law: 150 hours.
- (b)
 - (1) Subject to the exception in paragraph (2) of this subsection, possesses a master esthetician manager license in addition to a specialty cosmetology manager license if they intend to manage a shop or salon that provides services requiring a licensed master esthetician manager.

- (2) If an esthetician operator who has an application pending for a specialty cosmetology manager's license, on the date that this paragraph becomes effective, and who obtains the license under the rules that existed on the date that the application was made, has obtained a master esthetician manager's license pursuant to § 3703.24 prior to managing a shop that provides services requiring a licensed master esthetician manager.
- (c) Possesses a master esthetician manager's license pursuant to the requirements of § 3703.24, if the esthetician is licensed as a specialty cosmetology manager on the date that this paragraph becomes effective, and manages a shop that provides services that must be provided by a master esthetician manager.

Section 3703.22 is amended to read as follows:

3703.22 An applicant for a license as an instructor of individual specialties shall furnish proof, satisfactory to the Board, that the applicant qualifies for the examination under either (a) or (b) of this section:

- (a) Applicants for licensure by examination shall demonstrate to the Board that they have served as a licensed barber, cosmetology operator, master esthetician manager, braider, electrologist, or manicurist, in a licensed salon or barbershop for at least six (6) months, and have completed one thousand (1,000) hours of training in an instructor's course as set forth in the following paragraphs:
 - (1) Barbering or Cosmetology Instructor:
 - (A) Barbering or cosmetology practical procedures and theory: 255 hours;
 - (B) Basic teaching methods and principles of preparing lesson plans: 70 hours;
 - (C) Shop management: 50 hours;
 - (D) Ethics and salesmanship: 30 hours;
 - (E) Oral, written, and performance testing: 140 hours;
 - (F) Safety measures: 30 hours;
 - (G) District law and regulations: 10 hours;
 - (H) Supervision and training of students in a laboratory setting: 50 hours;
 - (I) Practice teaching: 300 hours; and
 - (J) Using computers in cosmetology and barbering: 65 hours.
 - (2) Braiding, Electrology, or Manicuring Instructor:

- (A) Specialty cosmetology practical procedures and theory (electrology, braiding, and manicuring): 255 hours;
 - (B) Basic teaching methods and principles of preparing lesson plans: 70 hours;
 - (C) Shop management: 50 hours;
 - (D) Ethics and salesmanship: 30 hours;
 - (E) Oral, written, and performance testing: 140 hours;
 - (F) Safety measures: 30 hours;
 - (G) District law and regulations: 10 hours;
 - (H) Supervision and training of students in a laboratory setting: 50 hours;
 - (I) Practice teaching: 300 hours; and
 - (J) Using computers in electrology, braiding, or manicuring: 65 hours.
- (3) Master Esthetician Instructor:
- (A) Esthetics practical procedures and theory: 255 hours;
 - (B) Basic teaching methods and principles of preparing lesson plans: 70 hours;
 - (C) Facility management: 50 hours;
 - (D) Ethics and salesmanship: 30 hours;
 - (E) Oral, written, and performance testing: 140 hours;
 - (F) Safety measures: 30 hours;
 - (G) District law and regulations: 10 hours;
 - (H) Supervision and training of students in a laboratory setting: 50 hours;
 - (I) Practice teaching: 300 hours; and
 - (J) Using computers in esthetics: 65 hours.
- (b) Applicants for licensure as an instructor without examination shall demonstrate to the Board that they hold a current, master esthetician manager, braider, electrologist, or manicurist, barber manager, cosmetology manager, or specialty cosmetology manager's license and have completed a course of study in teaching techniques at the post-secondary educational level.
- (1) Notwithstanding the foregoing, unless qualifying under the grace period set forth in § 3703.24, an esthetics instructor candidate must hold a current master esthetician manager license.

- (2) An esthetician instructor who has taught esthetics at a school for at least two (2) of the past five (5) years and who obtains a master esthetician manager license within the grace period set forth in § 3703.24 shall qualify for an instructor's license without examination.

A new Section 3703.23 is added to read as follows:

3703.23 Applicants for a Master Esthetician Manager license may apply for licensure by examination pursuant to the requirements set forth in paragraph (a) or without examination by meeting the requirements set forth in paragraph (b).

- (a) Applicants for licensure by examination shall furnish proof, satisfactory to the Board, that the applicant has the training necessary to sit for the Master Esthetician Manager's Examination. Applicants shall furnish such proof by completing the application provided by the Board and providing all information requested by the Board. Proof shall include documentation that the applicant has completed the Basic Esthetician training set forth in § 3703.17, passed the basic esthetics examination, and completed six hundred (600) hours of Master Esthetician Manager training in the following subjects:
 - (1) Advanced sciences:
 - (A) Skin histology;
 - (B) Anatomy and physiology;
 - (C) Chemistry and biochemistry;
 - (D) Skin analysis (classification systems);
 - (E) Cosmetic ingredients (health, lifestyle, and nutrition);
 - (F) Physics (advanced modalities);
 - (2) Esthetics:
 - (A) Advanced facials;
 - (B) Advanced facial massage;
 - (C) Advanced body treatments;
 - (D) Advanced make-up;
 - (E) Advanced facial machines;
 - (3) Medical:
 - (A) Surgical procedures
 - (i) Plastic surgery procedures; and
 - (ii) Pre- and post-operation care;

- (B) Non-surgical procedures;
- (C) Medical terminology and intervention;
- (4) Business:
 - (A) Business plan;
 - (B) Marketing;
 - (C) Business operations;
 - (D) Industry relations; and
 - (E) Compliance and safety.
- (b) The training and examination requirement for a master esthetician license may be waived by the Board if the applicant holds either a current District of Columbia Esthetician Operator license or a Cosmetology Operator license and is NCEA-certified.

A new section 3703.24 is added to read as follows:

3703.24 Esthetician Operators, Cosmetology Operators, and Specialty Cosmetology Managers who have been providing services or managing a shop that provides services which must now be provided by and supervised by individuals who possess a master esthetician license must obtain a master esthetician manager license no later than two (2) years from the date that this section is published in the *D.C. Register* as a final rulemaking. Individuals will qualify for licensure as a master esthetician manager if they provide the Board with documentary proof that they have at least two (2) years of experience in providing master level esthetician services.

Section 3711.1 is amended to read as follows:

- 3711.1 An applicant for a license by reciprocity or endorsement shall furnish proof satisfactory to the Board that the applicant has paid the applicable fee and:
- (a) If applying for licensure by reciprocity the applicant must provide a letter of good standing from a jurisdiction with requirements which, in the opinion of the Board, were substantially equivalent at the time of the applicant's licensure to those of the District of Columbia, and which jurisdiction admits barbers and cosmetologists licensed by the District in a like manner; or
 - (b) If applying for licensure by endorsement the applicant must provide the Board with written certification that he or she:
 - (1) Passed an examination acceptable to the Board that is applicable to the license sought in the District;

- (2) Has an active certification from a recognized national certifying organization that is listed in § 3711.5 of this chapter; and
- (3) Has not been disciplined or otherwise disqualified by the national certifying organization relied upon for the application for licensure by endorsement.

Section 3711.5 is added to read as follows:

- 3711.5 The following organizations shall be recognized by the Board as national certifying organizations acceptable to the Board whose standards for certification are at least as high as the education and experience standards set forth in this chapter for the same profession or occupation in the District:
- (a) Master Estheticians - National Coalition of Estheticians, Manufacturers/Distributors & Associations (NCEA).

A new section 3729 is added to read as follows:

3729 FACIAL PROCEDURES, DEVICES, AND EQUIPMENT

- 3729.1 Cosmetic exfoliating substances may include alpha hydroxy acids, glycolic and lactic acids, beta hydroxy acids, salicylic acid, Jessner's Solutions, resorcinol, and other substances intended to exfoliate the stratum corneum.
- 3729.2 Licensees are prohibited from performing procedures using cosmetic exfoliating substances or devices that affect more than the top layer of the epidermis or outermost layer of dead cells. A cosmetic exfoliation substance or device is not intended to remove viable (living) skin below the stratum corneum. Use of such substances and devices are deemed beyond the scope of practice of persons and establishments licensed by the Board.
- 3729.3 Licensees shall be permitted to use devices registered or approved by the U.S. Food and Drug Administration that are intended to be used for cosmetic skin care purposes, including, but not limited to, beautifying and improving the appearance of the skin.

Section 3799 is amended by adding or amending the following definitions:

Cosmetologist – a licensed person, whether as an owner, manager, operator, instructor, demonstrator, manicurist, or student, who engages in hair styling or the cosmetic arts, such as hair styling and skin care, and any other practice of cosmetology, including the practice of esthetics and other specialty cosmetology practices regulated by the Board, but does not include shaving or trimming the beard or moustache of an individual or engaging in the practice of master-level esthetics without obtaining the applicable license.

Course of study in teaching techniques – a single course that spans one (1) semester at the college level and requires students to pass an examination in order to receive credit.

Esthetician operator – a person who engages in the practice of basic esthetics for compensation.

Practice of basic esthetics – any one of the following skin care procedures done on the head, torso, face, neck, arms, hands, legs, feet, eyebrows, or eyelashes for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

- (a) Cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or masks, manual extraction, including a comedone extractor, depilatories, waxes, and tweezing;
- (b) Chemical exfoliation;
- (c) Removing superfluous hair by means other than electrolysis, laser procedures, or intense pulsed light; or
- (d) Other esthetic preparations or procedures with the use of the hands, a high-frequency or galvanic electrical apparatus, or a heat lamp for cosmetic purposes and not for the treatment of medical, physical, or mental ailments.

Esthetics instructor – means a licensed master esthetician that has completed an approved instructor license curriculum and who meets the competency standards of the Board as an instructor of esthetics.

Instructor – any person who is authorized to teach barbering, cosmetology, or any specialty cosmetology operator as a profession as provided for in this chapter.

Master esthetician manager – an individual who is licensed under this chapter to engage in the practice of master-level esthetics and authorized to manage an esthetics establishment.

NCEA –the National Coalition of Estheticians, Manufacturers/ Distributors & Associations.

NCEA-certified – the professional status awarded to a skin care professional that has met the competency standards as set forth by NCEA's 1200 Hour Esthetician Job Task Analysis.

Noncosmetic purposes – medically necessary.

Practice of master-level esthetics –:

- (a) Any of the following when done for cosmetic purposes on the head, face, neck, torso, abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes and not for the treatment of medical, physical, or mental ailments:
 - (1) Body wraps;
 - (2) Hydrotherapy;

- (3) Chemical exfoliation;
- (4) Sanding, including microdermabrasion;
- (5) Advanced extraction with lancet; or
- (6) Other esthetic preparations or procedures with the use of:
 - (A) The hands; or
 - (B) A mechanical or electrical apparatus which is approved by the Board for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; and
 - (C) Lymphatic massage by manual or other means.
- (b) Notwithstanding the foregoing, a master-level esthetician may perform procedures listed in subparagraph (a) for non-cosmetic purposes if the procedures are performed under the supervision of a licensed health care practitioner acting within the scope of his or her license.
- (c) The term “practice of master-level esthetics” includes the practice of basic esthetics.

Salon – a place, facility, shop, or establishment in which cosmetology, barbering, esthetics, electrology, manicuring, or braiding is practiced.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in sections 2002(f) and (l) of the Second Omnibus Regulatory Reform Amendment Act of 1998, effective April 20, 1999 (D.C. Law 12-261; D.C. Official Code §§ 47-2851.03a(c)(1)(H) and (c)(2) and 47-2851.20), and consistent with section 2(d) and (e) of the Streamlining Regulation Act of 2003, effective October 28, 2003 (D.C. Law 15-38; D.C. Official Code §§ 47-2851.02 and 47-2851.03), hereby gives notice of the adoption of a new Chapter 16 (Public Halls) of Title 19 of the District of Columbia Municipal Regulations (DCMR).

This rulemaking amends Public Hall basic business license regulations to provide a forum for public hearings for the licensing of public halls.

These rules were previously published as proposed rulemaking in the *D.C. Register* on November 6, 2009 (56 DCR 8749). One comment was received in response to that notice, but no changes have been made. These final rules will be effective upon publication of this notice in the *D.C. Register*.

19 DCMR Chapter 16 is amended to read as follows:

CHAPTER 16 PUBLIC HALLS

Secs.	
1600	Public Hall Licenses
1601	Application for Licensure
1602	Denial, Suspension, or Revocation of License
1603	Public Notice by the Director
1604	Public Notice by the Applicant
1605	Filing an Objection
1606	Hearings
1607	Exceptions

1600. PUBLIC HALL LICENSES

- 1600.1 No person shall operate a public hall without obtaining from the Director of the Department of Consumer and Regulatory Affairs (“Director”) a basic business license with an Entertainment (Public Hall) endorsement unless the establishment:
- (a) Has a capacity of four hundred (400) or fewer occupants; and
 - (b) Has a class C or D license issued pursuant to the District of Columbia Alcoholic Beverage Control Act, D.C. Official Code §§ 25-101 *et seq.*
- 1600.2 For purposes of this chapter, a “public hall” means any building in which a ball, dance, exhibition, lecture, concert, or convention is conducted for profit or gain.

1600.3 Any license issued under this chapter shall be renewed every two (2) years and shall be subject to the restrictions on the presence of minors at the licensee's premises in accordance with D.C. Official Code § 47-2820(c).

1601. APPLICATION FOR LICENSURE

1601.1 Each application for a public hall license shall be made on a form prescribed by the Director and filed with the Department of Consumer and Regulatory Affairs ("Department").

1601.2 Each application shall contain the following information:

- (a) The name and address of the applicant;
- (b) The trade name and address of the public hall;
- (c) If the applicant is a partnership, the names and addresses of all partners; if the applicant is a limited partnership, the names and addresses of all general partners;
- (d) If the applicant is a corporation, the names and addresses of all officers and directors and the date of incorporation;
- (e) If the applicant is a corporation or the applicant does not reside in the District of Columbia, the corporation or non-resident applicant shall provide the name, address, telephone number, and signature of the person who has agreed to be the applicant's registered agent for service of process;
- (f) If different from the name and address of the applicant, the name and address of the owner of the building in which the public hall is located;
- (g) Whether any of the applicant's officers, partners, or members have been convicted of any crimes within the last ten (10) years;
- (h) A description of the proposed hours of operation and the kinds of events that will occur at the public hall;
- (i) What steps the applicant has taken to provide for sufficient parking spaces, as required by District law or regulation; and
- (j) Any other information requested by the Director.

1601.3 The applicant shall also file as part of its license application the following:

- (a) If the applicant is a corporation or limited partnership, documentation that the applicant is in good standing with the Superintendent of Corporations of the District of Columbia;
- (b) Documentation that the building or portion of the building that will be used as a public hall has a valid certificate of occupancy; and

- (c) A Clean Hands Certification, certifying that the applicant does not owe more than one hundred dollars (\$100) to the District as a result of fees, fines, penalties, or taxes.

1601.4 The Director may also require that any owner, member, partner, or other person holding an ownership interest in the public hall submit to a criminal background check.

1601.5 An application for the renewal of an existing license shall be filed sixty (60) days prior to the expiration date of the existing license.

1602. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

1602.1 The Director may deny an application or suspend or revoke a license if:

- (a) The application, or any other document required to accompany the application, contains a false statement;
- (b) The applicant or licensee, or its officer, partner, or member, has a criminal conviction that, considering its age and severity, bears on their fitness to operate a public hall;
- (c) The activities at the public hall or associated with the public hall have created or will create a nuisance or a threat to the public health, public safety, or the peace, order, or quiet of the surrounding community;
- (d) The activities at the public hall or associated with the public hall have had or will have a significant adverse effect on the residential parking needs and vehicular and pedestrian safety of the surrounding neighborhood;
- (e) The building violates District zoning, building, or fire safety statutes or regulations;
- (f) The applicant or licensee has allowed or failed to prevent illegal activity from occurring at a public hall; or
- (g) The applicant or licensee has failed to take reasonable steps to prevent violence or any other nuisance from occurring at a public hall or in the surrounding community.

1602.2 An appeal from the denial, suspension, or revocation of a license may be filed with the Office of Administrative Hearings in accordance with its rules of procedure.

1603. PUBLIC NOTICE BY THE DIRECTOR

1603.1 At least thirty (30) days before granting an application for a new or a renewal license, the Director shall give written notice to the affected Advisory Neighborhood Commission and shall cause the notice to be published in the District of Columbia Register.

- 1603.2 The notice shall contain the following:
- (a) The name of the applicant and the trade name of the public hall;
 - (b) The address or other designation of the location of the building for which the license is sought;
 - (c) A statement that any resident or owner of residential property, within six hundred (600) feet of the boundary lines of the lot upon which is situated the building for which the license is sought, who objects to the granting of the application is entitled to be heard at a hearing;
 - (d) A concise description of the proposed hours of operation and the kinds of events that will occur at the public hall;
 - (e) The date and manner by which a person or organization must file an objection with the Director; and
 - (f) The date, time, and location of the hearing to be held if objections are filed.

1604. PUBLIC NOTICE BY THE APPLICANT

- 1604.1 The applicant shall post two (2) notices supplied by the Director in conspicuous places on the building for which the license is sought and shall take photographic evidence of the posting.
- 1604.2 The notices shall be posted for at least twenty-eight (28) consecutive days, with the first consecutive day occurring at least thirty (30) calendar days prior to the noticed hearing date, and shall contain the information set forth in § 1603.2.
- 1604.3 The notices shall be securely posted on the front of the building. The bottom of the notice may not be less than three (3) feet above the abutting pedestrian level, and the top of the notice may not be more than six (6) feet above the abutting pedestrian level.
- 1604.4 The notices may be attached to the inside of a window, provided that the notices meet the positioning requirements of § 1604.3.
- 1604.5 Notices posted on the exterior of a building shall be covered with clear plastic to protect them from the weather.
- 1604.6 On or before the date of the hearing, the applicant shall file an affidavit with the Director certifying that the notice requirements of § 1604 have been satisfied.
- 1604.7 If the notices have been removed or are posted in a manner making them not easily visible from the street, the Director may extend the notice period or may require that the notice be reposted and the notice period begin anew.

1605. FILING AN OBJECTION

- 1605.1 The affected Advisory Neighborhood Commission or any resident or owner of property within six hundred (600) feet of the boundary lines of the lot on which the public hall is situated may file an objection to the issuance of a new or a renewal license. If an objection is filed, the Director shall hold a hearing to make the determinations required by D.C. Official Code § 47-2820(b-1)(2).
- 1605.2 An objection shall be in writing and must be filed with the Department's Business and Professional Licensing Administration at least five (5) calendar days prior to the date of the hearing. The objection shall list the name and address of the person making the objection and shall describe the reasons for the objection.
- 1605.3 When a party retains counsel, the attorney so retained shall include his or her name, address, phone number, and D.C. Bar number on the first document filed by that party after retaining counsel. If the party retains counsel after filing a document and the party does not file additional documents, the attorney retained shall promptly file with the Department a notice of appearance containing the attorney's name, address, phone number, and D.C. Bar number.
- 1605.4 When a party is proceeding without representation by counsel, the party shall include his or her name, address, and phone number on any document filed with the Department.

1606. HEARINGS

- 1606.1 This section shall govern any hearing conducted by the Director for the issuance or renewal of licenses issued under this chapter. For purposes of this section, "Director" shall mean the Director or the Director's agent.
- 1606.2 The provisions of this chapter are intended to be consistent with the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*). Evidence shall be admitted consistent with the District of Columbia Administrative Procedure Act ("Act"). If there is any conflict between this chapter and the Act, the Act shall govern.
- 1606.3 The hearing shall be a non-adversarial proceeding held by the Director for any license application. Any person who has filed an objection pursuant to § 1605 may attend the hearing in person or appear through a designated representative.
- 1606.4 Failure by the applicant to appear at the hearing either in person or through a designated representative may result in the Director's denial of the license application, unless good cause is shown for the failure to appear.
- 1606.5 At the hearing, the Director shall have the authority to:
- (a) Regulate the course of the hearing, including the order of testimony and the imposition of appropriate time limitations on witness testimony;
 - (b) Request the applicant and objectors appearing at the hearing to state their respective positions concerning any issues in the proceeding and their support of or opposition to such issues;

- (c) Request or accept written or oral testimony and exhibits from the applicant and objectors;
- (d) Question the applicant and any testifying objectors and allow the applicant to conduct appropriate cross-examination of any testifying objectors;
- (e) Exclude irrelevant, immaterial, or unduly repetitious evidence;
- (f) Grant a request to continue the hearing for a period not to exceed thirty (30) days;
- (g) Adjourn a hearing and establish the date when the hearing will be continued; and
- (h) Take any other action authorized by, or necessary under, this section.

1606.6 Upon the scheduling of a hearing with the Director, all parties shall be prohibited from participating in any *ex parte* communication with the Director relevant to the merits of the hearing.

1606.7 The hearing shall be open to the public and recorded by video or audio equipment.

1606.8 Within thirty (30) calendar days after the close of the record, the Director shall render a written decision accompanied by findings of fact and conclusions of law.

1606.9 An appeal from the final decision rendered by the Director after a hearing may be filed with the Office of Administrative Hearings in accordance with its rules of procedure.

1607. EXCEPTIONS

1607.1 A licensed applicant who holds a valid class C or D license issued pursuant to the District of Columbia Alcoholic Beverage Control Act, D.C. Official Code § 25-101 *et seq.*, shall be exempt from the notice and hearing provisions of this chapter.

DISTRICT DEPARTMENT OF THE ENVIRONMENT**NOTICE OF FINAL RULEMAKING****Air Quality State Implementation Plan Transportation Conformity Regulations**

The Interim Director of the District Department of the Environment, pursuant to the authority set forth in sections 5 and 6(b) of the District of Columbia Air Pollution Control Act of 1984, as amended, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 and 8-101.06(b)), section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4)), Mayor's Order 98-44, dated April 10, 1998, and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of this final action to amend Chapter 4, reserve Chapters 11-14, and adopt a new Chapter 15 to Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), as published with the Notice of Proposed Rulemaking in the *D.C. Register* on April 24, 2009, 56 DCR 3132.

The rules are necessary to amend general conformity requirements and adopt new transportation conformity regulations that will help develop and implement the air quality State Implementation Plan (SIP). The air quality SIP includes conformity of federal actions based on the federal Clean Air Act, §§ 110 and 171-193 (Part D), 42 U.S.C. §§ 7410 and 7501 *et seq.*, as amended. The federal conformity regulations in 40 CFR §§ 93.100-.160 establish standards and procedures to follow when evaluating the conformity of federal projects to all applicable implementation plans.

Transportation conformity is a way to ensure that federal funding goes to transportation activities that are consistent with national, regional, and local air quality goals. A transportation conformity determination demonstrates that the total emissions projected for a plan or program are within the emissions limits established by the SIP, and that transportation control measures are implemented in a timely fashion. Transportation conformity applies to transportation plans, transportation improvement programs, and projects funded or approved by the Federal Highway Administration or the Federal Transit Administration in areas that do not meet or previously have not met air quality standards for ozone, carbon monoxide, particulate matter, or nitrogen dioxide. These areas are known as "nonattainment" and "maintenance" areas. The District of Columbia is currently in nonattainment for ozone and the annual fine particulate matter (PM_{2.5}) standard. The District is also a maintenance area for the daily PM_{2.5} standard and carbon monoxide.

Since conformity commitments in the SIP must be enforceable, the District's responsibilities must be codified in the District of Columbia Municipal Regulations.

No comments were received on the proposed rules and no changes have been made to the text of the proposed rules as previously published. After a forty-five (45) day review period before the Council of the District of Columbia, the rules were deemed approved on November 28, 2009. The rules will become effective upon publication of this notice in the *D.C. Register*.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation pursuant to the authority set forth in sections 6(b) and 7 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137, D.C. Official Code §§ 50-921.05(b), and 50-921.06); Section 422 of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 790; D.C. Official Code 1-204.22); Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code §§ 10-1141.01 et seq.); and Mayor's Order 96-8, 43 DCR 615 (February 9, 1996), hereby gives notice of adoption of the following amendments to Chapter 1 of Title 24 of the *District of Columbia Municipal Regulations*. These rules allow all signs that are not lewd, indecent, or vulgar, or do not pictorially represent the commission of or the attempt to commit any crime to be posted on a structure in public space for sixty (60) days, and a sign, advertisement, or poster related to a specific event to be affixed any time prior to the event for which it is advertising or publicizing but be removed no later than thirty (30) days following the event.

A Notice of Emergency and Proposed Rulemaking was published in the D.C. Register on November 6, 2009 (56 DCR 8759).

The emergency rulemaking was adopted on November 2, 2009, and became effective immediately on that date. No changes have been made to the text of the emergency and proposed rules, as published.

These final rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Title 24 DCMR, Chapter 1, OCCUPATION AND USE OF PUBLIC SPACE, Section 108, SIGNS, POSTERS, AND PLACARDS, is amended as follows:

Subsections 108.5 and 108.6 are amended to read as follows:

- 108.5 A sign, advertisement, or poster not related to a specific event shall be affixed for no more than sixty (60) days.
- 108.6 A sign, advertisement, or poster related to a specific event may be affixed any time prior to the event but shall be removed no later than thirty (30) days following the event to which it is related.