

**OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES
AND
UNIVERSITY OF THE DISTRICT OF COLUMBIA**

ERRATA NOTICE

The Administrator of the Office of Documents and Administrative Issuances, pursuant to the authority set forth in section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-559), hereby gives notice of the following corrections to the text of the District of Columbia Municipal Regulations (DCMR) which was amended by a Notice of Final Rulemaking published in the District of Columbia Register, and issued by the University of the District of Columbia on March 26, 2010 at 57 DCR 2630. The Notice of Final Rulemaking amended Title 8 of the DCMR to adopt the UDC Procurement Rules.

In Title 8B, chapter 30, section 3009.2 (57 DCR 2637), subsections (b) through (j) are renumbered (a) through (i). This corrects an error in which the published Notice misnumbered these subsections to omit (a).

In Title 8B, chapter 30, section 3017.9 (57 DCR 2644), the second subsections (a) and (b) are renumbered (c) and (d), respectively, such that the subsections to § 3017.9 are (a), (b), (c), and (d), *seriatim*.

In Title 8B, chapter 30, section 3017.15 (57 DCR 2645), the word “proposals” is deleted and the word “proposal” is inserted in its place.

In Title 8B, chapter 30, section 3047.1 (57 DCR 2660), the word “University’s” is deleted and the word “University” is inserted in its place.

In Title 8B, chapter 30, section 3047.3 (57 DCR 2660), subsections (e) and (f) are renumbered (d) and (e), respectively. This corrects an error in which the published Notice misnumbered these subsections to omit (d).

In Title 8B, chapter 30, section 3047.5 (57 DCR 2661), the first subsection (c) is renumbered (b). The published Notice erroneously numbered two subsections as (c).

In Title 8B, chapter 30, section 3059.1, (57 DCR 2671), the word “it’s” is deleted and the word “its” is inserted in its place.

In Title 8B, chapter 30, section 3059.1(a) (57 DCR 2671), the first instance of the word “or” is deleted and the word “of” is inserted in its place, such that the clause reads “All of the contractor’s assets;”.

In Title 8B, chapter 30, section 3059.5 (57 DCR 2671), a missing period (“.”) is added to the

end of the section text.

In Title 8B, chapter 30, section 3064.16(e) (57 DCR 2677), the word “that” is deleted and the word “of” is inserted in its place.

Inquiries regarding this notice shall be addressed by mail to Administrator, Office of Documents and Administrative Issuances, 441 4th Street, N.W., Suite 520 South, Washington, D.C. 20001 or via telephone at (202) 727-5090.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND ZONING COMMISSION ORDER NO. 09-10
Z.C. Case No. 09-10
(Text Amendment – 11 DCMR)
(Water Tower on the Saint Elizabeths East Campus)
April 12, 2010**

The Zoning Commission for the District of Columbia (the “Commission”), pursuant to its authority under §§ 1, 3, and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798, and 799; D.C. Official Code §§ 6-641.01, 6-641.03, and 6-641.07), hereby gives notice of the adoption of the following text amendments to the Zoning Regulations of the District of Columbia, DCMR Title 11. A Notice of Proposed Rulemaking was published in the *D.C. Register* (“*DCR*”) on March 5, 2010, at 57 *DCR* 1919. The amendments will become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

The text amendments include the adoption of a new § 2523 that authorizes the establishment of a water tower or elevated water tank (“Water Tower”) owned and operated by the District of Columbia Water and Sewer Authority (“WASA”) on unzoned property owned by the District of Columbia and located on the East Campus of Saint Elizabeths Hospital. The new section also provides for Commission review of the design of a Water Tower in excess of 90 feet in height. The Commission may approve, but not deny, a design review application without a public hearing. No action to approve can be taken until the affected Advisory Neighborhood Commission (“ANC”) receives notice of the application and the statutorily mandated review period has elapsed. The affected ANC will also be given notice of a tentative public hearing to be held if a motion to approve the application fails. No other notice of the hearing will be given.

Subsection 106.7 is also amended to exempt the Water Tower from the prohibition against the issuance of building permits and certificates of occupancy for structures on unzoned land. In addition, § 3043.1 (a), which exempts District agencies from the payment of filing fees, is amended to address the scenario that exists here; where the District government, but not the agency that will use the structure, owns the property. In addition, the provision was amended to apply the exemption to government projects located on land under the jurisdiction of the District or one of its agencies. Lastly, conforming amendments are made to §§ 3011, 3014, 3015, 3022, and 3027 of the Zoning Commission Procedures Rules of Practice and Procedure, also in Title 11.

Procedures Leading to Adoption of Amendments

The Office of Planning (“OP”), in a report dated July 17, 2009, petitioned the Commission for a text amendment to permit the water tower as a matter-of-right. The Commission voted to set down the proposal for hearing at its July 27, 2009 public meeting,

A public hearing was scheduled for and held on September 24, 2009. The petition was considered as a proposed action item at the Commission’s October 30th public meeting. The Commission

decided to defer taking action and instead requested that OP formulate text that would require the Commission's approval of a proposed design. Consideration of the item on December 14th was postponed at the request of OP, which sought more time to consult with WASA on the design review process.

Through a second Supplementary Report dated February 4, 2010, OP provided revised language to the Commission, which included a design review approval process if the design of the tower called for a height greater than 90 feet.

WASA expressed its written concurrence with the proposed text revision and also advised the Commission that the Water Tower's proposed location is subject to an approved planned unit development ("PUD"). The letter informed the Commission that a PUD modification request would be forthcoming to remove the affected portion from the PUD site.

At a properly noticed February 22, 2010 public meeting, the Commission authorized the referral of the proposed text to the National Capital Planning Commission ("NCPC") and the publication of a notice of proposed rulemaking in the *D.C. Register*.

NCPC, through a delegated action dated February 25, 2010, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 14.)

The Notice of Proposed Rulemaking was published in the *D.C. Register* on March 5, 2010, 57 DCR 1919, for a 30-day notice and comment period. No comments were received.

At a properly noticed April 12, 2010 public meeting, the Commission took final action to adopt the text amendments as follows:

The amendments to the Zoning Regulations (Title 11, DCMR) are as follows:

- A. Chapter 1, THE ZONING REGULATIONS, § 106, ZONING MAP, § 106.7, is amended by inserting the phrase "except for the water tower and related water utility facilities authorized by § 2523", so that the provision will read as follows:

106.7 No building permit or certificate of occupancy shall be issued nor proceeding instituted before the Board of Zoning Adjustment, nor shall any property in private ownership be used for any purpose until after the Zoning Commission has designated zoning for the property, except for the water tower and related water utility facilities authorized by § 2523.

- B. Chapter 25, MISCELLANEOUS ZONING REQUIREMENTS, is amended by adding a new § 2523, to read as follows:

2523 WATER TOWER ON THE EAST CAMPUS OF SAINT ELIZABETHS:

2523.1 Notwithstanding any other provision of this Title, a water tower or elevated water tank ("Water Tower") owned and operated by the District of Columbia Water and

Sewer Authority may be established on unzoned property owned by the District of Columbia and located on the East Campus of Saint Elizabeths Hospital.

- 2523.2 No building permit to construct a Water Tower in excess of ninety (90) feet in height may be issued unless the Zoning Commission finds that said tower, as designed, meets the standards of § 3104 and is not inconsistent with the Comprehensive Plan, small area plan(s), and other adopted planning studies that pertain to the site.
- 2523.3 An application pursuant to § 2523.2 shall include such plans and illustrations necessary to adequately represent the final proposed appearance of the tower, including its materials, final elevation, and location on the East Campus. The application shall also identify how the proposed design meets the standard for approval set forth in § 2523.2.
- 2523.4 An application shall be included as a “Final Action” item for a Zoning Commission meeting scheduled after the completion of the thirty (30) day review period allowed the affected ANC(s). The notice to the affected ANC(s) shall include the date of the final action and a tentative public hearing date.
- 2523.5 The only motion that can be made at that time is for approval of the application in accordance with § 3028 and without the need for a public hearing.
- 2523.6 If no motion is made, or if the motion fails, the matter shall be moved to the “Hearing Actions” portion of the agenda, at which point the Commission may take any of the actions authorized by §§ 3011.3 through 3011.6.
- 2523.7 The Office of Planning may submit a report as to whether the Commission should approve the application. Any such report should be filed no later than ten (10) days prior to the date of the public meeting at which the final action item will be considered.
- 2523.8 A request to modify an approved design shall be subject to the same review criteria and approval process as set forth in this section for the original application.
- C. Chapter 30, ZONING COMMISSION PROCEDURES RULES OF PRACTICE AND PROCEDURE, is amended as follows:
1. Section 3011, REVIEW AND PROCESSING OF APPLICATIONS AND PETITIONS, § 3011.1, is amended by inserting the phrase “Except as provided in § 2523.4,” at its beginning, so that the provision will read as follows:
- 3011.1 Except as provided in § 2523.4, as soon as an application or petition is accepted for filing by the Director of the Office of Zoning, the Director shall place a copy of the application or petition in the public record of the Commission and refer a copy to the D.C. Office of Planning for

review and recommendation on whether the matter should be processed further, except that the applications for Zoning Commission review and approval filed pursuant to Chapters 16, 18, and 28 of this Title, which are deemed complete by the Director, shall be immediately scheduled for hearing consistent with the notice provisions of this chapter. The exception from the requirements of this subsection shall not apply to an application for Zoning Commission approval pursuant to § 1606 unless accompanied by a written report of the Office of Planning certifying that the application is compliant with the standards of that section.

2. Section 3014, NOTICE OF HEARINGS: GENERAL, § 3014.1, is amended by inserting the phrase “, other than a hearing for a § 2523 application,”, so that the provision will read as follows:

3014.1 Notice of a hearing pursuant to the rulemaking provisions of § 3021 or the contested case provisions of § 3022, other than a hearing for a § 2523 application, shall be given by:

- (a) Publishing notice of the hearing in the D.C. Register at least forty (40) days in advance of the hearing;
- (b) Posting a copy of the notice of the public hearing in the Office of Zoning at least forty (40) days prior to the hearing; and
- (c) Providing copies of the notice of the public hearing to the public library system and the appropriate Advisory Neighborhood Commission(s) for posting in appropriate locations. These copies of the notice shall be mailed or delivered at least forty (40) days prior to the hearing.

3. Section 3015, NOTICE OF CONTESTED CASE HEARINGS, § 3015.1, is amended by inserting the phrase “, other than a hearing for a § 2523 application,” so that the provision will read as follows:

3015.1 Notice of a contested case hearing pursuant to § 3022, other than a hearing for a § 2523 application, shall be given in accordance with § 3014 and the additional requirements of this section.

4. Section 3022, CONTESTED CASE HEARINGS, § 3022.1, is amended by striking the phrase “as well as § 1709.21” and inserting the phrase “as well as §§ 1709.21 and 2523.2” in its place, so that the provision will read as follows.

3022.1 The contested case procedures in § 10 of the D.C. Administrative Procedure Act, D.C. Official Code § 2-509, and this section shall apply to applications for a change in the Zoning Map pursuant to § 102 and to applications for planned unit developments, air space developments, and

similar plan review activities of the Commission, including those required by Chapters 16, 18, and 28 of this Title, as well as §§ 1709.21 and 2523.2, except as otherwise provided in § 3010.7.

5. Section 3027, PROPOSED ACTION, § 3027.4, is amended to read as follows:

3027.4 The Commission need not take proposed action with respect to an application for Zoning Commission review and approval pursuant to Chapters 16, 18, and 28 of this Title, as well as §§ 1709.21 and 2523.2, but may take final action in accordance with § 3028, either at the close of the hearing or at a subsequent public meeting and, in the case of an application pursuant to § 2523, at the initial public meeting regarding the application.

6. Section 3043, EXEMPTION FROM FEES, § 3043.1 is amended by striking the phrase “is owned by that agency” from paragraph (b) and inserting the phrase “is owned by the District or that agency or is under one or both of their jurisdictions” in its place, so that the provision will read as follows:

3043.1 The following persons or groups shall not be required to pay either a filing fee or hearing fee:

- (a) A department, office, or agency of the government of the District of Columbia, where the property is owned by the District or that agency or is under one or both of their jurisdictions and the property is to be used for a government building or use; and
- (b) The National Capital Planning Commission.

3043.2 There shall be no fee required for the filing of a petition before the Commission.

On February 22, 2010, upon the motion of Commissioner Schlater, as seconded by Vice Chairman Keating, the Zoning Commission **APPROVED** this proposed rulemaking at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve).

On April 12, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** this rulemaking by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot; William W. Keating, III, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on April 23, 2010.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND**

ZONING COMMISSION ORDER NO. 10-01

Z.C. Case No. 10-01

(Text Amendment – 11 DCMR)

**(Text Amendments to Allow Increased FAR and Height as a Matter of Right for Certain
Types of Projects on Properties Located in a TDR Receiving Zone)**

April 12, 2010

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; D.C. Official Code § 6-641.01); hereby gives notice of adoption of the following text amendments to the Zoning Regulations of the District of Columbia, DCMR Title 11. A Notice of Proposed Rulemaking was published in the *D.C. Register* (“DCR”) on March 12, 2010, at 57 DCR 2112, Notice ID 188779. The amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

Properties included within a receiving zone established by 11 DCMR § 1709 have a base zoning of C-3-C, which caps matter of right floor area ratio (“FAR”) at 6.5 and height at 90 feet. Prior to the effective date of this amendment, these limits could only be increased through the purchase of transferable development rights (“TDR”) generated by eligible properties within the Downtown Development Overlay, with each TDR representing one square foot of gross floor area. Section 1709 also increased height to accommodate the additional density.

The text amendment allows for these same increases as a matter of right, *i.e.* without the need to purchase the additional density and height, for projects within a receiving zone either developed as part of a D.C. Council-approved New Community Plan; or that qualify as a “low or moderate income subsidized housing development” pursuant to § 3042.2 of the Zoning Regulations. That subsection defines a “subsidized housing development” as a housing development that receives funding from a recognized District of Columbia or federal government housing subsidy and that “low or moderate income projects shall be as defined by the U.S. Department of Housing and Urban Development.” The Council approves New Community plans through the adoption of a resolution.

Procedures Leading to Adoption of Amendments

The District of Columbia Office of Planning (“OP”) submitted a memorandum dated January 4, 2010 that served as a petition requesting the text amendment, which also served as OP’s supplemental filing. The memorandum requested a waiver of the Commission’s rules to: (1) accept the late-filed memorandum; (2) permit the immediate advertisement of the public hearing; and (3) hold the hearing in less than 40 days from its advertisement, provided that at least 30-days notice would be given as required by the District Charter. At the Commission’s

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January 11, 2010 public meeting, OP presented a slight variation of the text stated in its January 4, 2010 memorandum. The Commission accepted the memorandum and voted to set down the revised text and grant the hearing-related waivers.

In addition to the notice of hearing required by the Zoning Act and Regulations, a notice of the petition was provided pursuant to § 13 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Official Code § 1-309.10) to all Advisory Neighborhood Commissions (“ANCs”). No written ANC reports were received.

A public hearing was scheduled for and held on March 1, 2010. At the hearing, the Commission requested that the OP and the District of Columbia Office of the Attorney General (“OAG”) revise the text to clarify what exactly was meant by the reference in the text to “affordable housing funded by the District of Columbia”. The Commission further authorized the referral of the text, as clarified, to the National Capital Planning Commission (“NCPC”) and the publication of a notice of proposed rulemaking in the *DC Register*.

NCPC, through a delegated action dated April 1, 2010, found that the proposed text amendments would not adversely affect the identified federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital. (Exhibit No. 11.)

The Notice of Proposed Rulemaking was published in the *D.C. Register* on March 12, 2010, 57 DCR 2112, Notice ID 188779, for a 30-day notice and comment period. No comments were received.

After the publication of the notice of proposed rulemaking, OAG and OP recognized that § 770 also needed to be amended to authorize the additional matter of right height needed to accommodate the additional matter of right density being made available by new § 771.4. This is the same height limit as is available for receiving zone properties that purchase additional density. In addition, OAG and OP suggested a conforming amendment to § 770.1 to include a reference to Chapter 17 as being among the chapters in Title 11 where additional height is authorized.

At a properly noticed April 12, 2010 public meeting, the Commission took final action to adopt the text amendments, including the amendments as follows:

Title 11 of the District of Columbia Municipal Regulations (ZONING), CHAPTER 7, COMMERCIAL DISTRICTS, is amended as follows:

1. By amending § 770 Height of Buildings or Structures (C), is amended as follows:

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- A. By amending § 770.1 by adding a cross-reference to the height provisions related to receiving zone properties contained in Chapter 17, so that the provision reads as follows:

770.1 Except as provided in this section and in chapters 17 and 20 through 25 of this title, the height of a building or structure in a Commercial District shall not exceed that set forth in the following table:

ZONE DISTRICT	MAXIMUM HEIGHT (Feet)	MAXIMUM HEIGHT (Stories)
C-1	40	3
C-2-A	50	No Limit
C-2-B,C-3-A	65	No Limit
C-3-B	70	6
C-2-C,C-3-C	90	No Limit
C-4	110	No Limit
C-5(PAD)	130	No Limit

- B. By amending § 770.2 to insert a reference to the new § 770.9 added through this rulemaking so that the provision reads as follows:

770.2 The height of buildings or structures specified in § 770.1 may be exceeded in the instances provided in §§ 770.3 through 770.9.

- C. By adding a new § 770.9 to read as follows:

770.9 The height permitted for a building eligible for the additional density permitted pursuant to § 771.4 shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09).

2. Amending § 771 Floor Area Ratio by inserting a new paragraph § 771.4 to read as follows:

771.4 As an alternative to purchasing transferable development rights to achieve additional density as permitted in the receiving zones described in §§ 1709.15

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through 1709.19, a building or structure located in any such zones that is being developed as part of an approved New Community Plan approved by the Council of the District of Columbia or that qualify as a low or moderate income subsidized housing development as defined in § 3042.2 (“Eligible Projects”) may utilize the following additional density as a matter of right, provided that the Zoning Administrator determines that the proposed building or structure is not inconsistent with the approved New Community Plan, if applicable, or the Comprehensive Plan:

- (a) Eligible Projects located in the New Downtown, North Capitol, Capitol South, and Southwest receiving zones may be constructed to a maximum FAR of 10.0 for buildings permitted a height of one hundred thirty feet (130 ft.) pursuant to § 770.9, and 9.0 for buildings permitted a lesser height; or
- (b) Eligible Projects located in the Downtown East receiving zone may be constructed to a maximum FAR of 9.0.

On March 1, 2010, upon motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the petition at the conclusion of its public hearing by a vote of **4-0-1** (Anthony J. Hood, William W. Keating, III, Peter G. May, and Michael G. Turnbull to approve; Konrad W. Schlater, not present, not voting).

On April 12, 2010, upon motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May (by absentee ballot), and Michael G. Turnbull to adopt; Konrad W. Schlater, having not participated, not voting; and William W. Keating, III, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on April 23, 2010.