

ANC 2A Appeal
Appellant's Supporting Documents

Exhibit No.	Description
Exhibit 1	Certificate of Service
Exhibit 2	Article 43: Denomination of Business Streets and Use of Sidewalk Space Thereon
Exhibit 3	24 DCMR 100 et seq.: Occupation and Use of Public Space
Exhibit 4	24 DCMR 200 et seq.: Rental of Public Space
Exhibit 5	24 DCMR 300 et seq.: Administrative Procedures for Sidewalk Cafes
Exhibit 6	BZA Order 17632: Estelle Goldman on behalf of 7-Eleven, Inc Zoning Determination Letter to Ms. Shiker for Capitol Place PUD 701 2nd St.NE
Exhibit 7	11 DCMR 1521: Foggy Bottom Overlay 11 DCMR 1553: Matter-of-Right And Special Exception Uses in the 16th Street Heights Overlay District 11 DCMR 2304: Drive-Through Uses 10B DCMR 2400: Purpose and Scope of Review (for permits in Chinatown) 11 DCMR 3309: Off Street Parking Saint Elizabeths East Campus District

Exhibit 1

**KINLEY R. BRAY
3544 SARATOGA AVE
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kinley.bray@me.com**

September 11, 2015
Chairman Lloyd Jordan
Board of Zoning Adjustment
441 Fourth Street NW, Suite 210 S
Washington DC 20001

Re: Appeal of ANC 2A, BZA Case No. 19023

Dear Chairman Jordan and Members of the Board:

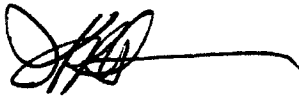
It has come to my attention that the Certificate of Service I filed in this case on behalf of Advisory Neighborhood Commission 2A contained an error in the date. The Certificate of Service read "March 10, 2015," when it should have read "April 10, 2015." This is simply a typo.

The appeal in this matter was filed very late in the evening of April 9, 2015 via IZIS. The Certificate of Service was inadvertently left off of the initial filing; I prepared a duplicate certificate at the request of the Office of Zoning, and that duplicate contained the typo. Service was made via electronic mail in the very early hours of April 10, 2015 (see attached e-mail).

I apologize for any confusion my typo may have caused, and respectfully request that the Board view this error in the light most favorable to the Appellant in this matter.

Very truly yours,

Kinley R. Bray

A handwritten signature in black ink, appearing to be 'Kinley R. Bray', with a long horizontal flourish extending to the right.

Enclosure

Cc: Meridith H. Moldenhauer, Esq.

Appeal of ANC 2A

April 10, 2015 at 12 07 AM From

kinley.bray@me.com

To Norman.glasgowjr@hk-law.com

ccafriz@cafrizinterests.com

Please find attached a copy of the Appeal filed via IZIS this evening concerning The River Inn, 924 25th Street NW Please use kbray@washlaw.com for all future correspondence (I am having technical difficulties in mailing the document using my remote connection tonight).

Thank you,

Kinley

Kinley R. Bray
Griffin, Murphy, Moldenhauer & Wiggins LLP
1912 Sunderland Place NW
Washington D.C. 20036
(202) 530-7158
kbray@washlaw.com

<Appeal.pdf>
<Exhibit A.pdf>
<Exhibit B.pdf>
<River Inn Appeal Authorization pdf>

Exhibit 2

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE
WASHINGTON 4, D.C.

July 11, 1961

SUBJECT: Police Regulations (1955 ed.) - Amended by adding a new Article 43, Denomination of Business Streets and Use of Sidewalk Space Thereon ("Sidewalk Cafes").
Department of Licenses and Inspections

ORDERED:

That the Police Regulations (1955 ed.) are amended by adding a new Article 43 as follows:

ARTICLE 43
DENOMINATION OF BUSINESS
STREETS AND USE OF SIDEWALK
SPACE THEREON.

Sec. 1. As used in this Article --

"Business street" means a portion of a street denominated by the Commissioners of the District of Columbia as a business street in accordance with the authority contained in the last proviso of the Act of July 1, 1898 (30 Stat. 570), as amended, (sections 7-1205 and 8-108, D. C. Code, 1951 ed.)

"Commissioners" means the Commissioners of the District of Columbia.

"Director" means the Director, Department of Licenses and Inspections, D. C., or his designated agent, unless otherwise specified herein.

"District" means the District of Columbia.

"Sidewalk space" means all that space between the building line and the curb on that portion of a street denominated as a business street, regardless of whether such space is paved or unpaved.

"Street" means a public way, other than an alley, as shown on the records of the Surveyor of the District, whether designated as a street, avenue, road, drive, lane, place, boulevard, parkway, circle, or by some other term.

Sec. 2. (a) The following portions of streets are denominated as business streets:

E Street, N.W., both sides between 6th Street and 14th Street;

F Street, N.W., both sides between 6th Street and 15th Street;
G Street, N.W., both sides between 6th Street and 15th Street;
H Street, N.E., both sides between 4th Street and 13th Street;
K Street, N.W., both sides between 14th Street and 22nd Street;
M Street, N.W., both sides between 18th Street and 22nd Street;
M Street, N.W., both sides between 29th Street and 34th Street;
U Street, N.W., both sides between 13th Street and 16th Street;
Connecticut Avenue, N.W., both sides between H Street and Florida Avenue;
New York Avenue, N.W., both sides between 3rd Street and 7th Street;
New York Avenue, N.W., both sides between 9th Street and 15th Street;
Pennsylvania Avenue, N.W., north side between 6th Street and 22nd Street;
Pennsylvania Avenue, N.W., south side between 17th Street and 22nd Street;
Vermont Avenue, N.W., west side between H Street and Thomas Circle;
8th Street, N.W., both sides between Pennsylvania Avenue and F Street;
8th Street, S.E., both sides between Pennsylvania Avenue and M Street;
11th Street, N.W., both sides between Pennsylvania Avenue and K Street;
13th Street, N.W., both sides between Pennsylvania Avenue and Eye Street;
14th Street, N.W., both sides between Pennsylvania Avenue and Thomas Circle;
17th Street, N.W., west side between F Street and M Street.

(b) Streets or portions of streets in addition to those denominated in the preceding subsection may be denominated by the Commissioners as business streets upon a showing satisfactory to them that in any such street or portion of street a majority of a frontage of not less than three blocks in length is occupied and used for business purposes, or that, with respect to a portion of a street denominated a business street by subsection (a) of this section, there exists adjoining such portion a block or more having a majority of its frontage occupied and used for business purposes.

Sec. 3. (a) The operators of businesses abutting a business street may, subject to the provisions of this Article, utilize so much of the sidewalk space on which their places of business

abut as the Commissioners determine is not needed for the use of the general public during specified times on specified days.

(b) In addition to any authorization granted the operator of a place of business to use the sidewalk space abutting his place of business, any such operator who desires to use the sidewalk space abutting one or both of the adjoining places of business may, with the written permission of the operator of any such adjoining place of business, be issued a permit to use part or all of the sidewalk space abutting such adjoining place of business under the same conditions as relate to the use of the sidewalk space abutting his place of business. In any such case, the permittee will be responsible for full compliance with these regulations, both as to the sidewalk space abutting his place of business and so much of any sidewalk space abutting the adjoining places of business as he may be authorized by permit to use. No permit shall be issued to the operator of a place of business for the use of the sidewalk space abutting an adjoining place of business unless he first secures from the operator of the adjoining place of business written permission to use such sidewalk space and submits the same with his application. Such written permission shall, unless it states otherwise, be considered by the Commissioners to be revocable at the option of the person giving such permission, and shall be considered as expiring with any change in ownership of the adjoining business, thereby subjecting the permit issued for the use of such sidewalk space to possible revocation, upon written application to the Commissioners by the operator of the adjoining place of business.

Sec. 4. Application for the use of sidewalk space on a business street shall be made to the Director in duplicate, on the form prescribed by him for such purpose, shall be filed with the Permit Branch, Department of Licenses and Inspections, D.C., and shall be accompanied by 6 copies of a plat or drawing indicating, to scale, the amount of sidewalk space the applicant is seeking permission to use. Such application shall state with particularity the nature of the proposed use, the type of equipment to be used, and the days of the week and hours of each day the applicant desires to use such sidewalk space. Such application shall also contain a statement by the applicant that he will, in consideration of being issued a permit for the use of sidewalk space, agree to hold harmless the United States and the District, and the officers and employees of each of them, for any loss or damage arising out of such use, or the discontinuance of any such use; that he understands that his use of sidewalk space is to be temporary, on a day-to-day basis; that he shall not acquire any right, title, or interest in such space; that the Commissioners may by written notice, require him at any time to vacate all or any part of the sidewalk space he has been given permission to use; that upon demand to vacate such space he will promptly remove any

personal property placed thereon by him, or reimburse the District for the cost of moving such property; and that he shall have no recourse against either the United States, the District, or the officers or agents of either for any loss or damage occasioned by his being required to vacate all or any part of the sidewalk space which he has been granted permission to use.

Sec. 5. (a) Application for a permit to use sidewalk space shall be subject to the approval of the Commissioners, on consideration of a recommendation by the Public Space Committee, which shall report whether the sidewalk space for the use of which application is being made is required for the use of the general public on the days and at the times covered by such application. The Public Space Committee shall investigate and report as to those days, and as to those times during each such day when such space may not be wholly or partly required for the use of the general public, and, subject to such investigation, recommend to the Commissioners whether such application should be approved by them, and any qualifications which should be attached to such approval.

(b) Each applicant for a permit to use sidewalk space shall demonstrate to the satisfaction of the Commissioners that the use to be made of such space will include provision for the maintenance of a clear, unobstructed passageway not less than ten feet in width at all points, entirely across the sidewalk space on which the property occupied by the applicant abuts, parallel to the line of the street and generally in the line of pedestrian traffic: Provided, That if the Commissioners shall find that usually, or at certain periods during the day or evening, the flow of pedestrian traffic at such location is sufficiently light to permit a passageway narrower than ten feet, a passageway as narrow as six feet may be approved by the Commissioners, either at all times when such use of sidewalk space is permitted, or for certain specified periods during the time when such use is permitted. The width of the passageway or passageways approved by the Commissioners shall be indicated on the permit issued for the use of the sidewalk space, and the space itself shall be so marked as to define such passageway or passageways, such marking to be by one or more painted white lines, each not less than four inches in width, extending across so much of such sidewalk space as the permittee is authorized to use. Such marking shall be done by the permittee in accordance with the directions of the Director of the Department of Highways and Traffic.

(c) Applications for permits to use sidewalk space abutting real property subject to the provisions of the Act approved May 16, 1930 (46 Stat. 366), as amended (sections 5-410 and 5-411, D. C. Code, 1951 ed.), known as the "Shipstead-Luce

Act", and the Act approved September 22, 1950 (64 Stat. 903; sections 5-801 through 5-805, D. C. Code, 1951 ed.), known as the "Old Georgetown Act", shall be submitted by the Director to the National Commission of Fine Arts for its advice as to whether the proposed use of such sidewalk space is in conformity with the intent and purposes of the applicable Act: Provided, That if the said Commission of Fine Arts fails to advise the Director of its determination within fifteen days, the Director may assume that the proposed use is in conformity with the applicable Act. An applicant for permission to use sidewalk space in an area subject to the provisions of either of the aforesaid Acts shall submit with his application a full description, including one or more sketches in color and to scale, of the use proposed to be made of such sidewalk space, in order to permit the National Commission of Fine Arts to determine whether such use will be in conformity with the applicable Act.

(d) Each public utility company which, according to the records of the District, operates or maintains any equipment or service in the area beneath the sidewalk space for the use of which application is made shall be given an opportunity by the Director to inform the Commissioners concerning its objections, if any, to the proposed use to be made of such space: Provided, That if any such company fails within fifteen days after request for its recommendation to notify the Commissioners of any objection it may have to such use, the Commissioners may assume that it has no objection to the proposed use.

Sec. 6. The applicant for a permit to use sidewalk space under the authority of this Article shall, as a condition precedent to the issuance of and as a condition to the continuance in effect of a permit for the use of such space, furnish the Director with a copy of a policy of public liability and property damage insurance, naming the District of Columbia and its officers and employees as parties insured. The limits of liability of such policy shall be in amounts of \$100,000 for one person in any one accident, \$500,000 for the aggregate of all persons in any one accident, and \$10,000 property damage in any one accident. Such policy of insurance shall be cancellable only by written notice to the Commissioners, addressed to the Secretary, Board of Commissioners, D.C., District Building, 14th and E Streets, N.W., Washington 4, D.C., stating the date on which the proposed cancellation of the policy is to become effective, but such date shall be not less than thirty days after the date on which the Commissioners receive such notice.

Sec. 7. (a) Each permit to use sidewalk space under the authority of these regulations shall be issued subject to the

following conditions:

(1) That such space will only be used for the activity or activities specified on the permit, in accordance with the requirements of these and any other applicable regulations;

(2) That such use is to be considered temporary, and that the user acquires no right, title, or interest in the space he is permitted to use;

(3) That the United States and the District, and the officers and employees of each of them, will be held harmless for any loss or damage arising out of such use, whether such loss or damage be suffered by the permittee, the United States, the District, or by some third person;

(4) That any personal property placed on such space by the permittee will be readily movable, will be maintained in a good, clean condition, and will not be allowed to deteriorate or become unsightly, or become dangerous to passers-by;

(5) That any awning or umbrella extending over or used on such sidewalk space shall be flame-proofed, and the arrangement of any tables, chairs, or other property placed thereon shall be in accordance with a plan recommended by the Public Space Committee and approved by the Commissioners.

(6) That the permittee will not use such sidewalk space for the display of merchandise: Provided, That nothing herein contained shall be applicable to the display of merchandise in existing enclosed show windows encroaching on public space as authorized by law: Provided further, That nothing herein contained shall be construed as prohibiting the use of such sidewalk space for the consummation of transactions between an operator of a business in the abutting property and persons with whom such operator may have dealings.

(7) That such space will not be used in a manner or for a purpose which the Commissioners find is deleterious to the general character of the neighborhood, or is not in the best interests of the general public.

(8) That the permittee will promptly remove any litter deposited on or in the vicinity of the sidewalk space used by him, resulting from the activity or activities conducted by him on such space;

(9) That the permittee will at all times conduct such activity or activities in an orderly fashion;

(10) That the permittee will, under permit duly issued by the District, provide lighting facilities adequate to light the activity or activities conducted by him on such sidewalk space during the evening or night.

(11) That such space will be used for business purposes only during the hours specified on the permit authorizing such use, and neither before nor after such hours;

(12) That no entertainment or music shall be provided or permitted for the enjoyment of the patrons of the establishment operated by the permittee other than such music as may be furnished by not to exceed three musicians playing such stringed instruments as the violin, the viola, the cello, the double-bass, and the guitar, and not more than one accordion or concertina: Provided, That such music shall not disturb the peace or quiet of the neighborhood, or the comfort or repose of any inhabitant thereof: Provided further, That no music shall be played: (1) in violation of section 2a of Article 6 of the Police Regulations of the District; (2) before or after the hours within which such music may be played as specified on the face of the permit issued for the use of such space; or (3) later than 12:00 midnight: And provided further, That there shall be no amplification or production of music by any electronic or mechanical means, nor shall there be any electronic or mechanical reproduction of music and its dissemination by means of loudspeakers, whether by coin-operated or non-coin-operated phonographs or music boxes, by a background music service, or by any radio or television set.

(13) That the government of the District and the several public utility companies operating in the District will be permitted to have immediate access to manholes located in such space; that no objects or structures shall be placed on ventilation gratings over transformer manholes; that the said utility companies shall have the right, under permit, to have access to such space for the purpose of reinforcing existing facilities and to build new facilities, and the government of the District shall have like right; and that the government of the District and the said utility companies, their officers and employees, shall be held harmless for any loss or damage arising out of their use of said space or any part thereof, or for the interruption or discontinuance of any use which may have been made of such space by the permittee, where such loss, damage, or interruption or discontinuance of use results from the per-

formance of work under, on, or above such space by the government of the District or by any of the said utility companies.

(14) That the permittee will post the permit issued him for the use of sidewalk space in a conspicuous location on the front of the premises occupied by the permittee, either on the exterior of such premises or in a location where it may be seen from the exterior of the premises, and so located and lighted as to be readily legible to a person on the sidewalk space in front of such premises.

(b) Permits for the use of sidewalk space shall be subject to suspension or revocation for failure of the permittee to comply with these regulations.

Sec. 8. The provisions of this Article relating to the extent to which sidewalk space on business streets may be occupied by the operators of businesses in property abutting such space shall supersede such other provisions of these regulations as may control the extent to which such space may be occupied.

By order of the Board of Commissioners, D. C.

Samuel H. Nett
Secretary to the Board

Official copy furnished:

Acct.
Disb.
Budget
Int. Audit
Dept. of Lic. & Insp. (200)
Police
Fire
Dept. of Pub. Health
Judges (20)
Printing Div.
Regulations Committee
C.C.
Gen. Files
Personnel
Pub. Library

(Officially published in the STAR, July 15 , 1961.)

Exhibit 3

100 GENERAL PROVISIONS

- 100.1 Occupation of public space beyond the extent permitted by existing law or regulation, or as those laws or regulations may be amended from time to time, is hereby forbidden. The Mayor, however, may authorize the issuance of a permit for a use of public space directly connected with and subordinate to another use of that space which is specifically permitted by some other law or regulation, if the Mayor, on the recommendation of the Public Space Committee, finds that the proposed additional use will not adversely affect the public interest or violate any of the following criteria:
- (a) The proposed additional use will not endanger the public;
 - (b) The proposed additional use will not substantially interfere with pedestrian or vehicular traffic; and
 - (c) The proposed additional use will not increase the area of public space that the applicant for the permit is authorized to use by other law or regulation.
- 100.2 The customary and necessary use of additional space by the occupants of abutting property to handle goods in transit is permitted during business hours only. This permissible use shall not be construed to authorize an occupation of public space for storage purposes or for crating or uncrating, boxing or unboxing, or packing or unpacking goods and materials being shipped or received.
- 100.3 For purposes of this title, the term "Mayor" shall include the Mayor's agent, designee, or representative, including the government official designated by law, regulation, or order to perform any act or to exercise any power granted under this chapter.
- 100.4 The Mayor shall have the right to revoke any permit given in accordance with the provisions of this title. If a permit is revoked, the person who held that permit shall, on notice from the Mayor, restore the sidewalk or parking as nearly as possible to its original condition, if it has been disturbed.
- 100.5 In addition to public utility installations in public space specifically authorized by statute, by this title, or by any other regulations of the District of Columbia, the Mayor may issue special permits, upon such terms and conditions as the Mayor may require, for installations of public utilities in public space as the Mayor finds are in the public interest.
- 100.6 Any person violating any provision of this title for which a specific penalty is not provided shall, upon conviction, be punished by a fine of not more than three hundred dollars (\$300).
- 100.7 The Mayor may deny the issuance or renewal of a public space permit to any applicant who has not abated, in full, a nuisance for which a notice of violation was issued for a violation of the regulations under the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100, D.C. Code §6 -2901 et seq. (1981)).

AUTHORITY: Unless otherwise noted, the authority for this chapter is An Act approved January 26, 1887, 24 Stat. 368, as amended, D.C. Code §1-315; and §412 of the District of Columbia Self-Government and Governmental Reorganization Act, as amended, 87 Stat. 790, Publ. No. 93-198, D.C. Code §1-227(a) (1981).

SOURCE: Article 4, §§9, 19 & 26 of the Police Regulations (May 1981); as amended by §4 the District of Columbia Solid Waste Regulations Amendment Act of 1989, D.C. Law 8-31, 36 DCR 4750, 4753 (July 7, 1989).

101 STREETS AND ROADS

- 101.1 Without a permit from the District, no person shall make an excavation in or under any public street, avenue, or other public place; and no person shall remove from or deposit on any public street, avenue, or other public place, any earth or other material.
- 101.2 Without a permit, no person shall destroy, cut, or injure the footway or roadway of any street, avenue, or other public place.
- 101.3 No person shall place or maintain in the footway of any pavement any stopcock box, street washer, vent, vault, cover, cellar door, or any hinge that projects above the level of the pavement or above any vault cover with a smooth surface.
- 101.4 Without a permit, no person shall erect a fence or wall, or plant a tree, in any public street, avenue, or other public space; except as provided §§102 through 104.
- 101.5 No part of any street shall be used for the keeping, depositing, storing, displaying, selling, valet staging or valet parking of vehicles of any kind, except when authorized under a permit issued in conformity with the provisions of chapter 3 or 16 of this title.
- 101.6 Any permit issued by the Mayor under the provisions of this title shall be displayed at all times at the address of work indicated on the permit.
- 101.7 Any person issued excavation permits pursuant to section 101.1 shall comply with all terms and conditions of the permit, the District of Columbia Department of Public Works Standard Specifications for Highways and Structures (1996), and Chapter 34 of this title, as those specifications and that Chapter is amended from time to time.
- 101.8 Any person issued a valet staging or valet parking permit pursuant to section 101.5 shall comply with all terms and conditions of the permit and Chapter 16 of this title, as that chapter is amended from time to time.

SOURCE: Article 4, §20, and Article 8, §§1-3 of the Police Regulations (May 1981); as amended by §5 of the Litter Control Expansion Amendment Act of 1987, D.C. Laws 7-38, 34 DCR 5326, 5329 (August 14, 1987); as amended by Notice of Emergency and Proposed Rulemaking published at 47 DCR 9918(December 15, 2000); as amended by Final Rulemaking published at 48 DCR 3075 (April 6, 2001); as amended by Notice of Emergency and Proposed Rulemaking published at 57 DCR 5059 (June 11, 2010)[EXPIRED]; as amended by Final Rulemaking published at 57 DCR 8024, 8025 (September 3, 2010).

102 PUBLIC PARKING: UPKEEP AND PLANTINGS

- 102.1 The public parking on streets and avenues of the District of Columbia shall be under the immediate care and keeping of the owners or occupants of the premises abutting on the public parking.
- 102.2 No person shall use any parking for the purpose of drying clothes or other laundry.
- 102.3 No hedges shall be planted on public parking without a permit from the District. The same fee shall be charged as for parking fences.
- 102.4 Hedges on parking shall not exceed three feet (3 ft.) in height, nor project more than six inches (6 in.) over the sidewalk. On corner properties, if hedges are placed at the back of the sidewalk, they must be planted not more than ten inches (10 in.) above the sidewalk grade.
- 102.5 The Mayor is authorized to issue permits, without charging a fee, to erect tree markers of concrete or stone in tree spaces. The markers shall not be less than six inches (6 in.) nor more than eight inches (8 in.) square, or in excess of eight inches (8 in.) in height. They shall be driven firmly into the ground, and placed as directed by the Director of the Department of Public Works.
- 102.6 No tree marker shall be placed between a tree and a corner crosswalk. A metal plate may be placed on the upper surface of each marker, if it bears appropriate inscription and is securely fastened.
- 102.7 No person shall deposit or cause to be deposited any dirt, grass, or other yard refuse on any public sidewalk, tree space, roadway, or alley, from any public parking under the immediate care and keeping of the owner or occupant of the premises that abut the sidewalk, tree space, roadway, or alley.
- 102.8 For purposes of this section, "public parking" means that area of public space devoted to open space, greenery, parks, or parking that lies between the property line, which may or may not coincide with the building restriction line, and the edge of the actual or planned sidewalk that is nearer to the property line, as the property line and sidewalk are shown on the records of the District.

SOURCE: Article 4, §§1-3 of the Police Regulations (May 1981); as amended by §5 of the Litter Control Expansion Amendment Act of 1987, D.C. Law 7-38, 34 DCR 5326, 5329 (August 14, 1987); and by §4 of the District of Columbia Solid Waste Regulations Amendment Act of 1989, D.C. Law 8-31, 36 DCR 4750, 4753 (July 7, 1989).

103 PUBLIC PARKING: WALLS, WICKETS, AND FENCES

- 103.1 After obtaining a permit from the District, the owners or occupants of land abutting a public parking may enclose the parking with any of the following:
- (a) Walls of an approved type not exceeding three feet by six inches (3 ft. x 6 in.) in height;
 - (b) Wooden fences of colonial design of an approved type not exceeding three feet by six inches (3 ft. x 6 in.) in height, with square, rectangular, or round posts and rails; with or without square, rectangular or round pickets extending through the rails; or
 - (c) Open fences of an approved type not less than three feet (3 ft.) or more than three feet by six inches (3 ft. x 6 in.) in height, constructed of iron, ornamental wire, or woven wire, and having top and bottom string pieces.
- 103.2 No permit shall be issued for, and it shall be unlawful to maintain, a sharp-pointed or spear-headed type of fence that has uppermost points or prongs that are less than one-half inch (1/2 in.) in diameter.
- 103.3 Walls and fences of a height greater than three feet six inches (3 ft. x 6 in.) shall be permitted only when specifically approved by the Mayor.
- 103.4 A fee of nineteen dollars (\$19) shall be charged for enclosing the parking in front of each house or where no parking fence or wall has previously existed.
- 103.5 No fee shall be charged for an application to repair an existing fence or wall with the same character of material; Provided, that a permit for the erection of the original fence or wall must be on record.
- 103.6 Where permission is requested to move a parking fence of an approved pattern out to a newly established sidewalk line, no fee will be charged.
- 103.7 In all cases not covered by these exceptions, however, a fee of nineteen dollars (\$19) shall be charged.
- 103.8 Blocks or pedestals for fence posts must not project above the surface of the sidewalk, and no portion of a fence or a fence post block or pedestal shall extend beyond the parking line.
- 103.9 All gates in parking fences must swing inwardly; and no gate shall swing outwardly over any sidewalk, avenue, street, or road.
- 103.10 It shall be unlawful to place or maintain any wickets, guard wires, or other similar devices upon or adjacent to the sidewalk, tree space, or parking in the District of Columbia, except in accordance with the provisions of this section.
- 103.11 Upon the payment of a fee of nineteen dollars (\$19) for each premises, the Mayor may issue a permit to erect wickets of iron not less than three-eighths of an inch (3/8 in.) in diameter. Each wicket shall be driven firmly into the ground, overlapping at least three inches (3 in.); shall be securely lashed with wire at top intersections and at the bottom of each wicket; shall be painted green; and shall be maintained in exact alignment with their tops on a level.
- 103.12 Where the parking around which the wickets are to be placed is at the level of the sidewalk, the wickets shall have a minimum height of twenty-four inches (24 in.); and where the parking is terraced, the wickets shall have a minimum height of twelve inches (12 in.).

- 103.13 Permission to erect wickets may be revoked by the Mayor upon failure to maintain the wickets in accordance with this section, or for any other reason that the Mayor may determine.
- 103.14 No permit shall be issued for any wickets that are within one foot (1 ft.) of the back edge of a public sidewalk; or that are in, upon, or around tree spaces. The Mayor shall have the right to deny the use of wickets at any place that he or she deems that they should not be constructed or maintained.

SOURCE: Article 4, §1 of the Police Regulations (May 1981); as amended by 27 DCR 3326, 3330 (August 1, 1980).

104 PUBLIC PARKING: PAVING, GRADING, AND COVERING

- 104.1 Without the written authority of the Mayor, no person shall change the grade of any parking; pave or cover any portion of a parking; or construct any walls, steps, coping, fences, or other structures on a parking.
- 104.2 Each day that the grade, paving, or covering of a parking remains changed; and each day that any walls, steps, coping, fences, or other structures remain on a parking; shall constitute a separate offense.
- 104.3 Nothing in this section shall be construed to prevent the person having control of the premises abutting on a public parking from sodding or beautifying it with flowers.
- 104.4 Parking division fences on streets and avenues shall follow property lines.
- 104.5 Parking leads shall not be over six feet (6 ft.) wide, without the approval of the Mayor.
- 104.6 Except in the case of building operations, permits to cross sidewalks shall be granted by the Mayor upon the application of the owner of the abutting property, or his or her authorized representative, under conditions similar to those named in the Building Code governing occupation or use of public space to guarantee against any injury to the sidewalk, paving, or curbing.
- 104.7 Permits to pave the public parking in districts zoned for first commercial, second commercial, and industrial uses shall be granted by the Director of Consumer and Regulatory Affairs upon the recommendation of the Director of the Department of Public Works; and upon payment of a fee of thirty-six dollars (\$ 36) for each permit.
- 104.8 Without a permit from the Mayor, no person shall pave or cover with any permanent covering any sidewalk space or any portion of a sidewalk space.
- 104.9 Without a permit from the Mayor, no person shall place any letters or advertising device in or upon any sidewalk, in any manner whatever; either by projecting images or shadows upon the sidewalk by means of lenses or reflectors, or both, or in any other manner.

SOURCE: Article 4, §§3 & 4 of the Police Regulations (May 1981); as amended by §4 of the District of Columbia Solid Waste Regulations Amendment Act of 1989, D.C. Law 8-31, 36 DCR 4750, 4753 (July 7, 1989).

105 TEMPORARY COVERED WALKWAYS

- 105.1 Temporary covered ways across sidewalks or parkings may be permitted by the Chief of Police for periods not to exceed forty-eight (48) hours.
- 105.2 Temporary covered ways shall afford a free passage of at least six feet (6 ft.) in width along the middle of the sidewalk.
- 105.3 Each applicant for a temporary covered way shall communicate to the Chief of Police by telephone, stating the time when the applicant desires to erect the covered way. The Chief of Police shall note the desired time and communicate this to the commanding officer of the police districts involved.
- 105.4 The commanding officer shall require the removal of a covered way within forty-eight (48) hours. If the inclement weather continues beyond forty-eight (48) hours, the commanding officer may extend the time for removal an additional forty-eight (48) hours.
- 105.5 Once a covered way is removed, it shall not be erected again without further permission from the Chief of Police.
- 105.6 Permits for sockets in the sidewalk, in connection with temporary covered ways across sidewalks or parkings, shall be issued by the Director of Consumer and Regulatory Affairs upon approval of the Director of the Department of Public Works.
- 105.7 Permits for sockets confer no authority to erect temporary covered ways across the sidewalks or parking areas. Once sockets have been installed, the Police Department shall issue forty-eight (48) hour permits to allow the use of the temporary covered way in inclement weather.

SOURCE: Article 4, §10 of the Police Regulations (May 1981); as amended by §4 of the District of Columbia Solid Waste Regulations Amendment Act of 1989, D.C. Law 8-31, 36 DCR 4750, 4753 (July 7, 1989).

106 PRIVATE LAMPPOSTS AND OTHER FIXTURES

- 106.1 No private lamppost or lamp shall be erected or placed in public space or in any public street, avenue, alley, or road of the District of Columbia unless authorized by a special permit obtained prior to the erection of the lamppost or lamp.
- 106.2 Each permit shall be issued on the condition that the Mayor has the right to require the lamppost or lamp to be removed whenever the Mayor deems removal is necessary or advisable. Each application for a permit to erect a lamppost or a lamp must be accompanied by a written agreement signed by the owner or occupant, or both, of the premises in front of which the lamppost or lamp would be erected, agreeing to remove the lamppost or lamp when the Mayor requests removal.
- 106.3 No private lamppost erected in public space that extends more than three feet by six inches (3 ft. x 6 in.) from the building line shall have a greater diameter than eighteen inches (18 in.). Lampposts that are permitted shall be of an approved, single-light type.
- 106.4 The wattage of a lamp that extends more than three feet by six inches (3 ft. x 6 in.) from the building line shall not exceed the wattage as established for the public-street lamps for the vicinity; and the mounting heights shall be not less than that used for the public-street lamps of similar wattage.
- 106.5 Spot or floodlight standards shall not be erected beyond three feet by six inches (3 ft. by 6 in.) from the building line; and, in no case, shall standards be erected beyond the inner edge of the sidewalk, or beyond the building line in front of or adjacent to premises used or zoned as residential.
- 106.6 Private lamps of one hundred (100) watts or less, mounted not less than eight feet (8 ft.) above grade, may be permitted on or over public space.
- 106.7 Private lamps over one hundred (100) watts, mounted not less than fourteen feet (14 ft.) above grade, may be permitted on or over public space in other than residential zones.
- 106.8 No private lamp shall project over public space beyond a point eighteen inches (18 in.) back of the face of the nearest curb line. However, permits may be issued for lights of the public utility companies that, in the public interest, must be located in or over the public highway.
- 106.9 Lamps or clusters of lamps installed under the provisions of this section shall be installed so that the light rays shall not be directed on, against, or across public sidewalks, streets, alleys, or roadways, or across private property zoned as residential.
- 106.10 A permit for the erection of spot and floodlights beyond the building line in residence and special purpose districts may be issued when, in the opinion of the Mayor, the spot and floodlights are desirable to illuminate public monumental buildings, monuments, and other similar structures; Provided, that the illumination is in the public interest, the direct rays are confined to the premises served, and a nuisance is not created.
- 106.11 Colored lights or globes on private lamps shall not be used when placed more than three feet by six inches (3 ft. x 6 in.) beyond the building line.
- 106.12 Every private lamp erected in the public space shall be enclosed in some form of ground, opalescent, or alabaster glass of sufficient density to remove the glare from the light source. This shall not be construed to apply to lamps less than twenty-five (25) watts each, used as borders, for outline lighting, and for illuminating signs, when placed not less than fourteen feet (14 ft.) above the sidewalk.

- 106.13 No private lamppost or lamp, or any part of a lamppost or lamp, projecting or extending more than three feet by six inches (3 ft. x 6 in.) beyond the building line, or on or over any sidewalk or roadway, shall be used as a sign or advertisement.
- 106.14 No portion of a sign, fixture, marquee, or other structure or projection of a building, shall extend over public space beyond a point eighteen inches (18 in.) back of the nearest curb line.

SOURCE: Article 20, §§6 through 10 of the Police Regulations (May 1981).

107 STREETLIGHTS, STREET SIGNS, TREES, AND FIXTURES

- 107.1 No person shall break, damage, mutilate, or carry away any lantern, glass, frame, street designation, fixture, or other part or appurtenance of any public lamp; or hitch, tie, or fasten any animal to any public lamppost or appurtenance of a public lamp.
- 107.2 Without a permit from the Mayor, no person shall remove, take up, or carry away any public lamppost; extinguish or obstruct the light in any public lamp; or cap or plug the service pipe of any public lamp.
- 107.3 No person shall injure or destroy any public lamppost; attach any guy line to a public lamppost; deface any public lamppost or appurtenance of a lamppost by means of lime, mortar, paint, or other material; or pile material of any kind against any public lamppost.
- 107.4 Only an employee of the District, or a person employed by a contractor for the lighting or painting of public lamps, shall climb any lamppost.
- 107.5 No person shall hitch or fasten an animal to any tree on any street, avenue, or other public space in the District; nor to its wooden, wire, or other protection.
- 107.6 Without a permit from Director of the Department of Public Works, no person shall trim, prune, whitewash, or pile material about any tree in a street, avenue, or other public place.
- 107.7 Without a permit from Director of the Department of Public Works, no person shall attach any guy rope or wire to any tree in a street, avenue, or other public place.
- 107.8 Permits may be issued to erect banners, ornaments, or lights, whose display is to celebrate a national holiday as declared by an Act of Congress or a District holiday as declared by District law, on lampposts and across a street or avenue between buildings, street lampposts, or traffic lights; provided, that no banners, ornaments, or lights shall be erected in a manner that obstructs the free passage of pedestrian or vehicular traffic.

SOURCE: Article 20, §§1, 3, 4 & 5, and Article 22, §§1 through 3 of the Police Regulations (May 1981); as amended by §4 of the District of Columbia Solid Waste Regulations Amendment Act of 1989, D.C. Law 8-31, 36 DCR 4750, 4753 (July 7, 1989); as amended by D.C. Act 13-510, 48 DCR 588 (January 26, 2001).

108 SIGNS, POSTERS, AND PLACARDS

- 108 1 No person shall affix a sign, advertisement, or poster to any public lamppost or appurtenances of a lamppost, except as provided in accordance with this section
- 108 2 The placing of any advertisement on any tree in public space is prohibited.
- 108.3 No poster or placard shall be publicly displayed or exhibited if it is lewd, indecent, or vulgar, or if it pictorially represents the commission of or the attempt to commit any crime
- 108.4 Any sign, advertisement, or poster that does not relate to the sale of goods or services may be affixed on public lampposts or appurtenances of a lamppost, subject to the restrictions set forth in this section
- 108.5 A sign, advertisement, or poster shall be affixed for no more than one hundred eighty (180) days.
- 108 6 A sign, advertisement, or poster related to a specific event shall be removed no later than thirty (30) days following the event to which it is related This subsection does not extend the time limit in subsection 108 5.
- 108 7 Each sign, advertisement, or poster shall contain the date upon which it was initially affixed to a lamppost.
- 108.8 Each sign, advertisement, or poster shall be affixed securely to avoid being torn or disengaged by normal weather conditions.
- 108 9 Signs, advertisements, and posters shall not be affixed by adhesives that prevent their complete removal from the fixture, or that do damage to the fixture
- 108 10 No more than three (3) versions or copies of each sign, advertisement, or poster shall be affixed on one (1) side of a street within one (1) block
- 108 11 Within twenty-four (24) hours of posting each sign, advertisement, or poster, two (2) copies of the material shall be filed with an agent of the District of Columbia so designated by the Mayor The filing shall include the name, address, and telephone number of the originator of the sign, advertisement, or poster, and if the sign is for an event, the date of the event
- 108 12 For purposes of this section, a "public lamppost" is any public post erected for the purpose of supporting electric wires

108 13 For purposes of this section, the term “event” refers to an occurrence, happening, activity or series of activities, specific to an identifiable time and place, if referenced on the poster itself or reasonably determined from all circumstances by the inspector

SOURCE Article 20, §2, Article 22, §3, Article 25, §12 of the Police Regulations (May 1981), as amended by §2 of the Street Sign Regulation Amendment Act of 1979, D C Law 3-50, 26 DCR 2733 (December 21, 1979), by §2 of the Crime Prevention Sign Posting Act of 1980, D C Law 3-148, 27 DCR 4883 (November 7, 1980), as amended by Final Rulemaking published at 57 DCR 528 (January 8, 2010), as amended by Notice of Emergency and Proposed Rulemaking published at 58 DCR 7688 (August 26, 2011)[EXPIRED], as amended by Notice of Emergency and Proposed Rulemaking published at 58 DCR 8410 (September 30, 2011)[EXPIRED], as amended by Notice of Final Rulemaking published at 59 DCR 273 (January 20, 2012)

109 BEAUTIFICATION OF TREE SPACES

- 109.1 The regulations contained in this section shall apply to the unpaved area of public space that lies between the street curb and the sidewalk, which is commonly reserved by the District government for planting trees
- 109 2 The beautification of tree spaces shall be governed by the provisions of this section
- 109 3 The beautification of tree spaces shall not require a permit
- 109 4 The owner or occupant of property that abuts tree space shall not be liable for injuries to others as a result of a tree space beautification activity that complies with this section Tree space beautification shall be undertaken solely at the personal risk and expense of the owner or occupant
- 109 5 The District government reserves the right to enter tree space without the permission of the owner or occupant of the property that abuts the tree space
- 109 6 The beautification of a tree space may be undertaken at the discretion of the owner or occupant of the property that abuts the tree space, and shall be under the immediate care and keeping of the owner or occupant of the property that abuts the tree space
- 109 7 The beautification of a tree space shall not extend beyond the following requirements
- (a) Extend over the curb or the sidewalk,
 - (b) Extend within three feet (3 ft.) of a crosswalk or paved bus stop landing;
 - (c) Extend within six feet (6 ft) of an entrance to an alley, or
 - (d) Extend within six feet (6 ft.) of a street corner
- 109 8 In a continuous tree space, beautification areas shall be not more than four feet (4 ft) wide and nine feet (9 ft) long At least six feet (6 ft) shall separate each beautified area A beautification area shall not be planted within four feet (4 ft) of a parking meter or a fire hydrant
- 109 9 A tree space may be bordered by a continuous barrier on the three (3) sides that do not abut the curbline The barrier may project not less than four inches (4 in) and not more than twelve inches (12 in) from the sidewalk or curb elevation The use of wickets to edge or border a tree space shall be prohibited
- 109 10 The grade of the tree space shall not be altered in conjunction with a beautification effort, except with mulch The use of gravel as ground cover shall be prohibited
- 109 11 Planting material used to beautify a tree space shall have a shallow root system and shall not be allowed to grow to a height in excess of eighteen inches (18 in) The growing of vegetables in a tree space shall be prohibited
- 109 12 A tree space beautification effort may be removed or destroyed with sufficient notice by the District government or its agents, if removal or destruction is made necessary by construction, repair, or maintenance activities
- 109 13 A tree space beautification effort that is not in compliance with this section, or that is inadequately maintained or allowed to deteriorate may be removed with sufficient notice by the Department of Public Works

109 14 This section shall not be construed to supersede the provisions of chapter 11 of Title 24 of the D
C Municipal Regulations

SOURCE Section 3 of the Tree Space Beautification Regulation Act of 1989, D C -Law 8-21, 36
DCR 4568 (June 30, 1989)

110 CONSTRUCTION, REPAIR, AND DEMOLITION

- 110 1 The provisions of this section shall apply to all streets, avenues, alleys, highways, footways, sidewalks, public parkings, and other public space in the District of Columbia (also referred to simply as "public space")
- 110 2 Persons engaged in the erection, alteration, demolition, or repair of any building may occupy the public space with building materials and appliances if a permit is secured from the Director of Consumer and Regulatory Affairs
- 110 3 Each permit shall specify any condition, in addition to the provisions of this chapter, upon which it is granted
- 110 4 All applications for storage of materials on the roadway, including debris removed from a building or building site, or material excavated from a building site, shall be approved by the Director of the Department of Public Works, subject to the conditions specified in this chapter
- 110 5 The Director of Consumer and Regulatory Affairs may revoke a permit to occupy public space at any time the Director determines that the terms of the permit have been violated, or when traffic conditions or the public convenience may warrant revocation
- 110.6 Building materials must be stored on private property until needed at the building that is being altered or repaired
- 110 7 Old brick or building materials taken from a building may be stacked in front of the building site for a limited time specified in the permit, when these materials will be used in the construction of a new building to be erected on the site
- 110 8 The maximum area permitted to be occupied shall not extend beyond seven feet (7 ft) from the curb on streets where there are no railway tracks.
- 110.9 On streets having railway tracks, the area occupied shall not be more than one-half (1/2) the distance from the curb to the nearest rail from the curb, and, in no case, shall material be placed nearer than seven feet (7 ft) from the outer rail of the track nearest the materials
- 110.10 The material shall be compactly stacked or arranged to occupy as little space as possible, and to secure vehicles and pedestrians from danger
- 110 11 Within twenty-five feet (25 ft) of the intersection of building lines at street corners, the material shall not be piled higher than four feet (4 ft)
- 110 12 All building material shall be removed from public space when the roof is placed on a building, or when ordered to be removed by the Director of Consumer and Regulatory Affairs
- 110 13 Building material or earth from excavation may be temporarily deposited or stored in a space one-third (1/3) the width of any alley that is fifteen feet (15 ft.) or more in width, when authorized by the Director of Consumer and Regulatory Affairs, after approval by the Director of the Department of Public Works
- 110 14 Building material or earth from excavation deposited or stored in an alley shall be removed immediately when the Mayor orders removal
- 110 15 In all cases, the manner in which earth and materials are deposited in an alley shall permit the free use of the alley for the passage of vehicles, and shall allow unobstructed egress from the property abutting on the alley

- 110 16 When considered necessary by the Mayor, the space allotted for materials may extend laterally in the roadway twenty feet (20 ft.) on each side of the lot on which the building is being erected
- 110 17 A width of not less than six feet (6 ft) shall be kept clear on the sidewalks Beyond this required passageway, however, the sidewalk may be inclosed with a tight board fence used under the same conditions as the roadway, Provided, that no materials or rubbish are deposited or placed within two feet (2 ft) of any tree, and provided that there is no vault under the sidewalk.
- 110 18 If any enclosing fence shall prevent passage on the sidewalk, a temporary plank sidewalk shall be constructed and maintained in good repair and free from rubbish, dirt, and snow The temporary plank shall not be less than six feet (6 ft) in width in the clear
- 110 19 Dressing stone and cleaning brick or other materials may be stored within the parking line, if suitably enclosed by a tight fencing
- 110 20 Each builder or owner occupying the roadway or sidewalk with materials shall exhibit a red light at night The light shall be placed in a manner that warns the public of the obstruction of the roadway and sidewalk, and shows distinctly the clear passageway left in the roadway and sidewalk.
- 110 21 When the space occupied by the materials extends along the curb for twenty feet (20 ft) or more, at least one (1) light shall be exhibited at each end of the obstruction, and hung clear of the obstruction on the side adjoining the roadway
- 110 22 A temporary wooden office or storage shed not over two hundred square feet (200 ft ²) in floor area may be erected within the space allowed for the storage of building material The shed shall be subject to removal when so ordered by the Director of Consumer and Regulatory Affairs
- 110 23 Earth taken from excavation, and rubbish taken from the building, shall not be stored upon sidewalks or roadways, but shall be taken directly from buildings and removed from day to day
- 110 24 When material or rubbish is removed through windows or other openings in the upper stories of a building, the material or rubbish shall be well wetted down and removed by means of tight chutes extending from the building to a point of discharge, as directed or approved by the Director of Consumer and Regulatory Affairs

SOURCE Article 3, §§3(a) through (j) of the Police Regulations (May 1981), as amended by §4 of the District of Columbia Solid Waste Regulations Amendment Act of 1989, D C Law 8-31, 36 DCR 4750, 4753 (July 7, 1989)

**111 TEMPORARY USE OF PUBLIC SPACE FOR
 MERCHANDISE, CONTAINERS, AND OTHER ARTICLES**

- 111 1 No person shall leave any goods, wares, or merchandise either in or upon any street, avenue, alley, highway, footway, sidewalk, parking, or other public space in the District for a period longer than two (2) hours, except as provided in this chapter or in chapter 2 of this title
- 111 2 Whenever a sidewalk space is used temporarily for handling goods, a clear passageway for pedestrians shall be left at least ten feet (10 ft.) wide on business streets, and six feet (6 ft.) wide on residence streets
- 111 3 No empty bottles stored in crates or otherwise, and no empty crates, baskets, buckets, tubs, cans, boxes, kegs, cartons, or barrels, shall be allowed to remain in or upon any public space
- 111 4 No wood shall be sawed or split in or upon any public space

SOURCE Article 3, §13 of the Police Regulations (May 1981)

112 RETAIL BUSINESS USE OF ADJOINING PUBLIC SPACE

- 112.1 The owner or occupant of a store located in a residential-use district (as designated under the zoning regulations) may, during the time the store is open for business, use the space outside the front of the store to the extent of four feet (4 ft.) from the building line for the display of goods, wares, and merchandise directly connected with the business transacted within the store; **Provided, that the use is conducted in compliance with the zoning regulations and in accordance with the provisions of this section.**
- 112.2 The owner or occupant of a store located in the first or second commercial or industrial-use districts (as designated under the zoning regulations) may use the space outside the front of the store to the extent of three feet (3 ft.) from the building line for the display, in show cases or otherwise, of goods, wares, or merchandise directly connected with the business transacted within the store; Provided, that the use is conducted in accordance with the provisions of this section.
- 112.3 No meat, fish, or fowl shall be displayed outside of a store on any street or avenue.
- 112.4 No permit shall be issued for a bootblack stand on public space.
- 112.5 No permit shall be granted for a fruit stand on public space, except for the purpose of displaying fruit under the conditions set forth in §§112.1 and 112.2.
- 112.6 The provisions of this section shall not apply to the owners of occupants of stores or places of business located on business streets designated under §113.

SOURCE: Article 4, §§6 & 7 of the Police Regulations (May 1981).

113 BUSINESS STREETS

- 113 1 The streets within the following boundary areas shall be denominated "business streets" for the purposes of this chapter
- (a) K Street N W , between Fifth and Sixth Streets,
 - (b) The west side of Seventh Street, N W , between the northern limit of the market building of the Northern Market Co , and the south building line of P Street,
 - (c) The west side of Eleventh Street, S W., between Maine Avenue and F Street; and
 - (d) The south side of F Street, S W , from Eleventh Street westward, a distance not exceeding one hundred feet (100 ft)
- 113 2 The business streets and the sidewalks adjacent to business streets may be used by occupants of abutting property for business purposes under the conditions set forth in this section
- 113 3 Permission to occupy more space on business streets than is allowed in § 112 shall not be granted by the Director of Consumer and Regulatory Affairs, except under special order extending the limits of permissible occupation along the front of an entire block
- 113 4 No permit shall be granted to occupy any portion of the sidewalk or parking to any person who is not the owner or occupant of the property abutting that sidewalk or parking
- 113 5 Permits to occupy parking, sidewalks, or other public space shall not be transferable, and the space shall not be sublet
- 113 6 Whenever any occupant of an adjacent building vacates the building, or sells or otherwise transfers his or her business in whole or in part, any permit previously issued to the occupant shall become void.
- 113 7 The subdivision of the space shall be under the direction of the Department of Consumer and Regulatory Affairs
- 113.8 If meat, fish, poultry, or game of any kind is sold, the person or persons holding the permit(s) shall do the following
- (a) Have those commodities under roof, and screened or covered as provided by the health and food regulations of the District of Columbia,
 - (b) Have a clean water supply for cleaning the hands and utensils of food dealers, and
 - (c) Ensure that these foods are kept from insanitary and contaminating products.
- 113 9 Anyone who uses public space to display merchandise and wares shall keep clean metal receptacles with covers for the deposit of all kinds of garbage, trash, and waste
- 113 10 No papers, trash, or rubbish shall be thrown on any public space or in the streets adjacent to any public space, and no person shall allow any barrels, boxes, crates, or other property owned by him or her to be placed on any space not assigned to the person for occupancy
- 113 11 The hours during which commodities may be sold on public space under this section are as follows

- (a) During the months of April, May, June, July, August, and September, from 4 30 a m to 8 00 p m.,
 - (b) During the months of October, November, December, January, February, and March, from 5 00 a.m to 8 00 p m.,
 - (c) During all months, on Saturdays until 11:30 p m , and
 - (d) At no time on Sundays
- 113 12 The schedule of distribution of the space between the building line and the curb line on each side of K Street, shall be as follows
- (a) A total of twenty-one feet (21 ft.) may be used for spaces,
 - (b) The twenty-one feet (21 ft) shall be divided into not more than three (3) spaces, one (1) of which shall not exceed five feet (5 ft) wide, and two (2) of which shall not exceed eight feet (8 ft) wide,
 - (c) The five foot (5 ft) wide space shall be contiguous to the curb, and
 - (d) Each space shall be separated from each other space by an aisle for pedestrian traffic at least ten feet (10 ft.) wide, with an aisle between the building line and the nearest eight foot (8 ft) space the width of the remaining portion of the sidewalk space
- 113 13 The spaces are authorized to be used for the temporary display, handling, and sale of goods, and for the placing of counters The counters shall be no more than four feet (4 ft) in height, and shall not be placed or maintained in the space during the hours when spaces may not be used under this section, nor when spaces are otherwise not in use for the display of goods, unless any authorized canopy is adequately lighted for protection of pedestrians; Provided, that foods that are eaten in an uncooked condition, such as peaches, apples, grapes, and other fruits or vegetables, shall be placed on stands or tables that are not less than eighteen inches (18 in) in height, or placed on the counters authorized by this section
- 113 14 All aisles shall be kept open and unobstructed at all times
- 113 15 The name of the owner of the merchandise displayed for sale on any of space or stand shall be conspicuously posted on the top of each stand

SOURCE Article 4, §§7 & 8 of the Police Regulations (May 1981)

114 APPLICATION FOR BUSINESS STREET DISPLAY PERMITS

- 114 1 Permits for the use of public space on business streets shall be issued annually to occupants of adjacent buildings who are engaged in the sale of merchandise within the buildings, upon application to the Department of Consumer and Regulatory Affairs on the form(s) prescribed by the Director, in accordance with this section
- 114 2 Before occupying any portion of a street in the District of Columbia that has been or is denominated a business street in accordance with law, or before occupying any sidewalk or parking space contiguous to the street, each owner or occupant of any store, building, or other place of business on the street shall submit a least two (2) drawings showing, respectively, the location and dimensions of the space he or she desires to occupy, and the type of stands or structures, if any, the owner or occupant proposes to erect or use on the space
- 114 3 No permit to occupy any public space shall be issued until the drawings required by § 114 2 are approved by the Director of Consumer and Regulatory Affairs, and until one (1) of each of the drawings has been placed on file in the Department of Consumer and Regulatory Affairs
- 114 4 Permits to construct shed roofs or awnings on the public space may be issued by the Mayor to the owner or owners of adjacent buildings, in accordance with plans to be submitted to and approved by the Director of Consumer and Regulatory Affairs
- 114 5 Applications for additional space privileges shall state the space desired and the nature of the business to be conducted on the space
- 114.6 All persons occupying a space on a business street or a portion of a business street, for displaying or selling merchandise, or for other business purposes, shall pay to the District of Columbia a monthly rental fee of one hundred thirty-six dollars (\$136)
- 114 7 The full name of the owner of merchandise displayed or sold in a structure or stand on any business street, sidewalk, parking space, or other public space, shall be conspicuously displayed on each structure or stand

SOURCE Article 4, §8, and Article 5, §2(e) of the Police Regulations (May 1981)

**115 SKATEBOARDS, ROLLERSKATES, AND
ROLLERBLADES**

- 115 1 Any person using skateboards, rollerskates, roller blades, or similar devices upon the parks and plazas located in the Pennsylvania Avenue Development area shall be subject to the rules under 18 DCMR §§1211.3 through 1211.10

SOURCE. Section 2 of the Pennsylvania Avenue Development Area Parks and Plaza Public Safety Amendment Act of 1995, D.C. Law 11-19, 42 DCR 1843 (April 21, 1995)

**116 INSTALLATION OF PERSONALIZED MARKERS IN THE
PUBLIC SPACE BY THE MAKE A DIFFERENCE
FOUNDATION**

- 116 1 The Make a Difference Foundation may install personalized markers made of granite or other material approved by the Director according to specifications approved by the Director, consistent with the Make a Difference Selection Committee Establishment Act of 1998, Establishment Act of 1998, effective April 30, 1998 (D C Law 12-98, D.C Code §§ 9-1215 01 (2001) (formerly codified at D C Code §§ 7-231 et seq (1999 Supp))
- 116 2 Prior to the installation of any personalized marker, the Make a Difference Foundation shall obtain the approval of
- (a) the Downtown Streetscape Committee, if a personalized marker is to be installed in the Downtown Streetscape Area, or
 - (b) the Public Space Committee, if a personalized marker is to be installed outside the Downtown Streetscape Area.
- 116.3 The Make a Difference Foundation shall submit the following documents to the Downtown Streetscape Committee or Public Space Committee, as appropriate, with each request for approval of the installation of a personalized marker
- (a) A drawing of the proposed personalized marker,
 - (b) A construction drawing of the site of the proposed marker;
 - (c) A drawing of the proposed location indicating all other personalized markers currently planned or already installed within 50 feet of the proposed location,
 - (d) Certification that the specifications of the personalized marker have been approved by the Director,
 - (e) Certification that the Make a Difference Foundation is currently registered as a foreign corporation in the District of Columbia, and
 - (f) Certification that the Make a Difference Foundation currently maintains liability insurance for personalized markers, as provided for in the Make Difference Selection Committee Establishment Act of 1998, as amended
- 116 4 Once affixed to the sidewalk, a personalized marker may not be removed or altered, except for maintenance and repair, without the written consent of the Director

SOURCE Final Rulemaking published at 49 DCR 4099 (May 3, 2002)

120 RAILROADS AND RAILROAD CROSSINGS

- 120 1 No unauthorized person shall loiter, walk, ride, drive, or otherwise trespass upon any of the following
- (a) Railroad tracks;
 - (b) The bridges or elevated or depressed structures carrying tracks,
 - (c) Locomotives or cars operated on tracks, or
 - (d) In tunnels or underpasses designed or used solely for the accommodation of tracks of any steam, diesel, or electric railroad company operating in the District of Columbia
- 120 2 It shall be unlawful for any person or persons to remove snow from the tracks of any railway in the District of Columbia in a manner that obstructs the free passageway of any street, avenue, or roadway
- 120 3 No person shall sprinkle salt or other decomposing substance upon any railway tracks or rails in the District of Columbia for the purpose of melting snow or ice on the tracks or rails, or for any purpose, unless a permit is granted by the Mayor
- 120 4 No person, firm, or corporation shall move, cause to be moved, or take any part in moving a railway locomotive, car, or train of cars on or over an intersection at grade of that railway with any street, alley, avenue, highway, footway, sidewalk, parking, or other public space in the District, unless the movement is protected by a visible signal, such as a sign, red flag, or similarly suitable device, displayed at the intersection in advance of each movement by a member of the crew of the locomotive, car, or train
- 120 5 If, in the opinion of the Mayor, the volume of pedestrian or vehicular traffic at any intersection at grade is sufficient to justify additional safeguards, the intersection shall, if ordered by the Mayor, be guarded also by a standard railway cross-arm warning sign, gate, electric bells, electric automatic flashing red signal lights, or other appliance, or combination of appliances, to be approved by the Mayor. The safeguarding appliances shall be constructed, operated, and maintained by and at the cost of the company operating the railway
- 120 6 No person, firm, or corporation shall move, cause to be moved, or take part in moving a railway locomotive, car, or train of cars on or upon a street or other public space between sunset and sunrise, unless a headlight or other equivalent reflecting lantern, or a hand lantern in the hands of an attendant, is displayed upon the most advanced approaching part of the locomotive, car, or train or cars to give due warning of its approach to persons near or crossing the tracks
- 120 7 No highway or railway crossing in the District of Columbia on which tracks of steam railroad are laid shall be obstructed by any train, locomotive, car, or crossing gates for a period longer than five (5) minutes, nor shall a train, locomotive, car, or cars be parked or stored on a street for an unreasonable time
- 120 8 The supervisor of tracks or yardmaster shall be held liable and subject to prosecution for obstructions by crossing gates when, by his or her order, they are kept down for a longer time than is permitted by the rules of this chapter
- 120 9 All railroad sidings, switches, and standing tracks within the District terminating at, abutting on, or adjacent to a street or other public space or private property, at whatever grade, shall at all times, without notice, when in use for the movement of cars, locomotives, or other railroad

carriages, be protected and kept protected by the construction and maintenance of bumping blocks or other protection approved by the Mayor

- 120 10 The person or persons, or corporation or corporations using the railroad sidings, switches, and standing tracks shall be responsible for the construction of the protection devices, and for maintaining them in sound, safe, and serviceable condition once they are approved by the Mayor

SOURCE Article 3, §6, Article 25, §§3 4, & 5 of the Police Regulations (May 1981)

121 TENTS, TRAILER CAMPS, AND OTHER TEMPORARY ABODES

- 121 1 No person or persons shall set up, maintain, or establish any camp or any temporary place of abode in any tent, wagon, van, automobile, truck, or house trailer, of any description, or in any combination, on public or private property, without the consent of the Mayor of the District of Columbia.
- 121 2 Nothing contained in this section shall prevent any owner or lawful occupant of private property provided with sufficient sewage and water facilities, in the opinion of the Director of Health, from permitting use of the his or her private property for setting up and maintaining a temporary place of abode for not more than a total thirty (30) days in any consecutive three (3) months
- 121 3 Not more than two (2) single, temporary places of abode, as defined in this section, shall be maintained at any one (1) location
- 121 4 Each tent, wagon, van, automobile, truck, house trailer, or other temporary place of above shall be situated or placed more than forty feet (40 ft) from any public space, and shall not disturb the peace and quiet of the neighborhood

SOURCE Article 17, §24 of the Police Regulations (May 1981).

122 PUBLIC TOILETS

- 122 1 No person shall blow, spread, or place any nasal or other bodily discharge, or spit, urinate, or defecate, on the floors, walls, partitions, furniture, fittings, or on any portion of any public convenience station, or in any place in a public convenience station, except directly into the particular fixture provided for that purpose
- 122 2 No person shall place any bottle, can, cloth, or rag, or metal, wood, or stone substance, in any of the plumbing fixtures in any public convenience station
- 122 3 No person shall stand or climb on any closet, closet seat, basin, partition, or other furniture or fitting, or loiter about, or push, crowd, or otherwise act in disorderly manner, or interfere with any attendant in the discharge of his or her duties, or whistle, dance, sing, skate, or swear, or use obscene, loud, and boisterous language within any public convenience station, or at or near the entrances of a public convenience station
- 122 4 No person shall cut, deface, mar, destroy, or break, or write on or scratch any wall, floor, ceiling, partition, fixture, or furniture, or use towels in any improper manner, or waste soap, toilet paper, or any of the facilities provided in any public convenience station

SOURCE Article 25, §§8 through 10 of the Police Regulations (May 1981)

199 **DEFINITIONS**

199 1 When used in this chapter, the following term shall have the meaning ascribed below

Person - any individual, corporation, firm, agency, association, organization, utility company, and any government agency or instrumentality

Personalized Marker - an engraved sidewalk treatment of granite or other suitable material approved by the Director that is inscribed with a profile likeness and other inscriptions in recognition of an individual selected by the Make a Difference Foundation pursuant to the Make A Difference Selection Committee Establishment Act of 1998, D C. Code §§ 9-1215.01 (2001) (formerly codified at D C Code §§ 7-231 et seq (1999 Supp))

Downtown Streetscape Area - the Downtown Urban Renewal Area, as defined in the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations, and the west side of North Capitol and both sides of all other boundary streets of the Downtown Urban Renewal Area

SOURCE Amended by Notice of Emergency and Proposed Rulemaking published at 47 DCR 9918(December 15, 2000) [EXPIRED], as amended by Final Rulemaking published at 48 DCR 3075 (April 6, 2001); as amended by Final Rulemaking published at 49 DCR 4099 (May 3, 2002), as amended by Final Rulemaking published at 49 DCR 6566 (July 12, 2002)

Exhibit 4

200 ADMINISTRATION AND ENFORCEMENT

- 200.1 Public space rental permits shall be issued under the provisions of the D.C. Public Space Rental Act (the "Act"), D.C. Code §7-1001 et seq. (1981), and the provisions of this chapter.
- 200.2 The Director of the District of Columbia Department of Public Works (the "Director") shall have the following responsibilities under this chapter:
- (a) When a property owner requests the use of public space, the Director shall investigate the public need for that space, consider the proposed use of the space, and recommend to the Public Space Committee (the "Committee") approval or disapproval of the use;
 - (b) The Director, when he or she deems it necessary, shall inspect each space for which a permit application is received to determine compliance with the Act, this title, and the terms of the permit;
 - (c) The Director shall refer violations of the Act, the provisions of this chapter, the permit, or conditions requiring remedial action to the Director of Consumer and Regulatory Affairs; and
 - (d) If, as a result of the private use of surface space, an imminently dangerous condition is discovered, and public safety requires, the Director shall take any necessary steps to immediately remedy the situation.
- 200.3 The Public Space Committee shall, on recommendation from the Director, determine the public need for public space, what private use may be made of it, and what may be erected or installed in that space.
- 200.4 The Committee shall approve or disapprove all applications for the use of public space referred to it by the Director, and no permit for use of public space shall be issued without Committee approval.
- 200.5 The Director of Finance and Revenue shall render all bills and collect all rents and other charges for public space occupancy and use, as provided by law and regulation.
- 200.6 The Corporation Counsel, or his or her designee, shall institute and prosecute any action determined by the Corporation Counsel to be necessary by reason of any violation of the Act and this chapter.
- 200.7 The **Director of Consumer and Regulatory Affairs** shall take all of the following actions with respect to public space rental:
- (a) Receive all applications for permits to occupy or use public space, and refer them to the proper departments for review and approval or disapproval;
 - (b) In the case of vaults, determine the structural adequacy of proposed construction, investigate all questions of structural defects in existing vaults, and inspect vaults when necessary to determine their physical condition;
 - (c) If a vault or related construction is found to be in an imminently dangerous condition, and public safety requires, take any necessary steps to immediately remedy the situation;
 - (d) Issue all approved public space permits through the Permit Branch; and

(e) Investigate violations of the Act, this chapter, or the terms of the permit, and take necessary action to remedy the situation.

- 200.8 Any personal property placed on public space by the permittee shall be readily movable, and maintained in a good clean condition; and shall not be allowed to deteriorate, or become unsightly or dangerous to the public.
- 200.9 Prior to the issuance of an occupancy permit, any property owner who wishes to sublet public space, including surface space and space below the surface, shall file with the Director a notarized copy of the rental agreement covering the space to be sublet.
- 200.10 Permits for the use of surface space shall be subject to suspension or revocation for failure of the permittee to make use of the surface space for a period of more than twelve (12) months; and for failure to comply with this chapter, the specifications of the permit, or the plan required by §202.
- 200.11 The provisions of this chapter relating to the extent to which surface space may be occupied by the operator of a business abutting the space shall supersede any other provisions of this title that may control the extent to which surface space may be occupied.

AUTHORITY: Unless otherwise noted, the authority for this chapter is An Act of April 23, 1892, 27 Stat. 21, ch. 53. § 3, D.C. Code 1-1024 (1992 Repl. Vol.); as amended by An Act of July 11, 1919, 41 Stat. 69, ch. 7, as amended, D.C. Code § 5-516 (1994 Repl. Vol.); by §§ 401 and 402 of Reorganization Plan No. 3 of 1967, effective August 11, 1967, D.C. Code Vol. 1 at 126 (1991 Repl. Vol.); by An Act approved October 17, 1968, 82 Stat. 1156, Pub. L. 90-596, D.C. Official Code 10-1101 et seq. (2001); and § 412 of the District of Columbia Self-Government and Governmental Reorganization Act, as amended, 87 Stat. 790, Pub.L. No. 93-198, D.C. Code § 1-227(a) (1992 Repl. Vol.); section 5(4)(A), 6(b) and (c) and 7 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.04(4)(A), 50-921.05(b) and (c), and 50-921.06), and sections 603 and 604 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198, D.C. Official Code §§ 10-1141.03 and 10-1141) and Mayor's Order 96-175 (December 9, 1996); D.C. Code §§ 10-1141.04; 50-921.02.

SOURCE: Article 43, §§2(a),(c); 3(l), (m) of the Police Regulations (May 1981); as amended by §4 of the District of Columbia Solid Waste Regulations Amendments Act of 1989, D.C. Law 8-31, 36 DCR 4750, 4753 (July 7, 1989).

EDITOR'S NOTE: The Building Code, the Fire Code, and the Electrical Code referred to in this title have been superseded by D.C. Law 6-216, Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987. The construction regulations existing prior to March 21, 1987, remain in effect for projects having reached specified stages of completion. D.C. Law 6-216 adopted the 1984 National BOCA Codes, and the 1985 D.C. Supplement to the National BOCA Codes. Effective November 27, 1992 (39 DCR 8665), the 1984 BOCA Codes, and the 1985 D.C. Supplement to the National BOCA Codes were superseded by the adoption of the 1990 BOCA Codes, and the 1992 D.C. Supplement to the BOCA Codes.

201 RENTAL OF SURFACE SPACE

- 201.1 The owners of commercial property abutting public space in areas zoned for the proposed use in the Zoning Regulations of the District may, subject to the provisions of this chapter, rent so much of the surface space on which their properties abut as the Committee determines is not needed for the use of the general public during specified times on specified days.
- 201.2 Space to be rented under this section shall not extend beyond the following limits:
- (a) Above a horizontal plane extending from the first floor ceiling of the adjoining building, or above twelve feet (12 ft.), whichever is the lesser;
 - (b) Beyond the curb line fronting the property as the line is established in the records of the Department of Public Works;
 - (c) Below the surface of the ground, whether paved or unpaved, within the area that is rented; and
 - (d) On either side beyond a line extending at ninety degrees (90°) to the property line from the intersection of the lot line of the permittee with the property line, as these lines are recorded in the office of the Surveyor of the District of Columbia; or, if the property line is on a curve, beyond a radial extending from the same point.
- 201.3 The owners of commercial property located in an area zoned R or SP, and occupied by a cafe or restaurant, may rent surface space for an outdoor cafe if the Board of Zoning Adjustment grants a special exception for the cafe, pursuant to the Zoning Regulations of the District of Columbia.
- 201.4 Each permittee shall pay rent for the surface space rented to him or her at the rate established by the Council, and set forth in the current schedule of rent. The current rent schedule shall be available from the Permit Branch.
- 201.5 The rent shall be payable annually in advance, unless the space is rented for a period less than a year. If a space is rented for less than a year, the rent shall be payable in advance for the entire rental period. Public space shall not be rented for less than one (1) month.
- 201.6 If the Director requires a permittee to relinquish part or all of the surface space rented by the permittee, the permittee may secure a refund commensurate with the space that is relinquished, and with the portion of the rental period remaining. The permittee shall apply for the refund in writing to the Director.
- 201.7 A refund shall be made to the nearest one-twelfth (1/12) of the annual rent.
- 201.8 A refund shall be made only after verification by the Director that all provisions of the Act and this chapter have been complied with.

SOURCE: Article 43, §§3(a)-(d) of the Police Regulations (May 1981); as amended by §2 of the Outdoor Sidewalk Cafe Act of 1977, D.C. Law 2-7 (April 22, 1977).

202 APPLICATION FOR SURFACE SPACE RENTAL

- 202.1 Application for the use of surface space shall be made to the D.C. Department of Consumer and Regulatory Affairs in duplicate, on the form prescribed for that purpose.
- 202.2 Each application form shall be accompanied by six (6) copies of a plat or drawing indicating, to scale, the amount of surface space the applicant is seeking permission to use.
- 202.3 Each application shall state with the following:
- (a) The nature of the proposed use;
 - (b) The type of equipment to be used; and
 - (c) The days of the week and hours of each day the applicant desires to use the surface space.
- 202.4 Each application for a permit for the occupancy and use of public space shall be signed by the owner of the abutting property.
- 202.5 Each application shall contain a statement by the applicant that he or she will, in consideration of being issued a permit for the use of surface space, agree to hold harmless the United States and the District, and the officers and employees of each of these governments, for any loss or damage arising out of the use of the space, or the discontinuance of any use.
- 202.6 Each applicant shall sign a statement that he or she understands and agrees to the following conditions:
- (a) That the applicant's use of surface space is to be temporary, on a day-to-day basis;
 - (b) That the applicant shall not acquire any right, title, or interest in the space;
 - (c) That the Director may, by written notice, require the permittee at any time to vacate all or part of the surface space he or she has been given permission to use;
 - (d) That, upon demand to vacate the space, the applicant will promptly remove any personal property he or she placed on the space, or reimburse the District for the cost of moving the property; and
 - (e) That the applicant shall have no recourse against either the United States, the District, or the officer or agents of either, for any loss or damage that occurs because of the applicant being required to vacate all or any part of the surface space that he or she had been granted permission to use.

SOURCE: Article 43, §§2(b), 3(e) of the Police Regulations (May 1981).

203 INVESTIGATION AND APPROVAL

- 203.1 Application for a permit to use surface space shall be subject to the approval of the Committee, on consideration of a recommendation by the Director.
- 203.2 The Director shall report whether the surface space being requested for use is needed for use by the general public on the days and at the times requested by the applicant.
- 203.3 The Director shall investigate and report as to the days a surface space is needed for public use, and as to those times during each day when the space may not be wholly or partly required for the use of the general public.
- 203.4 Subject to the investigation required by §203.3, the Director shall recommend to the Committee whether the Committee should approve the application for use, and specify any qualifications that should be attached to the approval.

SOURCE: Article 43, §3(f) of the Police Regulations (May 1981).

204 MAINTENANCE OF CLEAR PASSAGEWAY

- 204.1 Each applicant for a permit to use surface space shall demonstrate to the satisfaction of the Committee that the use to be made of the space will include provisions for the maintenance of a clear, unobstructed passageway not less than ten feet (10 ft.) in width at all points, entirely across the frontage of the property occupied by the applicant, parallel to the line of the street, and generally in the line of pedestrian traffic.
- 204.2 If the Committee finds that usually, or at certain periods during the day or evening, the flow of pedestrian traffic at a location is sufficiently light to permit a passageway narrower than ten feet (10 ft.), a passageway as narrow as six feet (6 ft.) may be approved by the Committee. Approval for the narrower passageway may be given either at all times when the use of surface space is permitted, or for certain specified periods during the time when the use is permitted.
- 204.3 The width of the passageway or passageways approved by the Committee shall be indicated on the permit issued for the use of the surface space, and the space itself shall be marked to define the width of the passageways.
- 204.4 The markings of passageways shall be by one (1) or more painted white lines, each not less than four inches (4 in.) wide; or by other markings as may be required, extending across the total surface space the permittee is authorized to use.
- 204.5 The markings of passageways shall be done by the permittee in accordance with the directions of the Director.

SOURCE: Article 43, §3(g) of the Police Regulations (May 1981).

205 SUBMISSION OF APPLICATIONS TO THE FINE ARTS COMMISSION

- 205.1 Each application for a permit to use surface space abutting real property subject to the provisions of the "Shipstead-Luce Act" (D.C. Code §§ 5-410 and 5-411 (1981)) or the "Old Georgetown Act" (D.C. Code §§ 5-1101 through 5-1107 (1981)) shall be submitted by the Director of Consumer and Regulatory Affairs to the Commission of Fine Arts for its advice as to whether the proposed use of the surface space is in conformity with the intent and purposes of the applicable act.
- 205.2 If the Commission fails to advise the Director of its determinations within thirty (30) days, the Director may assume that the proposed use is in conformity with the applicable act.
- 205.3 Each applicant for permission to use surface space in an area subject to the provisions of either of the acts set forth in § 205.1 shall submit with his or her application a full description, including one (1) or more sketches or renderings in color and perspective, of the use proposed to be made of the surface space, in order to permit the Commission to determine whether that use will be in conformity with the applicable act.

SOURCE: Article 43, § 3(h) of the Police Regulations (May 1981).

206 ACCESS TO PUBLIC SPACE BY PUBLIC UTILITIES

- 206.1 Each public utility company that, according to the records of the District, operates or maintains any equipment or service in the area beneath the surface space for the use of which application is made shall be given an opportunity by the Director to inform the Director concerning the company's objections, if any, to the proposed use to be made of the space.
- 206.2 If any utility company fails, within fifteen (15) days after request for its recommendation, to notify the Director of any objection it may have to the use, the Director may assume that the company has no objection to the proposed use.
- 206.3 The District government and the several public utility companies operating in the District shall be permitted to have immediate access to manholes located in public space.
- 206.4 No objects or structures shall be placed on ventilation gratings over transformer manholes.
- 206.5 The District government and the utility companies shall have the right, under permit, to have access to all public space for the purpose of repairing or reinforcing existing facilities and to build new facilities.
- 206.6 The District government, the utility companies, and their officers and employees, shall be held harmless for any loss or damage arising out of their use of all or part of a public space, or for the interruption or discontinuance of use resulting from the performance of work under, on, or above a space by the District government or by any of the utility companies.

SOURCE: Article 43, §§3(i), j(13) of the Police Regulations (May 1981).

207 GENERAL CONDITIONS OF USE OF SURFACE SPACE

- 207.1 Each permit to use surface space under the authority of this chapter shall be subject to the conditions set forth in this section.
- 207.2 Public space shall be rented only to the owner of the abutting private property. The owner may sublet that space to his tenant upon filing a copy of the rental agreement for said public space with the Director as set forth in § 201.
- 207.3 The space shall only be used for the activity or activities specified on the permit, in accordance with the requirements of these and any other applicable regulations.
- 207.4 The use of any space is temporary, and the user acquires no right, title, or interest in the space he or she is permitted to use.
- 207.5 The United States and the District, and the officers and employees of these governments, shall be held harmless for any loss or damage arising out of any use of public space, or the discontinuance of any use, whether the loss or damage is suffered by the permittee, the United States, the District, or by some third person.
- 207.6 The Director may require any space to be vacated upon demand, and its use discontinued. In either case, the permittee has no recourse against either the United States or the District for any loss or damage occasioned by any requirement to vacate or discontinue use of any public space.
- 207.7 If a permittee does not vacate or discontinue the use of the public space by the time specified by the Director, the Director may remove from the space any property left on it. Removal shall be at the risk and expense of the owner.
- 207.8 Any awning, umbrella, or other covering extending over or used on a surface space shall be flame-proofed; and the arrangement of any furniture or other property placed on a surface space shall be in accordance with a plan proposed by the applicant, recommended by the Director, and approved by the Committee.
- 207.9 The permittee shall remove promptly any litter deposited on or in the vicinity of the surface space used by him or her, that results from the activity or activities conducted by the permittee on the space or on any area adjoining the space.
- 207.10 The permittee shall, at all times, conduct all activities in an orderly fashion.
- 207.11 The permittee shall, under permit duly issued by the District, provide lighting facilities adequate to light the activity or activities conducted by the permittee on the surface space during the evening or night.
- 207.12 The space shall be used for business purposes only during the hours specified on the permit authorizing use, and neither before nor after such hours.
- 207.13 The permittee shall post the permit issued to him or her for the use of surface space in a conspicuous location on the front of the premises occupied by the permittee, either on the exterior of the premises, or in a location where it may be seen from the exterior of the premises. The permit shall be located and lighted so as to be readily legible to a person on the public space in front of the premises.

207 14 No food may be consumed on public space unless table service is provided by a waiter or waitress, or unless an attendant is assigned to the area for maintenance purposes during all times the area is occupied by patrons

SOURCE Article 43, §§ 3(j)(1)-(11), (14-15) of the Police Regulations (May 1981), as amended by § 6(b) of Enclosed Sidewalk Cafe Act of 1982, D C Law 4-148, 29 DCR 3361. 3367 (August 6, 1982)

208 ENTERTAINMENT AND MUSIC

- 208 1 No entertainment or music shall be provided or permitted for the enjoyment of the patrons of the establishment operated on public space by a permittee other than music as may be furnished by no more than three (3) musicians playing stringed instruments such as the violin, the viola, the cello, the double-base, and the guitar, and no more than one (1) accordion or concertina
- 208 2 Music allowed under § 208.1 shall not disturb the peace or quiet of the neighborhood, or the comfort or repose of any inhabitant of the neighborhood This music shall not exceed sixty (60) dB(A) or the applicable decibel level for the zone from which the music emanates when measured at the property line of the establishment from which the music originates
- 208 3 No music shall be played before or after the hours within which the music may be played as specified on the face of the permit issued for the use of the space, or later than 12 00 midnight
- 208 4 There shall be no amplification or production of music by any electronic or mechanical means, including any electronic or mechanical reproduction of music and its dissemination by means of loudspeakers, whether by coin-operated or non-coin operated phonographs or music boxes, by background music service, or by any radio or television set.

SOURCE Article 43, § 3(j)(12) of the Police Regulations (May 1981), as amended by § 2 of the District of Columbia Noise Control Act of 1977 Amendment Act of 1986, D C Law 6-180, 33 DCR 7660 (December 12, 1986)

209 VEHICLE PARKING AND SALES

- 209.1 If the surface space is to be used for the parking of vehicles, either at a sales lot, a parking lot, a garage, a gasoline filling station, or other business property, the provisions of this section shall apply in addition to the other requirements of this chapter
- 209.2 The vehicle parking area shall be paved to Department specifications
- 209 3 Limits of the surface space to be used shall be delineated in accordance with Department specifications and requirements
- 209 4 Vehicles shall not encroach beyond the marked limits in any manner, including the car or other overhang
- 209 5 When the operator of a parking facility does not wish to rent surface space adjoining his or her establishment, no vehicle or other object shall encroach beyond the property line in any manner, including car or other overhang, and provisions to prevent an encroachment shall be made as provided in § 606 of this title

SOURCE Article 43, § 3(k) of the Police Regulations (May 1981)

210 ENCLOSED SIDEWALK CAFES

- 210.1 All structural materials used in an enclosed sidewalk cafe shall be easily demountable and capable of being removed within twenty-four (24) hours after notice, without damage to the sidewalk or public space that it occupies.
- 210.2 An enclosed sidewalk cafe may utilize a base wall of opaque material up to a maximum height of thirty-six inches (36 in.) from the sidewalk level.
- 210.3 All enclosing walls, doors, and windows, except for structural members, extending above the base wall, must be of a transparent material.
- 210.4 To maximize transparency, both the horizontal and vertical structural members shall be no more than ten inches (10 in.) wide.
- 210.5 No plumbing fixtures shall be installed in an enclosed sidewalk cafe. Heating, air-conditioning, ventilation, and electrical lighting may be installed, when authorized, in accordance with the applicable District codes and regulations.
- 210.6 Except as provided in §210.7, a sidewalk cafe may be enclosed only during the period from October 15th through May 15th.
- 210.7 If no inspection is required under this section or the Second Amendment to the D.C. Building Code, approved Sept. 21, 1977 (D.C. Law 2-18; 12 DCMR), a sidewalk cafe may be enclosed on any day when the National Weather Service predicts at 8:00 a.m. at the National Airport weather station that, within the next twenty-four (24) hours, the temperature may go above ninety degrees Fahrenheit (90 °F.) or below sixty degrees Fahrenheit (60 °F.); or if the chance of rain is fifty percent (50%) or more; or in the event of rain.
- 210.8 No enclosed sidewalk cafe shall project more than twenty feet (20 ft.) from the building line, or occupy more than sixty percent (60%) of available surface space; Provided, that all enclosed cafes shall be subject to the provisions of §204.
- 210.9 In addition to a permit to occupy public space issued under this chapter, an owner shall obtain a separate building permit for an enclosed sidewalk cafe in accordance with §314.3 of the D.C. Building Code (12 DCMR).
- 210.10 The Committee may waive the requirements of this section, in accordance with the procedures for a contested case under the D.C. Administrative Procedure Act (D.C. Code §1-1509 (1981)), if both of the following criteria are met:
- (a) The strict application of this section would result in exceptional practical difficulty because of the shape, topography, or other condition of the particular property or would result in undue hardship; and
 - (b) Relief can be granted without substantial detriment to the public good or the general purpose of this section.
- 210.11 Nothing in this section shall be construed to affect the operation or design of an unenclosed sidewalk cafe.
- 210.12 Nothing in this section shall affect any landlord-tenant relationship as established in a lease or judicial order in effect on the effective date of the Enclosed Sidewalk Cafe Act of 1982 (D.C. Law 4-148).

210 13 The design of a sidewalk cafe shall be approved by the Director

210 14 Upon the recommendation of the Committee and within ninety(90) days of the effective date of the 1982 Act, the Director shall issue rules establishing standards for the design, traffic and pedestrian safety, and compatibility with the surrounding neighborhood for the rental of public space These rules shall supplement the requirements of this section

SOURCE Article 43, §§3(n), (o) of the Police Regulations (May 1981), as amended by § 6(c) of Enclosed Sidewalk Cafe Act of 1982, D C Law 4-148, 29 DCR 3361, 3367 (August 6, 1982)

215 VAULTS: GENERAL PROVISIONS

- 215 1 No excavation or structural work of any kind, including abandonment, shall be done on a vault without a permit, nor shall any vault remain in public space unless authorized by a valid permit issued to the owner
- 215 2 Vaults constructed on or after July 1, 1969, are subject to the provisions of the Act, and shall be subject to all applicable portions of all regulations of the District
- 215 3 When, in accordance with § 306 of the Act, the Director of Consumer and Regulatory Affairs serves a notice upon an owner informing him or her that the vault is unsafe, the owner shall immediately, upon obtaining the proper permit, make repairs or abandonment in accordance with the specifications of the Department of Consumer and Regulatory Affairs. Repairs or abandonment shall be completed within the time stated in the Director's notice
- 215 4 Vaults shall not be used for any purpose prohibited by the Building Code (12 DCMR). Vaults may be used for storage of readily movable personal property, as sales or office space, for the storage of fuel, or for the parking of motor vehicles. Other uses not specifically forbidden by law or regulation may be approved by the Director if the Director finds it is in the public interest to do so
- 215 5 Any person who violates any provision of §§ 215 through 219 of this chapter shall be punished by a fine not exceeding three hundred dollars (\$300), or by imprisonment for not more than ten (10) days for each and every day the violation continues

SOURCE Article 43, §§ 4(a), (c)(1), (f), (i), & (5) of the Police Regulations (May 1981)

216 VAULTS EXISTING BEFORE JULY 1, 1969

216 1 Under the conditions of the Act, all permits issued for vaults constructed prior to July 1, 1969, expire on that date, and the owner may elect to do one (1) of the following

- (a) Abandon the vault,
- (b) Retain and use the vault, or
- (c) Maintain only a portion of the vault, abandoning the remainder.

216 2 The issuance of a permit for the purposes of retaining and using a vault under § 215 2 shall be conditioned on the owner's having first executed and recorded an agreement with the D C Recorder of Deeds, on the form provided for this purpose obtainable from the Permit Branch. A certified copy of the recorded agreement shall be furnished to the Department prior to the issuance of a permit. Insurance, or other security, shall be secured and be in effect at the time a permit is issued.

SOURCE Article 43, § 4(b) of the Police Regulations (May 1981)

217 ABANDONMENT OF VAULTS

- 217 1 If a pre-Act vault is partially abandoned and partially retained under §215 2(c), application shall be made for a permit to abandon. The provisions of §215 3 shall apply to the portion maintained.
- 217 2 When an owner has notified the Mayor in writing of the abandonment of a vault, rent shall be charged until the Director has verified the abandonment.
- 217 3 Specifications for abandonment shall be secured from the Underground Locations Section, Department of Public Works. No rent shall be charged for any existing vault abandoned by December 31, 1969.
- 217 4 When an owner wishes to abandon a vault constructed after July 1, 1969, the provisions of this section regarding abandonment of vaults constructed before that date shall apply.
- 217 5 When abandonment is in connection with subway construction, the execution of an agreement between the owner and the Washington Metropolitan Area Transit Authority transferring full responsibility to the latter agency shall relieve the owner of all responsibility, including rent, Provided, that the owner notifies the Director in writing, and furnishes an executed copy of the agreement.

SOURCE Article 43, §§ 4(b)(1), (c)(2), & (e) of the Police Regulations (May 1981), as amended by § 4 of the District of Columbia Solid Waste Regulations Amendments Act of 1989, D C Law 8-31, 36 DCR 4750, 4753 (July 7, 1989)

218 ALTERATION, REPAIR, AND REPLACEMENT OF VAULTS

- 218 1 A vault may be altered, repaired, or replaced only under permit obtained and issued in accordance with applicable provisions of this chapter
- 218 2 Where a new building is to be erected on property adjoining an existing vault, and the vault space is to be used immediately or shortly for the construction of a new vault, the existing vault may be sealed by construction of a solid masonry wall separating it from the private property
- 218 3 In the case of a replacement vault under § 218.2, the vault agreement and insurance shall remain in effect, and full responsibility shall rest on the owner. No rent, however, shall be charged for the space until the new vault is constructed, subject to the provisions of §§ 218 4 and 218 5
- 218 4 If construction on the new building has not been started within six (6) months following the construction of the sealing wall, rent shall again be charged for the space occupied by the sealed vault at the previous rate until construction is started
- 218 5 If construction is suspended after starting, and remains suspended for six (6) consecutive months, rent shall be charged as provided in § 218 4 during the remainder of the period of suspended construction

SOURCE Article 43, § 4(d) of the Police Regulations (May 1981)

**219 INSTALLATION AND ALTERATION OF UTILITIES
 AND SURFACE CHANGES**

- 219 1 When the Director considers it in the public interest to construct or authorize construction of any utility in, through, under, over, or in place of any vault, the Director shall request the Director of Consumer and Regulatory Affairs to serve a notice on the owner stating the need for the vault space, what portion is required, and the date by which it must be available
- 219 2 Within the time specified in the notice required by § 219 1, the owner shall do any work that is necessary to clear the required space
- 219 3 The Director is authorized to accept an arrangement between the owner and the utility company under which the utility company shall do all or part of the required work on the vault in conjunction with the utility installation.
- 219 4 An arrangement as authorized by § 219 3 shall not relieve the owner of any responsibility under the vault permit and the recorded agreement
- 219 5 All abandonment or alteration effected by the utility company shall be under permit, and to Department specifications
- 219 6 When any change proposed to be made in the roadway, sidewalk, or other surface adjoining a vault will affect the vault, the owner shall be notified as provided in §219.1, and he or she shall make all necessary modifications to the vault within the specified time

SOURCE Article 43, § 4(h) of the Police Regulations (May 1981)

220 TAX SALES

- 220 1 Delinquent rent and charges shall be collected in the same manner as delinquent real estate taxes
- 220 2 If any tax remains unpaid after two (2) years from the date it is levied, the Director of Finance and Revenue shall send to the property owner a notice of intent to advertise the property for tax sale
- 220 3 The notice required by §220 2 shall state, as a minimum, the following information
- (a) The date of the tax sale,
 - (b) The square and lot number of the property to be sold,
 - (c) The amount of tax due, and
 - (d) The last date on which the tax may be paid before the property will be advertised for sale

SOURCE Article 43, §4(g) of the Police Regulations (May 1981)

225 PUBLIC SPACE PERMIT FEES

225.1 The following schedule of fees shall apply to public space permits

Description of Permit		Permit Fee
(a) Administrative:		
Application Fee (New or Renewal)(Public Utilities Exempt)		\$50.00
(b) Temporary Occupancy		
(1)	General Temporary Occupancy (fee per month unless otherwise noted) Unless noted in § 225.1(b)(2), all temporary occupancy fees will be fifty dollars (\$50 00) per month.	\$50.00
(2)	Specific Temporary Occupancy Notwithstanding the provisions of § 225 1(b)(1), the following specific temporary occupancy fees apply.	
(A)	Residential Moving Trucks (2 days maximum)	\$50 00
(B)	Man Hole Access (each occurrence)	\$85 00
(C)	Man Hole Access (Annual Permit)	\$2,585.00
(D)	Receptacles for construction debris (e g , Dumpsters™) placed in public space in areas zoned CR, C-1 through C-5, CM, M, SP-1 and SP-2, and W-1 through W-3.	Permit Fee Per Month
	Months 1, 2, and 3	\$75 00
	Months 4 and 5	\$100 00
	Month 6 or more	\$150 00
(E)	Receptacles for construction debris (e.g , Dumpsters™) placed in public space in areas zoned R-1 through R-5.	Permit Fee Per Month
	Months 1, 2, and 3	\$75.00
	Months 4 and 5	\$125 00
	Month 6 or more	\$200 00
(c) Public Inconvenience Fee		

In addition to those fees in paragraph (b) of this subsection, a public inconvenience fee for the temporary occupancy of public space in excess of a one-time thirty (30) calendar day grace period per permit shall be applied as follows:

(1) Within the Central Business District, as defined in 18 DCMR § 9901 Parking Lane (where no parking meters exist)	Fee/Sq-Ft/Day Fee established for prohibiting parking in 18 DCMR §§ 2407.20 and 2407.21 \$0.040
1 st Travel Lane (to include lanes dedicated for use by bicycles)(\$2,250 maximum fee per block per 30 days)	\$0.060
2 nd Travel Lane and Each Additional (\$2,250 maximum fee for each lane per block per 30 days)	\$0.020
Alley (\$2,250 maximum fee per block per 30 days)	\$0.030
Sidewalk (\$3,000 maximum fee per block per 30 days)	-\$0.030
Pedestrian Walkway Credit (for 100% of sidewalk area where the pedestrian pathway is maintained per DDOT Pedestrian Safety and Work Zone Standards: Covered and Open Walkway)	
(2) Outside the Central Business District, as defined in 18 DCMR § 9901.	Fee/Sq-Ft/Day
Parking Lane (where no parking meters exist)	Fee established for prohibiting parking in 18 DCMR §§ 2407.20 and 2407.21 \$0.030
1 st Travel Lane (to include lanes dedicated for use by bicycles)(\$2,250 maximum fee per block per 30 days)	\$0.045
2 nd Travel Lane and Each Add'l (\$2,250 maximum fee for each lane per block per 30 days)	\$0.015
Alley (\$2,250 maximum fee per block per 30 days)	\$0.020
Sidewalk (\$3,000 maximum fee per block per 30 days)	-\$0.020
Pedestrian Walkway Credit (for 100% of sidewalk area where the pedestrian pathway is maintained per DDOT Pedestrian Safety and Work Zone	

Standards. Covered and Open Walkway)

(d)	Fixture(s) and Paving (in Public Parking):	Permit Fee
	Fence	\$50 00
	Fence w/Brick Piers	\$75 00
	Retaining Wall	\$75 00
	Planter Box (each)	\$75 00
	Coping	\$75.00
	Steps	\$75.00
	Over-Height Fence or Wall	\$135.00
	Minor Repair of Fence, Wall or Paving	\$50.00
	Paving (up to 150 square feet)	\$75 00
(e)	Fixture(s) and Paving (other):	Permit Fee
	Pay Phone (each)	\$75 00
	Street Furniture	\$135.00
	Raised Planter Box(es) on Sidewalk	\$135.00
	Moveable Planter Box(es) on Sidewalk	\$135 00
	Bollards	\$135 00
	Sign(s)	\$135.00
	Canopy Sockets	\$75 00
	Paving (up to 150 square feet)	\$75.00
	Repair/Replace Existing Driveway	\$75 00
	Close Existing Driveway	\$75 00
	New Residential Driveway	\$75.00
	New Commercial Driveway	\$135.00
	New Circular Driveway	\$135 00
	Sidewalk Paving (up to 300 linear feet)	\$135 00
	Curb & Gutter (up to 300 linear feet)	\$135.00
	Alley Paving/Roadway Paving (up to 300 linear feet)	\$135.00
	Resurface Roadway (up to 300 linear feet)	\$75.00
	Subsurface Fuel Tank (each – new or replacement)	\$250.00
	Other Fixture(s) or paving in public space	\$135 00
(f)	Building Projections:	Permit Fee
	Porches & Steps (each)	\$75.00
	Areaway (each)	\$75.00
	Window Well (each)	\$75 00
	Bay Window (each)	\$75 00
	Projections Requiring Exception from Building Code (See 12 DCMR A § 3202.4) (each)	\$135 00
(g)	Grading:	Permit Fee

	Roadways, sidewalks and alleys	\$0 00
(h)	Trees and Landscaping:	Permit Fee
	Plant Public Space Tree(s)	\$0.00
	Remove Public Space Tree(s)	\$100.00
	Plant Hedge(s)	\$75 00
	Other Landscaping (Commercial)	\$75 00
	Prune Street Tree(s)	\$75.00
	Build New Tree Space(s)	\$75 00
	Install Tree Fence(s)	\$50 00
(i)	Minor Excavation:	Permit Fee
	(1) Non-House Service	
	Test Pits, Boring, and Cores (single)	\$50 00
	Test Pits, Boring, and Cores (Each additional)	\$20 00
	Monitor Wells (single)	\$135 00
	Monitor Wells (Each additional)	\$20 00
	Conduit Relocation (up to 10 linear feet)	\$50 00
	Other Minor Excavation (up to 100 square feet and not requiring sheeting and shoring)	\$85 00
	(2) House Service (each premise)	
	Water/Fire Connection/Abandonment/Repair – up to 2 inch pipe size	\$50.00
	Water Meter Pit and associated Pipe up to 2 inches	\$50 00
	Gas Connection/Abandonment/Repair	\$50 00
	Electric Connection/Abandonment/Repair	\$50 00
	Communication Connection/Abandonment/Repair	\$50 00
	Sanitary Sewer Connection/Abandonment/Repair – up to 4 inch pipe size	\$85 00
	Storm Sewer Connection/Abandonment/Repair – up to 4 inch pipe size	\$85.00
(j)	Major Excavation:	Permit Fee
	Regulator Stations, above and below ground, and associated appurtenances installation or removal (each)	\$135 00
	Washington Gas and Light – System	\$85 00

Monitoring/Telemetric Equipment installation or removal (each)	
Washington Gas and Light – Non-Emergency maintenance related excavations such as for cathodic protection activities, encapsulations, other O & M activities (each)	\$85.00
Gas Service Connection/Abandonment/Repair (each)	\$85 00
Electric Service Connection/Abandonment/Repair only	\$85 00
Electric Service Connection/Abandonment/Repair and associated Manhole and Conduit (each)	\$135 00
Transformer Vault and associated Manhole and Conduit (each)	\$250.00
Water/Fire Connection/Abandonment/Repair (each – over 2 inch pipe size)	\$85 00
Water Meter Manhole and associated piping(each)	\$135 00
Fire Hydrant Installation/Repair/Removal (each)	\$85.00
Sanitary/Storm Sewer Connection/Abandonment/Repair (each – over 4 inch pipe size)	\$135.00
Sanitary/Storm Sewer Manhole (each)	\$135 00
Communication Manhole (each)	\$135.00
Utility or Communication Excavation for Pipe, Conduit or Cable (each 200 linear feet or portion thereof)	\$135.00
Sheeting and Shoring (each 100 linear feet or portion thereof)	\$135.00
Abandonment or Removal of Subsurface Fuel Tank or Vault (each)	\$135 00

(k) Overhead Electrical/Communication:	Permit Fee
(1) Install/Remove/Replace Overhead Electrical/Communication Wire	
Up to 300 linear feet	\$50 00
Each additional 300 linear feet or portion thereof	\$20 00
(2) Install/Remove/Replace Utility/Communication Pole with or without Guy Wire	
First Pole	\$50 00
Each Additional Pole	\$20.00
(3) Install/Remove/Replace Guy Wire for Utility/Communication Pole	

	First Guy Wire	\$50 00
	Each Additional Guy Wire	\$20 00
(l)	Moving Overweight, Over-length, or Over-width equipment (excluding permits issued to the federal government):	Permit Fee
	Single Trip (each)	\$30.00
	Round Trip (each)	\$50.00
(m)	Miscellaneous:	Permit Fee
	All miscellaneous permits primarily benefitting the applicant	Per Month
		\$50 00
(n)	Inspection Fee:	Fee per Hour
	Additional fee for any needed inspection of paving, repairing or altering of public space	\$50.00/hr
(o)	Public Space Abutting Business (see § 201.1):	One-Time Permit Fee
	Use of public space by operators of abutting businesses	\$139.00
(p)	Steel Plates:	\$0 per plate for the first 5 days in public space,
	Public space covered by 1 or more steel plate(s) at any time between and including January 1 and March 31 and between and including November 1 and December 31	\$600 per plate for days 6 through 10 in public space,
		\$900 00 per plate for all subsequent 5-day periods.
	Public space covered by 1 or more steel plate(s) at all other times	\$0 per plate for the first 5 days in public space,
		\$300 per plate for days 6 through 10 in public space;
		\$450.00 per plate for all subsequent 5-day periods.
(q)	Bus stop:	Annual fee of two dollars and fifty cents (\$2 50)
	Use of public space for buses that park, as that term is defined in 18 DCMR § 9901, at a designated location in public space on a regular schedule to pick up and drop off passengers	multiplied by the hours per week permitted for occupancy further multiplied by fifty- two (52)

(r) Charging station.

In addition to all other applicable fees, a person using an electric charging station located in public space, pursuant to 18 DCMR § 2406 14, will be assessed a one dollar (\$1 00) per hour inconvenience fee for the use of public space to charge the vehicle.

225.2 Notwithstanding the provisions of § 225.1, ladders and scaffolding placed in residential areas located on unpaved parking shall not require a permit and shall be exempt from the temporary occupancy fee

225.3 A refund of public space fees shall be made as follows:

(a) If no public space occupancy occurred, or will occur, for the entire duration of the permit authorizing the temporary occupancy, and if the request for the refund is made, in writing, to the Director within one hundred eighty (180) days from the date the permit authorizing the occupancy was issued and the permit and receipt are returned to the public space permit office, all public space fees shall be refunded, except for the following.

- (1) A fifty dollar (\$50 00) administrative fee to process the refund;
- (2) The initial fifty dollar (\$50.00) application fee to process the permit, and
- (3) The cost of inspection to verify that no occupancy occurred, based on fifty dollars (\$50 00) per inspector hour

(b) Failure to provide a request for refund within the time and manner specified in § 225 3(a) will result in complete forfeiture of all public space fees associated with that permit

225 4 The penalty for a permit to abate notice of doing work without a permit shall be fifty percent (50%) of the fee.

225 5 Waiver of permit fees pertaining to all public space permits except those issued to the public utility companies No permit fee shall be charged for the following:

(a) Work done exclusively for the District government,

- (b) Changes in existing structures made at the request of the District Government, or
- (c) Work done exclusively for agencies of the United States Government

225 6 No permit fee shall be charged to a public utility, as that term is defined in Section 2 of the Underground Facilities Protection Act of 1980, effective March 4, 1981 (DC Law 3-129, DC Official Code § 34-2701), for the following.

- (a) Work done exclusively for the District to service District owned fixtures,
- (b) Work done exclusively for District buildings and connections to the buildings,
- (c) Changes in existing structures made at the request of, or on order from the Mayor of the District;
- (d) For mains, conduits, or other structures laid or repaired in advance of new paving purely to avoid cuts, therein and as a result of notification to the permittee from the District that paving is contemplated;
- (e) Work done under contract for the District,
- (f) Work done to repair damages caused by construction done by the District or by a contractor for the District; or
- (g) Work done exclusively for agencies of the United States Government.

225.7 The fees collected pursuant to this section are proceeds collected by the District for the rental of public space and shall be deposited in the Department of Transportation Unified Fund, as provided in paragraph 9c(c)(4) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137, D.C. Official Code § 50-921 11(c)(4))

225 8 Beginning on October 1, 2010, there shall be imposed a non-refundable technology fee on each public space permit. The technology fee shall be equal to ten percent (10%) of the total amount of the public space permit fee.

225 9 The Director may waive the public inconvenience fee set forth in § 225 1(c) for the temporary occupancy of.

- (a) Public space that is being occupied strictly for the purpose of restoring public space following an excavation or construction project, and only for the time needed to restore public space;
- (b) A public alley that is totally contained within a work zone associated with a land development or redevelopment project; provided, that the temporary closing will not prohibit the only vehicular or pedestrian access to
 - (1) The side or rear of a private property abutting the work zone, or
 - (2) Another public alley that provides the only vehicular or pedestrian access to the side or rear of abutting private property, or
- (c) A public street right-of-way that is totally contained within a work zone associated with a land development or redevelopment project, if
 - (1) The street classification, as shown in District records, is a local street or no street classification is shown, and
 - (2) The temporary closing will not prohibit vehicular or pedestrian access to any private property.

225.10 No public inconvenience fee set forth in § 225 1(c) shall be charged for the renewal of an existing public space permit for the temporary occupancy of public space pertaining to construction or excavation staging, if the original public space permit for temporary occupancy was applied for prior to the implementation date set forth in § 225 11.

225 11 The implementation date of the public inconvenience fee set forth in § 225 1(c) shall be as follows:

- (a) For construction staging or excavation on public space associated with construction activities on private property, the public inconvenience fee shall begin to be assessed on the date of publication of the final rulemaking notice in the D.C. Register, except where the associated construction is a new building construction or building reconstruction
- (b) For construction staging or excavation on public space associated with new building construction or building reconstruction activities:

- (1) The inconvenience fee will begin to be assessed on the date of publication of the final rulemaking notice in the D.C Register for projects having one hundred (100) linear feet of street right-of-way frontage or less;
 - (2) The inconvenience fee shall begin to be assessed on October 1, 2011, for projects having one hundred one (101) to three hundred (300) linear feet of street right-of-way frontage;
 - (3) The inconvenience fee shall begin to be assessed on April 1, 2012, for projects having three hundred one (301) to seven hundred (700) linear feet of street right-of-way frontage, and
 - (4) The inconvenience fee shall begin to be assessed on October 1, 2012, for projects having seven hundred one (701) or more linear feet of street right-of-way frontage.
- (c) For construction staging or excavation on public space performed by a utility company or other party with infrastructure within the street right-of-way, the public inconvenience fee shall be phased in as follows:
- (1) The inconvenience fee will begin to be assessed on the date of publication of the final rulemaking notice in the D C Register for utility work for service projects done for private parties in connection with construction or other improvements on private property, and
 - (2) The inconvenience fee will begin to be assessed on October 1, 2012, for utility work that is done as a planned system improvement project to upgrade or install new utility main lines
- (d) Notwithstanding § 225 1(a) and (b), the inconvenience fee shall begin to be assessed on the date of publication of the final rulemaking notice in the D C. Register for projects that will cause eighty percent (80%) or more of the street right-of-way width to be closed, except as set forth in § 225 9(c).

Except for the application fee, permit fees for the occupancy or use of public space, public rights-of-way, or public structures may be waived or reduced for any project that.

- (1) Is conducted by a Business Improvement District of Community Improvement District established pursuant to the Business Improvement Districts Act of 1996, effective May 19, 1996 (D C Law 11-134, D C. Official Code § 2-1215.01 *et seq.*);
- (2) In the Mayor's determination, serves a public benefit,
- (3) Does not impose costs on the District government, and
- (4) Does not involve commercial sponsorship

SOURCE Final Rulemaking published at 27 DCR 3326, 3330 (August 1, 1980), as amended by Final Rulemaking published at 35 DCR 6744 (September 9, 1988), Final Rulemaking published at 54 DCR 2832 (March 30, 2007), Final Rulemaking published at 56 DCR 1725 (February 20, 2009), and Final Rulemaking published at 56 DCR 1813 (February 27, 2009), as amended by Fiscal Year 2011 Budget Support Act of 2010, effective September 24, 2010 (D C Law 18-223), published at 57 DCR 6242, 6364-6366 (July 23, 2010), as amended by Notice of Final Rulemaking published at 58 DCR 1118, 1119 (February 4, 2011); as amended by Notice of Final Rulemaking published at 58 DCR 5338, 5340 (June 24, 2011), as amended by section 6011 of the Fiscal Year 2012 Budget Support Act of 2011, effective September 14, 2011 (D C Law 19-21), published at 58 DCR 6226, 6293 (July 29, 2011), as amended by the Public Space Permit Fee Waiver Amendment Act of 2011, effective December 2, 2011 (D C Law 19-48), published at 58 DCR 8943 (October 21, 2011)

226 PUBLIC SPACE PERMITS

- 226 1 A permit is required for work within, or occupancy of, public space.
- 226 2 A separate public space permit shall be required for each type of temporary occupancy listed in paragraphs (d) through (k) of § 225 1. In addition, an applicant shall pay the general temporary occupancy fee pursuant to § 225.1(b) for each affected area. Each separate public space permit must be in effect during the specific time period needed to perform the work associated with the permit
- 226.3 Notwithstanding the provisions of § 226.2, the Director may waive the requirement for a separate public space permit for temporary occupancy during
- (a) The installation or repair of fixtures and paving located on public parking pursuant to § 225.1(d);
 - (b) The installation of fixtures pursuant to § 225 1(e); or
 - (c) The installation of trees or landscaping pursuant to § 225 1(h)
- 226 4 (a) A permit issued pursuant to paragraphs (d) through (k) of § 225 1 shall become invalid if:
- (1) The authorized work is not begun within one (1) year after the issue date shown on the permit; or
 - (2) The authorized work is suspended or abandoned for a period of one (1) year after the date work is begun
- (b) If an application is filed to renew a permit prior to the permit becoming invalid, the permit fee for the renewal shall be fifty dollars (\$50 00).

Source Notice of Final Rulemaking published at 58 DCR 1118, 1131 (February 4, 2011)

299 **DEFINITIONS**

299 1 In addition to the terms and phrases defined in the Act (D C Code §7-1001 (1981)), when used in this chapter, the following words and phrases shall have the meanings ascribed, except in those instances where the context clearly indicates a different meaning:

Committee - the Public Space Committee of the District of Columbia as constituted by Commissioner's Order No. 69-502, September 3, 1969.

Department - the D C Department of Public Works (D.C. Law 8-31).

Director - the Director of the Department of Public Works, or the Director's agent, representative, or designee.

Enclosed sidewalk cafe - any authorized enclosure of public space as a temporary structure adjacent to a restaurant that consists of no more than one (1) story constructed primarily of light, incombustible, or fire-resistant materials, that does not restrict egress from the properties abutting the restaurant adjacent to the cafe, and that can be removed within a twenty-four (24) hour period.

Unenclosed sidewalk cafe - any authorized use of public space adjacent to a restaurant that contains tables, chairs, railings, or planters, that is open to the sky and at the sides, but may include awnings or umbrellas, and that can be removed within a twenty-four (24) hour period

Street right-of-way frontage – the section of the public space abutting the affected private property

Surface space - all the space between the building line and the curb, regardless of whether the space is paved or unpaved.

SOURCE Article 43, §§2(b), 3(e) the Police Regulations (May 1981), as amended by §4 of the District of Columbia Solid Waste Regulations Amendments Act of 1989, D C Law 8-31, 36 DCR 4750, 4753 (July 7, 1989), as amended by Notice of Final Rulemaking published at 58 DCR 1118, 1132 (February 4, 2011)

Exhibit 5

300 APPLICABILITY

- 300.1 This chapter shall apply to all sidewalk cafes and shall supplement chapter 2 of this title and the provisions of D.C. Law 4-148, "The Enclosed Sidewalk Cafe Act of 1982," as amended (also referred to in this chapter as "the Act").
- 300.2 A person granted a sidewalk cafe permit before September 16, 1982, shall, by March 16, 1984, satisfy the requirements of the Act, §210 of chapter 2 of this title, and §§102.3, 103.2, 200.2, 200.3, 202.7, 206.2, 206.3, 206.4, 206.12, 207.1, 207.2, and 207.3 of this chapter.
- 300.3 A person granted a Sidewalk Cafe Permit after September 15, 1982, and before August 26, 1983, shall, on or before September 25, 1983, satisfy the requirements of the Act, §210 of chapter 2 of this title, and the subsections of this chapter listed in §300.2.
- 300.4 On or before November 26, 1984, a person granted a Sidewalk Cafe Permit prior to August 26, 1983, shall satisfy the requirements of this chapter that are not listed in §300.2.
- 300.5 No person shall be issued a Sidewalk Cafe Permit after August 26, 1983, unless the proposed sidewalk cafe meets the requirements of this chapter, §210 of chapter 2 of this title, and the Act.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Reorganization Plan No.2 of 1975, 21 DCR 3198; 22 DCR 961, effective July 25, 1975, and §6(c) of the Enclosed Sidewalk Cafe Act of 1982, D.C. Law 4-148, D.C. Code §7-1001 et seq (1995 Repl Vol.).

SOURCE: Final Rulemaking published at 30 DCR 4346 (August 26, 1983).

EDITOR'S NOTE: The Building Code, the Fire Code, and the Electrical Code referred to in this title have been superseded by D.C. Law 6-216, Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987. The construction regulations existing prior to March 21, 1987, remain in effect for projects having reached specified stages of completion. D.C. Law 6-216 adopted the 1984 National BOCA Codes, and the 1985 D.C. Supplement to the National BOCA Codes. Effective November 27, 1992 (39 DCR 8665), the 1984 BOCA Codes, and the 1985 D.C. Supplement to the National BOCA, Codes were superseded by the adoption of the 1990 BOCA Codes, and the 1992 D.C. Supplement to the BOCA Codes.

301 GENERAL REQUIREMENTS

- 301.1 No person shall construct or operate a sidewalk cafe except when authorized by the Public Space Committee.
- 301.2 No person shall operate a sidewalk cafe until issued a Sidewalk Cafe Permit and a Certificate of Use, except as otherwise provided in this chapter.
- 301.3 No applicant shall be issued a Sidewalk Cafe Permit unless the adjacent property is zoned for restaurant or grocery store use or a variance to operate a restaurant or grocery store has been granted to the adjacent property.
- 301.4 No applicant shall be issued a Sidewalk Cafe Permit unless the applicant saves harmless and indemnifies the District, and its officers, agents, and employees from all suits, claims, charges, and judgments to which the District, its officers, agents, and employees may be subject on account of the issuance of a Sidewalk Cafe Permit, the operation of the sidewalk cafe, or the injury to any person or damage to any property, including the property of the District and the property of the applicant, where the applicant's or the District's property may be damaged or destroyed by the Fire Department or any other agency of the District pursuant to a public emergency or fire.
- 301.5 No person permitted to operate a sidewalk cafe adjacent to a grocery store shall be permitted to obtain an alcoholic beverage license for that sidewalk cafe.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4347 (August 26, 1983); as amended by D.C.ACT 17-665 published at 56 DCR 969 (January 30, 2009).

302 AUTHORITY TO ISSUE REQUIRED PERMITS

302.1 The Director of the Department of Regulatory and Consumer Affairs is authorized to issue a Sidewalk Cafe Permit and a Certificate of Use pursuant to the requirements of this chapter.

302.2 A Sidewalk Cafe Permit shall be issued when the following conditions are satisfied:

- (a) An application to occupy public space has been received by the Director of Regulatory and Consumer Affairs;**
- (b) The application has been reviewed and approved pursuant to this chapter;**
- (c) All applicable fees have been paid; and**
- (d) All insurance requirements have been approved and fulfilled.**

302.3 A Certificate of Use for a sidewalk cafe shall be issued when the following conditions are satisfied:

- (a) A Sidewalk Cafe Permit has been issued;**
- (b) Where applicable, a Building Permit has been issued;**
- (c) The sidewalk cafe has been inspected and approved pursuant to §306 of this chapter; and**
- (d) All applicable fees have been paid.**

SOURCE: Final Rulemaking published at 30 DCR 4346, 4347 (August 26, 1983).

303 APPLICATION PROCEDURES FOR A SIDEWALK CAFE PERMIT

- 303.1 In the case of an unenclosed sidewalk cafe, the applicant shall file for a Sidewalk Cafe Permit.
- 303.2 Pursuant to the provisions of the Act, each applicant for a permit for an enclosed sidewalk cafe shall file for a Sidewalk Cafe Permit and shall file for a Building Permit.
- 303.3 Each application for a sidewalk cafe shall be signed and approved by the owner of the property abutting the public space to be occupied.
- 303.4 The application shall be submitted to the Director of Consumer and Regulatory Affairs on the form prescribed for that purpose.
- 303.5 Upon receipt of a completed application by the Director of Consumer and Regulatory Affairs, the application shall be submitted for review to the appropriate District agencies in accordance with §304.
- 303.6 The applicant shall give appropriate notice of the application by posting on the proposed sidewalk cafe location a notice that an application for a Sidewalk Cafe Permit has been filed with the Director of Consumer and Regulatory Affairs. The notice shall be posted in the manner set forth in this section.
- 303.7 Notices shall be posted at each street frontage of the property involved and on the front of the building located on the property. All notices shall be in plain view of the public.
- 303.8 Notices shall be on paper having a minimum size of eight and one-half inches by eleven inches (8 1/2 in. x 11 in.)
- 303.9 Each notice shall be approved by the Director of Consumer and Regulatory Affairs.
- 303.10 Each notice shall include the following information:
- (a) The date of the application;
 - (b) The nature of the application;
 - (c) The name of the applicant;
 - (d) The Advisory Neighborhood Commission within which the property is located;
 - (e) The property involved; and
 - (f) The name and address of the person designated by the Director of Consumer and Regulatory Affairs to receive written comments.
- 303.11 Within five (5) days after the date the application for a Sidewalk Cafe Permit has been filed, each applicant shall file with the Director of Consumer and Regulatory Affairs a sworn affidavit demonstrating compliance with the notice provisions of this section.
- 303.12 Each applicant shall make a reasonable effort to maintain the posted notice by checking the signs at least every five (5) days and by posting new notices as necessary.
- 303.13 Each application shall include the following:

- (a) The location and address of the proposed sidewalk cafe and a description of the boundaries of the surface space proposed to be occupied;
- (b) A statement of the days and times of the week that the sidewalk cafe will operate, including Saturdays, Sundays, and holidays;
- (c) A statement of the anticipated periods of use during the year;
- (d) Fifteen (15) copies of the sidewalk cafe site plan, front and side elevations, appropriate longitudinal and latitudinal sections, and a structural diagram showing the items listed in §303.14;
- (e) In the case of an enclosed sidewalk cafe, four (4) additional copies of the items required in paragraph (d) of this subsection shall be submitted and the items shall be signed by a structural engineer certified in the District;
- (f) Three (3) eight inch by ten inch (8 in. x 10 in.) glossy photographs of the surface space showing the following:
 - (1) Frontal view;
 - (2) Sharp angle right side view; and
 - (3) Sharp angle left side view;
- (g) A copy of the required liability insurance as specified by the Director of Consumer and Regulatory Affairs;
- (h) A copy of the current Certificate of Occupancy issued by the Director of Consumer and Regulatory Affairs for the existing, abutting restaurant (if a current Certificate of Occupancy is in existence); and
- (i) A copy of a rental agreement if the surface space is to be used by a person other than the owner of the abutting property.

303.14 The structural diagram required under §303.13(d) shall show the following:

- (a) The width, length, and location of the sidewalk cafe areas in relation to the surface space;
- (b) The location of all tables, chairs, railings, planters, and floor coverings;
- (c) The seating capacity of the sidewalk cafe and the location of exit ways, doors, windows, and aisles;
- (d) The separation between the pedestrian space and the sidewalk cafe space;
- (e) The total width and length of the sidewalk adjacent to the sidewalk cafe and the location of any public improvements within or adjacent to the sidewalk, including, but not limited to, utility poles, fire hydrants, signs, posts, parking meters, bus stops, bus shelters, metrorail station entrances, trees and tree grates, and utility vaults;
- (f) The proposed improvements to the public space, including, but not limited to, mechanical ventilation, electrical installation, new sidewalk, walls, flooring, lighting, landscapings, plantings, railings, or other forms of weather protection. When

applicable, this information shall be accompanied by the manufacturer's detailed standards and location schedule;

- (g) The location of the sidewalk cafe in relation to the property line, the street curb(s), and to any other sidewalk cafe or awning located on the block face;
- (h) The location, height, and dimensions of any canopies, awnings or roofs, if any, and whether the canopies or awnings will be in fixed positions or capable of retraction, folding, or otherwise being moved;
- (i) Any object to be affixed or attached to a wall or ceiling of the sidewalk cafe;
- (j) The height and dimensions of any platforms, floors, walls, and dividers;
- (k) All sidewalk cafe construction and structural parts, including the structural adequacy of each,
- (l) The location of any fire escapes, drop ladders, and stairs;
- (m) The grade of the adjacent sidewalk if the topography deviates from the District standard sidewalk grade;
- (n) The location of any fire protection systems, equipment, or appliances; and
- (o) The location of any public utility cut-offs.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4348 (August 26, 1983).

304 REVIEW OF SIDEWALK CAFE PERMIT APPLICATION

- 304.1 Prior to the Public Space Committee review of the application, the application shall be reviewed for compliance with all applicable laws, regulations, rules, and Mayor's orders by the agencies and persons listed in this section.
- 304.2 If the proposed sidewalk cafe is located within the "Shipstead Luce" or "Old Georgetown" areas, the applicant shall comply with the conditions of D.C. Code §§5-410 and 5-1101 et seq. (1981), and §219 of chapter 2 of this title.
- 304.3 If the proposed sidewalk cafe is located within a "Historic District," or is attached to a "Historic Landmark" the application shall be referred to the Historic Preservation Review Board in accordance with D.C. Law 2-144, the "Historic Landmark and Historic District Protection Act of 1978."
- 304.4 The Director of Consumer and Regulatory Affairs shall forward copies of the application and the plan to the following agencies for the appropriate review:
- (a) The Fire Chief, who shall determine whether the proposed sidewalk cafe provides a reasonable degree of safety for life and property from the hazards of fire and explosions in accordance with the D C. Fire Code and §313;
 - (b) The Police Chief, who shall determine whether the proposed sidewalk cafe will have an effect on the public safety and the policing procedures in the area;
 - (c) The Director, who shall determine whether the proposed sidewalk cafe may create an adverse effect on the pedestrian or vehicular traffic in the area, whether the proposed sidewalk cafe is in compliance with chapter 2 of this title, and whether the proposed sidewalk cafe is in compliance with the provisions of this chapter. The Director shall also approve the design of the proposed sidewalk cafe; and
 - (d) The Director of the Department of Consumer and Regulatory Affairs, who shall determine whether the proposed sidewalk cafe will adversely affect the public health and safety, and whether the proposed sidewalk cafe is in compliance with §314
- 304.5 The Director of Consumer and Regulatory Affairs shall review and preliminarily approve the necessary building permit and shall determine whether the structural adequacy and safety of the proposed construction, and the framing and materials of the proposed sidewalk cafe are in accordance with the provisions of this chapter and the applicable provisions of the D.C. Building Code. The Director of Consumer and Regulatory Affairs shall also verify the ownership of the adjacent property and whether the property is zoned for or has been granted a variance for the proposed use.
- 304.6 The Director shall forward one (1) copy of the plan to the following agencies and persons for their review and comments:
- (a) The affected Advisory Neighborhood Commission;
 - (b) The public utility companies that operate or maintain equipment or service in the area beneath the proposed sidewalk cafe;
 - (c) The owner or occupants of the adjacent property; and
 - (d) The Office of Planning, which shall determine whether the proposed sidewalk cafe is in compliance with District planning and urban design objectives.

- 304.7 The persons, groups, and agencies listed in §304.6 shall forward their comments to the Director within thirty (30) days of receipt of the plan and application. Failure to provide comments within the thirty-day (30) period shall result in the Director assuming that the non-responding agency or the non-responding person has no objections to the proposed sidewalk cafe.
- 304.8 Except for the Director, the agencies listed in §304.4 shall forward their comments to the Director of Consumer and Regulatory Affairs within thirty (30) days of receipt of the plan and application. Failure to provide comments within the thirty-day (30) period shall result in the Director of Consumer and Regulatory Affairs assuming that the non-responding agency has no objections to the proposed sidewalk cafe. The Director of Consumer and Regulatory Affairs shall complete his or her review within the thirty-day (30) period.
- 304.9 The Director shall forward his or her comments, including a recommendation and the comments received pursuant to §304.6, to the Director of Consumer and Regulatory Affairs within forty-five (45) days of receipt of the plan and application.
- 304.10 If a District agency or a utility company has objections or conditions that have not been resolved by the applicant prior to the end of the forty-five day (45) review period, the application and the plan shall be returned to the applicant for resolution of the objections or conditions.
- 304.11 When applicable, the applicant shall forward a revised plan and application to the Director of Consumer and Regulatory Affairs pursuant to §303.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4351 (August 26, 1983).

305 PUBLIC SPACE COMMITTEE REVIEW OF SIDEWALK CAFE PERMIT

- 305.1 Within five (5) days of the satisfaction of the requirements of §304, the Director of Consumer and Regulatory Affairs shall forward the application, the plan, and all received comments to the Chairperson of the Public Space Committee.
- 305.2 The Chairperson shall prepare a recommendation on the application and the plan for the Public Space Committee's review and consideration.
- 305.3 The Chairperson shall place the application on the agenda of the Public Space Committee and shall notify the applicant of the time and place of the meeting.
- 305.4 The Chairperson shall inform the Advisory Neighborhood Commission or the adjacent property owner or occupant at least twenty-four (24) hours prior to the Public Space Committee meeting where the application is to be considered; Provided, that the Advisory Neighborhood Commission or the adjacent property owner has previously objected to the application pursuant to §304.7.
- 305.5 The Public Space Committee shall determine the following:
- (a) Whether the proposed sidewalk cafe adversely affects the public's need for the use of the public space where the sidewalk cafe is proposed to be located;
 - (b) Whether the proposed sidewalk cafe will provide an economic benefit to the District;
 - (c) Whether the proposed sidewalk cafe will promote the public use and enjoyment of public space;
 - (d) Whether the design and location of the proposed sidewalk cafe is compatible with the other structures and uses in the surrounding area and conforms to the planning objectives for the area; and
 - (e) Whether the proposed sidewalk cafe complies with District laws, rules, and regulations.
- 305.6 The decision of the Public Space Committee shall be submitted to the Director of Consumer and Regulatory Affairs within seven (7) days from the date of the meeting when the application was considered.
- 305.7 If the application is denied, the Director of Consumer and Regulatory Affairs shall return the application and plan to the applicant.
- 305.8 If the application is approved, and when the fees listed in §305.9 have been paid, the Director of Consumer and Regulatory Affairs shall issue the following:
- (a) For an application for an unenclosed sidewalk cafe, a Sidewalk Cafe Permit; or
 - (b) For an application for an enclosed sidewalk cafe, a Sidewalk Cafe Permit and a Building Permit.
- 305.9 The appropriate fees, pursuant to §305.8, shall be paid by check or money order, payable to the "D.C. Treasurer."

SOURCE. Final Rulemaking published at 30 DCR 4346, 4352 (August 26, 1983).

306 CERTIFICATE OF USE

- 306.1 Except as provided in §306.2, within six (6) months of the issuance of a Sidewalk Cafe Permit, the applicant shall apply to the Director of Consumer and Regulatory Affairs for a Certificate of Use.
- 306.2 A person granted a sidewalk cafe permit prior to the effective date of these rules shall apply, within fifteen (15) months of the effective date of these rules, to the Director of Consumer and Regulatory Affairs for a Certificate of Use.
- 306.3 An applicant may request that the Director of Consumer and Regulatory Affairs and the Director approve a delay in the application for a Certificate of Use. The request shall be in writing and shall provide sufficient reasons for the delay.
- 306.4 Upon the recommendation of the Director, the Director of Consumer and Regulatory Affairs may approve any justifiable delay in the issuance of a Certificate of Use. This delay shall not exceed three (3) months.
- 306.5 The Director of Consumer and Regulatory Affairs shall issue a Certificate of Use when the following conditions have been satisfied:
- (a) The sidewalk cafe has been inspected and the issuance of a Certificate of Use has been approved by the Director and the Director of Consumer and Regulatory Affairs;
 - (b) The sidewalk cafe complies with the requirements of this chapter, with the terms and conditions of the Sidewalk Cafe Permit and, where applicable, the Building Permit;
 - (c) The sidewalk cafe has been inspected by the Fire Chief to ensure that it complies with §313, §§316.10 and 316.11 and with any variance or waiver granted pursuant to §318; and
 - (d) All applicable fees, including, but not limited to, all present and past sidewalk cafe rental fees have been paid.
- 306.6 If the sidewalk cafe does not comply with the requirements of §306.5, the request for a Certificate of Use shall be denied.
- 306.7 Where applicable, the applicant shall be informed by the Director of Consumer and Regulatory Affairs of the reasons why the Certificate of Use has been denied.
- 306.8 The applicant shall have sixty (60) days to correct any deficiencies and to reapply for a Certificate of Use pursuant to § 306.1.
- 306.9 A Certificate of Use shall be valid for twelve (12) months and shall be renewed annually on the date specified on the certificate.
- 306.10 An applicant shall apply for a renewal of the Certificate of Use in accordance with §306.5.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4354 (August 26, 1983).

307 EXPIRATION OF SIDEWALK CAFE PERMITS

- 307.1 A Sidewalk Cafe Permit shall automatically expire if the construction of the proposed cafe is not commenced within ninety (90) days from the date of the issuance of the Sidewalk Cafe Permit.
- 307.2 An applicant may request that the Director of Consumer and Regulatory Affairs and the Director approve a delay in the construction of the sidewalk cafe. The request shall be in writing and shall provide sufficient reasons for the delay.
- 307.3 Upon recommendation of the Director, the Director of Consumer and Regulatory Affairs may approve any justifiable delay in the progress of the construction of a sidewalk cafe. The delay shall not exceed three (3) months.
- 307.4 If the construction is commenced within the prescribed period, but is not completed within six (6) months from the date the Sidewalk Cafe Permit was issued, the Director may recommend to the Director of Consumer and Regulatory Affairs that the Building Permit be revoked due to a lack of construction activities.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4355 (August 26, 1983).

308 REVOCATION OF SIDEWALK CAFE PERMITS

- 308.1 A Sidewalk Cafe Permit and a Certificate of Use may and can be revoked at any time by the Director of Consumer and Regulatory Affairs upon the request of the Public Space Committee or the Director, for any one (1) of the following reasons:
- (a) There is a public need for the use of the surface space;
 - (b) The applicant has failed to comply with the provisions of this subtitle;
 - (c) The applicant has failed to make use of the surface space for a period of more than twelve (12) consecutive months after the Sidewalk Cafe Permit has been issued;
 - (d) The applicant has failed to comply with the terms or conditions of the Sidewalk Cafe Permit or the Certificate of Use,
 - (e) The applicant has failed to comply with the provisions of this chapter or the provisions of the Act;
 - (f) The applicant has failed to complete the construction of the sidewalk cafe within six (6) months; or
 - (g) The applicant has failed to pay any and all applicable fees, including but not limited to, all present and past sidewalk cafe rental fees.
- 308.2 The applicant may, within five (5) days of receipt of the notice of revocation, request a hearing. The hearing shall be conducted pursuant to the D.C. Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208, D.C. Code §1-1501 et seq. (1981)), as amended.
- 308.3 The applicant shall remove any property placed upon the public space within twenty four (24) hours following the expiration of the five-day (5) period specified in §308.2, or on the date determined by the hearing examiner pursuant to the procedure set forth in §308.2.
- 308.4 A person shall not operate a sidewalk cafe subsequent to the revocation of a Sidewalk Cafe Permit, unless a new Sidewalk Cafe Permit and a new Certificate of Use has been issued pursuant to this chapter.
- 308.5 If a Sidewalk Cafe Permit has been revoked pursuant to §308.1(f), the Director of Consumer and Regulatory Affairs, upon the recommendation of the Director, may reissue the Building Permit and the Sidewalk Cafe Permit when the applicant certifies that the construction will comply with the provisions of the initial Building Permit and the initial Sidewalk Cafe Permit, and that the construction will be pursued on a timely basis.
- 308.6 Except as provided for in §308.2, the Director of Consumer and Regulatory Affairs shall restore and reissue a Sidewalk Cafe Permit and a Certificate of Use upon the approval of the Director and when the conditions that caused the revocation to be issued have been corrected.
- 308.7 Any costs incurred by the Department, the Department of Consumer and Regulatory Affairs, and any other District agency, as determined by the Director and the Director of Consumer and Regulatory Affairs, in connection with the revocation and the issuance of a new Sidewalk Cafe Permit and a new Certificate of Use, shall be paid by the applicant before the Sidewalk Cafe Permit and the Certificate of Use are restored.

308 8 The applicant shall have no recourse against either the United States, the District, or any employee, officer, or agent of the United States or the District, for any loss or damage caused by the revocation of the Sidewalk Cafe Permit or the Certificate of Use.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4355 (August 26, 1983).

310 GENERAL STANDARDS FOR ALL SIDEWALK CAFES

- 310.1 All sidewalk cafes shall be classified as a Group F2 Assembly as defined in §202.7 of the D.C. Building Code, and shall comply with all applicable requirements of §202.7 of the D.C. Building Code.
- 310.2 All electrical appliances and fixtures in a sidewalk cafe shall comply with chapter 1 of the D.C. Electrical Code (Articles 110-50, 410, and 430).
- 310.3 Installation of mechanical equipment and plumbing fixtures outside of the property line in a sidewalk cafe shall not be permitted.
- 310.4 No alcoholic beverages shall be served in a sidewalk cafe unless the appropriate ABC license is obtained and displayed.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4356 (August 26, 1983).

311 SIDEWALK LOCATIONAL CRITERIA

- 311.1 The clear sidewalk space shall be measured from the farthest extended portion of the sidewalk cafe frontage to the curb line or the nearest obstruction, whichever is nearest to the sidewalk cafe.
- 311.2 Recesses in the sidewalk cafe frontage shall not be used to satisfy the clear sidewalk space requirements.
- 311.3 The clear sidewalk space shall be measured as parallel to the curb line between the sidewalk cafe and any obstruction, and in line with normal pedestrian traffic.
- 311.4 For the purpose of determining clear sidewalk space, the space between a tree and the building line shall be considered unobstructed if the treebox is protected by a tree grate that is flush with the grade of the sidewalk.
- 311.5 For the purpose of determining clear sidewalk space, trees, streetlight poles, sign poles, fire hydrants, and other objects located on the surface space shall be considered as obstructions.
- 311.6 Sidewalk cafes located at street intersections shall provide corner clearance by providing a ten foot (10 ft.) clear space radial to the corner.
- 311.7 No sidewalk cafes shall be within fifteen feet (15 ft.) of a bus stop, a bus shelter, or a Metrorail station entrance.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4357 (August 26, 1983).

312 PHYSICAL CRITERIA FOR SIDEWALK CAFES

- 312.1 No portion of a sidewalk cafe, including, but not limited to, doors, windows, walls, or any other objects designed as part of a sidewalk cafe or placed within a sidewalk cafe, shall swing or project beyond the designated exterior perimeter of the sidewalk cafe; Provided, that this provision shall not apply to fire exit doors which are used exclusively as emergency fire exit doors.
- 312.2 All furnishings of the sidewalk cafe including, but not limited to, tables, chairs, and decorative accessories, shall be readily moveable.
- 312.3 The fixtures of a sidewalk cafe shall not be bolted or permanently affixed to public space, except that screw sockets may be permitted as a form of anchoring when approved by the Public Space Committee.
- 312.4 Any object to be affixed or attached to a wall or ceiling of a sidewalk shall be shown on the plan and approved by the Public Space Committee.
- 312.5 The floor of a sidewalk cafe shall be at the same elevation as the existing surface space, except as provided in §312.6.
- 312.6 In order for the floor of the sidewalk cafe to be at level grade, the floor of the sidewalk cafe may be constructed so as not to exceed eighteen inches (18 in.) above the sidewalk where the sidewalk cafe meets with the adjoining clear sidewalk space.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4358 (August 26, 1983).

313 LIFE AND FIRE SAFETY STANDARDS

- 313.1 When a sidewalk cafe or the adjacent restaurant is occupied, no exit door shall be locked, bolted, or otherwise fastened or obstructed so that the door is unable to be opened from the inside.
- 313.2 Chairs and tables shall be arranged so as to provide for ready access by aisles to each exit doorway. All aisles shall conform to §610 of the D.C. Building Code.
- 313.3 No part of any aisle shall be used in any way that will obstruct its use as an exit or that will constitute a hazardous condition.
- 313.4 All fire protection equipment shall be kept in working condition. Extinguishers, hoses, and other fire protection appliances required by the Fire Chief shall be visible and convenient at all times.
- 313.5 All exits in an enclosed sidewalk cafe shall be marked and lighted in accordance with the D.C. Building Code and the D.C. Electrical Code.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4358 (August 26, 1983).

314 SANITATION STANDARDS

- 314.1 If food service is to be provided within a sidewalk cafe, the provisions of this section shall be followed.
- 314.2 A waiter, waitress, or an attendant shall be assigned to the sidewalk cafe for maintenance purposes at all times the sidewalk cafe is occupied by patrons.
- 314.3 Food preparation or storage shall not be located within the sidewalk cafe area.
- 314.4 All water pitchers, coffee pots and urns, utensils, condiments, containers, and other similar objects within a sidewalk cafe shall be protected from contamination.
- 314.5 Sugar, salt, and other condiments shall be packaged or maintained in a covered container.
- 314.6 Pre-setting of tables in a sidewalk cafe shall not be permitted unless the silverware is protected from contamination.
- 314.7 Outdoor seating shall be counted in satisfying restroom requirements, including, but not limited to, quantity, access, and location.
- 314.8 All access to a sidewalk cafe from the restaurant shall be provided with doors, screening, or other similar objects.
- 314.9 Trash and refuse storage shall not be located in the vicinity of a sidewalk cafe.
- 314.10 A structure or enclosure to accommodate the storage of garbage shall not be erected, maintained, or placed adjacent to a sidewalk cafe.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4359 (August 26, 1983).

315 SPECIAL STANDARDS FOR UNENCLOSED SIDEWALK CAFES

- 315.1 Unenclosed sidewalk cafes shall comply with the provisions of this section and §§ 310, 311, 312, 313, and 314, chapter 2 of this title, the Act, and all other applicable District laws and regulations.
- 315.2 The awning, canopy, or umbrellas of an unenclosed sidewalk cafe shall be adequately secured, retractable, or removable. Framing shall be made or constructed of incombustible or fire-resistant materials. The material used to cover the framing shall be flame-retardant and shall be approved by the Fire Chief.
- 315.3 The height of the awning of an unenclosed sidewalk cafe shall not be lower than eight feet (8 ft.) from the floor of the sidewalk cafe.
- 315.4 The valance of the awning shall not exceed twelve feet (12 ft.) and shall not exceed a horizontal plane extending from the first floor ceiling of the adjoining building, whichever is less.
- 315.5 The height of a railing, fence, or planter (including vegetation) shall not be higher than thirty-six inches (36 in.).
- 315.6 Artificial turf, carpet, platforms, or any other surface cover shall be allowed on the floor area only when specifically approved by the Fire Chief and the Public Space Committee.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4360 (August 26, 1983).

316 SPECIAL STANDARDS FOR ENCLOSED SIDEWALK CAFES

- 316.1 Enclosed sidewalk cafes shall comply with the provisions of this section and §§311, 312, 313, 314, and 317, chapter 2 of this title, the Act, and all other applicable District laws, rules, and regulations.
- 316.2 Walls and other materials of an enclosed sidewalk cafe shall be of incombustible or fire-resistant materials. Awnings or canopies shall be flame-retardant.
- 316.3 Plastic materials used for any part of an enclosed sidewalk cafe shall have a Class "C" finished rating as defined in §901.5 of the D.C. Building Code.
- 316.4 Interior finishing materials for any part of an enclosed sidewalk cafe shall comply with the D.C. Building Code.
- 316.5 The flooring of an enclosed sidewalk cafe shall be fire-resistant.
- 316.6 The supporting structure of any enclosed cafe shall be constructed in a manner that will support a thirty pounds per square foot (30 lbs./ft.²) live load.
- 316.7 When the combined occupancies of the enclosed sidewalk cafe and the adjacent restaurant exceed seventy-five (75) persons, two (2) exits shall be provided from the enclosed sidewalk cafe, one (1) of which shall open directly from the sidewalk, public alley, or public space abutting the enclosed sidewalk cafe, and one (1) of which may open into the abutting restaurant.
- 316.8 If two (2) means of egress are required for the adjacent business property, two (2) means of egress shall be required for the enclosed sidewalk cafe. If one (1) of the exits is in the center of the enclosed sidewalk cafe and serves the interior of the restaurant, the required aisle width may be increased to a width approved by the Fire Chief and the Director of Consumer and Regulatory Affairs.
- 316.9 No enclosed sidewalk cafe shall project more than twenty feet (20 ft.) from the building line or occupy more than sixty percent (60%) of the available surface space; Provided, that a clear sidewalk space of ten feet (10 ft.) is provided in the surface space fronting the enclosed sidewalk cafe.
- 316.10 When required to be unenclosed, the enclosed sidewalk cafe shall be operated with all of its windows opened and so that the enclosed sidewalk cafe shall not be enclosed from the thirty-six inch (36 in.) base to eight feet (8 ft.) above the sidewalk; Provided, that structural members that are wider or bigger than ten inches (10 in.) shall not be permitted.

SOURCE: Final Rulemaking published at 30 DCR 4346, 4360 (August 26, 1983).

317 PROCEDURE FOR WAIVER OR MODIFICATION OF STANDARDS

- 317.1 Pursuant to the provisions of this section, and except as required pursuant to §317.2, the Public Space Committee, in its discretion, may waive or modify any provision of §§310.4, 312.1(d), 312.2, 312.3, 312.4, 312.5, 312.6, 312.7, and 316 6, and 311 and 314 if the waiver or modification does not pose or present any hazard or danger to the public safety, health, or welfare.
- 317.2 Pursuant to the requirements of this section, the applicant for an enclosed sidewalk cafe may request that the Public Space Committee waive or modify any provision of §210 of chapter 2 of this title or any provision of §§303.2, 310.2, 310.3, 312.7, 316.2, 316.3, 316.4, 316.12, or 316.10 of this chapter when the following conditions are satisfied:
- (a) The public good or the purpose of this chapter and of the Act are not substantially harmed;
 - (b) The waiver or modification has been reviewed pursuant to the provisions of §304 of this chapter;
 - (c) The waiver or modification enhances the design of the sidewalk cafe, the general character of the street and the neighborhood, and the overall planning objectives for the area where the sidewalk cafe is located;
 - (d) The waiver or modification does not interfere with the design, visibility, or operations of the adjacent buildings or space, or the interest of the general public in the adjacent buildings or space;
 - (e) The waiver or modification does not cause an adverse impact on pedestrian or vehicular traffic;
 - (f) The primary objective of the waiver or modification is not to occupy additional public space or to increase the seating capacity of the sidewalk cafe; or
 - (g) The strict application of the provision requested to be waived would result in exceptional practical difficulty due to the shape, topography, or other conditions of a particular property, or would result in undue hardship.
- 317.3 The Public Space Committee shall consider and decide whether to grant or deny the request for a waiver or modification pursuant to §317.2 after a hearing conducted pursuant to §109 of the D.C. Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208, D C Code §1-1509 (1981)), and pursuant to the rules and procedures of chapter 10 of Title 18 DCMR.
- 317.4 The applicant shall post a notice of the Public Space Committee hearing date, time, and location at least fifteen (15) days prior to the hearing.
- 317.5 The notice required under §317 4 shall be posted according to the provisions of §303 4 of this chapter.
- 317 6 The request for a waiver or modification shall be filed with the Director of Consumer and Regulatory Affairs, and shall be considered by the persons and the District agencies pursuant to the time frames and provisions of this chapter, except that the Director of Consumer and Regulatory Affairs may waive, when appropriate, any provision of §303 of this chapter.
- 317.7 The request for a waiver or modification shall be in writing and shall state the reason why the waiver or modification is requested

- 317.8 When possible, an applicant shall request waiver or modification of the original application filed with the Director of Consumer and Regulatory Affairs.
- 317.9 If a Sidewalk Cafe Permit was issued prior to August 26, 1983, the applicant shall request the waiver or modification on or before March 16, 1984, and pursuant to §317.2.
- 317.10 If a Sidewalk Cafe Permit was issued prior to August 26, 1983, the applicant shall request the waiver or modification on or before November 26, 1984, and pursuant to §317.1.
- 317.11 A request for a waiver or modification shall not operate as a stay on the requirements of the Act or this chapter.
- 317.12 At least fifteen (15) days prior to the hearing, the Public Space Committee shall notify the affected Advisory Neighborhood Commission, the adjacent property owners or occupants, and any other person who has submitted a written letter of support of or opposition to the proposed sidewalk cafe or to the waiver or modification.
- 317.13 The Department may intervene in any hearing conducted pursuant to this section, or may recommend to the Public Space Committee whether the request for a waiver or modification shall be granted.
- 317.14 The Public Space Committee shall issue a decision on a request for a waiver or modification within four (4) months of date the request for waiver or modification was filed with the Director of Consumer and Regulatory Affairs.

SOURCE. Final Rulemaking published at 30 DCR 4346, 4363 (August 26, 1983).

399 DEFINITIONS

399.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed, unless the text or context of the particular section, subsection, or paragraph provides otherwise:

Act - D.C. Law 4-148, the "Enclosed Sidewalk Cafe Act of 1982," effective September 16, 1982, as amended.

Alter or alteration - a change in the design or configuration of either the exterior or interior of a sidewalk cafe or its site; including, but not limited to, railings, walls, roof, awning, sign, or flooring.

Applicant - a person who is applying for or who has obtained a permit.

Awning or canopy - a temporary roof-like structure over a sidewalk cafe attached to, supported from, or contiguous to a restaurant.

Building Permit - a permit issued by the Director of Consumer and Regulatory Affairs for the construction, reconstruction, or alteration of an enclosed sidewalk cafe.

Certificate of Use - a one (1) year renewable certificate, issued upon the recommendation of the Director by the Director of Consumer and Regulatory Affairs, authorizing the use of public space for the purpose of operating a sidewalk cafe.

Chairperson - the Chairperson of the Public Space Committee.

Clear sidewalk space - the area within a sidewalk that is free from any obstruction and retained solely for the flow, passage, and circulation of pedestrians.

Combustible materials - any material made of or surfaced with wood, canvas, compressed paper, or other material that will ignite and burn. Material shall be considered as combustible even though flame-proofed, fire-retardant treated, or plastered. A material that does not meet the requirements of ASTM E136 shall be classified as a combustible material

D.C. Building Code- Title 12 of the District of Columbia Municipal Regulations, "Building Code," as amended.

D.C. Electrical Code - Title 5B-2 of the District of Columbia Rules and Regulations, "1977 D.C. Electrical Code," as amended.

D.C. Fire Code - Title 25 of the District of Columbia Municipal Regulations.

D.C. Police Regulations - the "District of Columbia Police Regulations," as amended.

D.C. Vehicles and Traffic Regulations - Title 18 of the District of Columbia Municipal Regulations, "Vehicles and Traffic," as amended.

Department - the District of Columbia Department of Public Works. [D.C. Law 8-31]

Design - the exterior features of a sidewalk cafe, including, but not limited to, height, depth, width, appearance, texture, color, dimensions, and nature of materials and signing; and the interior features, including, but not limited to, the table layout, the flooring, the lighting, and the width and the location of aisles and doorways.

Director - the Director of the Department of Public Works, or his or her designated agent.

Director, DCRA - the Director of the Department of Consumer and Regulatory Affairs, or his or her designated agent.

District - The District of Columbia.

Enclosed sidewalk cafe - any authorized enclosure of public space as a temporary structure adjacent to a restaurant which consists of no more than one (1) story constructed primarily of light, incombustible, or fire-resistant materials, which does not restrict egress from the properties abutting the restaurant adjacent to the sidewalk cafe, and which is able to be removed within a twenty-four (24) hour period.

Fee - the fee for a Sidewalk Cafe Permit, a Building Permit, a Certificate of Use, or the public space rental.

Fire Chief - the Fire Chief of the District of Columbia, or the Fire Chief's designated agent.

Fire-resistant materials - any material that is flame-proof or fire-retardant, pursuant to the applicable law, rule, or regulation.

Incombustible materials - materials meeting the requirements of ASTM E136-73.

Obstruction - Any physical object, item, material, or structure.

Owner - the holder of the legal title to real property as recorded in the Office of the Recorder of Deeds in the Department of Finance and Revenues of the District of Columbia.

Police Chief - the Police Chief of the District of Columbia Metropolitan Police Department, or the Police Chiefs designated agent.

Public space - all the publicly owned property between the property lines on a street.

Public Space Committee - the committee established for the purpose of making final determinations in cases involving the use of public space as specified by Mayor's Order No. 77-150, as amended.

Sidewalk - the portion of surface space located between the curb line and the building line intended for the use of pedestrians.

Sidewalk cafe - an enclosed sidewalk cafe or an unenclosed sidewalk cafe

Sidewalk Cafe Permit - a revocable permit, issued by the Director of Consumer and Regulatory Affairs upon the recommendation of the Public Space Committee and pursuant to the provisions of this chapter and chapter 2 of this title (Article 43 of D.C. Police Regulations), authorizing the use and occupation of public space in the District of Columbia.

Surface space - all space between the building line and the curb, regardless of whether the space is paved or unpaved.

Unenclosed sidewalk cafe - any authorized use of public space adjacent to a restaurant that contains tables, chairs, railing, or planters which is open to the sky and at the sides, but may include awnings or umbrellas, and which is able to be removed within a twenty-four (24) hour period.

SOURCE: Final Rulemaking published at 30 DCR 4346,4363 (August 26, 1983); as amended by § 4 of the D.C. Solid Waste Regulations Amendment Act of 1989, D.C. Law 8-31,36 DCR 4750,4753 (July 7, 1989).

Exhibit 6

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17632 of Estelle Goldman on behalf of 7-Eleven, Inc., pursuant to 11 DCMR § 3104.1, for a special exception to continue the operation of a retail grocery/delicatessen store with basement storage (last approved under BZA Order No. 17021) under subsection 2003.1, in the FB/R-3 District at premises 912 New Hampshire Avenue, N.W. (Square 28, Lot 122).

HEARING DATE: June 19, 2007
DECISION DATE: June 19, 2007 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2A, which is automatically a party to this application. ANC 2A submitted a report in support of the application. The Office of Planning (OP) also submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 2003. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2003.1, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

BZA APPLICATION NO. 17632
PAGE NO. 2

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED**, **SUBJECT to the following CONDITIONS:**

1. Approval shall be for a period of **FIVE (5) YEARS**.
2. The hours of operation shall be from 7:00 a.m. to 11:00 p.m. daily.
3. Deliveries from the 7-Eleven distribution center shall be between 8:00 pm and 10:00 pm only.
4. All other deliveries shall be on a scheduled basis between 9:30 am and 3:30 pm so that only one delivery vehicle is at the site at any given time
5. All deliveries shall be made using the commercial loading zone on New Hampshire Avenue immediately adjacent to the site.
6. Applicant will empty the trash containers belonging to 7-Eleven and the District government in front of the store at least twice daily or more frequently as required.
7. Applicant will clean the sidewalk and gutter in front of the store to ensure they are clean at all times.
8. Applicant will clear trash from the sidewalks in front of the adjacent and nearby buildings to the north and south of the store on a regular basis.
9. Applicant will clear snow and ice from the sidewalk in front of the store to ensure safe passage.
10. Applicant will maintain the exterior appearance of the premises in keeping with the residential character of the Foggy Bottom Historic District and Foggy Bottom Overlay District. Any exterior lighting shall be minimized and directed downward and away from all adjoining residential property. Applicant will take all reasonable measure to minimize the light visible from the inside of the store, and will maintain tinted windows and doors.
11. No signs or poster will be posted in the windows and no public telephones, teller machines or other similar devices will be added to the exterior of the building. No electronic or mechanical amusement machines will be located on the premises.

13. Applicant will ensure that the shrubs along the handicapped railing are of a height that covers the railing completely when seen from the sidewalk and that perennial and seasonal landscaping are provided so as to beautify the premises.

VOTE: **4-0-1** (Ruthanne G. Miller, Curtis L. Etherly, Jr. John A. Mann II
and Marc D. Loud to approve; No Zoning Commission
member participating).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning 

FINAL DATE OF ORDER: **JUN 25 2007**

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY

COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17632

As Director of the Office of Zoning, I hereby certify and attest that on **JUNE 25, 2007**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John Patrick Brown, Jr., Esq.
Stephanie A. Baldwin, Esq.
Greenstein, DeLorme & Luchs, P.C.
1620 L Street, N.W., Suite 900
Washington, D.C. 20036

Estelle Goldman
c/o 7-Eleven, Inc.
Chesapeake Division
5300 Shawnee Road
Alexandria, Virginia 22312

Chairperson
Advisory Neighborhood Commission 2A
725 24th Street N.W.
Washington, D.C. 20037

Single Member District Commissioner 2A03
Advisory Neighborhood Commission 2A
725 24th Street N.W.
Washington, D.C. 20037

Matthew LeGrant
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Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
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PAGE NO. 2

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Jill Stern, Esquire
General Counsel
Department of Consumer and Regulatory Affairs
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Washington, D.C. 20002

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning *L*

TWR

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



January 28, 2013

Ms. Christine Moseley Shiker
Holland & Knight LLP
800 17th Street, N.W. - Suite 1100
Washington, DC 20006

Re: Capitol Place PUD 701 2nd Street, N.E. (Lot 49, Square 752)

Dear Ms. Shiker:

This is to confirm the substance of our discussion on Wednesday, November 28, 2012, with Peter Cole, the representative of Fisher Brothers, the owner and developer of the property, and Laurence Caudle of Hickcok Cole Architects, the architect for the project. The property is located in Square 752 between 2nd and 3rd Streets and G and H Streets, N.E., and is currently known as Lot 49 in Square 752 (the "Property").

By Order No. 05-37, dated January 14, 2008, and effective as of April 11, 2008, the Zoning Commission approved a consolidated planned unit development ("PUD") for the development of a residential building with ground floor retail on the Property. The PUD was approved to include a maximum of 389,101 square feet, including approximately 302 residential units and approximately 25,777 square feet of gross floor area devoted to ground floor retail and second floor professional office space. Condition No. 1 of Order No. 05-37 required the PUD to be developed substantially in accordance with the plans prepared by Cook + Fox, dated November 5, 2007, as modified.

By Order No. 05-37B, dated April 30, 2012, and effective as of May 18, 2012, the Zoning Commission approved a modification to the original PUD. The modifications generally included the following changes: (1) an increase in the number of residential units to 375 units within a slightly reduced overall gross floor area (i.e., a maximum of 373,469 square feet); (2) flexibility to provide between 17,842 square feet and 22,842 square feet devoted to retail use and an elimination of the professional office space; (3) a reduction in the number of parking spaces; and (4) slight refinements to the exterior façades. Condition No. 1 of Order No. 05-37B requires the PUD to be developed substantially in accordance with the plans prepared by Hickcok Cole Architects, dated December 28, 2011, as modified by the guidelines, conditions and standards in the order (the "Approved Plans").

Condition No. 24 in Order No. 05-37 provides that the Applicant shall have flexibility with the design of the PUD in a variety of areas, including (b) to vary the final selection of the

exterior materials within the color ranges and material types as proposed, without a reduction in quality, based on availability at the time of construction and (c) to make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals. In Order No. 05-37B, additional flexibility was provided in Condition No. 7.

You advised that Fisher Brothers and its team are in the process of preparing construction drawings for the project in accordance with Order No. 05-37B. According to the architect, the project will comply with the overall parameters of the PUD approval, including height, density, massing, and parking. In our meeting, you described slight refinements and necessary adjustments to the exterior design resulting from the natural evolution in design that occurs when conceptual level plans (i.e., the level of detail typically presented to and approved by the Zoning Commission) are converted to schematic and design development and ultimately to fully designed construction documents.

We compared the elevations of all sides of the project from the Approved Plans to the proposed plans that have been developed for construction of the PUD (the "Construction Plans"), copies of both of which are attached. On the 2nd Street façade, you have incorporated operable windows on both sides of the glass bays in the center portion of the façade, and you have regularized the retail windows in the same location and size as shown on the Approved Plans. Canopies over residential and retail entries have been refined and further detailed.

At the corner of 2nd and H Streets, the mullions in the punched windows have been regularized to allow all windows to open in the same direction. The canopy at the tower element has been fully designed and is consistent with the perspective shown on Sheet 50 of the Approved Plans. Windows at the retail space along the H Street elevation have been enlarged and added to fulfill the goal of the PUD to create viable retail space along the steep grade of the H Street overpass. The accent bricks of the façade at the retail level have been fully designed to be consistent with the perspective shown on Sheet 51. Again, canopies over residential and retail entries have been refined and further detailed.

On 3rd Street, the elevation of the recessed row house has been further refined to include punched windows for the upper floors with large glass windows on the ground level. This refinement is consistent with the intent of the approved PUD, given the lack of detail relating to this elevation in the Approved Plans. On G Street, the bays shown in the Approved Plans have been refined and further articulated.

Along the alley, the spacing of the punched windows has been slightly shifted to accommodate the design of the units within the building. Based on final grade of the alley, the windows at the ground level have been enlarged to be consistent with the punched windows above. The percentage of windows to masonry area on the façades abutting the alley is substantially the same, originally being 28.62% and now being 25.99%. Two code-required emergency egress doors have been added to the alley façade.

The Approved Plans provide that the project will incorporate a barrier between the alley and the courtyards of the project. This barrier is necessary to provide safety for those in the alley given the grade difference between the alley and the lower courtyards and to provide security and privacy to the occupants of the project using the courtyards. In the Approved Plans, this barrier was a combination of a low masonry wall with bamboo plants adjacent to it in the courtyard (the "Original Barrier"). The Original Barrier was proposed to rise to between elevation 54 and elevation 59, ranging from 11 feet to 19 feet above the adjacent alley, which slopes up as it goes north. Given adverse issues with the bamboo for the courtyard and the continued need to provide safety and security, the Applicant has replaced the Original Barrier with a taller masonry wall topped with evergreen plantings (the "New Barrier"). The New Barrier will have a maximum height at elevation 55, which ranges from 12 feet to 15 feet above the adjacent alley. Because the New Barrier will be the same height or lower than the Original Barrier and it continues to provide a combination of masonry and plantings to create the barrier, I find the substitution consistent with the Approved Plans and the intent of the PUD to provide a safe and secure barrier between the alley and the courtyard.

With respect to the roof, you propose to retain the size and location of the mechanical penthouse/equipment enclosures as shown in the Approved Plans, with the exception of reducing the size of the enclosure at the southwest corner of the project. The pool deck has a maximum height of 59 feet, 10 inches on both the Approved Plans and the Construction Plans. The planters, walkways and terraces surrounding the pool have been further refined and designed consistent with the Approved Plans. The roof continues to provide at least 27,480 square feet of green roof, which is consistent with the approved 27,840 square feet (or 51% of the roof) shown on the Approved Plans.

Finally, Condition No. 2 of Order No. 05-37B states that the project "shall include between 17,842 square feet and 22,842 square feet of gross floor area devoted to retail use." You informed me that the ground floor which is partially below grade must be excavated further than originally proposed. This additional excavation is fully below grade near 3rd and H Streets and is required to support the structural foundation of the building. As a result, the calculation of gross floor area on the ground level has been slightly modified, as shown on the attached Gross Floor Area Summary ("GFA Summary").

Section 2409.6(b) of the Zoning Regulations authorizes the Zoning Administrator to approve minor modifications in the final plans as approved by the Commission, including a change not to exceed two percent (2%) in the number of residential units, hotel rooms, institutional rooms, or gross floor area to be used for commercial or accessory uses. As noted on the GFA Summary, the gross floor area devoted to retail use has increased from a maximum of 22,842 square feet to 23,256 square feet, which is a difference of 414 square feet representing a 1.8% change. Accordingly, I have the authority to approve this 1.8% increase in gross floor area devoted to retail use. The GFA Summary states that the overall gross floor area of the building is 371,628 square feet, which is less than that approved in Order No. 05-37B.

My view is that the overall design of the building is the same as shown in the Approved Plans and is consistent with the overall design scheme which was presented to and approved by

January 28, 2013

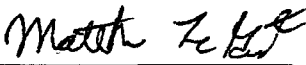
Page 4

the Zoning Commission in Order Nos. 05-37 and 05-37B. The slight refinements fall within the specific flexibility provided for in Condition No. 24 of Order No. 05-37 and the Zoning Administrator's flexibility to approve modifications to a PUD, as set forth in Section 2409.6 of the Zoning Regulations.

It is therefore my conclusion that, if you present plans for a building permit which carry out the design shown on the attached Construction Plans, those plans would be consistent with the Approved Plans in Order No. 05-37B and I would approve those plans for zoning purposes.

The Applicant should be aware that this application may be subject to Public Space Committee and/or Public Space permitting approval. Prior to the rendering of such a decision by the Public Space Committee or other administrative body, the District Department of Transportation (DDOT) will be asked to assess the impact of the proposed project on the District's transportation network. In order to complete its review and provide a recommendation, DDOT may require some form of a transportation analysis. This may include the completion of a Transportation Impact Study, Comprehensive Transportation Review, Transportation Demand Management (TDM) plan, and/or a Construction Management Plan/Maintenance of Traffic Plan. These materials should be provided to DDOT before any Preliminary Design Review Meeting is scheduled. The Applicant should contact DDOT in order to determine what materials, if any, are needed for DDOT to complete its transportation impact assessment.

Please let me know if you have any further questions.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachments:

Relevant pages from the Approved Plans
Relevant pages from the Construction Plans
GFA Summary

File. Det Let re 701 2nd St NE to Shikcr 1-28-13

Exhibit 7

1521 FOGGY BOTTOM OVERLAY DISTRICT (FB)

- 1521.1 The Foggy Bottom Historic District is a unique resource to the District of Columbia that must be preserved and enhanced. The historic district was designated and included in the National Register of Historic Places in 1986 and 1987, respectively. It is characterized by low scale residential structures forming a cohesive neighborhood of modest dwellings. Given the high density development pressures caused by the proximity of the Central Employment Area, George Washington University, medical clinics, and hotels, strong protection is needed to retain the historic district's low-scale residential character, human scale streetscape, and historic character.
- 1521.2 The Foggy Bottom (FB) Overlay District has the identical boundaries of the Foggy Bottom Historic District and is applied to the area, the boundaries of which begin at the intersection of K and 25th Streets, N.W., and proceed as follows. east along the center line of K Street, turning south along the eastern edge of Lot 19 in Square 28 to the northern edge of the alley; then eastward and southward along the alley to the northern boundary of Lot 92 in Square 28; then eastward to the center line of 24th Street; then south along the center line of 24th Street to New Hampshire Avenue; then southwest along the center line of New Hampshire to H Street; west along the center line of H Street to 25th Street; north along the center line of 25th Street to the southern edge of Lot 42 in Square 17; then west along the lot line to the alley in Square 17; then through the alley and then north along the western line of Lot 848 (encompassing Lots 812 through 820, 28 through 35, and 834, 848, and 849) in Square 17 to the center line of I Street; then west along the center line of I Street to the center line of 26th Street; then north on 26th Street to the northern edge of Lot 73 in Square 16; then east along the northern edge of Lot 73 to the easternmost corner of Hughes Mews and then south along the eastern edge of Hughes Mews to the northern edge of Lots 883, 858, and 856; then east along the lots to the center line of 25th Street; then north along the center line of 25th Street to the origination point at the center line of K Street. The FB Overlay District includes the following: Square 16, excluding Lots 884, 863, 93, 17, 71, and 2009 through 2161 (The Griffin Condominium Apartment Building); Square 17, excluding Lots 2001 through 2051 (The Plaza Condominium Apartment Building); Square 28, excluding Lots 884 and 168; and Square 29 in its entirety.
- 1521.3 The purposes of the FB Overlay District is to:
- (a) Require a scale of development consistent with:
 - (1) The Comprehensive Plan, which provides that the land use map for the Foggy Bottom Historic District be amended from the present "medium" category to the "moderate" category; and
 - (2) The characteristics of the low scale harmony of rhythmic townhouses of a purely residential neighborhood that formed the basis on which the area was designated a historic district;
 - (b) Protect the integrity of the historic district, its small scale, and open spaces; require compatibility of any development with the purposes of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144, as amended; D.C. Official Code §§ 6-1101 to 6-1115 (2001)(formerly codified at D.C. Code §§ 5-1001 to 5-1015 (1994 Repl. & 1999 Supp.))), and preclude demolitions or partial demolitions that would lead to an increase in height and floor area ratio inappropriate to the area;
 - (c) Enhance the residential character of the area by maintaining existing residential uses;
 - (d) Preserve areas planned as open backyards and alleyways that provide the only access to historic alley dwellings, and protect the light, air, and privacy that they provide;

- (e) Enhance the special human scale streetscape by maintaining the public space in front of the buildings as landscaped green spaces and limiting future curb cuts; and
- (f) Encourage greater use of public transportation through use of the nearby Foggy Bottom Metrorail Station, so as to protect the narrow residential streets and alleys from the deleterious effects of disruptive excessive traffic.

SOURCE: Final Rulemaking published at 39 DCR 2741 (April 17, 1992); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8457-59 (October 20, 2000).

1553 MATTER-OF-RIGHT AND SPECIAL EXCEPTION USES (SSH)

1553.1 An existing nonresidential use with a valid Certificate of Occupancy as of July 29, 1994, shall be considered a conforming use and may expand by up to ten percent (10%) of its gross floor area as a matter of right under the provisions of the R-1-B District; provided, that the following requirements are met:

- (a) No additional land area or subdivision of lots is involved in the expansion; and
- (b) The ten percent (10%) expansion limit shall be a total limit on expansion based on the gross floor area of the building as of July 29, 1994.

1553.2 A proposed new nonresidential use or an expansion of an existing nonresidential use in excess of ten percent (10%) of gross floor area shall be permitted as a special exception, if approved by the Board of Zoning Adjustment after public hearing, in accordance with § 3104 and subject to the following requirements:

- (a) The nonresidential use is capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions; and
- (b) There shall be adequate, appropriately located, and screened off-street parking sufficient to provide for the needs of the maximum number of occupants, employees, congregants, and visitors who can use the facility at one time; provided:
 - (1) The number of parking spaces provided shall be not less than the number required by chapter 21 of this title and shall be located and designed so that they have the least objectionable effects on contiguous or nearby property because of noise, traffic, or other objectionable conditions;
 - (2) Parking spaces and driveways providing access to them shall not be located in a required side yard, or on the lot between the principal building and a street right-of-way, nor in public space abutting the lot;
 - (3) If five (5) or more open parking spaces are provided, the parking spaces shall be screened from all contiguous residential property by a wood fence or a wall made of brick or stone at least twelve inches (12 in.) thick and forty-two inches (42 in.) high, or by evergreen hedges or evergreen growing trees that are thickly planted and maintained and are at least forty-two inches (42 in.) in height when planted; and
 - (4) Any lighting used to illuminate open parking spaces shall be so arranged that all direct rays of lighting are confined to the surface of the paved area devoted to parking; any lighting provided shall be the minimum necessary for reasonable visibility by drivers and for security purposes.

1553.3 Any expansion, renewal of time limits, or other changes to an existing use permitted by special exception in the R-1 District provisions shall continue to be governed by the R-1 provisions rather than those of this overlay district.

SOURCE: Final Rulemaking published at 41 DCR 5045, 5047 (July 29, 1994); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8464-65 (October 20, 2000).

2304 DRIVE-THROUGH USES

- 2304.1 A driveway serving as a vehicle queuing lane for a drive-through shall conform to the standards in this section.
- 2304.2 The queuing lane shall provide a minimum of five (5) queuing lane spaces before the first service location and one (1) queuing lane space after the last service location before entering public space.
- 2304.3 Each queuing space shall be a minimum of ten feet (10 ft.) in width by nineteen feet (19 ft.) in length and shall constitute an exclusive queuing lane.
- 2304.4 The queuing lane shall not be the only entry or exit lane on the premises.
- 2304.5 The queuing lane shall be paved and maintained with materials that form an all-weather impervious surface.
- 2304.6 No vehicular entrance or exit shall be within forty feet (40 ft.) of a street intersection as measured from the intersection of the curb lines extended.
- 2304.7 Any lighting used to illuminate the queuing lane shall be so arranged that all direct rays of that lighting are confined to the surface of the queuing lane.

SOURCE: Final Rulemaking published at 32 DCR 4374, 4378 (July 26, 1985); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8512 (October 20, 2000).

2400 PURPOSE AND SCOPE OF REVIEW

2400.1 The purpose of this chapter is to establish a review process relating to applications for permits in Chinatown that the Director of the Department of Consumer and Regulatory Affairs is required to refer to the Director of the Office of Planning pursuant to Mayor's Order No. 89-132, dated June 9, 1989.

2400.2 The Director shall review referred applications on the basis of the following:

- (a) Consistency of the proposed project with the District elements of the Comprehensive Plan for the National Capital and the Chinatown Design Guidelines Study Report;
- (b) Contribution of building design, including signs and awnings, to the Chinese identity of Chinatown; and
- (c) Chinese character of public space improvements and the contribution of those improvements to increased pedestrian activity.

2400.3 Nothing in this chapter is intended to abrogate the existing authority or responsibility of either the Public Space Committee or the Downtown Streetscape Committee.

AUTHORITY: Unless otherwise noted, the authority for this chapter is Mayor's Order 89-132 issued June 9, 1989, 36 DCR 4525 (June 23, 1989).

SOURCE: Final Rulemaking published at 38 DCR 890 (February 1, 1991).

3309 OFF-STREET PARKING

- 3309.1 The cumulative total of all parking spaces, including below-grade, surface, and above-grade structured parking, shall not exceed a total of four thousand eight hundred (4,800) parking spaces, exclusive of parking on the StE-2 or StE-18 subdistricts, existing surface parking lots, historic structures, and any parking associated with existing District of Columbia Government facilities.
- 3309.2 Each application to the Department of Consumer and Regulatory Affairs for a development that includes above-grade or below-grade structured parking or surface parking shall provide an accounting of the total number of parking spaces within the StE District which count towards the four thousand eight hundred (4,800) parking space limit.
- 3309.3 Additional parking spaces beyond the four thousand eight hundred (4,800) space limit shall be permitted by special exception by the Board of Zoning Adjustment pursuant to § 3104 and in accordance with the provisions of § 3304.2 and 3304.3, provided that the applicant addresses compliance with the following standards:
- (a) The application shall include a detailed accounting of the existing and proposed number and locations of parking spaces provided pursuant to § 3309.1; and shall also include a traffic study assessing the impacts of the proposed additional parking spaces on local traffic patterns for referral to and comment by the District Department of Transportation;
 - (b) The applicant shall include a transportation demand management (TDM) plan, as well as District Department of Transportation analysis of the TDM plan. The parameters of the analysis shall be outlined by the District Department of Transportation; and
 - (c) Vehicular access and egress will be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions.
- 3309.4 For any application pursuant to § 3309.3:
- (a) The Board shall judge, balance, and reconcile the need for additional on-site parking against any adverse impacts the presence of the parking will have on traffic, and the aesthetics and development of the surrounding neighborhood; and
 - (b) The Board may impose requirements pertaining to design, appearance, signs, massing, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the StE District.

- 3309.5 Any additional commuter parking, beyond parking that may exist as of (*date of enactment*) within the StE-18, shall be for the exclusive use of residents of, employees within, or visitors to the StE District or Federal employees of the adjacent Saint Elizabeths West Campus.
- 3309.6 Parking spaces shared by more than one use is permitted.
- 3309.7 Parking spaces need not be located on the same lot as the building or buildings they are intended to serve, but must be located on a lot within the StE District other than the StE-18 or StE-19 subdistrict.
- 3309.8 Parking spaces shall not be located between a street right-of-way line and the more restrictive of either a building façade or a line extending from and parallel to a building façade. A building used solely as a parking attendant shelter shall not trigger this restriction.
- 3309.9 Parking spaces provided within a structure shall be located at least twenty feet (20 ft.) from all lot lines that abut public streets, unless the surface of the parking spaces is at least ten feet (10 ft.) below grade, at all points along the building frontage.
- 3309.10 Parking spaces within an above-grade structure along 13th Street, Dogwood Street, and Sycamore Street shall be lined with preferred uses as defined in § 3305.1 on the ground floor to a depth of thirty feet (30 ft.) minimum.
- 3309.11 All parking spaces, other than mechanical parking spaces shall be accessible at all times from a driveway accessing either an improved street or an improved alley or alley system with a minimum width of ten feet (10 ft.).
- 3309.12 Parking spaces provided within a mechanized parking system need not meet the accessibility requirement of § 3309.10 as long as the mechanized parking system does.
- 3309.13 Parking spaces and drive aisles shall be designed in accordance with the standards of 11 DCMR Chapter 21 of this title.
- 3309.14 Where other options for access to parking spaces exist, such as from an alley or a different street, access to parking shall not be from a section of street where preferred uses are required in accordance with § 3305; or from Martin Luther King Jr. Avenue, S.E., Dogwood Street, 13th Street, or Oak Drive.
- 3309.15 Approval of a driveway under this chapter shall not be interpreted to imply permission for a curb cut in public space. An applicant for a driveway with a curb cut in public space shall have the responsibility to obtain all other necessary approvals and permissions.