

TITLE 11 – ZONING

SUBTITLE Z ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE

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CHAPTER 1 ADMINISTRATION

100 JURISDICTION; AUTHORITY; POWERS

- 100.1 This chapter supplements procedures set out in the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 to 641.15 (2012 Repl.)) (hereinafter “Zoning Act”); the Zoning Regulations of the District of Columbia, Title 11 DCMR; and the D.C. Administrative Procedure Act, effective October 8, 1975 (D.C. Law 1-19; D.C. Official Code §§ 2-501 to 2-511).
- 100.2 This subtitle shall be effective on September 6, 2016.
- 100.3 The Commission, pursuant to D.C. Official Code § 6-641.01, is empowered to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population; and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes; and for the purpose of such regulation the Commission may divide the District of Columbia into districts or zones of such number, shape, and area as the Commission may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, conversion, maintenance, and uses of buildings and structures, and the uses of land.
- 100.4 The Commission, pursuant to D.C. Official Code § 6-641.01, is empowered to promulgate regulations to require, with respect to buildings erected subsequent to the promulgation of such regulations, that facilities be provided and maintained either on the same lot with any such building, or on the same lot with any such building or elsewhere, for the parking of automobiles and motor vehicles of the owners, occupants, tenants, patrons, and customers of such building, and of the business, trades, and professions conducted therein.
- 100.5 The Commission, pursuant to D.C. Official Code §§ 6-621.01 and 6-641.01, is empowered to hear contested cases, as defined by D.C. Official Code § 2-509(8), brought under the Zoning Regulations, including cases described in Subtitle Z § 201.2.
- 100.6 The Commission, pursuant to D.C. Official Code §§ 6-621.01 and 6-641.01, is empowered to hear rulemaking cases, as defined by D.C. Official Code § 2-509(7), including cases described in Subtitle Z § 201.5.

101 GENERAL PROVISIONS

- 101.1 In any conflict between the provisions of this subtitle and any other provisions of this title, the other provisions of this title shall govern.

- 101.2 In any conflict within this section between general and specific provisions, the specific provisions shall govern.
- 101.3 In any conflict between this section and the D.C. Administrative Procedure Act, the Act shall govern.
- 101.4 In any conflict between this subtitle and the Zoning Act, the Act shall govern.
- 101.5 Legal advice from the Office of the Attorney General may be requested or received at any time.
- 101.6 Informal requests for advice or moot questions shall not be considered by the Commission.
- 101.7 When used in this subtitle the following terms shall have the meanings ascribed:
- (a) ANC: Advisory Neighborhood Commission;
 - (b) Commission: Zoning Commission; and
 - (c) Director: Director of the Office of Zoning or his/her designee.
- 101.8 In this subtitle, the term “affected Advisory Neighborhood Commission” or “affected ANC” refers to the ANC within which the property that is the subject of an application or petition is located; except if an area represented by another ANC is directly across the street from property that is the subject of an application or petition the term shall also refer to that ANC. If a petition has a District-wide affect, all ANCs are deemed to be affected.
- 101.9 The Commission may, for good cause shown, waive any of the provisions of this subtitle if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

102 ORGANIZATION

- 102.1 The Commission shall consist of five (5) members and shall have the duties and powers set forth in this subtitle.
- 102.2 The Commission shall consist of three (3) Mayoral appointees, the Architect of the Capitol (or staff designee), and the Director of the National Park Service (or staff designee).
- 102.3 Three (3) members of the Commission shall constitute a quorum. A quorum is necessary to conduct a hearing or meeting, but a lesser number may publicly announce a postponement or adjournment. If necessary, the Director may announce a postponement.

- 102.4 The Commission shall elect its Chairperson and Vice-Chairperson at its first meeting held in February of each calendar year, unless a vacancy occurs at some other point during the calendar year, at which point the Commission shall hold elections in a timely manner.
- 102.5 The Chairperson shall preside at all meetings and hearings of the Commission. In the event of the absence or disability of the Chairperson, the Vice-Chairperson shall preside.
- 102.6 The Chairperson of the Commission shall be one (1) of the three (3) Mayoral appointees to the Commission.
- 102.7 A Commission member may vote or cast an absentee vote at a meeting only if the member attended all of the hearings on the application or petition or reviewed the complete record. Nothing in this subsection shall be construed to require a Commission member to review the complete record in order to vote on a subsequent application to extend or modify the order granting the application.
- 102.8 While a majority of the Commission members present at a meeting or hearing may take a procedural action, any proposed or final action on an application or petition requires the concurrence of at least three (3) of the five (5) Commission members.
- 102.9 No Commission member shall vote on any post-hearing motion unless the member participated in, and voted on, the original decision, or the member reviewed the complete record.

103 MEETINGS AND HEARINGS

- 103.1 On or about the first (1st) day of the calendar year, the Director shall publish in the *D.C. Register* a twelve (12)-month calendar or schedule of meeting dates, and continually update the Office of Zoning electronic calendar to reflect the meeting dates.
- 103.2 The meetings and hearings of the Commission shall be open to the public; provided that, for the reasons cited in § 405(b) of the D.C. Administrative Procedures Act, as amended by the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-575(b)), the Commission may hold a closed meeting, but only after the Commission meets in public session and votes in favor of entering into or scheduling a closed meeting.
- 103.3 All records of the Commission shall be filed with the Office of Zoning and shall be open to public inspection.
- 103.4 Subject to the direction of the Commission and its Chairperson, the Director shall perform the following duties:

- (a) Conduct all correspondence of the Commission, send out all notices required by this title, attend all meetings and hearings of the Commission, compile all required records, and maintain the necessary files and indexes;
- (b) Enter in the Commission case record the number assigned to each application or petition, the name of the applicant or petitioner, a short description of the premises (by street number or otherwise), the nature of the application or petition, and the final disposition of the proceeding;
- (c) Enter in the Commission case record all continuances, postponements, dates of sending notices, and other steps taken or acts done by the Commission or its officers on behalf of the Commission;
- (d) Issue and revise application and petition forms to ensure presentation of adequate information required for the understanding and processing of applications and petitions; and
- (e) Certify the zoning of a property upon the request of a member of the public subject to the payment of the fee set forth in Subtitle Z § 1504.

- 103.5 The proposed public agenda for each meeting shall be posted on the Office of Zoning website and available to the public at least four (4) days prior to each meeting.
- 103.6 Copies of the agenda shall be available to the public at all meetings and hearings.
- 103.7 Nothing in this section shall preclude the Commission from amending the agenda at a meeting or hearing.
- 103.8 A meeting of the Commission shall be held in accordance with a schedule to be established by the Commission pursuant to Subtitle Z § 103.1, and additional meetings may be scheduled or cancelled as needed. Meetings may be called by the presiding officer or by three (3) Commission members.
- 103.9 The Commission shall schedule hearings for the purpose of receiving evidence and testimony on specific applications and petitions advertised in advance.
- 103.10 Meetings and hearings shall be held at such time and place as the Commission or the Office of Zoning may designate.
- 103.11 When postponing or continuing a contested case, the Commission shall make reasonable efforts to schedule the public hearing within thirty (30) days.
- 103.12 If the time and place of resumption is publicly announced when a postponement, continuance, or adjournment is ordered, no further notice shall be required. For the purposes of this section, the form of the public announcement may be a sign placed at the entrance to the Commission's hearing room.

104 TRANSCRIPTS OF PUBLIC MEETINGS AND HEARINGS

- 104.1 The transcripts of Commission public meetings and hearings are a matter of public record and shall be available through the Office of Zoning.
- 104.2 The public meetings and hearings shall be reported under the supervision of the presiding officer, by transcription or by other means, by an official reporter who may be designated by the Director or who may be an employee of the Office of Zoning.
- 104.3 The transcript prepared by the reporter shall be the sole official transcript of public meetings and hearings.
- 104.4 Copies of the transcript will be made available by the Office of Zoning fourteen (14) days after the public meeting or hearing.
- 104.5 A motion to correct a transcript may be made only when the alleged error is substantive.
- 104.6 A motion to correct a transcript shall be filed with the Commission within ten (10) days after the transcript has been made available in the Office of Zoning.
- 104.7 Copies of the motion to correct a transcript shall be served simultaneously on all parties or their authorized representatives.
- 104.8 The Commission will rule on a motion to correct a transcript at a public meeting or hearing.
- 104.9 Objections to the motion to correct a transcript shall be filed with the Commission within five (5) days and served upon the parties.
- 104.10 The Commission, on its own motion at a public meeting or hearing, may order changes to a transcript at any time for any reason.
- 104.11 If a motion to correct a transcript is granted, the corrected transcript will be made available by the Office of Zoning fourteen (14) days after the Commission grants the motion.

105 RULES OF ETHICS

- 105.1 The following Rules of Ethics are intended to be complementary to, and not in place of, the ethical requirements applicable to all District Officials, as those requirements are stated in the Ethics Manual for the District of Columbia and the District and federal laws it references. To the extent there is any conflict between the rules that follow and requirements described in the Ethics Manual, the more stringent requirement shall govern.

- 105.2 Members of the Commission shall at all times maintain a high level of ethical conduct in connection with the performance of their official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the government of the District of Columbia.
- 105.3 Members of the Commission shall avoid all actions which might result in, or create the appearance of, the following:
- (a) Using public office for private gain;
 - (b) Giving preferential treatment to any person;
 - (c) Impeding government efficiency or economy;
 - (d) Losing complete independence or impartiality;
 - (e) Making a government decision outside official channels; or
 - (f) Affecting adversely the confidence of the public in the integrity of government.
- 105.4 Members of the Commission shall not ask for or accept, either directly or through someone else, any gift, gratuity, favor, loan, entertainment, or anything of value from a person who has or is seeking a contract with the District of Columbia; is regulated by the District; or has any interest that may be affected by the member of the Commission's performance of official duties.
- 105.5 In any proceedings before the Commission, all members of the Commission shall be prohibited from receiving or participating in any *ex parte* communication relevant to the merits of the proceeding.
- 105.6 The prohibition in Subtitle Z § 105.5 shall begin to apply upon the referral of any application or petition pursuant to Subtitle Z §§ 400.3 and 500.3, and shall not terminate until the final disposition of the case.
- 105.7 The prohibition in Subtitle Z § 105.5 shall not extend to communication between the Commission and the Office of Zoning concerning matters of record.
- 105.8 A member of the Commission shall disqualify himself or herself in a proceeding before the Commission in which the member's impartiality might reasonably be questioned, including but not limited to instances where:
- (a) The member of the Commission has a personal bias or prejudice concerning a party or a party's representative, or personal knowledge of disputed evidentiary facts concerning the proceeding;

- (b) The member of the Commission served as a representative in the matter in controversy, or has been a material witness concerning it;
- (c) The member of the Commission knows, or reasonably should have known, that he or she, individually or as a fiduciary, or the member's spouse, domestic partner, parent or child wherever residing, or any other member of the Commissioner's family residing in the member's household, has an economic interest in the matter in controversy or in a party to the proceeding or has any other more than *de minimus* interest that could be substantially affected by the proceeding; or
- (d) The member of the Commission or their spouse, domestic partner, parent or child wherever residing, or any other member of the Commissioner's family residing in the member's household:
 - (1) Is a party to the proceeding, or an officer, director, or trustee of a party;
 - (2) Is acting as a lawyer or otherwise representing a party in the proceeding; or
 - (3) Is known to have a more than *de minimus* interest that could be substantially affected by the proceeding.

105.9 A member of the Commission subject to disqualification by the terms of Subtitle Z § 105.8 may disclose on the record the basis of the member's disqualification and may ask the parties and their representatives to consider whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and their representatives all agree that the member of the Commission should not be disqualified, and the member is then willing to participate, the Commissioner may participate in the proceeding.

105.10 No member of the Commission shall represent any person before the Board of Zoning Adjustment or Commission other than himself or herself while a member of the Commission.

105.11 No former member of the Commission shall represent any person before the Board of Zoning Adjustment or Commission other than himself or herself for a period of one (1) year after the date that the member's service on the Commission terminates.

105.12 For a period of two (2) years after the date on which the member's service on the Commission terminates, no former member of the Commission shall assist in representing, including aiding, counseling, advising, and consulting, another person in a particular matter involving a specific party before the Commission or Board of Zoning Adjustment other than himself or herself, if he or she

participated personally and substantially in the particular matter while a member of the Commission.

- 105.13 No former member of the Commission shall represent any person other than himself or herself in a particular matter for which the Commission member had a substantial involvement while a member of the Commission or an employee of the District.

CHAPTER 2 PUBLIC PARTICIPATION

200 APPEARANCE AND REPRESENTATION

- 200.1 In a proceeding before the Commission, any person or party may appear on that person's or party's own behalf.
- 200.2 Any person or party may be represented by any other person duly authorized in writing to do so.
- 200.3 The authorization shall state specifically that the authorization includes the power of the agent or representative to bind the person in the case before the Commission.

201 APPLICATIONS AND PETITIONS

- 201.1 Any contested case proceeding before the Commission shall be initiated by the filing of an application with the Commission on the form and in the manner that the Director may prescribe, except that the Commission may initiate a case on its own motion.
- 201.2 Contested cases are adjudicatory in nature, present issues for resolution at a public hearing that potentially have a limited scope of impact, and involve primarily questions of fact applicable to that limited scope of impact, while broader issues of public policy are secondary concerns. Contested cases include, without limitation, all applications that do not meet the requirements of a rulemaking case under Subtitle Z § 201.5. Contested cases include:
- (a) Design review;
 - (b) Planned unit developments (PUDs);
 - (c) Campus plans and further processings;
 - (d) Air space development; and
 - (e) Map amendments filed by the property owner or owners for a single property or for multiple properties that are contiguous or are only separated by a street or alley;
- 201.3 Contested cases, as defined by D.C. Official Code § 2-502(8), shall be initiated by the filing of an application. Public hearings on contested cases shall be processed and conducted according to the provisions of D.C. Official Code § 2-509 (2012 Repl.) and Subtitle Z, Chapter 4, unless the Commission determines otherwise pursuant to Subtitle Z § 201.9.
- 201.4 Any rulemaking case proceeding before the Commission shall be initiated by the filing of a petition with the Commission on the form and in the manner that the

Director may prescribe, except that the Commission may initiate a case on its own motion.

201.5 Rulemaking cases are legislative in nature and present issues for resolution at a public hearing that potentially affect large numbers of persons or property or the public in general, and include, without limitation, the following:

- (a) Amendments to the text of the Zoning Regulations; and
- (b) Map amendments pursuant to Subtitle Z § 201.7.

201.6 Except for cases initiated by the filing of an Office of Planning report or by the Commission on its own motion, rulemaking cases, as defined by D.C. Official Code § 2-502(7), shall be initiated by the filing of a petition. Public hearings on rulemaking cases shall be processed and conducted according to the provisions of D.C. Official Code § 2-505 (2012 Repl.) and Subtitle Z, Chapter 5, unless the Commission determines otherwise pursuant to Subtitle Z § 201.9.

201.7 Map amendments in rulemaking cases may be initiated by:

- (a) Public agencies to amend the zoning map for a neighborhood, commercial district, or other geographic area encompassing multiple properties, unless determined otherwise by the Commission pursuant to Subtitle Z § 201.9; and
- (b) Private persons, organizations, or other entities to amend the zoning map in cases where:
 - (1) The petitioner does not own all of the property proposed to be rezoned; or
 - (2) The petitioner owns all of the property proposed to be rezoned, but the ownership pattern is geographically scattered or otherwise of a character that raises land use policy questions to a greater degree than highly localized issues of fact and effects on neighboring properties.

201.8 In a rulemaking case before the Commission, including, but not limited to, those cases described in Subtitle Z § 201.5, there are no parties or motions.

201.9 Notwithstanding the classifications of cases in Subtitle Z §§ 201.2 and 201.5, the Commission may, on its own motion or at the request of the applicant, petitioner, or affected ANC, determine the designation of such case as a contested case or a rulemaking case based on the standards contained in Subtitle Z §§ 201.2 and 201.5.

202 DECORUM AND GOOD ORDER

202.1 This section applies to all proceedings before the Commission.

202.2 No person shall utter loud, threatening, or abusive language, or engage in any disorderly or disruptive conduct, including the display of any signs or objects, that has the effect of (as determined by the presiding officer) impeding any meeting, hearing, or other proceeding or the orderly conduct of official business of any member, officer, employee, or agent of the Commission or the Office of Zoning; or enter or remain in, during the course of any meeting, hearing, or other proceeding of the Commission, any area set aside for use by persons other than the general public.

203 EVIDENCE

203.1 Exhibits may be offered in evidence at the hearing.

203.2 Any exhibit that exceeds a size suitable for inclusion in the record shall be reduced to a size not to exceed tabloid size of eleven inches (11 in.) by seventeen inches (17 in.).

203.3 If models are used, images of the models not exceeding tabloid size of eleven inches (11 in.) by seventeen inches (17 in.) shall be submitted into the record.

203.4 If PowerPoint presentations, computer simulations, slides, or similar media are used, a paper copy of the exhibit shall be filed with the Commission.

203.5 If a video is used, six (6) copies of the video on DVD shall be filed with the Commission.

203.6 The Zoning Act, the Zoning Regulations, and the official Zoning Map, shall be a part of the record of every proceeding before the Commission, and it shall not be necessary for any party or person formally to move their introduction into evidence.

203.7 If a map, plan, or other document is readily available to the general public, in lieu of filing a copy of the document, the applicant or petitioner need only provide a complete citation to the source of the document and indicate where the public may view the document.

203.8 An individual offered as an expert witness shall provide written evidence to the Commission of expertise including, but not limited to, educational attainment, licensing, accreditation, examples of relevant or comparable work, and employment.

203.9 An expert witness shall be present at the hearing and be available for questions from the Commission and cross-examination by any other party.

- 203.10 The applicant or petitioner, public agency representatives, additional parties, organization representatives, and individuals may appear as witnesses and offer evidence at a hearing.
- 203.11 In a contested case under Subtitle Z, Chapter 4, witnesses may be examined or cross-examined by the Commission, the applicant, or any party so determined by the Commission under this subtitle.
- 203.12 In a rulemaking case under Subtitle Z, Chapter 5, only the Commission may examine witnesses. A public agency representative may pose a question to a witness through the presiding officer.

204 COMPUTATION OF TIME

- 204.1 In computing any period of time, days shall refer to calendar days unless otherwise specified.
- 204.2 In computing any period of time specified in this title, the day of the act, event, or default after which the designated period of time begins to run shall not be included.
- 204.3 The last day of the period computed as provided in Subtitle Z § 204.2 shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday, nor official District of Columbia holiday.
- 204.4 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper, and the paper or notice is served upon the party by mail, three (3) days shall be added to the prescribed period.
- 204.5 Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, for good cause, be extended or reduced by the Commission with notice to all parties or announcement on the record.

205 SERVICE OF DOCUMENTS; METHODS OF SERVICE; PROOF OF SERVICE

- 205.1 Any document required to be served upon a party shall be served upon that party or upon the representative designated by that party or by law to receive service of documents. When a party has appeared through a representative, service may be made upon the representative of record.
- 205.2 Where there are numerous parties to a proceeding, the Commission may designate representative parties or make other special provisions regarding the service of documents.

- 205.3 Service may be made and shall be considered complete as indicated in paragraphs (a) through (f) of this subsection, or as otherwise authorized by law:
- (a) By personal delivery to the party's address of record by either handing the document to the person to be served, handing it to a responsible individual of suitable age, or leaving it in a conspicuous place;
 - (b) By express mail, when properly addressed and with charges prepaid;
 - (c) By first-class mail, when deposited in the United States mail, properly stamped and addressed;
 - (d) By facsimile, when transmitted with the proper facsimile number corresponding to the intended recipient;
 - (e) By electronic mail (e-mail), when transmitted with the proper electronic mail address; or
 - (f) In any specific manner prescribed by the Commission in a proceeding.
- 205.4 Each document filed by a party, whether in hard copy, by e-mail, or electronically, must include a signed statement that the document was served on the parties. Such a statement is known as a "certificate of service." The certificate of service shall identify the individual serving the paper, the parties served and their addresses, the way it was served, and the date served.
- 205.5 A certificate of service may be represented by:
- (a) Written acknowledgement of the party served or that party's representative of record; or
 - (b) The written statement of the person making the service.

206 SUBMITTING COMMENTS OR FILING DOCUMENTS ELECTRONICALLY OR BY E-MAIL

- 206.1 This section includes provisions for the electronic filing of comments and documents through the Interactive Zoning Information System (IZIS) and by e-mail with the Office of Zoning. It also permits the Office of Zoning to serve orders and notices by e-mail.
- 206.2 The submission of any comments electronically following the procedures set forth in Subtitle Z §§ 206.3 through 206.5 constitutes filing for all purposes under these rules.
- 206.3 Comments may be submitted electronically through IZIS or by e-mail.
- 206.4 All comments submitted electronically through IZIS shall:

- (a) Contain the name, mailing address, telephone number, and e-mail address of the person filing it; and
- (b) Describe the nature of the comments (for example, “Comments in Support,” “Comments in Opposition,” or “General Comments”).

206.5 All comments submitted by e-mail shall:

- (a) Contain the name, mailing address, telephone number, and e-mail address of the person filing it;
- (b) Describe the nature of the comments (for example, “Comments in Support,” “Comments in Opposition,” or “General Comments”);
- (c) Include the case number and case name in the subject line of the e-mail; and
- (d) Be e-mailed to zcsubmissions@dc.gov.

206.6 The filing of any documents electronically following the procedures set forth in Subtitle Z §§ 206.7 through 206.12 constitutes filing for all purposes under these rules.

206.7 All documents to be filed electronically through IZIS or by e-mail shall be in portable document format (PDF).

206.8 All documents filed electronically through IZIS shall:

- (a) Contain the name, mailing address, telephone number, and e-mail address of the person filing it;
- (b) Contain the case number assigned by the Office of Zoning, or a statement that a case number has not yet been assigned;
- (c) Describe the nature of the documents (for example, “Letter in Support,” “Letter in Opposition,” or “Request for Party Status”); and
- (d) The file size of any document submitted electronically through IZIS or by e-mail may not exceed the maximum allowable size of eight (8) megabytes.

206.9 All documents filed by e-mail shall:

- (a) Contain the name, mailing address, telephone number, and e-mail address of the person filing it;
- (b) Describe the nature of the documents (for example, “Letter in Support,” “Letter in Opposition,” or “Request for Party Status”);

- (c) Include the signature of the originator;
- (d) Contain no more than ten (10) pages;
- (e) Include the case number and case name in the subject line of the e-mail; and
- (f) Be sent to zcsubmissions@dc.gov.

- 206.10 All e-mail filings sent between 12:01 a.m. and 5:00 p.m. on any Office of Zoning business day shall be recorded on the date it was received.
- 206.11 The filing date for an e-mail filing received between 5:01 p.m. and 12:00 p.m. will be recorded the next business day.
- 206.12 The date and time recorded in the correct Office of Zoning electronic mailbox at zcsubmissions@dc.gov, shall be conclusive proof of when it was received.
- 206.13 Parties are responsible for monitoring their e-mail accounts and for opening e-mails.
- 206.14 The Office of Zoning shall serve orders and notices by e-mail to any party who provides an e-mail address. The party is responsible for ensuring that the Office of Zoning has an accurate, up-to-date e-mail address.
- 206.15 Any notice required by D.C. Official Code § 1-309.10(c)(4) to be provided to affected ANCs, the Commissioner representing the affected single member district, and the Office of ANCs (“notice recipients”) may be provided by electronic or first-class mail; provided, that the notice shall be by first-class mail unless a notice recipient agrees in writing to receive future notifications through electronic mail.
- 206.16 A notice of an application shall constitute the notice required by D.C. Official Code § 1-309.10(b) and starts the time period for the affected Commission to review the application and submit its written report pursuant to D.C. Official Code § 1-309.10(d).

CHAPTER 3 APPLICATION REQUIREMENTS

300 PLANNED UNIT DEVELOPMENT (PUD) APPLICATION REQUIREMENTS

- 300.1 Each application seeking approval of a PUD pursuant to Subtitle X, Chapter 3 shall meet the requirements of this section before it will be accepted by the Commission for processing.
- 300.2 No PUD application shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Z, Chapter 16.
- 300.3 A PUD application may include property owned by one (1) or more persons.
- 300.4 The name, address, and signature of each owner of property included in the area to be developed, or of the owner's authorized agent, shall be included in the PUD application.
- 300.5 In an application for a modified PUD, the application need only be signed by the owner(s) of the property within the existing PUD site that is the subject of the modification.
- 300.6 The application shall be filed on a form as may be designated by the Director.
- 300.7 At least forty-five (45) calendar days prior to filing an application under this chapter, the applicant shall mail written notice of its intent (NOI) to file the application to the affected ANC and to the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.
- 300.8 The NOI shall describe generally the proposed development, including the name of all owners of the property involved and the use, height, bulk, and other significant aspects of the proposal. The notice shall also indicate the applicant's availability to discuss the proposed development with all interested and affected groups and individuals.
- 300.9 The applicant shall make all reasonable efforts to attend a duly noticed meeting of the affected ANC during the forty-five (45) day notice period.
- 300.10 An application for PUD approval shall be made in an appropriate manner provided by the Director.
- 300.11 The applicant for a first-stage PUD shall furnish ten (10) copies of architectural drawings and two (2) copies of all other information required by the form at the time of filing the application, including the following:
- (a) A completed application form;

- (b) A certified surveyor's plat of the subject property prepared by the Office of the Surveyor;
- (c) A map showing the location of the proposed project, the existing zoning for the subject site, the zoning of adjacent properties, and any proposed change of zoning;
- (d) A statement of the purposes and objectives of the project, including the proposed form of development and a detailed statement elucidating how the application meets the PUD evaluation standards of Subtitle X;
- (e) A statement certifying to whom and in what manner the required NOI was given. The applicant shall also indicate what meetings or discussions were held with the Office of Planning, the affected ANC, and other individuals and community groups concerning the proposed development, as well as any changes that resulted from these meetings or discussions;
- (f) A general site, landscape, and development plan indicating the proposed use, location, dimensions, number of stories, and height of each building, and the exact area of the total site; and
- (g) A tabulation of development data showing the following:
 - (1) The area and dimensions of each lot proposed for each building and the exact area of the total site;
 - (2) The percentage of lot occupancy of each building on each lot and the total percentage of lot occupancy for all buildings on the entire site;
 - (3) The gross floor area and floor area ratio for each building on each lot, including a break-down for each use, and the total gross floor area and floor area ratio for all buildings on the entire site, including a breakdown for each use;
 - (4) A circulation plan, including the location of all vehicular and pedestrian access ways and the location and number of all off-street parking spaces and loading berths, including an indication of which spaces are designated for which use;
 - (5) The existing topography of the development area; the location of all major natural features, including trees of six-inch (6 in.) caliper or greater; and the location and elevations of public or private streets, alleys, or easements bounding or traversing the site, including an indication of which of the rights-of-way or easements are to be continued, relocated, or abandoned;

- (6) Estimated quantities of potable water required by the project, and of sanitary sewage and storm water to be generated, including the methods of calculating those quantities; and
- (7) Any other information needed to understand the unique character and problems of developing the PUD; and
- (h) The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and self-stick labels printed with their names and addresses.

300.12 The applicant for a second-stage PUD shall furnish ten (10) copies of architectural drawings and two (2) copies of all other information required by the form at the time of filing the application including the following:

- (a) A completed application form;
- (b) A certified surveyor's plat of the subject property prepared by the Office of the Surveyor;
- (c) A detailed statement as to the uses to be located in the project, including the location, number, size, and types of stores, offices, residential, institutional, industrial, and other uses;
- (d) A statement certifying to whom and in what manner the required NOI was given. The applicant shall also indicate what meetings or discussions were held with the Office of Planning, the affected ANC, and other individuals and community groups concerning the proposed development, as well as any changes that resulted from these meetings or discussions;
- (e) A detailed site plan, showing the location and external dimensions of all buildings and structures, utilities and other easements, walkways, driveways, plazas, arcades, and any other open spaces;
- (f) A detailed landscaping and grading plan, showing all existing contour lines, including graphic illustration of grades exceeding fifteen percent (15%) in five percent (5%) increments, landscaping to be retained, grades, planting, and landscaping. The plan shall also show the proposed drainage for the site, including the location of buildings, roads, sidewalks, water and sewer lines, inlets, and basins, and connections to public water and sewer lines. Proposed erosion control measures shall also be shown;
- (g) Typical floor plans and architectural elevations for each building, sections for each building and the project as a whole, and sections and elevations of the entire square within which the project is located;

- (h) A final detailed circulation plan showing all driveways and walkways, including widths, grades, and curb cuts, as well as detailed parking and loading plans;
- (i) Any other information needed to understand the final design of the proposal, or information specifically requested by the Commission;
- (j) A statement showing how the second-stage plans are in accordance with the intent and purposes of this title, the PUD process, and the first-stage approval; and
- (k) The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and self-stick labels printed with their names and addresses.

300.13 No application shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the application and all accompanying documents have been served upon:

- (a) The Office of Planning; and
- (b) The affected ANC.

301 DESIGN REVIEW APPLICATION REQUIREMENTS

301.1 Each application for design review approval pursuant to Subtitle X, Chapter 6 shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.

301.2 No design review application shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Z, Chapter 16.

301.3 A design review application may include property owned by one (1) or more persons.

301.4 The name, address, and signature of each owner of property included in the area to be developed, or of the owner's authorized agent, shall be included in the design review application.

301.5 The application shall be filed on a form as may be designated by the Director.

301.6 At least forty-five (45) days prior to filing an application under this chapter, the applicant shall serve a written notice of intent (NOI) to file the application on the affected ANC and on the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.

- 301.7 The NOI shall describe generally the proposed development, including the name of all owners of the property involved and the use, height, bulk, and other significant aspects of the proposal. The notice shall also indicate the applicant's availability to discuss the proposed development with all interested and affected groups and individuals.
- 301.8 The applicant shall make all reasonable efforts to attend a duly noticed meeting of the affected ANC during the forty-five (45) day notice period.
- 301.9 An application for design review approval shall be made in an appropriate manner provided by the Director.
- 301.10 The applicant for a design review application shall furnish ten (10) copies of architectural plans and two (2) copies of all other information required by the form at the time of filing the application, including the following:
- (a) A completed application form;
 - (b) A certified surveyor's plat of the subject property prepared by the Office of the Surveyor;
 - (c) A map showing the location of the proposed project, the existing zoning for the subject site, and the zoning of adjacent properties;
 - (d) A statement of the purposes and objectives of the project, including the proposed form of development and a detailed statement describing how the application meets the design review evaluation standards in Subtitle X § 604;
 - (e) A statement certifying to whom and in what manner the required NOI was given. The applicant shall also indicate what meetings or discussions were held with the Office of Planning, the affected ANC, and other individuals and community groups concerning the proposed development, as well as any changes that resulted from these meetings or discussions;
 - (f) A detailed statement as to the uses to be located in the project, including the location, number, size, and types of stores, offices, residential, institutional, industrial, and other uses;
 - (g) A detailed site plan, showing the location and external dimensions of all buildings and structures, utilities and other easements, walkways, driveways, plazas, arcades, and any other open spaces;
 - (h) A detailed landscaping and grading plan, showing all landscaping to be retained, including trees of eighteen inch (18 in.) circumference or greater, proposed planting, and landscaping;

- (i) Typical floor plans and architectural elevations for each building, sections for each building and the project as a whole, and sections and elevations of the entire square within which the project is located;
- (j) A circulation plan, including the location of all vehicular and pedestrian access ways and the location and number of all off-street parking spaces and loading berths, including an indication of which spaces are designated for which use;
- (k) A tabulation of development data showing the following:
 - (1) The area and dimensions of each lot proposed for each building and the exact area of the total site;
 - (2) The percentage of lot occupancy of each building on each lot and the total percentage of lot occupancy for all buildings on the entire site; and
 - (3) The gross floor area and floor area ratio for each building on each lot, including a break-down for each use, and the total gross floor area and floor area ratio for all buildings on the entire site, including a breakdown for each use;
- (l) A table listing by-right development standards and identifying all areas of relief requested and the degree of such relief;
- (m) The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and self-stick labels printed with their names and addresses; and
- (n) Any other information needed to understand the proposed project.

301.11 An application for design review in the USN zone shall also include the requirements listed in Subtitle K §§ 320, 322, and/or 324.

301.12 No application shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the application and all accompanying documents have been served upon:

- (a) The Office of Planning; and
- (b) The affected ANC.

302 CAMPUS PLAN/FURTHER PROCESSING AND MEDICAL CAMPUS PLAN APPLICATION REQUIREMENTS

- 302.1 Each application for campus plan/further processing and medical campus plan approval pursuant to Subtitle X, Chapter 1 shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.
- 302.2 No campus plan/further processing and medical campus plan application shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Z, Chapter 16.
- 302.3 A campus plan/further processing and medical campus plan application may include property owned by one (1) or more persons.
- 302.4 The name, address, and signature of each owner of property included in the area to be developed, or of the owner's authorized agent, shall be included in the campus plan/further processing application.
- 302.5 The application shall be filed on a form as may be designated by the Director.
- 302.6 At least forty-five (45) days prior to filing an application under this chapter, the applicant shall serve a written notice of intent (NOI) to file the application on the affected ANC and on the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.
- 302.7 The NOI shall describe generally the proposed development, including the name of all owners of the property involved and the use, height, bulk, and other significant aspects of the proposal. The notice shall also indicate the applicant's availability to discuss the proposed development with all interested and affected groups and individuals.
- 302.8 The applicant shall make all reasonable efforts to attend a duly noticed meeting of the affected ANC during the forty-five (45) day notice period.
- 302.9 An application for campus plan/further processing approval shall be made in an appropriate manner provided by the Director.
- 302.10 The applicant for a campus plan/further processing and medical campus plan application shall furnish ten (10) copies of architectural drawings and two (2) copies of all other information required by the form at the time of filing the application, including the following:
- (a) A completed application form;
 - (b) A certified surveyor's plat of the subject property prepared by the Office of the Surveyor;
 - (c) Facilities Plan:

- (1) Existing conditions, including existing topography, the location of any wetlands, and the location and size of existing trees to be removed on or adjacent to the property;
 - (A) Building mass and height;
 - (B) FAR for current campus; and
 - (C) Current building uses;
- (2) Proposed conditions;
 - (A) Future needs/capital improvements (10 yrs.);
 - (B) Building mass, including FAR, height, and bulk of all new or proposed buildings;
 - (C) FAR for entire campus with proposed building(s); and
 - (D) Proposed building uses.
- (d) Student count for every student on campus, including full-time, part-time, foreign, certificate/non-degree, single course, night programs, and executive program students (if applicable);
- (e) Employee count for every employee, including full-time, part-time, and administration;
- (f) Neighborhood Context:
 - (1) Edge conditions/Border transitions;
 - (2) Community relations;
 - (3) Identification/Mitigation of impacts;
 - (4) Noise, amplified sound, lighting, etc.; and
 - (5) Outdoor activities and special events;
- (g) Comprehensive Accessibility:
 - (1) Transportation demand management plan;
 - (2) Multi-modal transportation plan; and
 - (3) Parking, loading study;
- (h) Conservation:

- (1) Historic considerations;
- (2) Sustainability considerations; and
- (3) Environmental impacts;
- (i) Landscape/Open Space;
- (j) Streetscape treatment, including signage/wayfinding;
- (k) An explanation of all programs on campus including educational, certificate, adult learning, international, career training, religious, night classes, civic, and non-profit uses;
- (l) The number of students enrolled in a District of Columbia public or public charter school that also take classes on the campus shall be included in the application but shall not be counted against any approved enrollment cap (if applicable);
- (m) The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and self-stick labels printed with their names and addresses; and
- (n) Any other information needed to understand the proposed project.

302.11 No application shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the application and all accompanying documents have been served upon:

- (a) The Office of Planning; and
- (b) The affected ANC.

303 AIR SPACE DEVELOPMENT APPLICATION REQUIREMENTS

303.1 Each application for approval of an air space development pursuant to Subtitle X, Chapter 7 shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.

303.2 No air space development application shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Z, Chapter 16.

303.3 The application shall be filed on a form as may be designated by the Director.

303.4 At least forty-five (45) days prior to filing an application under this chapter, the applicant shall serve a written notice of intent (NOI) to file the application on the

affected ANC and on the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.

- 303.5 The NOI shall describe generally the proposed development, including the name of all owners of the property involved and the use, height, bulk, and other significant aspects of the proposal. The notice shall also indicate the applicant's availability to discuss the proposed development with all interested and affected groups and individuals.
- 303.6 The applicant shall make all reasonable efforts to attend a duly noticed meeting of the affected ANC during the forty-five (45) day notice period.
- 303.7 An application for air space development approval shall be made in an appropriate manner provided by the Director.
- 303.8 The applicant shall furnish ten (10) copies of architectural drawings and two (2) copies of all other information required by the format the time of filing the application, including:
- (a) A completed application form;
 - (b) A certified surveyor's plat of the subject property prepared by the Office of the Surveyor;
 - (c) A map showing the location of the proposed project, the existing zoning for the subject site, and the zoning of adjacent properties;
 - (d) A statement of the purposes and objectives of the project;
 - (e) A statement certifying to whom and in what manner the required NOI was given. The applicant shall also indicate what meetings or discussions were held with the Office of Planning, the affected ANC, and other individuals and community groups concerning the proposed development, as well as any changes that resulted from these meetings or discussions;
 - (f) A detailed statement as to the uses to be located in the project, including the location, number, size, and types of stores, offices, residential, institutional, industrial, and other uses;
 - (g) A detailed site plan, showing the location and external dimensions of all buildings and structures, utilities and other easements, walkways, driveways, plazas, arcades, and any other open spaces;
 - (h) A detailed landscaping and grading plan, showing all landscaping to be retained, including trees of eighteen inch (18 in.) circumference or greater, proposed planting, and landscaping;

- (i) Typical floor plans and architectural elevations for each building, sections for each building and the project as a whole, and sections and elevations of the entire square within which the project is located;
- (j) A circulation plan, including the location of all vehicular and pedestrian access ways and the location and number of all off-street parking spaces and loading berths, including an indication of which spaces are designated for which use;
- (k) A tabulation of development data showing the following:
 - (1) The area and dimensions of each lot proposed for each building and the exact area of the total site;
 - (2) The percentage of lot occupancy of each building on each lot and the total percentage of lot occupancy for all buildings on the entire site; and
 - (3) The gross floor area and floor area ratio for each building on each lot, including a break-down for each use, and the total gross floor area and floor area ratio for all buildings on the entire site, including a breakdown for each use;
- (l) A table listing by-right development standards and identifying all areas of relief requested and the degree of such relief;
- (m) The name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and self-stick labels printed with their names and addresses; and
- (n) Any other information needed to understand the proposed project.

303.9 No application shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the application and all accompanying documents have been served upon:

- (a) The Office of Planning; and
- (b) The affected ANC.

304 MAP AMENDMENT APPLICATION AND PETITION REQUIREMENTS

304.1 Each application or petition for approval of a map amendment pursuant to Subtitle X, Chapter 5 shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.

- 304.2 No map amendment application or petition shall be processed until the application or petition is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Z, Chapter 16.
- 304.3 A map amendment application or petition may include property owned by one (1) or more persons.
- 304.4 The application or petition shall be filed on a form as may be designated by the Director or the Commission.
- 304.5 At least forty-five (45) days prior to filing a map amendment application under this chapter, the applicant shall serve a written notice of intent (NOI) to file the application on the affected ANC and on the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.
- 304.6 In a map amendment application, the applicant shall make all reasonable efforts to attend a duly noticed meeting of the affected ANC during the forty-five (45) day notice period.
- 304.7 An application or petition for map amendment approval shall be made in an appropriate manner provided by the Director. The applicant or petitioner shall furnish two (2) copies of all information required by the form at the time of filing the application or petition, including:
- (a) A completed application or petition form;
 - (b) A certified surveyor's plat of the subject property prepared by the Office of the Surveyor;
 - (c) A map showing the location of the properties including, the existing zoning, the zoning of adjacent properties, and all proposed changes of zoning;
 - (d) A detailed description of the map amendment's consistency with the Comprehensive Plan and any other adopted public policies and active programs related to the subject site;
 - (e) For a map amendment application, a statement certifying to whom and in what manner the required NOI was given. The applicant shall also indicate what meetings or discussions were held with the community and the OP and the affected ANC as well as any changes that resulted from community input; and
 - (f) For a map amendment application, the name and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property and self-stick labels printed with their names and addresses.

304.8 No application or petition shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the application and all accompanying documents have been served upon:

(a) The Office of Planning; and

(b) The affected ANC.

305 TEXT AMENDMENT PETITION REQUIREMENTS

305.1 Each text amendment petition shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.

305.2 No zoning text amendment petition shall be processed until the petition is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Z, Chapter 16.

305.3 The application shall be filed on a form as may be designated by Director or the Commission.

305.4 A petition for text amendment approval shall be made in an appropriate manner provided by the Director.

305.5 The petitioner shall furnish two (2) copies of all information required by the form at the time of filing the petition, including:

(a) A statement of the purposes and objectives of this proposal and how it is consistent with the guidance and direction in the current Comprehensive Plan; and

(b) Any other information needed to understand the implications of the proposed changes.

305.6 No petition shall be accepted unless accompanied by a certificate of service demonstrating that a copy of the application and all accompanying documents have been served upon:

(a) The Office of Planning; and

(b) The affected ANC.

CHAPTER 4 PRE-HEARING AND HEARING PROCEDURES: CONTESTED CASES

400 SETDOWN PROCEDURES: SCHEDULING CONTESTED CASE APPLICATIONS FOR HEARING

- 400.1 The Director shall review for completeness every application filed with the Commission within five (5) days of its receipt.
- 400.2 Upon completing the review of an application, the Director shall notify the applicant in writing of any deficiency. The notice shall list the information necessary to make the application complete and the date the information must be received, which shall not be less than five (5) days after the date of notice. If the applicant fails or refuses to correct the deficiencies in the application by the date stated, the Director shall not accept the application for filing.
- 400.3 As soon as an application is accepted for filing by the Director, the Director shall place a copy of the application in the public record of the Commission and refer a copy to the Office of Planning and the District Department of Transportation.
- 400.4 Applications for design review, campus plan/further processings, and medical campus plans shall be immediately scheduled for hearing consistent with the notice provisions of this chapter.
- 400.5 For all other types of applications, the Commission, at a public meeting, shall determine if the application should be scheduled (setdown) for a hearing. The Office of Planning shall review each such application and submit a report and recommend whether the application should be set down for a hearing.
- 400.6 The report of the Office of Planning shall be in writing and filed with the Director at least ten (10) days prior to a meeting scheduled by the Commission pursuant to Subtitle Z § 103.1.
- 400.7 For contested cases enumerated under Subtitle Z § 400.5, the Director shall also refer a copy of the application to the affected ANC, along with an ANC Setdown Form, which the affected ANC may submit to provide feedback on whether the matter should be set down for hearing.
- 400.8 The ANC Setdown Form shall be filed with the Director no later than thirty (30) days after the date the application is referred.
- 400.9 A public meeting to consider setting down a contested case (other than a map amendment) shall not occur less than thirty-five (35) days after the application is filed.

- 400.10 If the applicant seeks to waive the thirty-five (35) day period between filing and a public meeting to consider setdown, it shall obtain the consent of the Office of Planning and the affected ANC, and provide such proof to the Commission.
- 400.11 After considering the application, the recommendations of the Office of Planning, and any ANC Setdown Form filed, the Commission may determine whether to:
- (a) Schedule the application for a hearing;
 - (b) Continue the setdown to permit the applicant to provide further information or modify its design;
 - (c) Dismiss the application because of a technical or procedural defect or to allow for needed modifications to be made; or
 - (d) Deny the application on its merits.
- 400.12 The concurrence of at least three (3) of the five (5) Commission members shall be required to take any of the actions enumerated in Subtitle Z § 400.11. The Commission may not dismiss or deny an application without first allowing the applicant or its representative, if present, an opportunity to be heard.
- 400.13 If the matter is denied or dismissed without a public hearing, the Commission shall issue a denial or dismissal order, copies of which shall be published in the *D.C. Register*, served on the applicant, and made available on the Office of Zoning website. The order shall include a statement of reasons for the denial or dismissal.
- 400.14 If the Commission dismisses an application without prejudice because of the need to modify the application, the order shall also state the type of modification the Commission considers appropriate.
- 400.15 An applicant granted a public hearing shall be so notified of the action in writing, and such notice shall be entered into the record.
- 400.16 After setdown, the hearing date will be scheduled in a timely manner, but only after the applicant submits its supplemental filing, and the appropriate hearing fee has been paid, as provided in Subtitle Z, Chapter 16.

401 SUPPLEMENTAL FILINGS

- 401.1 Prior to the scheduling of a public hearing, the applicant shall file with the Director ten (10) copies of architectural drawings and two (2) paper copies of all other information, and an electronic copy through the OZ electronic case management system, of the following:
- (a) Any additional information, reports, or other materials specified by the Commission at the time the matter was set down for public hearing; or, if

the Commission requested the applicant to make any changes in the application or petition, the updated application and supportive material;

- (b) A list of those persons the applicant intends to call as witnesses;
- (c) A written summary of the testimony of all witnesses, and a complete and professional resume for any expert who may be called to testify at the public hearing;
- (d) Any additional information, reports, or other materials the applicant may wish to introduce;
- (e) Reduced plans, which plans shall be no larger than the tabloid size of eleven inches (11 in.) by seventeen inches (17 in.), that show the "north arrow" reading up, and that include a bar scale;
- (f) A list of maps, plans, or other documents that are readily available to the general public and that will be offered into evidence; and
- (g) An estimate of the time required for the presentation of the applicant's case, subject to the decision of the presiding officer as provided in Subtitle Z § 408.2.

401.2 If the application proffers any public benefit that would require the agreement of or administration by any public agency or private entity, the applicant shall file a memorandum of understanding (MOU) that has been executed by the applicant and the public agency or private entity to agree to or administer the benefit.

401.3 The supplemental information shall also include:

- (a) The names and addresses of the owners of all property located within two hundred feet (200 ft.) of the subject property; provided, however, in the case of a residential condominium or cooperative with twenty-five (25) or more dwelling units, mailed notice may be provided to the board of directors or to the association of the condominium or cooperative that represents all of the owners of all such dwelling units; and
- (b) The name and address of each person having a lease with the owner for all or part of any building located on the property involved in the application.

401.4 The Director shall not issue any notice of public hearing until the applicant certifies in writing that all of the requirements of this section have been complied with.

401.5 No application shall be modified less than twenty (20) days prior to the public hearing.

- 401.6 Upon motion by the applicant and for good cause shown, the Commission may elect to waive Subtitle Z § 401.5 and permit modification of the application at the public hearing.
- 401.7 If the supplemental report includes a report by a transportation consultant or expert, the applicant shall provide a copy of the report to the District Department of Transportation on the same day of filing with Office of Zoning.
- 401.8 No later than thirty (30) days before the date of the public hearing on the application, the applicant shall file with the Commission any traffic or transportation reports to be submitted in support of the application. All such reports shall include the resume of the expert who prepared the report. At or before the time of filing the traffic or transportation report with the Commission, the applicant shall serve a copy of the report on the affected ANC, the Office of Planning, and the District Department of Transportation.

402 PUBLIC NOTICE REQUIREMENTS

- 402.1 Not less than forty (40) days before the public hearing on an application, the Director shall give notice of public hearing by:
- (a) Publishing the notice of public hearing in the *D.C. Register*;
 - (b) Providing a copy of the notice of public hearing to the applicant;
 - (c) Providing a copy of the notice of public hearing to the affected ANC, or for any other ANC that is within two hundred feet (200 ft.) of the property involved in the application;
 - (d) Providing a copy of the notice of public hearing to owners of all property within two hundred feet (200 ft.) of the property included in the application; provided, however, in the case of a residential condominium or cooperative with twenty-five (25) or more dwelling units, notice may be provided to the board of directors or to the association of the condominium or cooperative that represents all of the owners of all such dwelling units;
 - (e) Providing a copy of the notice of the public hearing to each person having a lease with the owner for all or part of any building located on the subject property;
 - (f) Providing a copy of the notice of public hearing to the Office of Planning and all other appropriate government agencies;
 - (g) Providing a copy of the notice of public hearing to the councilmember for the ward within which the property is located; and

- (h) Posting a copy of the notice of the public hearing on the Office of Zoning's website.

402.2 Each notice of public hearing shall include:

- (a) The case number of the application;
- (b) The name of the applicant;
- (c) A general summary of the application under consideration;
- (d) The square(s) and lot(s) and/or street address of the property involved;
- (e) The location, time, and date of the public hearing;
- (f) The number of the affected ANC(s); and
- (g) The requirements for participation as a party.

402.3 When a contested case application is requested by a property owner for the property owned, the applicant shall give additional notice of the public hearing by posting the property with notice of hearing in a form that is prescribed by the Director at least forty (40) days in advance of the public hearing.

402.4 The notice required by Subtitle Z § 402.3 to be placed upon an applicant's property shall be posted in plain view of the public at each street frontage on the property and on the front of each existing building located on the subject property.

402.5 The notice required by Subtitle Z § 402.3 shall be removed by the applicant within two (2) days after the conclusion of the public hearing.

402.6 The notice required by Subtitle Z § 402.3 shall be supplied by the Director indicating:

- (a) The case number of the application;
- (b) The name of the applicant;
- (c) The nature of the application;
- (d) The square(s) and lot(s) and/or street address of the property involved; and
- (e) The location, time, and date of the public hearing.

402.7 The Commission may give any additional notice of the public hearing as it deems necessary or appropriate.

402.8 When required to post any notice pursuant to Subtitle Z § 402.3, the applicant shall complete and file with the Director the completed affidavit of posting form,

demonstrating compliance with Subtitle Z § 402.3. This affidavit shall be filed not less than thirty (30) days prior to the public hearing.

- 402.9 The applicant shall attach to the affidavit a photograph of each sign after posting and as viewed by the public, identifying the street frontage or other location of each sign.
- 402.10 The applicant shall maintain the posting by checking the signs at least once per week and reposting when necessary. The applicant shall file an affidavit of maintenance of the posting between two (2) and six (6) days prior to the public hearing.
- 402.11 Notice of the public hearing pursuant to Subtitle Z § 402.1 shall not be a jurisdictional prerequisite to action by the Commission. It shall be intended to offer supplemental notice only.
- 402.12 A technical defect in the notice of public hearing that is minor in nature shall not deprive the Commission of jurisdiction over the case. If a defect in the notice is alleged and proven, the Commission may determine whether to postpone, continue, or hold the public hearing as scheduled based on the following considerations:
- (a) The nature and extent of the actual notice received by the parties and the public from all sources;
 - (b) Attendance, or lack thereof, at the public hearing; and
 - (c) The nature and extent of the construction and/or use involved in the application.

403 PARTIES: GENERAL GUIDELINES

- 403.1 This section and Subtitle Z § 404 only apply to contested case applications because parties are permitted to participate in those proceedings. These provisions do not apply to rulemaking proceedings where no parties are allowed.
- 403.2 The use of the term “person” includes entities.
- 403.3 All persons may present testimony before the Commission, but parties may also present witnesses, cross-examine witnesses, file pleadings and proposed orders, receive pleadings and proposed orders filed by other parties, and receive the final order issued by the Commission.
- 403.4 Being a party is not a pre-requisite to filing a petition to review a Commission decision with the District of Columbia Court of Appeals.

403.5 In an application for a contested case before the Commission, including, but not limited to, cases described in Subtitle Z § 201.2, the following persons automatically have party status:

- (a) The applicant; and
- (b) The ANC within which the property that is the subject of the application is located; except that if the subject property is located on a street that serves as a boundary line between two (2) ANC's, both ANCs are automatic parties.

403.6 In a contested case proceeding before the Commission, a party shall be afforded all the procedural rights provided in this chapter, including the right to receive a copy of any:

- (a) Service by any other party in the case of documents at the same time or before the document is filed with the Commission; and
- (b) Written notice of any decision or order entered in the case.

403.7 In all contested case proceedings before the Commission, a party may:

- (a) Submit motions and requests to the Commission, and respond to any motions or requests submitted to the Commission by others; provided that the record is open;
- (b) Present witnesses in support of the party's position;
- (c) Cross-examine all other parties and persons testifying in the case;
- (d) Submit proposed findings of fact and conclusions of law; and
- (e) Exercise all other procedural rights provided in this chapter.

404 REQUESTING PARTY STATUS

404.1 Except for the applicant and the affected ANC, to participate as a party in a proceeding before the Commission, a person seeking such status shall file with the Commission a Request for Party Status on the form and in the manner that the Director may prescribe. The person requesting party status and their authorized representatives, if any, shall provide the following information in their initial filing with the Commission:

- (a) Name, mailing address, telephone number, facsimile number, and e-mail address;
- (b) An identification of the application by number, the applicant's name, and the address of the property that is the subject of the application;

- (c) A request to appear and participate as a party;
- (d) Whether the person will appear as a proponent or opponent of the application;
- (e) If the person will appear through legal counsel or other authorized representation and, if so, the name and address of the legal counsel or other authorized representation;
- (f) If the person requesting party status is not an individual, the following shall be provided:
 - (1) Evidence that the entity requesting party status has authorized the entity's participation in the proceeding; and
 - (2) Evidence that the entity requesting party status has designated a specific officer, employee, or agent to act on its behalf and bind entity in the proceeding;
- (g) A list of witnesses who will testify on the person's behalf, a written summary of the testimony of all witnesses, and a complete and professional resume for any expert who may be called to testify at the public hearing; and
- (h) A written statement setting forth why the person should be granted party status, including reference to the following:
 - (1) The property owned or occupied by the person, or in which the person has an interest, that will be affected by the action requested of the Commission;
 - (2) The legal interest the person has in the property, such as owner, tenant, trustee, or mortgagee;
 - (3) The distance between the person's property and the property that is the subject of the application before the Commission;
 - (4) The environmental, economic, social, or other impacts likely to affect the person and/or the person's property if the action requested of the Commission is approved or denied; and
 - (5) An explanation of how the person's interests as identified in response to paragraph (4) would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.

- 404.2 The evidence required in Subtitle Z § 404.1(f) may consist of a resolution of the person's board of directors; a copy of the by-laws provision authorizing the particular officer, employee, or agent to represent the person in such proceedings; a letter signed by all the members; or similar proof satisfactory to the Commission.
- 404.3 The Commission shall determine whether to grant or deny party status requests at the opening of the first public hearing on the application, except the Commission may consider a party status request at a public meeting scheduled at least fourteen (14) days prior to the public hearing if the person requesting party status requests advance consideration on the Request for Party Status form.
- 404.4 A Request for Party Status that is to be considered at a public hearing shall be filed with the Commission not less than fourteen (14) days prior to the public hearing.
- 404.5 A Request for Party Status that is requested to be considered at a public meeting shall identify the public meeting date sought and shall be filed with the Commission not less than fourteen (14) days prior to that date.
- 404.6 If there is no public meeting scheduled within thirty (30) days of the public hearing, the person may request that the Chairman schedule a special public meeting to hear the party status request.
- 404.7 At or before the time of filing the request, the person requesting party status shall serve a copy of the request on the applicant and the affected ANC.
- 404.8 At the time of the filing request, the person requesting party status shall file an affidavit of service to all parties with the Commission;
- 404.9 Any opposition to a party status request by the applicant or affected ANC shall be filed within seven (7) days following the date by which it was served. An applicant's or affected ANC's failure to file a timely opposition shall be deemed signifying no objection to the Request for Party Status.
- 404.10 Replies to any opposition by the person requesting party status will not be accepted into the record.
- 404.11 A person requesting party status must be present at the public hearing or meeting at which the request is being considered; however, the attendance of the applicant or affected ANC at the public meeting is discretionary. Failure of the person or their representative to appear shall be deemed to constitute the withdrawal of the party status request.
- 404.12 During the portion of a public meeting in which a party status request is being considered, the Commission may call forward the person making the request, as well as the applicant or affected ANC, if an objection was made timely pursuant

to Subtitle Z § 404.9. The Commission may put questions to the person making the request and the applicant or affected ANC and to hear argument on the issue.

- 404.13 The Commission shall determine who will be recognized as a party. In so determining, the Commission shall consider whether the provisions of Subtitle Z § 404.1(f) have been complied with and whether the specific information presented qualifies the person as a party.
- 404.14 The Commission shall grant party status only if the person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.
- 404.15 No person may request reconsideration of the denial of their party status request.
- 404.16 If a Request for Party Status is denied, another Request for Party Status may not be made.
- 404.17 If a person granted party status no longer wishes to participate in the application, the person or their representative shall file written notice of that intent, which shall be served on the other parties. Upon the filing of such notice, the person shall no longer be considered a party.

405 REFERRALS TO AND REPORTS OF PUBLIC AGENCIES

- 405.1 For applications for which setdown is required, as soon as an application is accepted by the Director, the matter shall be referred to the Office of Planning, who shall coordinate with other public agencies that may be requested to provide information and assistance, depending on the nature of the case.
- 405.2 As to those applications for which set down is not required, as soon as an application is accepted for filing by the Director, a copy of the application shall be referred to the Office of Planning and other appropriate agencies for review and comment. A copy shall also be sent for review and comment to:

(a) The National Capital Planning Commission of:

- (1) All Subtitle K, Chapter 2 applications;
- (2) Those applications for approval pursuant to Subtitle K § 513.1(a) and (d);
- (3) The portion of the application for Master Plan approval relating to the single building south of H Street pursuant to Subtitle K § 316.1;

- (4) Those applications for stage 1 or consolidated approval for any part of the single building south of H Street pursuant to Subtitle K § 317.1; and
 - (5) Those applications for approval pursuant to Subtitle I § 618;
 - (b) The Capitol Police Board for those applications for approval pursuant to Subtitle K § 516.4; and
 - (c) The District Department of Transportation for those applications for special exception approval pursuant to Subtitle K § 412.
- 405.3 The Office of Planning shall coordinate review of the case and prepare a preliminary setdown report that contains its written recommendations pertaining to the project. The setdown report shall include any written reports submitted by all relevant public agencies including, but not limited to, the District Department of Transportation, Department of Housing and Community Development (DHCD), and, if a historic district or historic landmark is involved, the State Historic Preservation Officer (SHPO).
- 405.4 The written reports and recommendations requested by the Commission shall be filed by the Office of Planning with the Director at least ten (10) days in advance of the public hearing for inclusion in the public record.
- 405.5 For a design review case, the Office of Planning shall report on the:
 - (a) Compatibility of the proposed development with the Comprehensive Plan; and
 - (b) The quality of the urban design and site design of the proposed development, with emphasis on the design review evaluation standards in Subtitle X, Chapter 6.
- 405.6 For a planned unit development (PUD) case, the Office of Planning shall report on the:
 - (a) Suitability of the site for use as a PUD;
 - (b) Appropriateness, character, scale, mixture of uses, and design of the uses proposed for the proposed development, and other identifiable public benefits;
 - (c) Compatibility of the proposed development with the Comprehensive Plan and the goals of the PUD process;
 - (d) The quality of the urban design and site design of the proposed development;

- (e) Issues or concerns raised by the affected ANC or community members; and
- (f) Conformance with the PUD evaluation standards.

405.7 For a map amendment case, the Office of Planning shall report on the:

- (a) Compatibility of the proposed zoning with the Comprehensive Plan and other approved plans; and
- (b) Issues or concerns raised by the affected ANC(s) or community members.

405.8 The Commission shall give “great weight” to the written report of the Office of Planning pursuant to D.C. Official Code § 6-623.04.

406 ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

406.1 This section applies to an ANC within which the property that is the subject of an application is located; except that if the subject property is located on a street that serves as a boundary line between two (2) ANCs, the section applies to both ANCs.

406.2 The Commission shall give "great weight" to the written report of the ANC, pursuant to § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, as amended, that is received at any time prior to the date of a Commission meeting to consider final action including any continuation thereof on the application. All written reports shall contain the following:

- (a) The case name and number;
- (b) The date the public meeting of the ANC to consider the application occurred;
- (c) A statement that proper notice of that public meeting was given by the ANC;
- (d) The number of members of the ANC that constitute a quorum and the number of members present at the public meeting;
- (e) The issues and concerns of the ANC about the application, as related to the standards against which the application shall be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the application;

- (g) The outcome of the vote on the motion to adopt the report to the Commission;
- (h) The name of the person who is authorized by the ANC to present the report; and
- (i) The signature of the ANC chairperson or vice-chairperson.

406.3 If an ANC wishes to participate as a party, it must file its written report with the ANC at least seven (7) days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

406.4 The oral testimony of the ANC representative shall not be given great weight, unless accompanied within seven (7) days by written documentation approved by the respective ANC which supports the testimony.

407 MOTIONS PROCEDURE

407.1 A motion is a request by a party or parties for the Commission to take an action.

407.2 Unless made during a hearing, all motions shall be in writing. The first page of every motion shall contain the party's name, the case number, and the name of the presiding officer, if known. Every motion shall state the legal and factual reasons for the motion and the action requested of the Commission.

407.3 At the time of filing any motion, a party must serve all other parties.

407.4 Unless otherwise provided by these rules or ordered by the presiding officer, all parties opposing a motion shall have seven (7) days from the service of the motion to file and serve a response.

407.5 The presiding officer may decide any procedural motion including motions to continue without holding a hearing.

408 PUBLIC HEARING PROCEDURES

408.1 The presiding officer shall have authority to:

- (a) Call the hearing to order;
- (b) Consider preliminary matters, including, but not limited to, party status requests, motions, and qualifying expert witnesses;
- (c) Conduct the hearing;
- (d) Rule upon offers of proof and receive relevant evidence;

- (e) Exclude unduly repetitious or irrelevant testimony, and permit a witness to adopt the prior testimony of another witness;
- (f) Adjourn a hearing and establish the date when the hearing will be continued;
- (g) Close the hearing and record;
- (h) Take action to maintain decorum and order; and
- (i) Take any other action authorized by this title or necessary under this chapter.

408.2 Except as provided in Subtitle Z § 408.4, the applicant and all parties (except an affected ANC) in support shall collectively have a maximum of sixty (60) minutes, exclusive of cross-examination, to present testimony. All parties (except an affected ANC) in opposition shall collectively have an amount of time equal to that of the applicant and parties in support, but in no case, more than sixty (60) minutes collectively, exclusive of cross-examination, to present testimony in opposition.

408.3 Individuals and organization representatives in support, in opposition, and those undeclared shall have a maximum of three (3) and five (5) minutes respectively to present testimony.

408.4 The Commission may grant additional or lesser time than that allowed under Subtitle Z §§ 408.2 and 408.3 to an applicant, individual, organization representative, or party, to present a case, provided that the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

408.5 Nothing herein shall prohibit the Commission from placing reasonable restrictions on cross-examination, including limitations on the scope of cross-examination, by the applicant or parties in support or opposition.

408.6 A party may cross-examine any other party, individual, or organization representative, except the Commission; provided, that the presiding officer may rule a question out of order when it is irrelevant, immaterial, or unduly repetitious, or otherwise outside of the scope of cross-examination.

408.7 Evidence shall be taken in conformity with D.C. Official Code § 2-509(b) (2012 Repl.). Pursuant to D.C. Official Code § 2-509(b) (2012 Repl.), any oral and any documentary evidence may be received, but the Commission shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel its case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Where any decision of the Commission in a contested case rests on official notice of a

material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

- 408.8 The applicant shall carry the burden of justifying the proposal. Failure of groups or persons to appear in opposition shall not relieve the applicant of the responsibility of demonstrating the merits of the application.
- 408.9 The order of procedure for presenting evidence at the hearing shall be as follows:
- (a) Call to order and opening statement by the presiding officer;
 - (b) Consideration of preliminary matters, including, but not limited to, party status requests, motions, and qualifying expert witnesses;
 - (c) Applicant's case;
 - (d) Reports or statements by the Office of Planning (OP) and other government agency representatives, if any;
 - (e) Affected ANC(s);
 - (f) Parties in support of the application;
 - (g) Individuals and organization representatives in support of the application;
 - (h) Parties in opposition to the application;
 - (i) Individuals and organization representatives in opposition to the application;
 - (j) Individuals and organization representatives who are undeclared with respect to the application;
 - (k) Rebuttal by applicant; and
 - (l) Closing statement by applicant.
- 408.10 If surprise to the applicant or to a party in a contested case is clearly shown and the inability to proceed is demonstrated, a hearing may be adjourned to allow the applicant or party sufficient time to offer rebuttal evidence. This evidence shall be filed with the Director at least fourteen (14) days before the hearing is resumed.
- 408.11 The Commission may close the record at the end of a hearing and vote either to deny an application or to grant an application not involving a map amendment or schedule the case for final action at a public meeting. If the application is for a map amendment, including a map amendment proposed in association with a planned unit development, the Commission may deny the application, take proposed action on the application, or schedule the application for proposed action at a public meeting.

- 408.12 No decision or order of the Commission on an application shall be made except upon the exclusive record of the proceedings before the Commission.
- 408.13 All testimony shall be provided under oath or affirmation.

CHAPTER 5 PRE-HEARING AND HEARING PROCEDURES: RULEMAKING CASES

500 SETDOWN PROCEDURES: SCHEDULING RULEMAKING CASE PETITIONS FOR HEARING

- 500.1 The Director shall review for completeness every petition filed with the Commission within five (5) days of its receipt.
- 500.2 Upon completing the review of a petition, the Director shall notify the petitioner in writing of any deficiency. The notice shall list the information necessary to make the petition complete and the date the information must be received, which shall not be less than five (5) days after the date of notice. If the petitioner fails or refuses to correct the deficiencies in the petition by the date stated, the Director shall not accept the petition for filing.
- 500.3 As soon as a petition is accepted for filing by the Director, the Director shall place a copy of the petition in the public record of the Commission and refer a copy to the Office of Planning and the District Department of Transportation.
- 500.4 Notwithstanding the filing of a petition, the Commission may, on its own motion, review and determine the designation of such case as a contested case or rulemaking case based on the standards contained in Subtitle Z §§ 201.2 and 201.5.
- 500.5 For all petitions, the Commission, at a public meeting, shall determine if the petition should be scheduled (setdown) for a hearing. The Office of Planning shall review and recommend whether the petition should be set down for a hearing.
- 500.6 The report of the Office of Planning shall be in writing and filed with the Director at least ten (10) days prior to a meeting scheduled by the Commission pursuant to Subtitle Z § 103.1.
- 500.7 The Director shall also refer a copy of the petition to the affected ANC, along with an ANC Setdown Form, which the affected ANC may submit to provide feedback on whether the petition should be set down for hearing.
- 500.8 The ANC Setdown Form shall be filed with the Director no later than thirty (30) days after the date the petition is referred.
- 500.9 After considering the petition, the recommendations of the Office of Planning, and the ANC Setdown Form of the affected ANC, where appropriate, the Commission may determine at a public meeting to dismiss the petition or set it down for public hearing or other proceeding.

- 500.10 The concurrence of at least three (3) of the five (5) Commission members shall be required to deny or dismiss a petition without a hearing, as well as to set a matter down for a public hearing or other proceeding.
- 500.11 If the matter is denied or dismissed without a public hearing, the Commission shall issue a denial or dismissal order, copies of which shall be published in the *D.C. Register*, served on the petitioner, and made available on the Office of Zoning website. The order shall include a statement of reasons for the denial or dismissal.
- 500.12 If the Commission denies or dismisses a petition without prejudice, the order shall also state the type of modification the Commission considers appropriate.
- 500.13 If the matter is set down for a public hearing, the Commission shall, at the same meeting, confirm whether the matter will be heard as a contested or rulemaking case according to the standards in Subtitle Z §§ 201.2 and 201.5 and provide that the notice of hearing will state such classification.
- 500.14 A petitioner granted a public hearing and other processing shall be so notified on the record.
- 500.15 After setdown, the hearing date will be scheduled in a timely manner, but only after the petitioner submits its supplemental filing, the appropriate hearing fee has been paid, and it is deemed complete by the Director.
- 500.16 In a rulemaking case before the Commission, including, but not limited to, those cases described in Subtitle Z § 201.5, there are no parties.

501 SUPPLEMENTAL FILINGS

- 501.1 Prior to the scheduling of a public hearing, the petitioner shall file with the Director ten (10) copies of architectural drawings and two (2) paper copies of other information, and an electronic copy through the Office of Zoning electronic case management system, of the following:
- (a) Any additional information, reports, or other materials specified by the Commission at the time the matter was set down for public hearing; or, if the Commission requested the petitioner to make any changes in the petition, the updated petition and supportive material;
 - (b) A list of witnesses who are prepared to testify on the petitioner's behalf;
 - (c) A written summary of testimony of all witnesses or of the written report, and a complete and professional resume for any expert who may be called to testify at the public hearing, or made available to answer questions;
 - (d) Any additional information, reports, or other materials the petitioner may wish to introduce;

- (e) Reduced plans, which plans shall be no larger than the tabloid size of eleven inches (11 in.) by seventeen inches (17 in.), that show the "north arrow" reading up, and that include a bar scale;
- (f) A list of maps, plans, or other documents that are readily available to the general public and that will be offered into evidence; and
- (g) An estimate of the time required for the presentation of the petitioner's case, subject to the decision of the presiding officer as provided in Subtitle Z § 408.2.

501.2 The Director shall not issue any notice of public hearing until the petitioner certifies in writing that all of the requirements of this section have been complied with.

501.3 If the supplemental report includes a report by a transportation consultant or expert, the petitioner shall provide a copy of the report to the District Department of Transportation on the same day of filing with the Office of Zoning.

501.4 No later than thirty (30) days before the date of the public hearing on the petition, the petitioner shall file with the Commission any traffic or transportation reports to be submitted in support of the petition. All such reports shall include the resume of the expert who prepared the report. At or before the time of filing the traffic or transportation report with the Commission, the petitioner shall serve a copy of the report on the affected ANC, the Office of Planning, and the District Department of Transportation.

502 PUBLIC NOTICE REQUIREMENTS

502.1 Notice of a rulemaking case hearing shall be given by the Director at least forty (40) days in advance of the public hearing by:

- (a) Publishing the notice of public hearing in the *D.C. Register*;
- (b) Posting a copy of the notice of the public hearing on the Office of Zoning's website; and
- (c) Providing a copy of the notice of the public hearing to the appropriate ANC(s).

502.2 Each notice of public hearing shall include:

- (a) The case number of the petition;
- (b) A general summary of the petition under consideration;
- (c) The square(s) and lot(s), and/or street address of the property involved; if any;

- (d) The location, time, and date of the public hearing;
- (e) The name of the petitioner;
- (f) The action requested of the Commission; and
- (g) That the proceedings will be conducted pursuant to Subtitle Z, Chapter 5.

502.3 For a map amendment involving property owned by the petitioner, the petitioner shall give additional notice of the public hearing by posting the property with a notice of public hearing at least forty (40) days in advance of the public hearing.

502.4 The notice required by Subtitle Z § 502.3 is to be placed in plain view of the public at each street frontage of each square affected by the proposed map amendment, with a notice of public hearing in a form prescribed by the Director pursuant to Subtitle Z § 502.6.

502.5 The notice required by Subtitle Z § 502.3 shall be removed by the petitioner within two (2) days after the conclusion of the public hearing.

502.6 The notice required by Subtitle Z § 502.3 shall be supplied by the Director indicating:

- (a) The case number of the petition;
- (b) The name of the petitioner;
- (c) The nature of the petition;
- (d) The square(s) and lot(s) and/or street address of the property involved; and
- (e) The location, time, and date of the public hearing.

502.7 The Commission may give any additional notice of the public hearing as it deems necessary or appropriate.

502.8 When required to post any notice pursuant to Subtitle Z § 502.3, the petitioner shall complete and file with the Director the completed affidavit of posting form, demonstrating compliance with Subtitle Z §§ 502.3 and 502.4. This affidavit shall be filed not less than thirty (30) days prior to the public hearing.

502.9 The petitioner shall maintain the posting by checking the signs at least once per week and reposting when necessary. The petitioner shall file an affidavit of maintenance of the posting between two (2) and six (6) days prior to the public hearing.

502.10 If a failure of notice under Subtitle Z § 502.3 is alleged and proven, the Commission may consider all the surrounding circumstances, including the extent of actual notice received by the public from all sources, attendance at the public

hearing, and the nature and extent of the proposed construction and use under the application, if approved. On the basis of these considerations, the Commission may determine whether the public hearing will be postponed, continued, or held as scheduled.

503 [RESERVED]

504 REPORTS OF PUBLIC AGENCIES

504.1 As soon as a petition is set down for a public hearing, the matter shall be referred to the Office of Planning, who shall coordinate with other public agencies that may be requested to provide information and assistance, depending on the nature of the case.

504.2 The Office of Planning shall coordinate review of the case and prepare a preliminary setdown report that contains its written recommendations pertaining to the project. The preliminary setdown report shall include any written reports submitted by all relevant public agencies including, but not limited to, the District Department of Transportation, Department of Housing and Community Development (DHCD), and, if a historic district or historic landmark is involved, the State Historic Preservation Officer (SHPO).

504.3 The written reports and recommendations requested by the Commission shall be filed by the Office of Planning with the Director at least ten (10) days in advance of the public hearing for inclusion in the public record.

504.4 For a map amendment case, the Office of Planning shall report on the:

- (a) Compatibility of the proposed zoning with the Comprehensive Plan and other approved plans; and
- (b) Issues or concerns raised by the affected ANC(s) or community members.

504.5 For a text amendment case, if the Office of Planning fails to transmit its opinion or report to the Commission within a period of forty-five (45) days from the date of the submission, the Commission may proceed to schedule a public hearing on the proposed amendment.

504.6 The Commission shall give “great weight” to the written report of the Office of Planning pursuant to D.C. Official Code § 6-623.04.

505 ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

505.1 The Commission shall give "great weight" to the written report of the ANC(s), pursuant to § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, as amended, that is received at any time prior to

the date of a Commission meeting to consider final action, including any continuation thereof on the petition. All written reports shall contain the following:

- (a) The case name and number;
- (b) The date the public meeting of the ANC to consider the petition occurred;
- (c) A statement that proper notice of that public meeting was given by the ANC;
- (d) The number of members of the ANC that constitute a quorum and the number of members present at the public meeting;
- (e) The issues and concerns of the ANC about the petition, as related to the standards against which the petition shall be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the petition;
- (g) The outcome of the vote on the motion to adopt the report to the Commission;
- (h) The name of the person who is authorized by the ANC to present the report; and
- (i) The signature of the ANC chairperson or vice-chairperson.

505.2 The oral testimony of the ANC representative shall not be given great weight, unless accompanied within seven (7) days by written documentation approved by the respective ANC, which supports the testimony.

506 PUBLIC HEARING PROCEDURES

506.1 Any individual or organization representative may appear at a hearing in a rulemaking case proceeding, and may present, within the time limits determined by the Commission, evidence, testimony, or argument that is relevant and not unduly repetitious pursuant to Subtitle Z § 408.3.

506.2 There are no parties in a rulemaking case proceeding.

506.3 The presiding officer shall have authority to:

- (a) Call the hearing to order;
- (b) Consider preliminary matters, including, but not limited to, motions, and qualifying expert witnesses;
- (c) Conduct the hearing;

- (d) Rule upon offers of proof and receive relevant evidence;
- (e) Exclude unduly repetitious or irrelevant testimony, and permit a witness to adopt the prior testimony of another witness;
- (f) Adjourn a hearing and establish the date when the hearing will be continued;
- (g) Close the hearing and record;
- (h) Take action to maintain decorum and order; and
- (i) Take any other action authorized by this title or necessary under this subtitle.

506.4 The order for presenting evidence and arguments at the public hearing for a rulemaking case proceeding shall be as follows:

- (a) Call to order and opening statement by the presiding officer;
- (b) Consideration of preliminary matters, including, but not limited to, motions and qualifying expert witnesses;
- (c) Petitioner's case;
- (d) Reports or statements by the Office of Planning and other government agency representatives, as needed;
- (e) Affected ANC(s);
- (f) Individuals and organization representatives in support of the petition;
- (g) Individuals and organization representatives in opposition to the petition; and
- (h) Individuals and organization representatives who are undeclared with respect to the petition.

506.5 The Commission may close the record at the end of a hearing and vote either to deny the petition or take proposed action to grant the petition. Alternatively, the Commission may schedule the case for proposed action at a public meeting.

506.6 No decision or order of the Commission on a petition shall be made except upon the exclusive record of the proceedings before the Commission.

506.7 All testimony shall be provided under oath or affirmation.

CHAPTER 6 POST-HEARING PROCEDURES

600 DISPOSITION OF CASE BY WITHDRAWAL OR DISMISSAL

- 600.1 An applicant or petitioner may withdraw an application or petition at any time prior to advertisement of the hearing.
- 600.2 Following advertisement, an application or petition may be withdrawn only with the consent of the Commission.
- 600.3 An applicant or petitioner may withdraw, respectively, an application or petition at any time prior to the issuance of the Commission's written final decision and order, subject to the following conditions:
- (a) The applicant or petitioner shall file a written statement with the Commission withdrawing the application or petition;
 - (b) Withdrawal shall not authorize the removal of any document or paper from the files of the Commission;
 - (c) The application or petition fee shall not be refunded upon withdrawal; and
 - (d) If an application or petition is withdrawn, a new application or petition shall not be accepted for filing for at least ninety (90) days after the date the written statement of withdrawal is filed.
- 600.4 The Commission may dismiss an application or petition for failure of the applicant or petitioner to comply with the procedural requirements of this chapter, as follows:
- (a) Dismissal shall not authorize the removal of any document or paper from the files of the Commission;
 - (b) The application or petition fee shall not be refunded upon dismissal; and
 - (c) If an application or petition is dismissed before the close of the record, a new application or petition shall not be accepted for at least ninety (90) days after the date of the written order dismissing the application or petition.
- 600.5 No application or petition shall be dismissed on the grounds that the applicant or petitioner failed to comply with the provisions of this chapter unless, after due notice of the deficiency and expiration of a reasonable time as fixed by the Commission, the deficiency has not been corrected.

601 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 601.1 In a contested case, the applicant is required to submit proposed findings of fact and conclusions of law to the Office of Zoning within such time as the presiding officer may direct, which in any event shall not be less than seven (7) days after the transcript of the public hearing is delivered to OZ, pursuant to Subtitle Z § 104.4. However, nothing prevents an applicant from submitting proposed findings of facts and conclusions of law earlier if it chooses to do so.
- 601.2 In a contested case, other parties who choose to submit findings of fact and conclusions of law shall do so in accordance with Subtitle Z § 601.1.
- 601.3 Each party shall serve any proposed findings of fact and conclusions of law on all other parties at the same time or before the proposed findings and conclusions are filed with the Commission. The parties shall also file a certificate of service.
- 601.4 If requested by the Commission, the applicant or other parties may submit revised findings of facts and conclusions of law, provided that no such filing may be made later than seven (7) days prior to the date the application is scheduled for final action.
- 601.5 Unless the Commission specifies otherwise in a proceeding, no responses shall be permitted to a party's proposed findings of fact and conclusions of law.

602 CLOSING THE RECORD

- 602.1 The record shall be closed at the end of the public hearing, unless the Commission makes a determination to keep the record open for a stated period for the receipt of specific exhibits, information, or legal briefs, as directed by the presiding officer.
- 602.2 In a contested case, an applicant that has been required by Subtitle Z § 401.2 to submit a memorandum of understanding, and who did not submit, during or before the hearing, a fully executed written agreement to implement that memorandum, shall submit a written agreement, executed by the applicant and all appropriate agencies or entities, prior to the scheduling of proposed action.
- 602.3 In a contested case, the Commission shall allow all parties to a case an opportunity to file written responses to any exhibits, information, or legal briefs submitted after the close of the public hearing. All responses shall be filed within seven (7) days following the date by which the exhibits, information, or legal briefs were due. Replies by other parties to the aforementioned responses will not be accepted into the record.

- 602.4 In a rulemaking case, the Commission may allow individuals an opportunity to file written responses to any exhibits, information, or legal briefs submitted within the period designated by the Commission.
- 602.5 Prior to taking final action in a contested case, the Commission may on its own motion re-open the record and require submission of additional materials or further hearing on designated issues before the Commission. Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings, or the party's authorized representative. Notice shall be given at least fourteen (14) days prior to the date set for further hearing.
- 602.6 Any supplemental material received by the Commission after the close of the record that bears upon the substance of the application or petition shall be returned by the Director and not accepted into the files of the Commission. However, if the materials are accompanied by a separate request to re-open the record, the request shall be accepted and presented to the Commission for consideration. The request must demonstrate good cause and the lack of prejudice to any party. Such requests may be granted by the presiding officer and, if granted, the supplemental materials shall be entered into the record.

603 PROPOSED ACTION

- 603.1 As used in this section, proposed action means a vote taken after a hearing by the Commission to:
- (a) Publish a Notice of Proposed Rulemaking in the *D.C. Register* to permanently amend the zoning map or the text of the zoning regulations; or
 - (b) Refer the following types of cases to the National Capital Planning Commission (NCPC) for comment and review:
 - (1) Proposals to permanently amend the text of this title other than Subtitles A, Y, or Z or the zoning map; and
 - (2) Applications to grant a map amendment including an application related to a planned unit development application.
- 603.2 The Commission must take proposed action before taking final action to approve the cases described in Subtitle Z § 603.1.
- 603.3 Notice of the Commission's decision to take proposed action with respect to an application need not be issued.
- 603.4 A proposed action vote is not required to:
- (a) Grant an application not listed in Subtitle Z § 603.1(b)(2);

- (b) Amend the text of Subtitles A, Y, or Z;
- (c) Amend the text of this title on an emergency basis pursuant to D.C. Official Code § 2-505(b); or
- (d) Deny any application or petition.

603.5 A Commission vote to take any of the actions described in Subtitle Z § 603.4 is considered a final action.

604 FINAL ACTION AND FINAL ORDERS

604.1 In a rulemaking case to take final action to amend the text of this title, other than Subtitles A, Y, or Z or the Zoning Map, the Commission may proceed following receipt of the written report of the NCPC or after thirty (30) days from the date of the referral required under Subtitle Z § 603.1(b), whichever is sooner. In no case shall the Commission take final action sooner than the expiration of the period of public comment stated in the publication of the proposed rulemaking in the *D.C. Register*.

604.2 In a contested case, to take final action to approve a map amendment, including an amendment related to a PUD, or an air space development, the Commission may proceed following receipt of the written report of NCPC or after thirty (30) days from the date of the referral required under Subtitle Z § 603.1(b), whichever is sooner.

604.3 The Commission may proceed without a referral to or report from NCPC to:

- (a) Deny any application or petition; or
- (b) Approve any case for which NCPC referral is not specifically required under Subtitle Z § 603.1(b).

604.4 The final action of the Commission on an application or petition shall be in the form of a written order that shall be filed in the record.

604.5 A copy of the order shall be served on:

- (a) The petitioner;
- (b) The applicant and any other parties, if any;
- (c) The affected ANC(s);
- (d) The ANC Commissioner for the Single-Member District within which the property is located, if any; and

(e) The Councilmember for the Ward within which the property, if any, is located.

- 604.6 In a rulemaking case, orders shall be published in the *D.C. Register* as a notice of emergency or final rulemaking action, as is applicable.
- 604.7 In a contested case, the order shall be accompanied by findings of fact and conclusions of law unless the decision is not adverse to any party, in which case a summary form of order may be used. The order shall be published in the *D.C. Register*.
- 604.8 A written order setting forth a final action shall become final and effective upon publication in the *D.C. Register* unless the Commission specifies a later effective date.
- 604.9 A PUD associated rezoning shall become effective only upon completion of the process required by Subtitle X, Chapter 3 and upon filing with the District of Columbia a covenant ensuring compliance with the approved plans.
- 604.10 Approval of an application shall include approval of the plans submitted together with the application for the construction of a building or structure (or addition thereto) or the renovation or alteration of an existing building or structure, unless the Commission orders otherwise.
- 604.11 An application shall be required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Commission, unless the Commission orders otherwise.
- 604.12 If there is any ambiguity between the plans and the order, the written text of the order supersedes.
- 604.13 The Director or the Chairperson of the Commission is authorized to sign a final order that has been approved by a majority of the Commission.

CHAPTER 7 APPROVALS AND ORDERS

700 RECONSIDERATION OF FINAL ORDER; REHEARING AFTER FINAL ORDER

- 700.1 Requests for reconsideration of an application or petition dismissed without a hearing shall not be entertained.
- 700.2 No application or petition essentially the same as that denied following a hearing shall be accepted for filing within one (1) year after the denial.
- 700.3 A motion for reconsideration, rehearing, or re-argument of a final order in a contested case under Subtitle Z § 201.2 may be filed by a party within ten (10) days of the order having become final. The motion shall be served upon all other parties.
- 700.4 The Commission shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a final order in a contested case proceeding that is filed prior to the order having become final.
- 700.5 A motion for reconsideration, rehearing, or re-argument shall be filed on a form and in a manner as may be designated by the Director.
- 700.6 A motion for reconsideration, rehearing, or re-argument shall state specifically the respects in which the final order is claimed to be erroneous, the grounds of the motion, and the relief sought.
- 700.7 No request for rehearing shall be considered by the Commission unless new evidence is submitted that could not reasonably have been presented at the original hearing. If a rehearing is granted, notice shall be given as in the case of an original hearing.
- 700.8 Within seven (7) days after a motion for reconsideration, rehearing, or re-argument has been filed and served, any other party may file an answer in opposition to or in support of the motion. Replies by other parties to the aforementioned answers will not be accepted into the record.
- 700.9 Notice of a further hearing along with the designated issues shall be forwarded to any party who participated in the earlier proceedings, or the party's authorized representative. Notice shall be provided at least fourteen (14) days prior to the date set for further hearing.
- 700.10 Neither the filing nor the granting of the motion for reconsideration, rehearing, or re-argument shall stay a decision unless the Commission orders otherwise.
- 700.11 A motion for reconsideration, rehearing, or re-argument shall not be a prerequisite to judicial review.

700.12 A motion for reconsideration, rehearing, or re-argument of a final order in a rulemaking case shall not be accepted for filing or considered, except that a member of the Commission may initiate a motion for reconsideration up to thirty-five (35) days after the vote on the final action.

701 STAY OF FINAL DECISION AND ORDER

701.1 The Commission, on its own motion or the motion of a party or petitioner to the District of Columbia Court of Appeals, may order the effectiveness of a final decision and order of the Commission stayed, pending reconsideration or rehearing, *sua sponte* review, or appeal of the decision and order to the Court of Appeals.

701.2 Except for stays granted upon its own motion, the Commission shall grant a stay only upon finding all four of the following criteria are present:

- (a) The party seeking the stay is likely to prevail on the merits of the motion for reconsideration or rehearing, or the appeal;
- (b) Irreparable injury will result if the stay is denied;
- (c) Opposing parties will not be harmed by a stay; and
- (d) The public interest favors the granting of the stay.

702 VALIDITY OF APPROVALS AND IMPLEMENTATION

702.1 A first-stage or second-stage approval of a planned unit development (PUD) by the Commission shall be valid for a period of one (1) year, unless a longer period is established by the Commission at the time of approval, within which time application shall be filed for a building permit.

702.2 A contested case approval by the Commission shall be valid for a period of two (2) years from the effective date of the order granting the application, unless a longer period is established by the Commission at the time of approval, within which time application shall be filed for a building permit.

702.3 Construction shall start within three (3) years after the effective date of order granting the design review or second-stage PUD application, unless a longer period is established by the Commission at the time of approval.

702.4 In granting second-stage or design review approval, the Commission may specify that the project be built in stages and shall specify the timing of the stages.

702.5 Previous approval of an application shall not be a binding precedent on a new application.

- 702.6 If no application for a permit is filed, construction has not started within the period specified, or no extension is granted, the approval shall expire, the zoning shall revert to the pre-existing regulations and map.
- 702.7 Following approval of an application by the Commission, the applicant may file an application for a building permit with the proper authorities of the District of Columbia.
- 702.8 The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied. Nor shall the Zoning Administrator accept the establishment of an escrow account in satisfaction of any condition in the Commission's order approving the PUD.
- 702.9 For design review applications, approval shall be treated as a whole. Specific flexibility or special exception uses approved as part of the design review development shall not be bifurcated without approval of the Commission.
- 702.10 For PUD cases, the Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of Columbia by the owner or owners for the benefit of the District of Columbia, satisfactory to the Office of the Attorney General and the Zoning Administrator, which covenant will bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Commission.
- 702.11 The orders of the Commission issued in accordance with this chapter shall have all the force of this title, and violations shall be prosecuted in accordance with the provisions of Subtitle A, Chapter 3 of this title.
- 702.12 A text amendment approved by the Commission shall be effective upon issuance of a final order.
- 702.13 If applicable, the Office of Zoning shall make the referenced changes to the official Zoning Map and other public documents within thirty (30) days of the final action by the Commission.
- 703 CONSENT CALENDAR – MINOR MODIFICATION, MODIFICATION OF CONSEQUENCE, AND TECHNICAL CORRECTIONS TO ORDERS AND PLANS**
- 703.1 This procedure shall allow the Commission, in the interest of efficiency, to make, without public hearing, minor modifications, modifications of consequence, and technical corrections to previously approved final orders and plans.

- 703.2 For purposes of this section, “minor modifications” shall mean modifications that do not change the material facts upon which the Commission based its original approval of the application or petition.
- 703.3 For the purposes of this section, the term “modification of consequence” shall mean a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance
- 703.4 Examples of modification of consequence include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.
- 703.5 For the purposes of this section, a “modification of significance” is a modification to a contested case order or the approved plans of greater significance than a modification of consequence. Modifications of significance cannot be approved without the filing of an application and a hearing pursuant to Subtitle Z § 704.
- 703.6 Examples of modifications of significance include, but are not limited to, a change in use, change to proffered public benefits and amenities, change in required covenants, or additional relief or flexibility from the zoning regulations not previously approved.
- 703.7 In a rulemaking, any person may request a minor modification or technical correction by filing a written request on the form provided by the Director together with a copy of the rulemaking order.
- 703.8 In a contested case, only the applicant may request a technical correction, minor modification, or a modification of consequence to the order approving its application or to the approved plans using the form provided by the Director.
- 703.9 An application for minor modification approval shall be made in an appropriate manner provided by the Director.
- 703.10 The applicant shall furnish eight (8) copies of architectural drawings and two (2) copies of all other information required by the form at the time of filing the application, including the following:
- (a) A completed application form;
 - (b) The nature of, reason(s), and grounds for the minor modification, modifications of consequence, or technical correction; and
 - (c) A copy of any Commission final order, map, plan, or other action or relief proposed to be modified or corrected.

- 703.11 In a contested case, the filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.
- 703.12 The Commission, upon its own motion, may place a rulemaking matter on the Consent Calendar.
- 703.13 In a contested case, all written requests shall be served by the applicant on all parties in the original proceeding at the same time that the request is filed with the Office of Zoning. All written requests in a rulemaking case shall be served by the person requesting Consent Calendar placement upon the affected ANC.
- 703.14 The Director shall determine the appropriate form of public notice and any additional service, taking into account the nature of the request and any issues relating to efficiency and fairness.
- 703.15 In a contested case, within seven (7) days after a request to put a matter on the Consent Calendar for a minor modification or technical correction has been filed and served, any other party may file a response in opposition to or in support of the request. The responding party shall serve all other parties at the time that the response is filed with the Office of Zoning.
- 703.16 Responses for requests for modification of consequence shall be filed at the time specified by the Commission pursuant to Subtitle Z § 703.17.
- 703.17 The Commission may take one (1) of the following actions at a public meeting:
- (a) At the request of a Commissioner, remove an item from the Consent Calendar;
 - (b) Grant or deny a request for a minor modification or technical correction; or
 - (c) For a modification of consequence:
 - (1) Determine that the request is actually for a modification of significance in which case an application for such a modification must be filed and a hearing held pursuant to Subtitle Z § 705; or
 - (2) Establish a timeframe for the parties in the original proceeding to file responses in opposition to or in support of the request and for the applicant to respond thereto; and schedule the request for deliberations.
- 703.18 Any matter that is removed from the Consent Calendar shall be acted upon by the Commission according to the applicable procedures contained in other sections of this chapter.

704 MODIFICATIONS OF SIGNIFICANCE

- 704.1 An application for a modification of significance shall be filed using the form provided by the Director.
- 704.2 If the applicant had first requested the modification as a modification of consequence, the application fee paid in that case shall be credited against the fee required.
- 704.3 If the application is for the modification of a second-stage PUD, it shall meet the requirements for, and be processed as, a second-stage PUD application.
- 704.4 The scope of a hearing conducted pursuant to this section shall be limited to impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision.
- 704.5 The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.

705 TIME EXTENSIONS

- 705.1 The provisions of this section apply in their entirety to applications for design review and planned unit developments (PUDs).
- 705.2 An applicant may request an extension of the time periods of an order for good cause upon the filing of a written request, before the expiration of the approval, documenting the following:
- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
 - (b) There is no substantial change in any of the material facts upon which the Commission based its original approval of the application that would undermine the Commission's justification for approving the original application; and
 - (c) The applicant demonstrates with substantial evidence one (1) or more of the following criteria:
 - (1) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;
 - (2) An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of

delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

- (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.

705.3 The Commission may at their sole discretion:

- (a) Grant the extension for no more than two (2) years, subject to their determination that the applicant has sufficiently evidenced compliance with the criteria in Subtitle Z § 705.2; or
- (b) Grant the extension for no more than two (2) years, subject to their determination that the applicant has sufficiently evidenced compliance with the above criteria but with applicable conditions that the Commission concludes are in the public interest and which will expire with the issuance of a certificate of occupancy for the project; or
- (c) Deny the extension request.

705.4 Only one (1) extension may be requested for a design review development approval.

705.5 An applicant with an approved PUD may request no more than two (2) extensions. The second request for an extension may be approved for no more than one (1) year.

705.6 A request for an extension of an approval may not be filed more than six (6) months prior to the expiration of the order.

705.7 The Commission shall hold a public hearing on a request for an extension of the validity of an application approval only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the proceeding concerning any of the criteria in Subtitle Z § 705.2. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

705.8 In the event an appeal is filed in a court of competent jurisdiction from an order of the Commission, the time limitations of Subtitle Z §§ 705.3 and 705.5 shall run from the decision date of the court's final determination of the appeal. Unless stayed by the Commission or a court of competent jurisdiction, an applicant may proceed pursuant to the order of the Commission prior to any such final determination.

706 EXPIRATION AND DISMISSAL

- 706.1 Any contested case application for which a public hearing has not been held before the Commission within two (2) years from the date of the application being filed with the Office of Zoning shall be deemed dismissed without prejudice.
- 706.2 A PUD for which a public hearing has not been held before the Commission within two (2) years from the date of when the Commission set the case down for public hearing shall be deemed dismissed.
- 706.3 All filing fees relative to a dismissed or expired application under this section shall be non-refundable and not applicable to any future consideration of any case.

CHAPTER 8 SUA SPONTE REVIEW

800 SUA SPONTE REVIEW BY ZONING COMMISSION

- 800.1 The provisions of this section shall apply to all Board of Zoning Adjustment appeals and applications, except chancery proceedings.
- 800.2 Within ten (10) days after the decision and order of the Board of Zoning Adjustment has become final as provided in Subtitle Y § 604.8, the Commission may, *sua sponte*, determine to review any final decision and order of the Board of Zoning Adjustment and stay the effect of the decision and order pending completion of its review.
- 800.3 The Commission's determination to review a decision and order of the Board of Zoning Adjustment shall be transmitted forthwith to the Director, who shall forward to the Commission the record in the case and serve notice of the Commission's determination to review the Board of Zoning Adjustment's decision and order upon all parties to the case.
- 800.4 Upon receipt of the record, the Commission shall review the case and take such action as it deems appropriate; provided, however, the Commission shall not reverse or modify any decision and order of the Board of Zoning Adjustment without affording the parties to the case an opportunity to present written statements to the Commission in support of or in opposition to the action of the Board of Zoning Adjustment.
- 800.5 Any action by the Commission may include, without limitation, any of the following:
- (a) Hearing argument based on the existing record in the case before the Board of Zoning Adjustment;
 - (b) Affirmance, modification, or reversal of the Board of Zoning Adjustment's decision and order; and
 - (c) Remanding the case to the Board of Zoning Adjustment for reconsideration, rehearing, or other action pursuant to the instructions of the Commission.
- 800.6 The *sua sponte* review process established in this section shall not grant any rights of appeal to the Commission.
- 800.7 Because there is no right of appeal to the Commission from any action of the Board of Zoning Adjustment, the Commission need not answer any communications to the Commission (regardless of the form) requesting that *sua sponte* review be undertaken. *Sua sponte* review is a discretionary internal process.

800.8

The Commission shall look to the following guidelines when determining whether to invoke its *sua sponte* review authority. The Commission may exercise *sua sponte* review as follows:

- (a) In a particular instance where it appears to the Commission that the Board of Zoning Adjustment has exceeded its authority and has thus in effect changed the zoning;
- (b) Where it appears that a basic policy of the Commission, as expressed in the Zoning Regulations, has been violated as a result of action by the Board of Zoning Adjustment; or
- (c) In an unusual instance, as determined by the Commission.

CHAPTER 9 REMAND PROCEDURE

900 INTRODUCTION TO THE REMAND PROCESS

900.1 This chapter provides regulations for Commission to follow when the District of Columbia Court of Appeals remands a Commission decision for further proceedings.

901 REMAND PROCEDURES

901.1 Upon receipt of a Court of Appeals mandate remanding a Commission decision, the Director shall request the Office of the Attorney General (OAG) to provide a memorandum that:

- (a) Summarizes the Court of Appeals holding;
- (b) Identifies the issues that must be decided on the remand; and
- (c) Provides such further information and analysis as to enable the Commission to comply with the remand instructions.

901.2 Following receipt of the OAG memorandum, the Commission may meet to determine whether it should request the parties to submit briefs, provide additional oral or documentary evidence, present oral argument, or to augment the record by other means.

901.3 If it is determined that any of these actions are needed, the Commission shall issue a procedural order identifying the actions required and the timeframe within which those action must occur. The order shall be sent to any party who participated in the earlier proceedings, or the party's authorized representative.

901.4 No new parties shall be added to the case, and the Office of Zoning shall not accept requests for party status.

901.5 If a further hearing is ordered, the procedural order shall be issued no earlier than fourteen (14) days prior to the date set for the further hearing. The Director may provide such other notice of the hearing, as he or she deems appropriate.

901.6 Testimony at any further hearing shall be limited to witnesses called by the parties, unless the procedural order states otherwise.

901.7 Once the Commission Chairperson believes that the record is sufficient to permit deliberation, the Commission Secretary shall distribute to each Commission member the case record and schedule the case for decision.

901.8 Any Commission member who did not participate in the original decision shall indicate that he or she has read the record as a prerequisite to participating in the remand deliberations.

CHAPTER 10 THROUGH CHAPTER 15 [RESERVED]

CHAPTER 16 FEES

1600 FILING FEES

- 1600.1 At the time of filing a petition for a rulemaking map amendment, the petitioner shall pay a filing fee of three hundred twenty-five dollars (\$325).
- 1600.2 At the time of filing a petition for an amendment to the text of the Zoning Regulations, the petitioner shall pay a filing fee of three hundred twenty-five dollars (\$325).
- 1600.3 At the time of filing an application for approval of a planned unit development (PUD), contested case map amendment, or air space development, the applicant shall pay a filing fee of six hundred fifty dollars (\$650).
- 1600.4 At the time of filing an application for a modification to an approved PUD or air space development, the applicant shall pay a filing fee of five hundred twenty dollars (\$520).
- 1600.5 At the time of filing an application for a college or university use, the applicant shall pay a filing fee of six thousand five hundred dollars (\$6,500) for the processing a new or revised campus plan, and three thousand two hundred fifty dollars (\$3,250) for review of a specific building or use within an approved plan.
- 1600.6 At the time of filing an application for approval of a required design review, the applicant shall pay the following filing fee:
- (a) For each one hundred square feet (100 sq. ft.) of gross floor area or part thereof included in the application devoted to dwelling units, and the immediate area needed to serve that dwelling unit, seven dollars (\$7), with a maximum of sixty-five thousand dollars (\$65,000);
 - (b) For each one hundred square feet (100 sq. ft.) of gross floor area or part thereof included in the application devoted to any use other than a dwelling unit and the immediate area needed to serve that dwelling unit, thirteen dollars (\$13); and
 - (c) In the case of an application that combines dwelling units and other uses, the fee shall be the total of the amounts for each use computed separately.
- 1600.7 At the time of filing an application for approval of a voluntary design review, the applicant shall pay a filing fee of two thousand dollars (\$2,000).
- 1600.8 At the time of filing an application for a modification to an approved required design review, the applicant shall pay a filing fee of twenty-six percent (26%) of the original filing or one thousand three hundred dollars (\$1,300), whichever is greater.

- 1600.9 At the time of filing an application for a modification to an approved voluntary design review, the applicant shall pay a filing fee of fifteen hundred dollars (\$1,500).
- 1600.10 At the time of filing a request for approval of an extension of time to the validity of a Zoning Commission order, the applicant shall pay a filing fee of five hundred twenty dollars (\$520).
- 1600.11 Fees for any additional relief for special exception or variance will be assessed pursuant to Subtitle Y § 1600 – Schedule of Filing Fees.

TABLE Z § 1600 – SCHEDULE OF FILING FEES

CASE TYPE	FEE	MAXIMUM
Map amendment by rulemaking	\$325	
Text amendment	\$325	
Planned unit development (PUD), contested case map amendment, air space development	\$650	
Modification to an approved PUD, air space development	\$520	
Extension of time to the validity of an order for an approved design review or PUD	\$520	
College or university – new or revised campus plan	\$6,500	
College or university – review of a building or use w/in an approved plan	\$3,250	
Design review (voluntary)	\$2,000	
Design review (required)		
For each one hundred square feet (100 sq. ft.) of gross floor area or part thereof included in the application devoted to dwelling units, and the immediate area needed to serve that dwelling unit	\$ 7/100 sq. ft.	\$65,000
For each one hundred square feet (100 sq. ft.) of gross floor area or part thereof included in the application devoted to any use other than a dwelling unit and the immediate area needed to serve that dwelling unit	\$13/100 sq. ft.	
Modification to approved design review		
Voluntary	\$1,500	\$1,500
Required	26% of the original hearing fee or \$1,300, whichever is greater	

1601 HEARING FEES

- 1601.1 If the Commission schedules a public hearing on an application or petition for an amendment to the Zoning Map, prior to advertisement of the hearing, the applicant or petitioner shall pay a hearing fee in accordance with the following schedule:
- (a) For a map amendment to any R-1 through R-3, R-6 through R-17, or R-19 through R-21 zone, for each forty-three thousand five hundred and sixty square feet (43,560 sq. ft.) or part of that area, six hundred fifty dollars (\$650);

- (b) For a map amendment to any RF-1 through RF-3 zone and RA-1 or RA-6 zone, for each forty-three thousand five hundred and sixty square feet (43,560 sq. ft.) or part of that area, one thousand six hundred twenty-five dollars (\$1,625);
- (c) For a map amendment to any RA-2, RA-7, RA-8, or RC-1 zone, for each forty-three thousand five hundred and sixty square feet (43,560 sq. ft.) or part of that area, three thousand two hundred fifty dollars (\$3,250);
- (d) For a map amendment to any RA-3 through RA-5, RA-9, RA-10, D-1-R, SEFC-2, SEFC-3, or CG-1 zone, for each forty-three thousand five hundred and sixty square feet (43,560 sq. ft.) or part of that area, six thousand five hundred dollars (\$6,500);
- (e) For a map amendment to any MU-1, MU-2, MU-10 through MU-16, MU-22, MU-23, MU-29, D-2, SEFC-1, SEFC-4, CG4 through CG-7, and ARTS-4 zone, for each ten thousand square feet (10,000 sq. ft.) or part of that area, two thousand six hundred dollars (\$2,600);
- (f) For a map amendment to any MU-3 through MU-6, MU-17 through MU-19, MU-24 through MU-27, NC-1 through NC-5, NC-7, NC-9 through NC-11, NC-14, NC-16, NC-17, D-4-R, CG-2, ARTS-1, ARTS-2, RC-2 and RC-3 zone, for each ten thousand square feet (10,000 sq. ft.) or part of that area, one thousand six hundred twenty-five dollars (\$1,625);
- (g) For a map amendment to any MU-7 through MU-9, MU-20, MU-21, MU-28, NC-6, NC-8, NC-12, NC-13, NC-15, D-3 through D-5, D-5-R, D-6, D-6-R, D-7, D-8, CG-3, and ARTS-3 zone, for each ten thousand square feet (10,000 sq. ft.) or part of that area, three thousand two hundred fifty dollars (\$3,250);
- (h) For a map amendment to any PDR-1 through PDR-7 zone, for each twenty thousand square feet (20,000 sq. ft.) or part of that area, two thousand six hundred dollars (\$2,600);
- (i) The maximum hearing fee for a map amendment listed in Subtitle Z §§ 1601.1(a) through (d) shall be sixty-five thousand dollars (\$65,000); and
- (j) For an application or petition that proposes a map amendment to more than one (1) zone or is in the alternative, the fee shall be the total of the amounts for the area devoted to each proposed district or alternative computed separately.

1601.2 An applicant or petitioner shall not be required to pay a hearing fee for any alternative districts added by the Commission at the time it sets the case for hearing.

1601.3 If the Commission schedules a public hearing on a petition for an amendment to the text of the Zoning Regulations, prior to the advertisement of the hearing, the

petitioner shall pay a hearing fee of three hundred twenty-five dollars (\$325) for each section of this title proposed to be added, deleted, or amended, with a maximum hearing fee of one thousand three hundred dollars (\$1,300).

- 1601.4 If the Commission schedules a public hearing on an application for approval of a PUD or air space development, prior to the advertisement of the hearing, the applicant shall pay a hearing fee in accordance with the following schedule:
- (a) For each one hundred square feet (100 sq. ft.) of gross floor area or part thereof included in the application devoted to dwelling units, and the immediate area needed to serve that dwelling unit, seven dollars (\$7), with a maximum of sixty-five thousand dollars (\$65,000);
 - (b) For each one hundred square feet (100 sq. ft.) of gross floor area or part thereof included in the application devoted to any use other than a dwelling unit and the immediate area needed to serve that dwelling unit, thirteen dollars (\$13);
 - (c) In the case of an application that combines dwelling units and other uses, the fee shall be the total of the amounts for each use computed separately; and
 - (d) There shall be no charge for the hearing on the second-stage of a two-stage PUD application.
- 1601.5 In the case of an application or petition combining two (2) or more actions described in this section, the fee charged shall be the greatest of all the fees computed separately.
- 1601.6 If the Commission schedules a public hearing on an application for a modification to an approved PUD or air space development, prior to the advertisement of the hearing, the applicant shall pay a hearing fee equal to twenty-six percent (26%) of the original hearing fee or one thousand three hundred dollars (\$1,300), whichever is greater.
- 1601.7 An application for a modification to an approved required or voluntary design review shall pay the same hearing fee as stated in Subtitle Z § 1601.6 at the time the application is filed.

TABLE Z § 1601 – SCHEDULE OF HEARING FEES

MAP AMENDMENT			
Case Type	Unit	Fee	Maximum
R-1 through R-3, R-6 through R-17, or R-19 through R-21 zone	43,560 sq. ft. or part of that area	\$ 650	\$65,000
RF-1 through RF-3 zone and RA-1 or RA-6	43,560 sq. ft. or part of that area	\$1,625	\$65,000
RA-2, RA-7, RA-8, or RC-1	43,560 sq. ft. or part of that area	\$3,250	\$65,000
RA-3 through RA-5, RA-9, RA-10, D-1-R, SEFC-2,	43,560 sq. ft. or	\$6,500	\$65,000

MAP AMENDMENT			
Case Type	Unit	Fee	Maximum
SEFC-3, or CG-1 zone	part of that area		
MU-1, MU-2, MU-10 through MU-16, MU-22, MU-23, MU-29, D-2, SEFC-1, SEFC-4, CG4 through CG-7, and ARTS-4 zone	10,000 sq. ft. or part of that area	\$2,600	
MU-3 through MU-6, MU-17 through MU-19, MU-24 through MU-27, NC-1 through NC-5, NC-7, NC-9 through NC-11, NC-14, NC-16, NC-17, D-4-R, CG-2, ARTS-1, ARTS-2, RC-2 and RC-3 zone	10,000 sq. ft. or part of that area	\$1,625	
MU-7 through MU-9, MU-20, MU-21, MU-28, NC-6, NC-8, NC-12, NC-13, NC-15, D-3 through D-5, D-5-R, D-6, D-6-R, D-7, D-8, CG-3, and ARTS-3 zone	10,000 sq. ft. or part of that area	\$3,250	
PDR-1 through PDR-7 zone	20,000 sq. ft. or part of that area	\$2,600	
TEXT AMENDMENT			
Case Type	Unit	Fee	Maximum
Each section of this title proposed to be added, deleted, or amended	Per section modified	\$ 325	\$ 1,300
PLANNED UNIT DEVELOPMENT OR AIR SPACE DEVELOPMENT			
Case Type	Unit	Fee	Maximum
For each one hundred square feet (100 sq. ft.) of gross floor area or part thereof included in the application devoted to dwelling units, and the immediate area needed to serve that dwelling unit	100 sq. ft. of gross floor area or part of that area	\$ 7	\$65,000
For each one hundred square feet (100 sq. ft.) of gross floor area or part thereof included in the application devoted to any use other than a dwelling unit and the immediate area needed to serve that dwelling unit	100 sq. ft. of gross floor area or part of that area	\$ 13	
MODIFICATION TO A PLANNED UNIT DEVELOPMENT OR AIR SPACE DEVELOPMENT			
Case Type	Unit	Fee	Maximum
Modification to an approved design review, PUD, air space development, or any other action where review of a specific site or building plan was required		26% of the original hearing fee or \$1,300, whichever is greater	

1602 WAIVER OF HEARING FEES

- 1602.1 In the case of an application to permit the construction of a low- or moderate-income subsidized housing development, the D.C. Department of Housing and Community Development may request the Commission to waive the normal hearing fee.
- 1602.2 For the purposes of this section, the term "subsidized housing development" shall mean a housing development that is eligible to receive funding from a recognized District of Columbia or federal government housing subsidy program. Low- or moderate- income projects shall be as defined by the U.S. Department of Housing and Urban Development.
- 1602.3 The Application must be filed prior to the Commission's decision to set down the application for a hearing.

- 1602.4 To obtain the waiver, the applicant shall file with the application the request of the D.C. Department of Housing and Community Development.
- 1602.5 The request shall certify that the proposed development meets the requirements of Subtitle Z § 1602.2, and shall state why the proposed waiver should be granted.

1603 EXEMPTION FROM FEES

- 1603.1 A department, office, or agency of the government of the District of Columbia is not required to pay a filing or hearing fee for an application, where the property is owned by the District of Columbia or that agency or is under one (1) or both of their jurisdictions and the property is to be used for a government building or use.
- 1603.2 The following person or entities shall not be required to pay a filing or hearing fee for a petition to amend the Zoning Map or the text of the Zoning Regulations:
- (a) A department, office, or agency of the government of the District of Columbia, including an Advisory Neighborhood Commission (ANC);
 - (b) The National Capital Planning Commission; or
 - (c) A citizens' association or association created for civic purposes that is not for profit.

1604 MISCELLANEOUS FEES

- 1604.1 Fees for miscellaneous zoning services and documents provided by the Office of Zoning are as prescribed in Subtitle Y § 1601.

1605 ADMINISTRATION OF FEES

- 1605.1 The Director shall be responsible for administering, interpreting, and applying the terms of the fee schedule in Subtitle Z §§ 1600 and 1601.
- 1605.2 All fees shall be paid by check or money order made payable to the D.C. Treasurer, or by credit card where indicated by the Office of Zoning.
- 1605.3 Once a filing or hearing fee has been submitted, it will not be refunded.

1606 REVIEW OF FEES

- 1606.1 Upon the effective date of this title, and on a tri-annual basis thereafter, the Office of Zoning shall update the Commission on the status of their fees.
- 1606.2 If the Office of Zoning finds that the fees should remain the same, it shall indicate its findings to the Commission.
- 1606.3 If the Office of Zoning finds that the fees should be increased, then it shall submit a petition to the Commission for an increase of the fees.

1606.4 The Commission, on its own, can propose to increase the fees at any time.

CHAPTER 17 APPOINTMENT OF DIRECTOR

1700 PROCESS FOR APPOINTING THE DIRECTOR

- 1700.1 The Director of the Office of Zoning (Director) shall be appointed by the District members of the Commission and shall serve as an Excepted Service employee in accordance with D.C. Official Code § 1-609.01.
- 1700.2 The Director shall be a District resident throughout his or her term, and failure to maintain District residency shall result in a forfeiture of the position.
- 1700.3 Appointments to the Director may be made by competitive or non-competitive appointment; however, a person appointed as Director shall meet the minimum qualifications requirements for the position.
- 1700.4 Selection procedures for competitive appointment shall:
- (a) Be practical in character and fairly test the relative ability and fitness of candidates for jobs to be filled;
 - (b) Result in selection from among the best qualified candidates;
 - (c) Be developed and used without discrimination, as required by the D.C. Human Rights Act of 1977, as amended; and
 - (d) Comply with other requirements of applicable equal employment opportunity and affirmative action laws and regulations.
- 1700.5 Selection procedures for competitive appointment shall be conducted through the D.C. Department of Human Resources.
- 1700.6 Selection procedures for non-competitive appointment shall be at the discretion of the District members of the Commission.