

**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 (2001) (hereinafter “Zoning Act”); the Zoning Regulations of the District of Columbia, Title 11 DCMR; and the D.C. Administrative Procedure Act, D.C. Official Code §§ 2-501 to 2-511.
- 100.2 This subtitle shall be effective on _____, and applicable in its entirety to applications or petitions filed after that date with the Zoning Commission for the District of Columbia (Commission), and to applications or petitions filed as of that date, but for which the Commission had not granted a public hearing.
- 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 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 Z § 201.5.

101 GENERAL PROVISIONS

- 101.1 In any conflict between the provisions of this section 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 Legal advice from the Office of the Attorney General may be requested or received at any time.
- 101.5 Informal requests for advice or moot questions shall not be considered by the Commission.
- 101.6 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 chapter.
- 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 of the Office of Zoning or his/her designee (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 read the transcript(s) and reviewed the complete record. Nothing in this subsection shall be construed to require a Commission member to read the transcript(s) 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 read the transcript(s) of the hearing(s) and reviewed the 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 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 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; and
- (d) Issue and revise application and petition forms to ensure presentation of adequate information required for the understanding and processing of applications and petitions.

103.5 The proposed 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 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.

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 from time to time 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 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.

105.2 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.

105.3 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.

105.4 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.

105.5 The prohibition in Z § 105.4 shall begin to apply upon the referral of any application or petition pursuant to Z § 400.3 and 500.3, and shall not terminate until the final disposition of the case.

105.6 The prohibition in Z § 105.4 shall not extend to communication between the Commission and the Office of Zoning concerning matters of record.

105.7 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 by the member of the Commission to have a more than *de minimus* interest that could be substantially affected by the proceeding.

105.8 A member of the Commission disqualified by the terms of Z § 105.7 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.

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 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.
- 200.4 No member of the Commission shall represent any person before the Board of Zoning Adjustment (Board) or Commission other than himself or herself while a member of the Commission.
- 200.5 No former member of the Commission shall represent any person before the Board or Commission other than himself or herself for a period of six (6) months after the date that the member's service on the Commission terminates.
- 200.6 No former member of the Commission or former employee of the government of the District of Columbia shall represent any person other than himself or herself in a particular matter for which the Commission member or employee had a substantial responsibility while a member of the Commission or an employee of the District.

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 Z § 201.5. Contested cases include:
- (a) Design review;
 - (b) Planned unit developments (PUDs);
 - (c) Campus plans/schools plans;
 - (d) Air space development; and
 - (e) Map amendments.

- 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 (2001) and Chapter 4 of this subtitle, unless the Commission determines otherwise pursuant to 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) Cases in which the primary issues involve land use, urban planning, and zoning policies and cases in which the facts, information, and opinions come from a wide cross-section of the public; and
 - (b) Text amendments and map amendments that are proposed in furtherance of the Comprehensive Plan or other public law or policy; and
 - (c) Map amendments pursuant to Z § 201.7
- 201.6 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 (2001) and Chapter 5 of this subtitle, unless the Commission determines otherwise pursuant to 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 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 Z § 201.5, there are no parties.
- 201.9 Notwithstanding the classifications of cases in Z § 201.2 and 201.5, the Commission may, on its own motion or at the request of any person, review and determine the designation of such case as a contested case or a rulemaking case based on the standards contained in 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 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, five (5) 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 appellant need only provide a complete citation to the source of the document and indicate where the public may view the document.
- 203.8 The applicant, public agency representatives, additional parties, organization representatives, and individuals may appear as witnesses and offer evidence at a hearing.

- 203.9 In a contested case under chapter 4 of this subtitle, witnesses may be examined or cross-examined by the Commission, the applicant, or any party so determined by the Commission under this subtitle.
- 203.10 In a rulemaking case under chapter 5 of this subtitle, 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 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 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, when transmitted with the proper electronic mail address; or
- (f) In any specific manner prescribed by the Commission in a proceeding.

205.4 A document proving that service was effectuated shall be filed with the Office of Zoning for each document served on a party. The certificate of service shall state the name and address of the person(s) on whom the document was served and the manner and date of service.

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 FILING DOCUMENTS ELECTRONICALLY

206.1 This section includes provisions for the electronic filing of 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 filing of any documents electronically following the procedures set forth in this section constitutes filing for all purposes under these rules.

206.3 All documents to be filed electronically through IZIS or by email shall be in portable document format (PDF).

206.4 Every document 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 email may not exceed the maximum allowable size of eight (8) megabytes (mb).

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

- 206.6 All e-mail filings sent between 12:01 a.m. and 3:00 p.m. on any Office of Zoning business day shall be recorded on the date it was sent.
- 206.7 The filing date for an e-mail filing received between 3:01 p.m. and 12:00 p.m. will be the next business day.
- 206.8 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.
- 206.9 A party shall send a copy of anything filed electronically or by e-mail to all other parties, and must file a certificate of service as required by Z § 205.4.
- 206.10 Parties are responsible for monitoring their e-mail accounts and for opening e-mails.
- 206.11 The Office of Zoning shall serve orders and notices by e-mail to any party who provides an email address. The party is responsible for ensuring that the Office of Zoning has an accurate, up-to-date e-mail address.
- 206.12 All correspondence with Advisory Neighborhood Commissions (ANCs) shall be via US Mail unless an ANC consents in writing to receive documents electronically.

CHAPTER 3 RESERVED

DRAFT

CHAPTER 4 PRE-HEARING AND HEARING PROCEDURES: CONTESTED CASES

400 SETDOWN PROCEDURES

- 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 alert the applicant of any deficiency, listing the information necessary to make the application complete. If the applicant fails or refuses to correct the deficiencies, 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 Notwithstanding the filing of an application pursuant to Z § 400.3, 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 Z § 201.2 and 201.5.
- 400.5 Applications for design review, school plans, and campus plans are not subject to setdown procedures and shall be immediately scheduled for hearing consistent with the notice provisions of this chapter.
- 400.6 For all other types of applications, the Commission shall determine if the matter should be set down for a hearing. In such instances, the Office of Planning shall review and recommend whether the matter should be set down for a hearing.
- 400.7 The report of the Office of Planning on whether the matter should be set down for public hearing shall be in writing and filed with the Director at least ten (10) days prior to the meeting at which it is to be considered by the Commission, and forthwith shall be filed in the relevant case record.
- 400.8 For contested cases other than map amendments and those enumerated in Z § 201.2 the Director shall also refer a copy of the application to the affected Advisory Neighborhood Commission (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.
- 400.9 The ANC Setdown Form shall be filed with the Director at least seven (7) days prior to the meeting at which it is to be considered by the Commission.
- 400.10 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.
- 400.11 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.

- 400.12 After considering the application, 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 application or set it down for public hearing or other proceeding.
- 400.13 The concurrence of at least three (3) of the five (5) Commission members shall be required to deny or dismiss an application or petition without a hearing as well as to set a matter down for a public hearing or other proceeding.
- 400.14 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.
- 400.15 If the Commission denies or dismisses an application without prejudice, the order shall also state the type of modification the Commission considers appropriate.
- 400.16 In the case of a map amendment, 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 Z § 201.2 and 201.5 and provide that the notice of hearing will state such classification;
- 400.17 An applicant granted a public hearing and other processing shall be so notified on the record.
- 400.18 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 chapter 18 of this subtitle.

401 SUPPLEMENTAL FILINGS

- 401.1 Prior to the scheduling of a public hearing, the applicant shall file with the Director eleven (11) paper copies, 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 applicant to make any changes in the application or petition, the updated application and supportive material;
 - (b) A list of witnesses who are prepared to testify on the applicant'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 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 Z § 408.2.

401.2 If the application proffers any benefit or amenity 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 that would enter into or administer the agreement to provide the benefit or amenity.

401.3 The supplemental information filed also shall 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 Z § 401.4 and permit modification of the application at the public hearing.

401.7 If the application includes a report by a transportation consultant or other expert, the applicant shall provide a copy of the report to the District Department of Transportation or applicable public agency at least twenty (20) days prior to the public hearing.

402 PUBLIC NOTICE REQUIREMENTS

402.1 Notice of a contested 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;
- (c) Providing a copy of the notice to the ANC for the area in which the property is located, 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 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; and
- (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 property involved in the application.

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 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 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 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 Z § 402.3, the applicant shall complete and file with the Director the completed affidavit of posting form, demonstrating compliance with 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 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 If a failure of notice or a technical defect in the notice of public hearing 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.

403 PARTY STATUS GUIDELINES

- 403.1 In an application for a contested case before the Commission, including but not limited to cases described in Z § 201.2, the following persons automatically have party status:
- (a) The applicant; and
 - (b) The ANC for the area within which the property is located that is the subject of the application.
- 403.2 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) Documents filed by any other party in the case 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.

403.3 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 ANC, to participate as a party in a proceeding before the Commission, any affected person shall file with the Commission, not less than fourteen (14) days prior to the date set for the hearing, a Request for Party Status on the form and in the manner that the Director may prescribe. The following information:

- (a) The person's name and address;
- (b) A request to appear and participate as a party;
- (c) Whether the person will appear as a proponent or opponent of the application;
- (d) If the person will appear through legal counsel and, if so, the name and address of the legal counsel;
- (e) A list of witnesses who will testify on the person's behalf; and
- (f) 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 If the entity requesting party status is not an individual, the entity shall provide:

- (a) Evidence that the entity requesting party status has authorized the entity's participation in the proceeding; and
- (b) 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.

404.3 The evidence required in Z § 404.2 may consist of a resolution of the entity's board of directors; a copy of the by-law provision authorizing the particular officer, employee, or agent to represent the entity in such proceedings; a letter signed by all the members of the entity; or similar proof satisfactory to the Commission.

404.4 At or before the time of filing the request, the person requesting party status shall serve a copy of the request on all automatic parties.

404.5 The Commission shall determine who will be recognized as a party. In so determining, the Commission shall consider whether the provisions of Z § 404.1 have been complied with and whether the specific information presented qualifies the person as a party. 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.

405 REPORTS OF PUBLIC AGENCIES

405.1 For applications for which set down 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. 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.

405.2 The Office of Planning shall coordinate review of the case and prepare a preliminary set down report that contains its written recommendations pertaining to the project. The set down report shall may include written reports in writing from all relevant public agencies including, but not limited to, the District Department of

- Transportation, Department of Housing and Community Development, and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.
- 405.3 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.
- 405.4 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 chapter 8 of this subtitle.
- 405.5 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 ANC or community members; and
 - (f) Conformance with the PUD evaluation standards.
- 405.6 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 ANC or community members.
- 405.7 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 If an ANC wishes to orally recite its written report in a contested case, the ANC shall file the written report with the Commission at least seven (7) days in advance of the public hearing.

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. 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 or 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 application or petition, as related to the standards against which the application or petition shall be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the application or 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.

406.3 In the event the ANC submits its report on the basis of understandings, agreements, or meetings with the applicant which later are modified by the applicant, the designated ANC representative may comment orally concerning the specific modifications. No other new matters may be presented orally by the designated ANC representative. The Commission may leave the record open to permit the ANC to submit a revised report that meets the requirements of Z § 406.2.

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 If a party makes a motion to reopen the record, the supplemental materials shall be accompanied by a request to re-open the record, which will 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 shall be considered by the presiding officer and, must be granted prior to the supplemental materials being entered into the record.

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

407.5 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.

407.6 The Commission may authorize the presiding officer to decide any motion without holding a hearing.

408 PUBLIC HEARING PROCEDURES

408.1 The presiding officer shall have authority to:

- (a) Call the hearing to order;
- (b) Conduct the hearing;
- (c) Rule upon offers of proof and receive relevant evidence;
- (d) Consider preliminary matters, including, but not limited to, party status requests, motions, and qualifying expert witnesses;
- (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; and
- (h) Take any other action authorized by this title or necessary under this chapter.

408.2 Except as provided in Z § 408.4, the applicant and all parties (except an ANC) in support shall collectively have a maximum of sixty (60) minutes, exclusive of cross-examination, to present testimony. All parties (except an 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 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)(2001). Pursuant to D.C. Official Code § 2-509(b)(2001), in contested cases, except as may otherwise be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof. 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 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 petitioner 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 grant or deny the application. Alternatively, the Commission may schedule the case for a public decision 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

- 500.1 The Director shall review for completeness every petition filed with the Commission within seven (7) days of its receipt.
- 500.2 Upon completing the review of a petition, the Director shall alert the petitioner of any deficiency, listing the information necessary to make the petition complete. If the petitioner fails or refuses to correct the deficiencies in the petition, 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 Z § 201.2 and 201.5.
- 500.5 For all petitions, the Commission shall determine if the matter should be set down for a hearing. In such instances, the Office of Planning shall review and recommend whether the matter should be set down for a hearing.
- 500.6 The report of the Office of Planning on whether the matter should be set down for public hearing shall be in writing and filed with the Director at least ten (10) days prior to the meeting at which it is to be considered by the Commission, and forthwith shall be filed in the relevant case record.
- 500.7 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.
- 500.8 The ANC Setdown Form shall be filed with the Director at least seven (7) days prior to the meeting at which it is to be considered by the Commission.
- 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 applicant or 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 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 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 eleven (11) paper copies, 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 application or petition, the updated application or 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 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 No petition shall be modified less than twenty (20) days prior to the public hearing.

501.4 Upon motion by the petitioner and for good cause shown, the Commission may elect to waive Z § 501.3 and permit modification of the petition at the public hearing.

501.5 If the petition includes a report by a transportation consultant or other expert, the petitioner shall provide a copy of the report to the District Department of Transportation or applicable public agency at least twenty (20) days prior to the public hearing.

502 PUBLIC NOTICE REQUIREMENTS

502.1 Notice of a rulemaking case hearing shall be given by the Director (or designee) 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 Advisory Neighborhood Commission(s) (ANCs).

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 § chapter 5 of this subtitle..

502.3 For a map amendment, 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 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 Z § 502.6.
- 502.5 The notice required by 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 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 Z § 502.3, the petitioner shall complete and file with the Director the completed affidavit of posting form, demonstrating compliance with 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 applicant 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 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 to those petitions for which set down is required, 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. As to those petitions for which set down is not required, as soon as an petition is accepted for filing by the Director, a copy of the petition shall be referred to the Office of Planning and other appropriate agencies for review and comment.

- 504.2 The Office of Planning shall coordinate review of the case and prepare a preliminary set down report that contains its written recommendations pertaining to the project. The preliminary set down report shall may include written reports in writing from all relevant public agencies including, but not limited to, the District Department of Transportation, Department of Housing and Community Development, and, if a historic district or historic landmark is involved, the State Historic Preservation Officer.
- 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 ANC 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 take final action 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 If an ANC wishes to orally recite its written report in a contested case the ANC shall file the written report with the Commission. There shall be no filing deadline as long as the record in that case is open.
- 505.2 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. 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 or 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 application or petition, as related to the standards against which the application or petition shall be judged;
- (f) The recommendation, if any, of the ANC as to the disposition of the application or 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.

505.3 In the event the ANC submits its report on the basis of understandings, agreements, or meetings with the petitioner which later are modified by the petitioner, the designated ANC representative may comment orally concerning the specific modifications. No other new matters may be presented orally by the designated ANC representative. The Commission may leave the record open to permit the ANC to submit a revised report that meets the requirements of Z § 505.2.

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

- (h) Take any other action authorized by this title or necessary under this chapter.

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 grant or deny the petition. Alternatively, the Commission may schedule the case for a public decision 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.

CHAPTER 6 POST-HEARING PROCEDURES

600 DISPOSITION OF CASE BY WITHDRAWAL OR DISMISSAL

- 600.1 An application or petitioner may withdraw an application or petition at any time prior to advertisement of 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 the Office of Zoning, pursuant to Z § 104.

- 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 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 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 An applicant that has been required by § 3013.4 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, before the record closes.
- 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 The Commission reserves the right to reopen the record at a public hearing or meeting prior to the issuance of a final decision.
- 602.6 The Commission may close the record at the end of a public hearing and at their discretion take an action; or leave the record open for general or specific additional information.
- 602.7 The Commission may describe such conditions as the Commission desires to have included in its final decision or order, subject to the requirements of D.C. Official Code § 2-509(e) (2001).
- 602.8 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 shall mean the first vote to approve an application or petition in one of the cases listed in Z § 603.2. If the vote is to deny the application or petition, the proposed action shall be deemed final action and no additional vote shall be taken or required.

603.2 Prior to final action, the Commission shall take proposed action in the following cases, including any modifications thereto:

- (a) Planned unit development (PUD);
- (b) Text amendment;
- (c) Map amendment; and
- (d) Air space development.

603.3 The Commission may take a proposed action at the close of the public hearing, or at a later time when the record is closed.

603.4 Only proposed action decisions in the affirmative on rulemaking procedures shall be published in the *DC Register*.

603.5 Proposed action to approve any of the following cases shall be referred to the National Capital Planning Commission for comment and review pursuant to § 492(b)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 774, 810; D.C. Official Code § 6-641.05):

- (a) PUD;
- (b) Amendments to the text of the Zoning Regulations;
- (c) Map amendment; and
- (d) Air space development.

603.6 The Commission need not take proposed action with respect to an application for Commission review and approval of cases not identified in Z § 603.5, but may take final action in accordance with Z § 604, either at the close of the public hearing or at a subsequent public meeting.

604 FINAL ACTION AND FINAL ORDERS

604.1 In a contested or rulemaking case, to take final action to amend the text of the Zoning Regulations or the Zoning Map, the Commission may proceed following receipt of the written report of the National Capital Planning Commission or after thirty (30)

days from the date of the referral required under Z § 603.5, whichever is sooner. In no case shall the Commission take final action sooner than thirty (30) days after publication of the proposed rulemaking in the *D.C. Register*.

- 604.2 Prior to taking final action, the Commission may on its own motion re-open the record and require 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.
- 604.3 In a rulemaking case to take final action on amendments to subtitles A, X, Y, or Z the Commission may proceed without referral to or report from the National Capital Planning Commission and without publication of proposed rulemaking in the *D.C. Register*.
- 604.4 To take final action that does not amend the Zoning Map or that denies a planned unit development, the Commission may proceed without a referral to or report from the National Capital Planning Commission.
- 604.5 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.
- 604.6 A copy of the order shall be served on:
- (a) The applicant or petitioner;
 - (b) All parties, if any;
 - (c) The ANC for the area within which the property that is the subject of the case is located;
 - (d) The ANC Commissioner for the Single-Member District within which the property is located, if any; and
 - (e) The Ward Councilmember for the Ward within which the property, if any, is located.
- 604.7 In a rulemaking case, orders shall be published in the *D.C. Register* as a final rulemaking action.
- 604.8 In a contested case, the order shall be accompanied by findings of fact and conclusions of law. The order shall be published in the *D.C. Register*.
- 604.9 A written order setting forth a final action shall become final and effective upon publication in the *D.C. Register*.
- 604.10 A PUD associated rezoning shall become effective only upon completion of the process required by Subtitle X Chapter 3 (Planned Unit Developments) of this title,

and upon filing with the District of Columbia a covenant ensuring compliance with approved plans.

- 604.11 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.
- 604.12 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.
- 604.13 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.

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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 § 3022 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. 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.
- 700.4 A motion for reconsideration, rehearing, or re-argument shall be filed on a form and in a manner as may be designated from time-to-time by the Office of Zoning.
- 700.5 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.
- 700.6 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.
- 700.7 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.
- 700.8 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.
- 700.9 Neither the filing nor the granting of the motion for reconsideration, rehearing, or re-argument shall stay a decision unless the Commission orders otherwise.
- 700.10 A motion for reconsideration, rehearing, or re-argument shall not be a prerequisite to judicial review.
- 700.11 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, 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 a court of competent jurisdiction.
- 701.2 Except as provided in Z § 701.1, the Commission shall grant a stay only upon finding all four of the following criteria are present:
- (a) The party seeking the stay (or, in the case of a stay to be issued on the Commission's own motion, the party in whose favor the stay would be ordered) is likely to prevail on the merits of the motion for reconsideration or rehearing, the *sua sponte* review, 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.
- 701.3 Where the criteria in paragraphs (b) through (d) of Z § 701.2 strongly favor the granting of a stay, the Commission may grant a stay upon finding that the party requesting the stay (or, in the case of a stay to be issued on the Commission's own motion, the party in whose favor the stay would be ordered) has:
- (a) Raised serious questions going to the merits of its claim; and
 - (b) Presented fair grounds for more deliberative investigation by the Commission, in the case of a motion for reconsideration or rehearing, by the Commission in the case of *sua sponte* review, or by the court, in the case of an appeal.
- 701.4 In the event of a *sua sponte* review by the Commission of the final decision and order of the Board of Zoning Adjustment (Board), a motion to stay the effectiveness of the decision and order, whether by a party or the Board, shall ordinarily be determined in the first instance by the Board. The Commission may, on its own motion, order the effectiveness of the decision and order of the Board stayed pending the Commission's *sua sponte* review proceedings. As *sua sponte* review is a discretionary internal process. Thus, the Commission shall not entertain a motion for stay from a party.

702 VALIDITY OF APPROVALS AND IMPLEMENTATION

- 702.1 The design review development plan approved by the Commission shall be valid for a period of two (2) years, within which time an application shall be filed for a building permit.
- 702.2 A first-stage or second-stage approval of a planned unit development (PUD) by the Commission shall be valid for a period of two (2) years, 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 In granting second-stage approval, the Commission may specify that the project be built in stages and shall specify the timing of the stages.
- 702.4 Construction an application shall start within three (3) years of the date of final approval.
- 702.5 Previous approval of an application shall not be a binding precedent on a new application.
- 702.6 If no application for 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, and the approval shall not be reinstated unless a new application is filed, processed, and approved in accordance with this chapter.
- 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 planned unit development (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 between the owner or owners and 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 ZONING ADMINISTRATOR FLEXIBILITY

703.1 Minor flexibility shall be permitted pursuant to A § 304, but not in addition to any minor modifications allowed pursuant to Z § 704.

703.2 Following approval of any minor modifications under A § 304, the Zoning Administrator shall report to the Commission, as applicable, the modification approved under this section.

703.3 No building permit that requires the approval of a minor modification may be issued during a thirty (30) day period that begins on the date of a report made pursuant to Z § 703.1 unless the Commission advises the Zoning Administrator that it concurs that the modification is minor.

703.4 If at any time during the thirty (30) day period the Commission finds that the modification should not have been granted, the Zoning Administrator may not approve the building permit application, but shall advise the applicant that it must seek a modification pursuant to Z § 704 and 705, or other section of this title.

704 CONSENT CALENDAR – MINOR MODIFICATION AND TECHNICAL CORRECTIONS TO ORDERS

704.1 This procedure shall allow the Commission, in the interest of efficiency, to make, without public hearing, minor modifications and technical corrections to previously approved final orders.

704.2 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.

704.3 Any party to a previously filed case in which an order has been issued may make a motion in writing to have a matter placed on the Consent Calendar.

704.4 An application for minor modification approval shall be made in an appropriate manner provided by the Director. The applicant shall furnish eleven (11) copies of all 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 or technical correction; and
- (c) A copy of any Commission final order, map, plan, rulemaking, or other action or relief proposed to be modified or corrected.

- 704.5 The Commission, upon its own motion, may request that a matter be placed on the Consent Calendar.
- 704.6 All written requests shall be served by the moving party on all parties in the original proceeding at the same time that the request is filed with the Office of Zoning.
- 704.7 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.
- 704.8 Within seven (7) days after a request to put a matter on the Consent Calendar 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.
- 704.9 Any member of the Commission may remove any item from the Consent Calendar for any reason. Any matter that is not placed on the Consent Calendar or 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.

705 MODIFICATION OF PLANS AND ORDERS

- 705.1 The provisions of this section apply in their entirety to applications for design review and PUDs.
- 705.2 A modification to an approved application or issued order may be requested subject to the conditions of this section.
- 705.3 Modifications shall be considered as one of the following:
- (a) A minor modification, as defined in Z § 704.2;
 - (b) A modification of little or no consequence, which is a proposed change to an approved element that was not a consideration of or significance to the Commission in deciding the case;
 - (c) A modification of consequence, which is a proposed change to a condition cited by the Commission in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission; and
 - (d) A significant modification, which includes any other proposed modification.
- 705.4 The Zoning Administrator shall have the authority to approve minor modifications to a PUD pursuant to X § 312.
- 705.5 In reviewing and approving any modification requested pursuant to X § 312, the Zoning Administrator shall determine that the proposed modification is consistent with the intent of the Commission in approving the PUD.

- 705.6 Following approval of any modifications under X § 312, the Zoning Administrator shall report to the Commission the modification approved under this section. No building permit for the modified PUD shall be issued for forty-five (45) days after a report is sent to the Commission. If prior to the expiration of this time period the Commission decides that the modification exceeded the scope of X § 312, the Zoning Administrator shall not approve the building permit, but shall instruct the applicant to seek a modification pursuant to X § 312.5.
- 705.7 The Commission may determine that the minor modification approval is not consistent with the intent of the Commission in approving the PUD and shall consider the modification pursuant to X §§ 312.6 and 312.7.
- 705.8 Any requested modifications that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission.
- 705.9 The Commission shall determine the proposed modification as one of the following:
- (a) A technical correction or modification of little or no consequence, which may be acted upon as a consent item with no public hearing;
 - (b) A modification of consequence, which the Commission may consider by proposed action with no additional public hearing; or
 - (c) A significant modification, which shall meet the requirements for, and be processed as a second-stage application.
- 705.10 A public hearing on a request for a significant modification shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification, including but not limited to the approved flexibility and/or public benefits.

706 TIME EXTENSIONS

- 706.1 The provisions of this section apply in their entirety to applications for design review and PUDs.
- 706.2 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 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.

706.3 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 Z § 706.2; 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.

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

706.5 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.

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

706.7 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 Z § 706.2. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.

706.8 In the event an appeal is filed in a court of competent jurisdiction from an order of the Commission, the time limitations of Z §§ 706.3 and 706.5 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.

707 EXPIRATION AND DISMISSAL

- 707.1 If a design review application for permit is not filed within two (2) years and construction has not started within three (3) years, or no extension has been granted, the approval shall be deemed expired, the zoning standards shall revert to the by-right regulations, and a design review approval shall not be reinstated unless a new application is filed, processed, and approved in accordance with this chapter.
- 707.2 A design review 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.
- 707.3 For PUD applications that have received final approval from the Commission, if no application for 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, and the approval shall not be reinstated unless a new application is filed, processed, and approved in accordance with this chapter.
- 707.4 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 without prejudice.
- 707.5 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 DESIGN REVIEW

800 GENERAL PROVISIONS

- 800.1 The purpose of the design review process is to:
- (a) Allow for special projects to be approved by the Commission after a public hearing and a finding of no adverse impact;
 - (b) Recognize that some areas of the District warrant special attention due to particular or unique characteristics of an area or project;
 - (c) Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density;
 - (d) Promote high-quality, contextual design; and
 - (e) Provide for flexibility in building bulk control, design, and site placement without an increase in density or a map amendment.
- 800.2 The design review process is intended to be shorter and less intensive than the planned unit development (PUD) process and allow less deviation from by-right zoning standards.
- 800.3 A comprehensive public review by the Commission of the specific development proposal is required in order to evaluate the design of the project in proportion to the design flexibility requested.
- 800.4 While providing for greater flexibility in planning and design than may be possible under by-right zoning procedures, the design review process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.
- 800.5 A map amendment or an increase in density shall not be permitted as part of a design review application.

801 APPLICABILITY

- 801.1 In certain zones, some or all development may require design review. The zone reference table for the subtitle will reference any conditions under which design review is required.
- 801.2 Where not required, a property owner may apply voluntarily for design review development under this chapter; however, the Commission may at their sole discretion determine whether they will hear a design review case.
- 801.3 The minimum area included within a proposed design review development application, including the area of public streets or alleys proposed to be closed, shall be as follows:

- (a) A total of two (2) acres for a development to be located in any R zone; and
- (b) No minimum area required for a development in any other zone.

801.4 All the property included in a design review application shall be contiguous, except that the property may be separated only by a public street, alley, or right-of-way.

802 DESIGN REVIEW FLEXIBILITY

802.1 As part of the design review process, the Commission may grant relief from the development standards for height, setbacks, lot occupancy, courts, and building transitions; as well as any urban design standards. The design review process shall not be used to vary other building development standards including floor area ratio, Inclusionary Zoning, or green area ratio.

802.2 The amount of relief is at the discretion of the Commission, but must meet all of the standards of Z § 803.

802.3 An application for a special exception use that would otherwise require the approval of the Board of Zoning Adjustment (Board) may be heard simultaneously with a design review application and shall be subject to all applicable special exception criteria.

802.4 Approval of the Board shall not be required for any such use approved by the Commission under this section.

803 DESIGN REVIEW STANDARDS

803.1 The Commission will evaluate and approve, disapprove, or modify a design review application according to the standards of this section.

803.2 The applicant shall have the burden of proof to justify the granting of the application according to these standards.

803.3 The applicant shall not be relieved of the responsibility of proving the case by a preponderance of the evidence, even if no evidence or arguments are presented in opposition to the case.

803.4 The Commission shall find that the proposed design review development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.

803.5 The Commission shall find that the proposed design review development will not tend to affect adversely the use of neighboring property and meets the general special exception criteria of subtitle Y chapter 8.

803.6 The Commission shall review the urban design of the site and the building for the following criteria:

- (a) Street frontages are designed to be safe, comfortable, and encourage pedestrian activity, including:

- (1) Multiple pedestrian entrances for large developments;
 - (2) Direct driveway or garage access to the street is discouraged;
 - (3) Commercial ground floors contain active uses with clear, inviting windows;
 - (4) Blank facades are prevented or minimized; and
 - (5) Wide sidewalks are provided;
- (b) Public gathering spaces and open spaces are encouraged, especially in the following situations:
- (1) Where neighborhood open space is lacking;
 - (2) Near transit stations or hubs; and
 - (3) When they can enhance existing parks and the waterfront;
- (c) New development respects the historic character of Washington's neighborhoods, including:
- (1) Developments near the District's major boulevards and public spaces should reinforce the existing urban form;
 - (2) Infill development should respect, though need not imitate, the continuity of neighborhood architectural character; and
 - (3) Development should respect and protect key landscape vistas and axial views of landmarks and important places;
- (d) Buildings strive for attractive and inspired façade design, including:
- (1) Reinforce the pedestrian realm with elevated detailing and design of first and second stories; and
 - (2) Incorporate contextual and quality building materials and fenestration;
- (e) Sites are designed with sustainable landscaping; and
- (f) Sites are developed to promote connectivity both internally and with surrounding neighborhoods, including:
- (1) Pedestrian pathways through developments increase mobility and link neighborhoods to transit;

- (2) The development incorporates transit and bicycle facilities and amenities;
- (3) Streets, easements, and open spaces are designed to be safe and pedestrian friendly;
- (4) Large sites are integrated into the surrounding community through street and pedestrian connections; and
- (5) Waterfront development contains high quality trail and shoreline design as well as ensuring access and view corridors to the waterfront.

803.7 The Commission shall find that the criteria of Z § 803.6 are met in a way that is superior to any matter-of-right development possible on the site.

804 DESIGN REVIEW APPLICATION REQUIREMENTS

804.1 Each design review application shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.

804.2 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.

804.3 A design review application may include property of one or more owners. The owner or owners may be public or private persons, corporations, agencies, or other entities.

804.4 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.

804.5 The application shall be filed on a form as may be designated from time-to-time by the Office of Zoning.

804.6 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 ANC for the area within which the property is located and on the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.

804.7 The applicant shall make all reasonable efforts to attend a duly noticed meeting of the ANC during the forty-five (45) day notice period.

804.8 An application for design review approval shall be made in an appropriate manner provided by the Director. The applicant shall furnish eleven (11) copies of all information required by the form at 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 D.C. 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 Z § 803;
- (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 (only two (2) copies are required); and
- (n) Any other information needed to understand the proposed project.

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CHAPTER 9 AIRSPACE DEVELOPMENT

900 GENERAL PROVISIONS

- 900.1 Under § 5 of the District of Columbia Public Space Utilization Act, approved October 17, 1968 (D.C. Official Code § 10-1121.01 *et seq.*), the Commission shall, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, review and approve all air space development.
- 900.2 Development of airspace shall be approved by the Commission.
- 900.3 The Commission shall determine the use to be permitted in the proposed airspace consistent with existing zoning or the zoning of the abutting property that will use the air space, including limitations and requirements respecting the height of any structure to be erected in such airspace, off-street parking and development standards applicable to such structure, and easements of light, air, and access.
- 900.4 Airspace cases may be processed as a part of a design review or planned unit development application and shall be subject to the evaluation criteria and follow the procedures of the relevant chapter, except as provided in this section.
- 900.5 The Commission may impose any conditions or restrictions on airspace development that it deems necessary to ensure no adverse impact on adjoining properties and consistency with the Comprehensive Plan and this title.

901 AIR SPACE DEVELOPMENT APPLICATION REQUIREMENTS

- 901.1 Each air space development application shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.
- 901.2 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.
- 901.3 The application shall be filed on a form as may be designated from time-to-time by the Office of Zoning.
- 901.4 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 ANC for the area within which the property is located and on the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.
- 901.5 The applicant shall make all reasonable efforts to attend a duly noticed meeting of the ANC during the forty-five (45) day notice period.
- 901.6 An application for air space development approval shall be made in an appropriate manner provided by the Director. The applicant shall furnish eleven (11) copies of all information required by the form at 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 D.C. 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 (only two (2) copies are required); and
- (n) Any other information needed to understand the proposed project.

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CHAPTER 10 MAP AMENDMENTS

1000 GENERAL PROVISIONS

- 1000.1 Any interested person may petition the Commission to amend the Zoning Map.
- 1000.2 The Commission will evaluate and approve, disapprove, or modify a map amendment application or petition according to the standards of this section.
- 1000.3 The applicant or petitioner shall have the burden of proof to justify the granting of the application according to these standards.
- 1000.4 The Commission shall find that the proposed zone or zones are not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.

1001 MAP AMENDMENT APPLICATION REQUIREMENTS

- 1001.1 A map amendment application or petition shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.
- 1001.2 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.
- 1001.3 A map amendment application or petition may include property of one or more owners. The owner or owners may be public or private persons, corporations, agencies, or other entities.
- 1001.4 The application or petition shall be filed on a form as may be designated from time-to-time by the Office of Zoning.
- 1001.5 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 eleven (11) 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 D.C. 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; and

- (e) A statement certifying to whom and in what manner the required NOI was given. The applicant or petitioner shall also indicate what meetings or discussions were held with the community and the Office of Planning and the affected ANC as well as any changes that resulted from community input.

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CHAPTER 11 TEXT AMENDMENTS

1100 GENERAL PROVISIONS

1100.1 Any interested person may petition the Commission to amend this title.

1101 TEXT AMENDMENT PETITION REQUIREMENTS

1101.1 Each zoning text amendment petition shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.

1101.2 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.

1101.3 The petition shall be filed on a form as may be designated from time-to-time by the Office of Zoning.

1101.4 Both the applicant and the Office of Planning shall make all reasonable efforts to attend a duly noticed meeting of the affected ANCs during the forty-five (45) day notice period.

1101.5 At the time of filing the petition, the applicant shall certify to whom and in what manner the required notice was given. The petitioner shall also indicate what meetings or discussions were held with the community and the Office of Planning and the affected ANC as well as any changes that resulted from community input.

1101.6 A petition for text amendment approval shall be made in an appropriate manner provided by the Director. The petitioner shall furnish eleven (11) 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 D.C. Comprehensive Plan; and
- (b) Any other information needed to understand the implications of the proposed changes.

CHAPTER 12 CAMPUS PLANS

1200 CAMPUS PLAN/SCHOOL PLAN APPLICATION REQUIREMENTS

- 1200.1 Each campus plan/school plan application shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.
- 1200.2 No campus plan/school plan application shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule.
- 1200.3 The application shall be filed on a form as may be designated from time-to-time by the Office of Zoning.
- 1200.4 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 ANC for the area within which the property is located and on the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.
- 1200.5 The notice 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.
- 1200.6 The applicant shall make all reasonable efforts to attend a duly noticed meeting of the ANC during the forty-five (45) day notice period.
- 1200.7 Each application shall be made in an appropriate manner provided by the Director. In addition to the memorandum or certification required by Y § 300.6 and the information required by Z § 200 relating to appearance and representation, the applicant shall furnish eleven (11) copies of all information required by the application form at the time of filing the application, including:
- (a) A certified surveyor's plat of the subject property prepared by the D.C. Office of the Surveyor;
 - (b) Architectural plans and elevations in sufficient detail to clearly illustrate any proposed structure to be erected or altered, landscaping and screening, and building materials, and where applicable, parking and loading plans;
 - (c) A detailed statement of existing and intended use of the structure, or part thereof;
 - (d) A detailed statement of how the application meets each element of the review standards for special exceptions specified in Y § 801.2, for variances specified in Y § 902.1;
 - (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) Three (3) or more color images, not to exceed letter-size (8½ x 11 inches), showing the pertinent features of the structure, and property involved (front, rear, and sides, if possible and applicable);
- (g) 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 (only two (2) copies are required);
- (h) The name and address of each person having a lease with the owner for all or part of any structure located on the property involved in the application;
- (i) A copy of the resume of any expert witness who will be testifying in the case;
- (j) A written summary of the testimony of all witnesses;
- (k) A statement of the efforts that have been made to apprise the affected ANC and other individuals and community groups concerning the application, if any; and
- (l) 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 may provide a complete citation to the source of the document and indicate where the public may view the document.

CHAPTER 13 SUA SPONTE REVIEW

1300 SUA SPONTE REVIEW BY ZONING COMMISSION

- 1300.1 The provisions of this section shall apply to all Board of Zoning Adjustment (Board) appeals and applications, except chancery proceedings.
- 1300.2 Within ten (10) days after the decision and order of the Board has become final as provided in Y § 604.8, the Commission may, *sua sponte*, determine to review any final decision and order of the Board.
- 1300.3 The Commission's determination to review a decision and order of the Board 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's decision and order upon all parties to the case.
- 1300.4 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 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.
- 1300.5 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;
 - (b) Affirmance, modification, or reversal of the Board's decision and order; and
 - (c) Remanding the case to the Board for reconsideration, rehearing, or other action pursuant to the instructions of the Commission.
- 1300.6 The *sua sponte* review process established in this section shall not grant any rights of appeal to the Commission.
- 1300.7 Because there is no right of appeal to the Commission from any action of the Board, 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.
- 1300.8 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 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; or
- (c) In an unusual instance, as determined by the Commission.

CHAPTER 14	RESERVED
CHAPTER 15	RESERVED
CHAPTER 16	RESERVED
CHAPTER 17	RESERVED
CHAPTER 18	RESERVED

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CHAPTER 19 FEES

1900 FILING FEES

- 1900.1 At the time of filing an application or petition for a map amendment, the applicant or petitioner shall pay a filing fee of _____dollars (\$_____).
- 1900.2 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 _____dollars (\$_____).
- 1900.3 At the time of filing an application for approval of a design review, planned unit development (PUD), project-specific map amendment, air space development, or any other action where review of a specific site or building plan is required, the applicant shall pay a filing fee of _____dollars (\$_____).
- 1900.4 At the time of filing an application for a 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, the applicant shall pay a filing fee of _____dollars (\$_____).
- 1900.5 At the time of filing a request for approval of an extension of time to the validity of an order for a previously approved PUD, the applicant shall pay a filing fee of _____dollars (\$_____).

SCHEDULE OF FILING FEES

Case Type	Fee
Map Amendment	
Text Amendment	
Design Review	
Planned Unit Development (PUD)	
Air Space Development	
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	
Extension of time to the validity of an order for an approved Design Review or PUD	

- 1900.6 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.

1901 HEARING FEES

- 1901.1 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 map amendment to any R zone, for each forty-three thousand five hundred and sixty square feet (43,560 s.f.) or part of that area, _____dollars (\$_____);
- (b) For map amendment to any A zone, for each forty-three thousand five hundred and sixty square feet (43,560 s.f.) or part of that area, _____dollars (\$_____);
- (c) For map amendment to any M zone, for each ten thousand square feet (10,000 s.f.) or part of that area, _____dollars (\$_____);
- (d) For map amendment to any D zone, for each ten thousand square feet (10,000 s.f.) or part of that area, _____dollars (\$_____);
- (e) For map amendment to any P zone, for each twenty thousand square feet (20,000 s.f.) or part of that area, _____dollars (\$_____);
- (f) The maximum hearing fee for map amendment to any R or A zone shall be _____dollars (\$_____); and
- (g) For an application or petition that proposes 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.

1901.2 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.

1901.3 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 _____dollars (\$_____) for each section of this title proposed to be added, deleted, or amended, with a maximum hearing fee of _____dollars (\$_____).

1901.4 If the Commission schedules a public hearing on an application for approval of a design review, PUD, air space development, or any other action where review of a specific site plan or building plan is required, prior to the advertisement of the hearing, the applicant shall pay a hearing fee in accordance with the following schedule; provided that for those applications exempted from the setdown process, the fees shall be paid at the time the application is filed:

- (a) For each one hundred square feet (100 s.f.) 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, _____dollars (\$_____), with a maximum of _____dollars (\$_____);
- (b) For each one hundred square feet (100 s.f.) 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,
 _____dollars (\$_____);

- (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.

1901.5 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.

1901.6 If the Commission schedules a public hearing on an application for a 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, prior to the advertisement of the hearing, the applicant shall pay a hearing fee equal to _____ percent (____%) of the original hearing fee or _____dollars (\$_____), whichever is greater.

SCHEDULE OF HEARING FEES

Map Amendment			
Case Type	Unit	Fee	Maximum
R zone	43,560 s.f. or part of that area		
A zone	43,560 s.f. or part of that area		
RT zone	43,560 s.f. or part of that area		
T zone	20,000 s.f. or part of that area		
M zone	10,000 s.f. or part of that area		
D zone	10,000 s.f.) or part of that area		
P zone	20,000 s.f. or part of that area		
Text Amendment			
Case Type	Unit	Fee	Maximum

Each section of this title proposed to be added, deleted, or amended,			
Design Review, 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			
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			
Modification to a Design Review, 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		_____ percent (____%) of the original hearing fee or _____dollars (\$____), whichever is greater	

1901.7 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.

1902 WAIVER OF HEARING FEES

1902.1 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.

1902.2 For the purposes of this section, the term "subsidized housing development" shall mean a housing development that receives 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.

1902.3 To obtain the waiver, the applicant shall file with the application the request of the D.C. Department of Housing and Community Development.

1902.4 The request shall certify that the proposed development meets the requirements of Z § 1902.2, and shall state why the proposed waiver should be granted.

1902.5 The Commission shall rule upon the request for waiver of fees at the time the matter is set for public hearing.

1903 EXEMPTION FROM FEES

1903.1 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 or both of their jurisdictions and the property is to be used for a government building or use.

1903.2 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.

1904 MISCELLANEOUS FEES

1904.1 Fees for miscellaneous zoning services and documents provided by the Office of Zoning are as follows:

- (a) The fee for providing a zoning certification is fifty dollars (\$50.00);
- (b) The fee for photocopying is twenty cents (.20¢) per page;
- (c) The fee for providing certification of an exhibit from a case record shall be fifteen dollars (\$15) for each exhibit certified; and
- (d) The fee for retrieving Office of Zoning records located off-site is thirty-two dollars (\$32.00) per each request for retrieval of up to five (5) case files. This fee will be waived when the records are sought for noncommercial use and the request is made by an educational or scientific institution for scholarly or scientific research or by a representative of the news media. The Office of Zoning may not require advance payment of the fee unless the requester has previously failed to pay fees in a timely fashion.

SCHEDULE OF MISCELLANEOUS FEES

Service	Fee
Zoning Certification	\$50.00
Photocopying	\$0.20
Certification of an Exhibit	\$15.00
Retrieval of Records (located off-site)	\$32.00

1905 ADMINISTRATION OF FEES

- 1905.1 The Director shall be responsible for administering, interpreting, and applying the terms of the fee schedule in Z § 1900 and 1901.
- 1905.2 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.
- 1905.3 The Director shall conduct a review of the fee structure triennially and make recommendations for changes to the Commission.
- 1905.4 Any decision of the Director regarding the application of the fee schedule may be appealed to the Commission by the applicant or petitioner. The fee appeal shall be in writing and set forth specifically the error allegedly committed by the Director, the grounds for the appeal, and the relief requested. The Commission shall decide the fee appeal at a meeting or hearing as a preliminary matter to considering the fee application or petition.
- 1905.5 Once a filing or hearing fee has been submitted, it will not be refunded.

1906 REVIEW OF FEES

- 1906.1 Effective _____, and on a tri-annual basis thereafter, the Office of Zoning shall update the Commission on the status of their fees.
- 1906.2 If the Office of Zoning finds that the fees should remain the same, it shall indicate its findings to the Commission.
- 1906.3 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.
- 1906.4 The Commission, on its own, can propose to increase the fees at any time.