

TO: Alice Kelly, District of Columbia Department of Transportation

FROM: John T. Epting

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DATE: December 14, 2012

SUBJECT: August 17, 2012 Notice of Proposed Rulemaking to Add a New Title 13 (Sign Regulations) to the District of Columbia Municipal Regulations – Comments from Ballpark Square, LLC

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On behalf of our client Ballpark Square, LLC (“**Ballpark Square**”) and other partners and owners associated with Ballpark Square, we appreciate this opportunity to submit comments regarding the August 17, 2012 Notice of Proposed Rulemaking to add a new Title 13 (Sign Regulations) to the District of Columbia Municipal Regulations published in the D.C. Register at 59 DCR 10022 (“**Proposed Regulations**”).<sup>1</sup>

Ballpark Square and other associated owners own certain property on the east side of Square 701 in the District of Columbia. Ballpark Square’s proposed project was approved by Zoning Commission Case No. 12-05.

The comments below include a short discussion of provisions in Chapter 8. Generally, Ballpark Square is very supportive of the proposal relating to the new Designated Entertainment Areas (“**DEAs**”). As part of the recent approval under Z.C. Case No. 12-05 (heard on October 1, 2012; decision on November 14, 2012; Order forthcoming), the Zoning Commission reviewed and approved certain locations for the new signage proposed for DEAs. Such approval allowed the Zoning Commission to issue broad guidance confirming the type of signage allowed on the project on the eastern portion of Square 701. Ballpark Square submitted the proposed regulations setting forth the new DEAs and examples of signage intended for such areas.

## **COMMENTS ON CHAPTER 8 OF THE PROPOSED REGULATIONS**

### **1. District departmental jurisdiction relating to projecting signs should be clarified.**

The proposed Section 801 states that the Director of DCRA shall be responsible for issuing permits and enforcing the provisions of the signage regulations for signs on private

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<sup>1</sup> The original sixty day comment period was extended until December 14, 2012 by notice in the D.C. Register. See 59 DCR 11050 (Sept. 21, 2012). We appreciate the additional time for review and comment.

property, while the Director of DDOT shall be responsible for issuing permits and enforcing the provisions of the signage regulations for signs on public property. However, certain types of signage will be mounted in private space while projecting into public space, such as projecting signs (as proposed under Section 708). Historically, these signs have been reviewed, permitted, and enforced by the Director of DCRA under the Construction Code, and such authority should be clarified and continued.

**Recommendation:** *Section 801.1 should be revised to read “at the end of Section 801.1: “The permitting and enforcement official responsible for issuing permits and enforcing the provisions of this title for signs on private property and projecting signs governed by Section 708 within a DEA shall be the Director of DCRA.”*

**2. Previous approval by the Zoning Commission should be incorporated into further District review of Designated Entertainment Areas signage applications.**

The Proposed Regulations would create several new DEAs, including one comprising several blocks near the baseball stadium located in Square 705 (“**Ballpark DEA**”). See Proposed Regulations § 800.2(d). Due to their location in Square 700 and 701, many projects, including Ballpark Square’s project approved in Zoning Commission Case No. 12-05, are subject to Zoning Commission review and approval under Chapter 16 of the D.C. Zoning Regulations. During such review, the Zoning Commission typically approves signage as part of the overall design of a project. Since the Zoning Commission has been delegated such review authority over projects in the Ballpark DEA and DDOT and the Office of Planning review projects as part of that process, additional DEA signage reviews by DDOT and the Office of Planning should be limited.

**Recommendation:** Include a new Section 804.9 which states: “Any signage approved by the Zoning Commission through its Capitol Gateway review under Chapter 16 of the D.C. Zoning Regulations (Title 11 D.C.M.R.) submitted under Chapter 8 will have the presumption of approval by the District agencies described in this Section 804.”

**3. Unclear language regarding video boards with duplicative effect should be deleted.**

Section 805.9 contains language that “Any sign with motion, including but not limited to digital screens, digital video monitors, theater marquees, animated signs and images, or other projections, shall not change images more frequently than every eight (8) seconds and the amount of time between changed images is no greater than two (2) seconds”. However, this language is unclear and appears to contradict the ability to install video displays in the DEAs. Video boards are a primary element of the signage proposals that will add vitality to the DEAs. DDOT and OP reviews are already included in the signage approval process for DEAs so any adverse effects that might result from a signage proposal, whether would be due to the frequency of image changing or other elements, can be, and will be, specifically reviewed by these agencies. Further, since electronic signage technology is always evolving, it might have the

effect of disallowing new types of signage to be installed in the DEAs. Therefore, Section 805.9 should be eliminated.

**Recommendation:** *Delete Section 805.9, which only applies to DEAs.*

**4. The allowable configuration of signs in the Designated Entertainment Area near the Ballpark Area should be revised.**

Within this Ballpark DEA, the Proposed Regulations stipulate that “signs may advertise off-premises business . . . provided that . . . (c) In the Ballpark Area, the signs are facing into any site or any alley.” *Id.* § 806.2(c). However, the intent of the Ballpark DEA is to assist in creating a vibrant entertainment destination. The primary interface between the public and the properties comprising Squares 700 and 701 of the Ballpark DEA would occur along the street-facing facades of the properties, as well as into the Ballpark. Requiring signage to face into a site or an alley would defeat the purpose of creating any DEA, particularly the Ballpark DEA. Therefore, more permissive DEA regulations should apply to those areas of the Ballpark DEA – specifically the portions of Square 701 fronting on 1<sup>st</sup> Street, and M and N Streets, SE, and facing the Ballpark. Spaces along these streets will be among the most heavily-traveled and integral to the vitality of the Ballpark area, and the DEA regulations should be written to maximize that relationship, while being sensitive to other concerns already protected in the Proposed Regulations.

**Recommendation:** *Section 806.2(c) should be revised to read “In the [Ballpark DEA], the signs are facing into any site or any alley (including, but not limited to Cushing Place, SE), or onto M Street, N Street, or First Street, SE.”*