OFFICE OF HUMAN RIGHTS

NOTICE OF SECOND EMERGENCY RULEMAKING

The Director of the Office of Human Rights (hereafter the "Director,") pursuant to the authority set forth in Section 301(c) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c) (2016 Repl.)), hereby gives notice of the intent to amend, on an emergency basis, Chapter 7 (Private Complaints Alleging Unlawful Discriminatory Practices) of Title 4 (Human Rights and Relations) of the District of Columbia Municipal Regulations ("DCMR").

The rulemaking provides revision of rules to reflect the current operation of the Office of Human Rights during a declared state of emergency.

On April 10, 2020, the Director published a Notice of Emergency and Proposed Rulemaking in the *D.C. Register* at 67 DCR 004133. The emergency rules were adopted on March 18, 2020 and became effective on an emergency basis on that date. The Director also gave notice of the intent to make these rules final, providing a thirty (30) day comment period. No comments were received. For clarity and consistency, the Director has made the following technical edit: in lieu of using differing terms "emergencies" and "a state of emergency," as well as the prepositions "in" and "under," which appeared in §§ 705.2 and 705.6 of the April 10, 2020 Emergency and Proposed Rulemaking, the sections now read, "during a declared emergency" in all instances. The Director made no other changes.

The previously adopted emergency rules were to remain in effect for up to one hundred twenty (120) days after the date of adoption, expiring July 16, 2020. The instant emergency rulemaking is necessary to ensure that the emergency rules remain in place even if there is a gap between the expiration of the emergency rulemaking currently in effect and the publication of the final rulemaking.

The Office of Human Rights adopted these emergency rules on July 17, 2020, and they will expire one hundred twenty (120) days after the date of adoption, November 14, 2020, or upon the publication of final rulemaking in the *D.C. Register*, whichever occurs first.

Chapter 7, PRIVATE COMPLAINTS ALLEGING UNLAWFUL DISCRIMINATORY PRACTICES, of Title 4 DCMR, HUMAN RIGHTS AND RELATIONS, is amended as follows:

Section 705, FILING OF COMPLAINTS, in its entirety to read as follows:

705 FILING OF COMPLAINTS

705.1 Any person or organization may file with the Office a complaint of a violation of the provisions of the Act, including a complaint of general discrimination,

unrelated to a specific person or instance. If a complainant lacks capacity, the complaint may be filed on their behalf by a person with an interest in the welfare of the complainant.

705.2 The initial complaint shall be in writing on a form obtained from the Office, and can be filed online through the Office's website (http://www.ohr.dc.gov), via email to ohr.intake@dc.gov, mail or fax. The date of the online, email or fax filing will constitute the filing date for the complaint. The date of OHR's receipt of mailed complaints will constitute the filing date. If during a declared emergency, the Office is closed, the date of mail filings will be calculated as follows: the date of the postal stamp, or the date complainant signed the complaint plus five (5) business days. The Director may extend this deadline for good cause during a declared emergency. The finalized complaint, known as the Charge of Discrimination, shall be signed and verified by the complainant under penalty of perjury.

705.3 The Director may initiate a complaint whenever the Director has reason to believe that any person has committed an unlawful discriminatory practice. A complaint initiated by the Director shall be signed by the Director.

705.4 A complaint alleging a discriminatory practice shall contain the following information:

(a) The full name and address of the complainant(s);

(b) The full name and address of the respondent(s);

(c) A statement of the alleged unlawful discriminatory practice(s) and a statement of the particulars;

(d) The date(s) of the alleged unlawful discriminatory practice, and if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which the continuing acts of discrimination are alleged to have occurred; and

(e) A statement describing any other action, civil, criminal, or administrative in nature, instituted in any other forum or agency based on the same unlawful discriminatory practice as is alleged in the complaint.

705.5 Notwithstanding the provisions of § 705.4, a complaint shall be deemed sufficient when the Office receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practice complained of.

705.6 The Office shall reasonably accommodate a disabled person who wishes to

file a complaint or who wishes to make a personal appearance at the Office when filing a complaint. Accommodations may include, but shall not be limited to, a personal representative making an appearance on behalf of a disabled complainant, or an Office representative delivering a complaint to a complainant for signature. During a declared emergency, or when in-person service is not available, the Office shall find alternative ways to assist the person requiring reasonable accommodation.

705.7 The Director shall establish and maintain a complaint file containing all documents pertinent to each case. The complaint file shall contain, at a minimum, the following documents as appropriate to the individual case:

(a) The complaint;

(b) The reply to data request;

(c) Amendment(s) to the complaint;

(d) The respondent's reply to the complaint and any amendments;

(e) The complainant's statement of withdrawal;

(f) The investigator's summary or findings of fact and recommendations;

(g) The extended processing summary and recommendations;

(h) The Director's Letter of Determination (LOD);

(i) The conciliation agreement;

(j) Letter of certification to the Commission; and

(k) Letter of dismissal.

705.8 If the Office determines that a complainant is filing what are determined to be frivolous complaints, which may include filing an unreasonable number of complaints during a given time, it may resolve the complaint in accordance with OHR Intake Guidelines.