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District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 20-484, Commission on Health Disparities Establishment Act of 2014
- D.C. Council enacts Act 20-485, Disposition of District Land for Affordable Housing Amendment Act of 2014
- District Department of the Environment updates fees for Stormwater Management, and Soil Erosion and Sediment Control
- Department of Health modifies the schedule of fines for food operations
- D.C. Taxicab Commission allows digital dispatch services to set the entire fare when dispatching a taxicab
- D.C. Taxicab Commission allows designation of share ride locations
- Department of Small and Local Business Development announces funding availability for the DC Main Streets Grant for Lower Georgia Avenue, NW

DISTRICT OF COLUMBIA REGISTER

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-484

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 21, 2014

To establish a Commission on Health Disparities to examine health disparities in the District, produce reports on its findings, and advise the Department of Health, the Council, and the Mayor on the best ways to address existing health disparities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Commission on Health Disparities Establishment Act of 2014".

Sec. 2. Establishment of the Commission on Health Disparities.

(a) There is established a Commission on Health Disparities ("Commission") to prepare comprehensive recommendations to the Department of Health, the Council, and the Mayor that examine health disparities in each election ward of the District.

(b) The Commission shall have 9 voting members, who shall be appointed as follows:

(1)(A) Six voting members shall be appointed by the Mayor with the advice and consent of the Council, in accordance with section 2(f) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f)).

(B) The Mayor's initial 6 appointments shall include 3 members appointed to 3-year terms and 3 members appointed to 2-year terms. All subsequent appointments by the Mayor shall be for 3-year terms.

(2)(A) Three voting members shall be appointed by the Council.

(B) The Council's initial 3 appointments shall be for 1-year terms. All subsequent appointments by the Council shall be for 3- year terms.

(3) The voting members shall have expertise in at least one of the following areas:

(A) Health disparities;
(B) Social and human services;
(C) Early learning and education;
(D) Minority communities;
(E) Economic development; and
(F) Ecology and the environment.

(4) The Mayor shall appoint the Chairperson of the Commission from among its voting members.

(c)(1) The Commission shall have 8 nonvoting advisory members, including the following:

(A) The Chairperson of the Committee on Health, who shall serve as an ex-officio member;

(B) Three community advisory members, one each from Wards 5, 7, and 8, appointed by the Council;

(C) One patient organization representative, appointed by the voting members of the Commission; and

(D) The presidents or chief executive officers of 2 District hospitals and a representative from an insurance company who has access to a health disparities database, or their designees.

(2) For the purposes of this subsection, the term "patient organization representative" means an individual who works for a nationally or locally recognized organization committed to improving the diagnosis, treatment, and quality of life for individuals suffering from a particular disease or condition.

(d) All vacancies on the Commission shall be filled in the same manner in which the initial appointment is made.

(e) All members of the Commission shall be appointed within one year after the effective date of this act.

Sec. 3. Commission duties and functions.

(a) The Commission shall:

(1) Analyze each election ward in the city for health disparities related to the following diseases, conditions, and health indicators:

(A) Diabetes;

(B) Asthma;

(C) Infant mortality, including sudden infant death syndrome;

(D) HIV/AIDS;

(E) Heart disease;

(F) Stroke;

(G) Breast cancer, cervical cancer, and prostate cancer;

(H) Chronic kidney disease;

(I) Mental health;

(J) Women's health issues;

(K) Smoking cessation;

(L) Oral disease;

(M) Immunization rates of children and senior citizens; and

(N) Any other disease, condition, or health indicator that the Commission considers appropriate;

(2) Gather information from public hearings, inquires, and studies to understand how the District government may work to eliminate health disparities;

(3) Seek federal grants, if available; and

(4) Submit a formal city action plan by March 1st of each year to the Department of Health, the Mayor, and the Council.

(b)The formal city action plan required by subsection (a)(4) of this section hall be a public document and shall include, at a minimum:

(1) A report of the Commission's findings regarding the prevalence and severity of the diseases, conditions, or health indicators studied that highlight the election ward and demographic most affected; possible steps that can be taken by the District government to remedy these issues; and, expected outcomes that will result from taking the recommended steps; and

(2) Draft legislation, regulations, amendments to statutes or regulations, or any other specific steps for implementing the recommendations described in paragraph (1) of this subsection.

Sec. 4. Commission procedure and powers.

(a) The Commission shall meet at least once a quarter to share findings regarding the prevalence and severity of health disparities that exist in each election ward.

(b) The Chairperson of the Commission, or his or her designee, who must be a member of the Commission, shall convene all Commission meetings.

(c) A majority of the voting members appointed to the Commission at any given time shall constitute a quorum for the transaction of official business. Official actions of the Commission shall be taken by a majority vote of the voting members present at the meeting.

(d) The Commission may use space and supplies owned or rented by the District government and use staff loaned from the Council or detailed by the Mayor for purposes consistent with this act as the Commission may determine.

Sec. 5. Commission on Health Disparities Fund.

(a) There is established as a special fund the Commission on Health Disparities Fund ("Fund"), which shall be administered by the Commission in accordance with subsections (b) and (c) of this section.

(b) Revenue from the following sources shall be deposited into the Fund:

(1) Appropriations;

(2) Private gifts or donations; and

(3) Federal grants, when awarded.

(c) Money in the Fund shall be used to fulfill the functions and duties of the Commission, as set forth in section 3.

(d)(1) The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

Sec. 6. Section 2(f) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f)), is amended as follows:

(a) Paragraph (49) is amended by striking the word "and".

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(b) The first paragraph (50) is amended by striking the period and inserting a semicolon in its place.

(c) The second paragraph (50) is redesignated as paragraph (51).

(d) The newly designated paragraph (51) is amended by striking the period and inserting the phrase "; and" in its place.

(e) A new paragraph (52) is added to read as follows:

"(52) "The Commission on Health Disparities.".

Sec. 7. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 21, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-485

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 27, 2014

To amend An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes to establish affordable housing requirements and to require that specific documents accompany a proposed resolution for a land disposition transmitted to the Council.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Disposition of District Land for Affordable Housing Amendment Act of 2014".

Sec. 2. Section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801), is amended as follows:

(a) A new subsection (a-3) is added to read as follows:

"(a-3)(1) If a proposed disposition of real property will result in the development of multifamily residential property consisting of 10 or more units ("multifamily units"), the following affordable housing requirements shall apply:

"(A) If the multifamily units are located in the following areas, at least 30% of the units shall be dedicated as affordable housing:

"(i) Within 1/2 mile of a Metrorail station that is in operation or for which a construction contract has been awarded on or before the date of the disposition;

"(ii) Within 1/4 mile of a streetcar line that is in operation or for which a construction contract has been awarded on or before the date of the disposition; or

"(iii) Within 1/4 mile of a Priority Corridor Network Metrobus Route, as designated by the Washington Area Metropolitan Transit Authority, located entirely or partially within the District of Columbia;

"(B) If the multifamily units are located outside of the areas described in subparagraph (A) of this paragraph, at least 20% of the units shall be dedicated as affordable housing;

"(C) The units dedicated as affordable housing pursuant to subparagraphs (A) and (B) of this paragraph shall remain affordable housing units for the life of the building; and

"(D) The purchase price for the second and subsequent sales of the units dedicated as affordable housing described in subparagraphs (A) and (B) of this paragraph shall be determined by a formula established by the Mayor.

"(2) The units dedicated as affordable housing pursuant to subparagraphs (A) and (B) of this paragraph shall be made available according to the following affordability levels:

"(A) In the case of rental units, 25% of the units shall be housing for which a very low-income household will pay no more than 30% of its income toward housing costs, and 75% of such units shall be housing for which a low-income household will pay no more than 30% of its income toward housing costs; and

"(B) In the case of ownership units, 50% of the units shall be housing for which a low-income household will pay no more than 30% of its income toward housing costs, and 50% of the units shall be housing for which a moderate-income household will pay no more than 30% of its income toward housing costs.

"(3) The Mayor shall take into account the affordable housing requirements of this subsection when establishing the terms and conditions under which real property is to be disposed. The Mayor may transfer real property at less than its appraised value or provide additional subsidies to a developer, as necessary, to ensure that the affordable housing requirements imposed by this subsection are met.

"(4) The Mayor may waive the affordable housing requirements of this subsection; provided, that the Mayor certifies that:

"(A) The appraised value of the property to be disposed is insufficient to support the affordable housing requirements, taking into account all other available sources of public funding for affordable housing, whether provided by the District of Columbia or the federal government;

"(B) The terms and conditions under which the real property is to be disposed satisfy the housing requirements to the maximum extent possible; and

"(C) The Chief Financial Officer has provided to the Mayor and the Council a financial analysis, which shall consist of:

"(i) A review and analysis of the financial condition of disposed land; and

"(ii) An advisory opinion stating whether or not it is likely that the developer could be reasonably expected to meet the affordable housing requirements outlined in paragraph (1) of this subsection.

"(5) Paragraph (4) of this subsection shall not apply to the disposition of the building and property owned by the District located at 425 2nd Street, N.W., unless the

District commits to using all of the proceeds from the disposition of the property for the construction of a new homeless shelter and affordable housing to serve homeless populations.

"(6) The Mayor may reduce the affordable housing requirements of this section if the proposed disposition of real property finances the development of a significant public facility. For the purposes of this paragraph, the term "public facility" means a building, structure, or system that is an asset of the District government eligible for capital spending and subject to depreciation. A public facility may include a fire station, public library, public school, stadium, or homeless shelter. Notwithstanding the priority to finance a significant public facility, the Mayor shall nevertheless endeavor to provide affordable housing, consistent with this section, to the extent economically feasible.".

(b) Subsection (b)(5) is amended to read as follows:

"(5) If applicable, a finding that the Developer will achieve the affordable housing requirements established by subsection (a-3) of this section or, if those requirements will not be achieved, a written certification by the Chief Financial Officer pursuant to subsection (a-3)(4) of this section;".

(c) A new subsection (n) is added to read as follows:

"(n) For the purposes of this section, the term:

"(1) "Area median income" means:

"(A) For a household of 4 persons, the area median income in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development;

"(B) For a household of 3 persons, 90% of the area median income for a household of 4 persons;

"(C) For a household of 2 persons, 80% of the area median income for a household of 4 persons;

"(D) For a household of one person, 70% of the area median income for a household of 4 persons; and

"(E) For a household of more than 4 persons, the area median income for a household of 4 persons, increased by 10% of the area median income for a household of 4 persons for each household member exceeding 4 persons.

"(2) "Housing costs" means:

"(A) In the case of rental units, rent and utilities.

"(B) In the case of ownership units, mortgage payments, including principal, interest, and property insurance, taxes, homeowner association, condominium, or cooperative fees, and utilities.

"(3) "Low-income household" means a household consisting of one or more persons with a total household income that is more than 30% and less than or equal to 50% of the area median income.

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"(4) "Moderate-income household" means a household consisting of one or more persons with total household income more than 50% and less than or equal to 80% of the area median income.

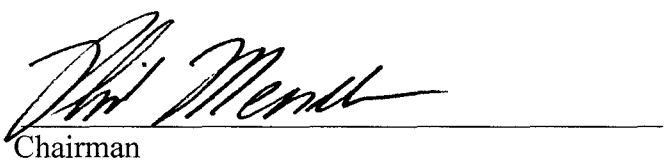
"(5) "Very low-income household" means a household consisting of one or more persons with total household income less than or equal to 30% of the area median income.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1974 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia
November 20, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-486

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 20, 2014

To provide for additional procedural safeguards for students with disabilities and their families, to provide for the neutral administration of due process hearings for students with disabilities as required under the Individuals with Disabilities Education Act, and to require the State Superintendent of Education to issue rules to implement this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Special Education Student Rights Act of 2014".

TITLE I. PROCEDURAL PROTECTIONS

Sec. 101. Short title.

This title may be cited as the "Special Education Procedural Protections Expansion Act of 2014".

Sec. 102. Definitions.

For the purposes of this act, the term:

(1) "Child with a disability" shall have the same meaning as provided in section 602(3) of IDEA (20 U.S.C. § 1401(3)).

(2) "IDEA" means the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*), and its implementing regulations.

(3) "Individualized education program" or "IEP" means a written plan that specifies the special education programs and services to be provided to meet the unique educational needs of a child with a disability, as required under section 614(d) of IDEA (20 U.S.C. § 1414(d)).

(4) "Individualized family service plan" or "IFSP" means a written plan for providing early intervention services to an infant or toddler with a disability and the infant's or toddler's family that:

(A) Is based on the evaluation and assessment of the child and family, consistent with the requirements of 34 C.F.R. § 303.321;

(B) Consistent with the requirements of 34 C.F.R. § 303.344, includes:

(i) Information about the child's present levels of development;

(ii) Information about the family;

(iii) The results or outcomes to be achieved;

(iv) The early intervention services necessary to meet the needs of the child and family, and

(v) To the extent appropriate, the identification of other services that the child or family needs or is receiving through other sources;

(C) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained, consistent with 34 C.F.R. § 303.420; and

(D) Is developed in accordance with the IFSP procedures in 34 C.F.R. §§ 303.342, 303.343, and 303.345.

(5) "Infant or toddler with a disability" shall have the same meaning as provided in section 632(5) of the IDEA (20 U.S.C. § 1432(5)).

(6) "Local education agency" or "LEA" means the District of Columbia Public Schools system or any individual or group of public charter schools operating under a single charter.

(7) "OSSE" means the Office of the State Superintendent of Education, as established by the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601, *et seq.*).

(8) "Parent" means a natural or adoptive parent of a child, a legal guardian, a person acting in the place of a parent, such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare, or a surrogate parent who has been appointed in accordance with 34 C.F.R. §300.519. The term "parent" may also include a foster parent when the natural parent's authority to make educational decisions on the child's behalf has been extinguished under applicable law and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child as required under IDEA, and has no interest that conflicts with the interest of the child.

(9) "Public agency" means either OSSE or a local education agency.

(10) "Service location" means the physical address at which instruction occurs or at which a student with disabilities receives special education and related services. The term "service location" does not refer to a specific classroom within a building or a specific building on a campus.

Sec. 103. Procedural safeguards; due process requirements.

In addition to any procedural safeguards and due process requirements required by IDEA:

(1) Before any change in service location for a child with a disability is made, the LEA shall provide the parent with written notice of the proposed change, which shall at minimum include:

(A) A description of the action proposed by the LEA;

(B) An explanation of why the LEA proposes to take the action;

(C) A description of each evaluation procedure, assessment, record, and report the agency used as a basis for the proposed action;

(D) A statement that the parents of a child with a disability have protection under the procedural safeguards of IDEA and that describes the means by which a copy of the procedural safeguards can be obtained;

(E) Sources for parents to contact to obtain assistance in understanding the provisions of IDEA;

(F) A description of other options that the LEA considered and the reasons why those options were rejected; and

(G) A description of any other factors relevant to the LEA's proposal.

(2) Any notice provided to the parent of a child with a disability or the parent of an infant or toddler with a disability pursuant to section 625(c)(1) or 639(a)(6) of IDEA (respectively, 20 U.S.C. § 1439(a)(6) and 20 U.S. C. § 1415(c)(1)) or this act shall include a list of sources the parent may contact for assistance, including contact information for the:

(A) Parent Training and Information Center established pursuant to section 671 of IDEA (20 U.S.C. § 1471);

(B) Office of the Ombudsman for Public Education; and

(C) Office of the Student Advocate.

(3) No fewer than 5 business days before a scheduled meeting where an IEP, IFSP, or eligibility for special education services will be discussed, the public agency scheduling the meeting shall provide parents with an accessible copy of any evaluation, assessment, report, data chart, or other document that will be discussed at the meeting; provided, that if a meeting is scheduled fewer than 5 business days before it is to occur, then these documents shall be provided no fewer than 24 hours before the meeting.

(4)(A) No later than 5 business days after a meeting at which a new or amended IEP has been agreed upon, the public agency shall provide the parents with a copy of the IEP. If an IEP has not yet been completed by the 5th business day after the meeting or additional time is required to comply with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*) ("Language Access Act"), the public agency shall provide the parent with the latest available draft IEP and a final copy upon its completion; provided, that the final copy of the IEP shall be provided to the parents no later than 15 business days after the meeting at which the IEP was agreed upon.

(B) No later than 5 business days after a meeting at which a new or amended IFSP has been agreed upon, the public agency shall provide the parents with a copy of the IFSP for their review and signature. If additional time is required to comply with the Language Access Act, the public agency shall provide the parent with a copy for parental review upon completion; provided, that the IFSP shall be provided to the parents for review no later than 15 business days after the meeting at which the IFSP was agreed upon.

(5)(A) Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child's current or proposed special educational program:

(i) The parent of a child with a disability; or

(ii) A designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed or is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent; provided, that the designee is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation.

(B) The time allowed for a parent, or the parent's designee, to observe the child's program shall be of sufficient duration to enable the parent or designee to evaluate a child's performance in a current program or the ability of a proposed program to support the child.

(C) A parent, or the parent's designee, shall be allowed to view the child's instruction in the setting where it ordinarily occurs or the setting where the child's instruction will occur if the child attends the proposed program.

(D) The LEA shall not impose any conditions or restrictions on such observations except those necessary to:

(i) Ensure the safety of the children in a program;

(ii) Protect other children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation by a parent or a designee; or

(iii) Avoid any potential disruption arising from multiple observations occurring in a classroom simultaneously.

(E) An observer shall not disclose nor use any information obtained during the course of an observation for the purpose of seeking or engaging clients in litigation against the District or the LEA.

(F) The LEA may require advance notice and may require the designation of a parent's observer to be in writing.

(G) Each LEA shall make its observation policy publicly available.

(H) Nothing in this paragraph shall be construed to limit or restrict any observational rights established by IDEA or other applicable law.

(6)(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

(i) Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement; provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

(7)(A) In any action or proceeding brought under Part B or Part C of IDEA, a court, in its discretion, may award reasonable expert witness fees as part of the costs to a prevailing party:

(i) Who is the parent of a child with a disability;

(ii) That is a local educational agency or OSSE, when the attorney of a parent files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) That is a local educational agency or OSSE against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(B) Any fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished; provided, that the maximum award shall be $6,000 per action or proceeding. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(C) Expert witness fees otherwise available under this paragraph shall not be awarded if reimbursement of attorneys' fees and related costs would be prohibited in the proceeding under 20 U.S.C. § 1415(i)(3)(D).

(D) Any expert witness fees available under this paragraph, shall be subject to reduction if the court makes a finding listed under 20 U.S.C. 1415(i)(3)(F).

(E) Expert witness fees otherwise available under this paragraph shall not be awarded to compensate the moving party for an independent educational evaluation unless that party would be entitled to compensation for the evaluation under IDEA.

(F) This paragraph shall apply to actions and proceedings initiated after July 1, 2016.

Sec. 104. Transfer of rights.

(a) A child with a disability who has reached 18 years of age shall be presumed to be competent, and all rights under IDEA shall transfer to the student, unless:

(1) The student has been adjudged incompetent under law;

(2) Pursuant to a procedure established by OSSE pursuant to 20 U.S.C. § 1415(m)(2), the student has been determined to not have the ability to provide informed consent and another competent adult has been appointed to represent the educational interests of that student; provided, that the adult student shall have the opportunity to challenge any determination made under this paragraph; or

(3)(A) The student has designated, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to:

(i) Make educational decisions;

(ii) Receive notices; and

(iii) Participate in meetings and all other procedures related to the student's educational program on behalf of the student.

(B)The student may terminate the power of attorney at any time and assume the right to make decisions regarding his or her education.

(b)(1) A student who has reached 18 years of age may receive support from another competent and willing adult to aid them in their decision-making.

(2) The student's decisional choice shall prevail any time that a disagreement exists between the student and the other adult providing support.

(c) No less than one year before a child with a disability reaches 18 years of age, the LEA shall notify the parents, in writing, that adult students with disabilities are presumed competent, and that all rights under IDEA will transfer to the student when the student reaches 18 years of age, unless the student or the family exercises one of the options described in subsection (a) of this section. The notice shall also describe the necessary procedure to exercise any of the options provided for in subsections (a) and (b) of this section.

TITLE II. DUE PROCESS HEARINGS

Sec. 201. Short title.

This title may be cited as the "Special Education Due Process Hearing Independence and Transparency Act of 2014".

Sec. 202. Hearing officer selection.

(a) OSSE shall administer impartial due process hearings as required by IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)) and may issue regulations necessary for this purpose.

(b) In selecting hearing officers for administering special education due process hearings, OSSE shall submit potential candidates for review to a 7-member community review panel.

(c)(1) The members of the community review panel shall be appointed by OSSE and consist of the following:

(A) One attorney knowledgeable in the field of special education who has experience representing parents and who is admitted to practice and in good standing in the District of Columbia;

(B) One attorney knowledgeable in the field of special education who has experience representing schools and who is admitted to practice and is in good standing in the District of Columbia;

(C) One educator knowledgeable in the field of special education and special education programming;

(D) One representative from a charter school LEA who is knowledgeable in the field of special education and special education programming;

(E) One representative from DCPS who is knowledgeable in the field of special education and special education programming; and

(F) Two parents of individuals who are or at one time were eligible to receive special education and related services in the District of Columbia.

(2) No member of the community review panel may be an employee of OSSE.

(d) Following its review of candidates for hearing officers, the community review panel shall forward its recommendations to the State Superintendent of Education.

Sec. 203. Evaluation and termination of hearing officers.

(a) The State Superintendent of Education may establish a process for submitting the records of individual hearing officers to the community review panel for evaluation before exercising a contract option year.

(b) The contract of a hearing officer may only be terminated for good cause and after the hearing officer has been given notice and an opportunity to be heard.

Sec. 204. Attorney abuses.

(a) Subject to IDEA and other applicable law, the chief hearing officer in the office for administering special education due process hearings ("office") may enter an order restricting the practice of any attorney before the office after a showing that the attorney has engaged in a pattern of filing frivolous pleadings.

(b) A pattern of filing frivolous pleadings shall be established when an attorney has:

(1) Three or more federal court judgments against him or her due to the filing of frivolous pleadings;

(2) Three or more pleadings that are deemed by the chief hearing officer for the office as frivolous, unreasonable, or without foundation, including pleadings that were filed for an improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation; or

(3) Filed a due process complaint without the knowledge and consent of the represented party.

(c) The restrictions that may be imposed by the chief hearing officer of the office include:

(1) Disqualification from a particular case;

(2) Suspension or disqualification from practice in special education due process hearings in the District of Columbia;

(3) A requirement that an attorney obtain ethics or other professional training; or

(4) A requirement that an attorney appear only when accompanied by another attorney.

(d) An attorney subject to a restriction under subsection (c) of this this section shall be given notice and an opportunity to be heard before the imposition of the restriction or as soon after imposition of the restriction as is practicable.

(e) Any person suffering a legal wrong or adversely affected or aggrieved by any order under this section may obtain judicial review of that order in the United States District Court for the District of Columbia.

TITLE III: RULES

Sec. 301. Rules.

Pursuant to the authority granted in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11), the State Superintendent of Education may issue rules to implement the provisions of this act; provided, that the State Superintendent of Education shall issue rules to implement section 104(a) by July 1, 2016.

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TITLE IV. GENERAL PROVISIONS

Sec. 401. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer, dated October 6, 2014, as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 402. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 20, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-487

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 18, 2014

To amend the State Education Office Establishment Act of 2000 to provide for special education service enhancements; and to amend the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006 to decrease the number of days within which an evaluation of a student who may have a disability must occur, and to clarify that the requirements of the act apply to all public school students.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Enhanced Special Education Services Amendment Act of 2014".

TITLE I. OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Sec. 101. Short title.

This title may be cited as the "State Education Office Establishment Amendment Act of 2014".

Sec. 102. The State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601 *et seq.*), is amended as follows:

(a) Section 2b (D.C. Official Code § 38-2601.02) is amended as follows:

(1) Redesignate paragraph (1) as paragraph (1A).

(2) Redesignate paragraph (1A) as paragraph (1B).

(3) Redesignate Paragraph (1B) as paragraph (1C).

(4) A new paragraph (1) is added to read as follows:

"(1) "Child with a disability" shall have the same meaning as provided in section 602(3) of the Individuals with Disabilities Education Act, approved April 13, 1970, (84 Stat. 175; 20 U.S.C. § 1401(3)).".

(5) New paragraphs (2C) and (2D) are added to read as follows:

"(2C) "IDEA" means the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*), and its implementing regulations.

"(2D) "Individualized education program" or "IEP" means a written plan that specifies the special education programs and services to be provided to meet the unique educational needs of a child with a disability, as required under section 614(d) of IDEA (20 U.S.C. § 1414(d)).".

(b) A new section 7h is added to read as follows:

"Sec. 7h. Special education.

"(a)(1) Beginning July 1, 2016, or upon funding, whichever occurs later, the first IEP in effect after a child with a disability reaches 14 years of age shall include transition assessments and services, including:

"(A) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services needed to assist the child in reaching those goals;

"(B) A statement of inter-agency responsibilities or any needed linkages before the child leaves the school setting; and

"(C) If the IEP team determines that transition services are not needed, a statement to that effect and the basis upon which the determination was made.

"(2) Not later than one year before a child with a disability's anticipated high school graduation or attainment of a certificate of IEP completion, the IEP team shall identify which adult services might be appropriate for the child and what evaluations should occur to determine the child's eligibility for those services; provided, that nothing in this section shall be construed to impose any obligation on an LEA to conduct evaluations to determine eligibility for adult services.

"(3) Beginning July 1, 2017, or upon funding, whichever occurs later, a child shall be eligible for Part C of IDEA if the child is otherwise an eligible infant or toddler with a disability and the child demonstrates a delay of at least 25%, using appropriate diagnostic instruments and procedures, in one of the following developmental areas:

"(A) Physical development, including vision or hearing;

"(B) Cognitive development;

"(C) Communication development;

"(D) Social or emotional development; or

"(E) Adaptive development.

"(b) By October 1, 2015, OSSE shall issue:

"(1) Rules to implement the provisions of this section; and

"(2) A report that includes recommendations on the advisability, timing, and expected cost to:

"(A) Further expand eligibility for early intervention or early childhood services to include any subset of infants or toddlers who are at risk of experiencing developmental delays because of the additional biological or environmental factors as described in 34 C.F.R. § 303.5; and

"(B) Expand eligibility for special education services by matching the definition of developmental delay of Part B of IDEA, defined in section 5-E3001 of Title 5 of the District of Columbia Municipal Regulations, and the definition of developmental delay under Part C of IDEA, defined in section 5-A3108.3 of Title 5 of the District of Columbia Municipal Regulations .

"(c) Subsection (a)(1) and (3) shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.".

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TITLE II. NON-PUBLIC PLACEMENTS

Sec. 201. Short title.

This title may be cited as the "Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2014".

Sec. 202. The Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 38-2561.01) is amended as follows:

(1) Paragraph (2) is amended to read as follows:

"(2) "DCPS" means the District of Columbia Public Schools, established by section 102 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D. C. Official Code § 38-171).".

(2) Paragraph (3)(D) is amended by striking the word "plan" and inserting the word "program" in its place.

(3) Paragraph (5) is amended by striking the phrase "Individualized education plan" and inserting the phrase "Individualized education program" in its place.

(4) A new paragraph (6A) is added to read as follows:

"(6A) "Local education agency" or "LEA" means an educational institution at the local level that exists primarily to operate a publicly funded school or schools in the District of Columbia, including the District of Columbia Public Schools and a District of Columbia public charter school.".

(5) A new paragraph (8A) is added to read as follows:

"(8A) "Public charter school" means a publicly funded public school established pursuant to the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1800 *et seq.*), and is not part of DCPS.".

(b) Section 102(a) and (b) (D.C. Official Code § 38-2561.02(a) and (b)) is amended to read as follows:

"(a)(1) Before paragraph (2)(A) of this subsection taking effect, an LEA shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment.

"(2)(A) Beginning July 1, 2017, or upon funding, whichever occurs later, an LEA shall assess or evaluate a student who may have a disability and who may require special education services within 60 days from the date that the student's parent or guardian provides consent for the evaluation or assessment. The LEA shall make reasonable efforts to obtain parental consent within 30 days from the date the student is referred for an assessment or evaluation.

"(B) This paragraph shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

"(3) For the purposes of this subsection, a referral for an evaluation or assessment for special education services may be oral or written. An LEA shall document any oral referral within 3 business days of receipt.

"(b) An LEA shall provide a student with a disability a free and appropriate public education in an appropriate special education placement in accordance with this act and IDEA; provided, that an LEA shall not remove a student with a disability from an age-appropriate classroom solely because of needed modifications in the general education curriculum.".

(c) Section 103 (D.C. Official Code § 38-2561.03) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) If an LEA anticipates that it may be unable to implement a student's IEP or provide a student with an appropriate special education placement in accordance with the IDEA and other applicable laws or regulations, the LEA shall notify the SEA. The SEA shall cooperate with the LEA to provide a placement in a more restrictive setting in conformity with the IDEA, and any other applicable laws or regulations.".

(2) Subsection (c) is amended to read as follows

"(c) The SEA shall be responsible for paying the costs of education, including special education and related services, of a student with a disability when the student is placed at a nonpublic special education school or program pursuant to this section; provided, that, in conformity with IDEA, the SEA shall not be responsible for paying the cost of education, including special education and related services, of a student with a disability who attends a nonpublic special education school or program if:

"(1) An LEA made a free and appropriate public education available to the student; and

"(2) The student's parent or guardian elected to place the student in a nonpublic special education school or program.".

(3) Subsection (d) is amended by striking the phrase "and with parental or guardian consent,".

(4) A new subsection (e) is added to read as follows:

"(e) The Office of the State Superintendent of Education shall issue updated rules to implement the provisions of this section by October 1, 2015.".

(d) Section 104 (D.C. Official Code § 38-2561.04) is amended by striking the acronym "DCPS" wherever it appears and inserting the acronym "the SEA" in its place.

(e) Section 105 (D.C. Official Code § 38-2561.05) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) The due process procedures set forth in the Special Education Student Rights Act of 2014, passed on 2nd reading on October 28, 2014 (Enrolled version of Bill 20-723), Chapter 30 of Title 5 of the District of Columbia Municipal Regulations, and IDEA shall govern any disputes between a student's parent or guardian and the LEA or SEA regarding the assessment, evaluation, placement, and funding of a student with a disability in a nonpublic special education school or program.".

(2) Subsection (b) is amended by striking the acronym "DCPS" and inserting the phrase "the SEA" in its place.

(f) Section 106 (D.C. Official Code § 38-2561.06) is amended as follows:

(1) The heading is amended by striking the acronym "DCPS" and inserting the acronym "LEA" in its place.

(2) The text is amended as follows:

(A) Strike the phrase "DCPS shall participate" and insert the phrase "the LEA shall participate" in its place.

(B) Strike the phrase "a DCPS representative" and insert the phrase "the LEA representative" in its place.

(C) Strike the phrase "as planned." and insert the phrase "as planned and does not negate or diminish the LEA's obligation to provide a free and appropriate public education." in its place.

(g) Section 107(d) (D.C. Official Code § 38-2561.07(d)) is amended by striking the phrase "the Internet site of the District of Columbia Public Schools" and inserting the phrase "its website" in its place.

(h) Section 109(b) (D.C. Official Code § 38-2561.09(b)) is amended as follows:

(1)Paragraph (3) is amended to read as follows:

"(3) To investigate allegations or complaints related to this act, violations of the IDEA, or an applicable local or federal law regarding child safety and welfare; during which the nonpublic school's Certificate of Approval shall be placed on probation throughout the pendency of any investigation of an allegation or complaint of child safety and welfare; and".

(2) Paragraph (4) is amended by striking the acronym "DCPS" and inserting the phrase "applicable local" in its place.

(i) Section 110(b) (D.C. Official Code § 38-2561.10(b)) is amended as follows:

(1) Strike the phrase "DCPS Superintendent of Schools" and insert the acronym "LEA" in its place.

(2) Strike the phrase "to any DCPS-funded" and insert the phrase "for any District of Columbia funded" in its place.

(j) Section 111 (D.C. Official Code § 38-2561.11) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase "or DCPS".

(B) Paragraph (2) is amended by striking the phrase "or DCPS" and inserting the phrase "or an LEA" in its place.

(C) Paragraph (6) is amended as follows:

(i) Strike the acronym "DCPS" and insert the phrase "an LEA" in its place.

(ii) Strike the phrase "initial application" and insert the word "application" in its place.

(2) Subsection (b)(4) is amended by striking the period at the end and inserting the phrase "; provided, that if the issues under review relate to student safety or welfare, the SEA shall change the status of the Certificate of Approval to probationary, the SEA may refuse to issue a location assignment to the nonpublic special education school or program, and the SEA may recommend to the LEA to remove some or all of its students from the nonpublic school pending resolution of the matter." in its place.

(k) Section 114(a) (D.C. Official Code § 38-2561.14(a)) is amended as follows:

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(1) Paragraph (1) is amended by striking the phrase "Superintendent of Schools" and inserting the phrase "State Superintendent of Education" in its place.

(2) Paragraph (2) is repealed.

(l) Section 116 (D.C. Official Code § 38-2561.16) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (5) is amended by striking the phrase "the SEA" and inserting the phrase "an LEA" in its place.

(B) Paragraph (6)(B) is amended to read as follows:

"(B) Whether the parents or guardian of the student, the LEA, and the SEA have been informed of the report; and".

(2) Subsection (b) is amended by striking the phrase "SEA and DCPS Internet sites" and inserting the phrase "SEA's website" in its place.

TITLE III. GENERAL PROVISIONS

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer, dated October 6, 2014, as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 302. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 18, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-488

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 18, 2014

To amend the District of Columbia School Reform Act of 1995 to authorize charter schools to establish an admission preference for students with disabilities, and to require by a date certain that each public charter school be its local educational agency; to amend the State Education Office Establishment Act of 2000 to establish the Special Education Enhancement Fund; and to amend the Ombudsman for Public Education Establishment Act of 2007 to clarify the ability of the ombudsman to examine patterns of complaints, and to authorize the Ombudsman to observe instruction at any public school or public charter school.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Special Education Quality Improvement Amendment Act of 2014".

TITLE I. SPECIAL EDUCATION CAPACITY

Sec. 101. Short title.

This title may be cited as the "District of Columbia School Reform Amendment Act of 2014".

Sec. 102. The District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321-107; D.C. Official Code § 38-1800.01 *et. seq.*), is amended as follows:

(a) Section 2002 (D.C. Official Code § 38-1800.02) is amended as follows:

(1) A new paragraph (18A) is added to read as follows:

"(18A) *IDEA.* – The term "IDEA" means the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400e*t seq.*), and its implementing regulations.".

(2) A new paragraph (19A) is added to read as follows:

"(19A) *Individualized education program or IEP.* – The term "individualized educaton plan" or "IEP" means a written plan that specifies the special education programs and services to be provided to meet the unique educational needs of a child with a disability, as required under section 614(d) of IDEA (20 U.S.C. § 1414(d)).".

(3) A new paragraph (30A) is added to read as follows:

"(30A) *Rehabilitation Act.* – The term"Rehabilitation Act" means the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 355; 29 U.S. C. § 701 *et seq.*).".

(b) Section 2202 (D.C. Official Code § 38-1802.02) is amended as follows:

(1) Paragraph (16)(H) is amended by adding the word "and" at the end.

(2) Paragraph (18) is amended by striking the phrase "; and" and inserting a period in its place.

(3) Paragraph (19) is repealed.

(c) Section 2206 (D.C. Official Code § 38-1802.06) is amended by adding a new subsection (c-1) to read as follows:

"(c-1)(1) *Random selection special education.* -- If there are more applications to enroll in a public charter school from students who are residents of the District of Columbia than there are spaces available, students shall be admitted in accordance with subsection (c) of this section; provided, that with the prior approval of the Public Charter School Board, a preference in admission may also be given to an applicant with an IEP or an applicant in a disability category pursuant to IDEA, in order to facilitate the planning, development, and maintenance of high quality special education programs in the District of Columbia.

"(2) A public charter school seeking to establish a preference for admission under this subsection shall apply to the Public Charter School Board no later than July 1 of the year before the proposed effective date of the lottery preference.

"(3) In reviewing an application by a public charter school to establish a preference for admission under this subsection, the Public Charter School Board shall ensure that the proposed preference will increase educational opportunities for, and not adversely impact, students with disabilities.

"(4) In approving an application by a public charter school to establish a preference for admission under this subsection, the Public Charter School Board shall make publicly available a written document that specifies the preference established and the reasons for granting the preference.".

(d) Section 2210 (D.C. Official Code § 38-1802.10) is amended as follows:

(1) Subsection (c) is amended to read as follows

"(c) *Education of children with disabilities.* – By August 1, 2017, each public charter school shall be its own local educational agency for the purpose of Part B of IDEA and section 504 of the Rehabilitation Act (29 U.S.C. § 794); provided, that the Public Charter School Board may, in its discretion, waive application of this subsection to allow a currently existing public charter school with more than 90% of its students entitled to receive services pursuant to an individualized educational program to continue to be a District of Columbia public school for the purposes of Part B of IDEA and section 504 of the Rehabilitation Act (29 U.S.C. § 794).".

(2) A new subsection (c-1) is added to read as follows:

"(c-1) No newly approved public charter school shall elect to be treated as a District of Columbia public school for the purpose of Part B of IDEA and section 504 of the Rehabilitation Act of 1973(29 U.S.C. § 794).".

TITLE II. SPECIAL EDUCATION ENHANCEMENT FUND

Sec. 201. Short title.

This title may be cited as the "State Education Office Special Education Enhancement Fund Amendment Act of 2014".

Sec. 202. The State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601 *et seq.*), is amended by adding a new section 7g to read as follows:

"Sec. 7g. Special Education Enhancement Fund.

"(a)(1) There is established as a special fundthe Special Education Enhancement Fund ("Enhancement Fund"), which shall be administered by OSSE in accordance with subsections (c) and (d) of this section.

"(b) Revenue from the following sources shall be deposited into the Enhancement Fund:

"(1) Any excess appropriated funds remaining at the end of each fiscal year in the operating budget for the non-public tuition paper agency within OSSE;

"(2) Any other annual appropriation, if any; and

"(3) Grants, gifts, or subsidies from public or private sources.

"(c) The Enhancement Fund shall be used solely to:

"(1) Provide additional funds to those public schools that demonstrate they have incurred costs associated with providing special education services above that for which the school was funded pursuant to the Uniform Per Student Funding Formula allocation;

"(2) Support special education capacity expansions, including:

"(A) Partnerships developed among nonpublic schools and public schools or public charter schools to provide special education services and training; and

"(B) Collaborative ventures among public charter schools to develop special education capacity through joint special education training, administration, or instruction;

"(3) Support:

"(A) Programs providing joint professional development and training opportunities:

"(B) Joint agreements to procure or provide special education services; or

"(C) Joint evaluations or assessments developed by groups of public schools or public charter schools; and

"(4) Support the development of educational programs specifically targeted at overage, under-credited youth with intensive special educational needs.

"(d) Notwithstanding any other provision of law, no funds provided under this section shall be counted for the purposes of calculating the maintenance of effort under IDEA.

"(e) OSSE may issue rules to implement the provisions of this section.

TITLE III. OMBUDSMAN.

Sec. 301. Short title.

This title may be cited as the "Ombudsman for Public Education Establishment Amendment Act of 2014".

Sec. 302. The Ombudsman for Public Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-351 *et seq.*), is amended as follows:

(a) Section 604 (D.C. Official Code § 38-353) is amended as follows:

(1) Paragraph (13) is amended by striking the word "and" at the end.

(2) Paragraph (15) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (16) is added to read as follows:

"(16) Identify school-level concerns based upon a pattern of complaints or concerns and recommend changes to improve the delivery of public education services.".

(b) Section 605 (D.C. Official Code § 38-354) is amended by adding a new paragraph (3A) to read as follows:

"(3A)Have the authority to observe instruction at any District of Columbia public school ("DCPS") or public charter school; provided, that DCPS or the public charter school may require advance notice before an observation may take place, but shall impose no other conditions or restrictions on such observations except those necessary to:

"(A) Ensure the safety of children in a program; or

"(B) To protect children in the program from disclosure by an observer of confidential and personally identifiable information if such information is obtained in the course of an observation;".

TITLE IV. GENERAL PROVISIONS.

Sec. 401. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 402. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 18, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-489

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 18, 2014

To amend the District of Columbia Taxicab Commission Establishment Act of 1985 to define a private vehicle-for-hire company and operator, to clarify the authority of vehicle inspection officers to make stops, to clarify the complaint authority of the District of Columbia Taxicab Commission, to create registration provisions for operators, to require background checks for operators, to prohibit street hails by operators, to require a private vehicle-for-hire company to conduct background checks, inspect vehicles, establish zero tolerance policies against discrimination and drug and alcohol use by operators, to require transmission of 1% of all gross receipts to the Office of the Chief Financial Officer, to require insurance for operators, to create provisions for charging for services, to provide for enforcement against private vehicles-for-hire, to deregulate fares for taxicabs arranged through digital dispatch, to clarify data and surcharge transmission requirements, and to require that a notice be posted in all taxicabs regarding acceptance of credit cards; to amend section 47-2829 of the District of Columbia Official Code to exempt private vehicles-for-hire from the license requirement and to clarify eligibility for a for-hire license; and to amend Title 18 of the District of Columbia Municipal Regulations to reduce the inspection requirement for taxicabs from semiannually to annually.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Vehicle-for-Hire Innovation Amendment Act of 2014".

Sec. 2. The District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-301 *et seq.*), is amended as follows:

(a) Section 4 (D.C. Official Code § 50-303) is amended as follows:

(1) New paragraphs (8A) and (8B) are added to read as follows:

"(8A) "Digital dispatch" means the hardware and software applications and networks, including mobile phone applications, which passengers and operators use to provide public and private vehicle-for-hire service.

"(8B) "Dispatch" means the traditional methods of pre-arranging vehicle-for-hire service, including through telephone or radio.".

(2) New paragraphs (16A), (16B), and (16C) are added to read as follows:

"(16A) "Private vehicle-for-hire" means a class of transportation service by which a network of private vehicle-for-hire operators in the District provides transportation to passengers to whom the private vehicle-for-hire operators are connected by digital dispatch.

"(16B) "Private vehicle-for-hire company" means an organization, including a corporation, partnership, or sole proprietorship, operating in the District that uses digital dispatch to connect passengers to a network of private vehicle-for-hire operators.

"(16C) "Private vehicle-for-hire operator" means an individual who operates a personal motor vehicle to provide private vehicle-for-hire service in contract with a private vehicle-for-hire company.".

(3) Paragraph (17) is amended to read as follows:

"(17) "Public vehicle-for-hire" means a class of transportation service by motor vehicle for hire in the District, including a taxicab, limousine, or sedan-class vehicle, that provides for-hire service exclusively using drivers and vehicles licensed pursuant to this act and D.C. Official Code § 47-2829.".

(4) Paragraphs (18) and (19) are repealed.

(5) Paragraph (21) is amended to read as follows:

"(21) "Taxicab" means a class of public vehicle-for-hire that may be hired by dispatch, digital dispatch, or hailed on the street, and for which the fare charged is calculated by a Commission-approved meter with uniform rates determined by the Commission; provided, that a taxicab hired by a passenger through digital dispatch may use rates set by the company that operates the digital dispatch pursuant to the requirements of this act.

(6) Paragraph (28) is amended by striking the phrase "taxicab service" and inserting the phrase "taxicab street-hail service" in its place.

(7) Paragraph (29) is amended by striking the phrase "and the fare" and inserting the phrase "and, when hailed on the street, the fare" in its place.

(8) New paragraphs (30A) and (30B) are added to read as follows:

"(30A) "Vehicle-for-hire industry" means all public and private vehicles-for-hire, including companies, associations, owners, operators, or any person who, by virtue of employment or office, is directly involved in providing public or private vehicle-for-hire services within the District.

"(30B) "Vehicle inspection officer" means a District employee trained in the laws, rules, and regulations governing public and private vehicle-for-hire service to ensure the proper provision of service and to support safety through street enforcement efforts, including traffic stops of public and private vehicles-for-hire, pursuant to protocol prescribed under this act and by regulation.".

(b) Section 8(c) (D.C. Official Code § 50-307(c)) is amended as follows:

(1) Paragraph (4)(B) is amended by striking the phrase "public vehicle inspection officers" and inserting the phrase "vehicle inspection officers" in its place.

(2) Paragraph (11) is amended as follows:

(A) Strike the phrase "public vehicle inspection officers" and insert the phrase "vehicle inspection officers" in its place.

(B) Strike the phrase "public vehicles-for-hire" and inserting the phrase "public and private vehicles-for-hire" in its place.

(3) Paragraph (14) is amended by striking the phrase "against taxicab operators, companies, associations, fleets, and taxi dispatch services" and inserting the phrase "against the vehicle-for-hire industry, including taxicab operators, companies, associations, fleets, and taxi dispatch services," in its place.

(c) Section 8b (D.C. Official Code § 50-307.02) is amended to read as follows:

"Sec. 8b. Reciprocal agreements.

"The Mayor shall work with surrounding jurisdictions to update reciprocal agreements and shall submit a report to the Council on or before June 30, 2015, on his or her progress.".

(d) Section 10b(a) (D.C. Official Code § 50-309.02(a)) is amended as follows:

(1) Strike the word "against" and insert the phrase "against public and private vehicles-for-hire, including" in its place.

(2) Strike the phrase "public vehicle inspection officers" and insert the phrase "vehicle inspection officers" in its place.

(e) Section 12 (D.C. Official Code § 50-311) is amended as follows:

(1) Subsection (b) is amended by striking the phrase "taxicab industry" and inserting the phrase "vehicle-for-hire industry" in its place.

(2) Subsection (b-1) is repealed.

(f) Section 13 (D.C. Official Code § 50-312) is amended as follows:

(1) Subsection (e) is amended as follows:

(A) Paragraph (5) is amended as follows:

(i) Strike the phrase "owners and operators of taxicabs, taxicab companies, associations, fleets, and dispatch services" and insert the phrase "owners and operators of public and private vehicles-for-hire, including taxicabs, taxicab companies, associations, fleets, and dispatch services," in its place.

(ii) Strike the phrase "taxicab industry" and insert the phrase "vehicle for-hire industry" in its place.

(B) Paragraph (11) is amended by striking the phrase "public vehicle inspection officers" and inserting the phrase "vehicle inspection officers" in its place.

(2) Subsection (f) is amended as follows:

(A) Strike the phrase "public vehicles-for-hire" wherever it appears and insert the phrase "public and private vehicles-for-hire" in its place.

(B) Strike the phrase "public vehicle inspection officers" wherever it appears and insert the phrase "vehicle inspection officers" in its place.

(g) Section 20a (D.C. Official Code § 50-320) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (4) is amended by striking the word "and" at the end.

(B) Paragraph (5) is amended by striking the period and inserting the phrase "; and" in its place.

(C) A new paragraph (6) is added to read as follows:

"(6) All funds collected pursuant to section 20l(b)(11).".

(2) Subsection (b)(1)(A) is amended by striking the word "public vehicles-for-hire" and inserting the phrase "vehicle-for-hire" in its place.

(h) New sections 20f-1 and 20f-2 are added to read as follows:

"Sec. 20f-1. Accessibility of digital dispatch for individuals with disabilities.

"(a) By January 1, 2016, a company that provides digital dispatch shall:

"(1) Ensure that the company's websites and mobile applications are accessible to the blind and visually impaired and the deaf and hard of hearing; and

"(2) Provide a report to the Council's Committee on Transportation and the Environment, or its successor committee with oversight of for-hire vehicles, on how the company intends to increase access to wheelchair-accessible public or private vehicle-for-hire service to individuals with disabilities.

"(b) A company that provides digital dispatch shall not:

"(1) Impose additional or special charges on an individual with a disability for providing services to accommodate the individual; or

"(2) Require an individual with a disability to be accompanied by an attendant.

"(c) If an operator accepts a ride request through digital dispatch from a passenger with a disability who uses a mobility device, upon picking up the passenger, the operator shall stow the passenger's mobility equipment in the vehicle if the vehicle is capable of stowing the equipment. If a passenger or operator determines that the vehicle is not capable of stowing the equipment, the company that provides digital dispatch shall not charge a trip cancellation fee or, if such fee is charged, shall provide the passenger with a refund in a timely manner.

"Sec. 20f-2. Training of employees and operators.

"(a)(1) A company that uses digital dispatch shall train associated operators in how to properly and safely handle mobility devices and equipment and to treat an individual with disabilities in a respectful and courteous manner.

"(2) Completion of a public vehicle-for-hire driver's training course approved by the Commission shall satisfy the operator training requirement of this subsection.".

(i) Section 20g (D.C. Official Code § 50-326) is amended by adding a new subsection (c) to read as follows:

"(c)(1) The Commission shall create a notice to be posted in a conspicuous location in all taxicabs in clear view of passengers. The notice shall be at least 5 inches by 7 inches in size, and shall include the following:

"(A) A statement that a taxicab must accept credit cards through the approved taximeter system;

"(B) A statement that a taxicab shall not operate without a functioning taximeter system;

"(C) A statement that failure to accept a credit card is a violation of the law and is punishable by fine; and

"(D) The information required for passengers to submit an alleged violation, including a telephone number and website address to the agency responsible for handling the complaint.

"(2) To obtain a copy of the notice required to be posted under this subsection, the owner or operator of a taxicab required to post the notice shall:

"(A) Print the notice from the Commission website; or

"(B) Request that the notice be mailed and submit payment to the Commission for the cost of printing and first-class postage.

"(3) The Commission shall post a notice on its website indicating that compliance with this subsection is mandatory as well as the penalties for failure to comply.

"(4) A violation of this subsection shall be punishable by a civil fine or other penalty provided by regulation.".

(j) Section 20j (D.C. Official Code § 50-329) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

"(a-1) The Commission shall not require a company that provides digital dispatch to sedan-class vehicles to produce to the Commission a list or inventory of vehicles or operators affiliated with the service.".

(2) Subsection (b) is amended by striking the phrase "a digital dispatch service" and inserting the phrase "digital dispatch" in its place.

(3) A new subsection (b-1) is added to read as follows:

"(b-1) A vehicle shall be permitted to operate as a sedan-class vehicle if:

"(1) It has a manufacturer's rated seating capacity of fewer than 10 persons;

"(2) It is not a salvaged vehicle or a vehicle rented from an entity whose predominant business is that of renting motor vehicles on a time basis; and

"(3) It is no more than 10 model years of age at entry into service and no more than 12 model years of age while in service.".

(k) New sections 20j-1, 20j-2, 20j-3, 20j-4, 20j-5, 20j-6, and 20j-7 are added to read as follows:

"Sec. 20j-1. General requirements for private vehicles-for-hire.

"A private vehicle-for-hire company shall:

"(1) Create an application process for a person to apply to register as a private vehicle-for-hire operator;

"(2) Maintain an up-to-date registry of the operators and vehicles associated with the private vehicle-for-hire company;

"(3) Provide the following information on its website:

"(A) The private vehicle-for-hire company's customer service telephone number or electronic mail address;

"(B) The private vehicle-for-hire company's zero tolerance policy established pursuant to paragraphs (9) and (10) of this section;

"(C) The procedure for reporting a complaint about an operator who a passenger reasonably suspects violated the zero tolerance policy under paragraphs (9) and (10) of this section; and

"(D) A telephone number or electronic mail address for the Commission;

"(4) Verify that an initial safety inspection of a motor vehicle used as a private vehicle-for-hire was conducted within 90 days of beginning service and that the vehicle passed the inspection and was determined safe by a licensed mechanic in the District pursuant to D.C. Official Code § 47-2851.03(a)(9) or an inspection station authorized by the State of Maryland or the Commonwealth of Virginia to perform vehicle safety inspections; provided, that an initial safety inspection need not be conducted if the motor vehicle used for service is compliant with an annual state-required safety inspection. A safety inspection conducted pursuant to this paragraph shall check the following motor vehicle equipment to ensure that such equipment is safe and in proper operating condition:

"(A) Brakes and parking brake;

"(B) All exterior lights, including headlights, parking lights, brake lights, and license plate illumination lights;

"(C) Turn signal devices;

"(D) Steering and suspension;

"(E) Tires, wheels, and rims;

"(F) Mirrors;

"(G) Horn;

"(H) Windshield and other glass, including wipers and windshield defroster;

"(I) Exhaust system;

"(J) Hood and area under the hood, including engine fluid levels and belts;

"(K) Interior of vehicle, including driver's seat, seat belts, and air bags;

"(L) Doors;

"(M) Fuel system; and

"(N) Floor pan.

"(5) Verify the safety inspection status of a vehicle as described in paragraph (4) of this section on an annual basis after the initial verification is conducted;

"(6) Perform the background checks required by section 20j-2(b) on each applicant before private vehicle-for-hire service is provided and update those checks every 3 years thereafter;

"(7) Establish a trade dress as required by section 20j-4;

"(8) Transmit the required amount pursuant to section 20l(b)(11);

"(9)(A) Establish a policy of zero tolerance for the use of alcohol or illegal drugs or being impaired by the use of alcohol or drugs while a private vehicle-for-hire operator is logged into a private vehicle-for-hire company's digital dispatch;

"(B) Immediately suspend, for the duration of the investigation conducted pursuant to subparagraph (C) of this paragraph, a private vehicle-for-hire operator upon

receiving a written complaint from a passenger submitted through regular mail or electronic means containing a reasonable allegation that the operator violated the zero tolerance policy established by subparagraph (A) of this paragraph; and

"(C) Conduct an investigation when a passenger alleges that a private vehicle-for-hire operator violated the zero tolerance policy established by paragraph (A) of this subparagraph;

"(10)(A) Establish a policy of zero tolerance for discrimination or discriminatory conduct on the basis of a protected characteristic under section 231 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.31), while a private vehicle-for-hire operator is logged into a private vehicle-for-hire company's digital dispatch. Discriminatory conduct may include:

"(i) Refusal of service on the basis of a protected characteristic, including refusal of service to an individual with a service animal unless the operator has a documented serious medical allergy to animals on file with the private vehicle-for-hire company;

"(ii) Using derogatory or harassing language on the basis of a protected characteristic;

"(iii) Refusal of service based on the pickup or drop-off location of the passenger; or

"(iv) Rating a passenger on the basis of a protected characteristic;

"(B) It shall not constitute discrimination under this paragraph for a private vehicle-for-hire operator to refuse to provide service to an individual with disabilities due to violent, seriously disruptive, or illegal conduct by the individual. A private vehicle-for-hire operator shall not, however, refuse to provide service to an individual with a disability solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience the operator or another person;

"(C) Immediately suspend, for the duration of the investigation conducted pursuant to subparagraph (D) of this paragraph, a private vehicle-for-hire operator upon receiving a written complaint from a passenger submitted through regular mail or electronic means containing a reasonable allegation that the operator violated the zero tolerance policy established by subparagraph (A) of this paragraph; and

"(D) Conduct an investigation when a passenger makes a reasonable allegation that an operator violated the zero tolerance policy established by subparagraph (A) of this paragraph;

"(11) Maintain records relevant to the requirements of this section for the purposes of enforcement; and

"(12) Submit to the Commission for the purposes of registration:

"(A) Proof that the private vehicle-for-hire company is licensed to do business in the District;

"(B) Proof that the private vehicle-for-hire company maintains a registered agent in the District;

"(C) Proof that the private vehicle-for-hire company maintains a website that includes the information required by paragraph (3) of this section;

"(D) Proof that the private vehicle-for-hire company has established a trade dress required by section 20j-4, including an illustration or photograph of the trade dress;

"(E) A written description of how the private vehicle-for-hire company's digital dispatch operates;

"(F) Proof that the private vehicle-for-hire company has secured the insurance policies required by section 20j-3; and

"(G) The certification required by section 20j-7; provided, that the Commission shall not impose a registration, licensure, certification, or other similar requirement for a private vehicle-for-hire company to operate in the District that exceeds the requirements set forth in this act.

"Sec. 20j-2. Registration of private vehicle-for-hire operators.

"(a) To become a private vehicle-for-hire operator, an individual shall submit an application to register with a private vehicle-for-hire company.

"(b) Before approving a registration application submitted under subsection (a) of this section, a private vehicle-for-hire company shall have a third party that is accredited by the National Association of Professional Background Screeners or a successor accreditation entity conduct the following examinations:

"(1) A local and national criminal background check;

"(2) The national sex offender database background check; and

"(3) A full driving record check.

"(c) A private vehicle-for-hire company shall reject an application submitted under subsection (a) of this section and shall permanently disqualify an applicant who:

"(1) As shown in the local or national criminal background check conducted in accordance with subsection (b)(1) of this section, has been convicted within the past 7 years of:

"(A) An offense defined as a crime of violence under D.C. Official Code § 23-1331(4);

"(B) An offense under Title II of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002 *et seq.*);

"(C) An offense under section 3 of the District of Columbia Protection Against Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; D.C. Official Code § 22-3102);

"(D) Burglary, robbery, or an attempt to commit robbery under An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Official Code §§ 22-801, 22-2801 and 22-2802);

"(E) Theft in the first degree under section 112 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3212);

"(F) Felony fraud or identity theft under sections 121 or 127b of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code §§ 22-3221, 22-3227.02); or

"(G) An offense under any state or federal law or under the law of any other jurisdiction in the United States involving conduct that would constitute an offense described in subparagraphs (A), (B), (C), (D), (E), and (F) of this paragraph if committed in the District;

"(2) Is a match in the national sex offender registry database;

"(3) As shown in the national background check or driving record check conducted in accordance with subsections (b)(1) and (b)(3) of this section, has been convicted within the past 7 years of:

"(A) Aggravated reckless driving under section 9(b-1) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1123; D.C. Official Code § 50-2201.04(b-1));

"(B) Fleeing from a law enforcement officer in a motor vehicle under section 10b of the District of Columbia Traffic Act, 1925, effective March 16, 2005 (D.C. Law 15-239; D.C. Official Code § 50-2201.05b);

"(C) Leaving after colliding under section 10c of the District of Columbia Traffic Act, 1925, effective April 27, 2013 (D.C. Law 19-266; D.C. Official Code § 50-2201.05c);

"(D) Negligent homicide under section 802(a) of An Act To amend an Act of Congress entitled "An Act to establish a Code of Law for the District of Columbia", approved March 3, 1901, as amended, by adding three new sections to be numbered 802(a), 802(b), and 802(c), respectively, approved June 17, 1935 (49 Stat. 385; D.C. Official Code § 50-2203.01);

"(E) Driving under the influence of alcohol or a drug, driving a commercial vehicle under the influence of alcohol or a drug, or operating a vehicle while impaired under sections 3b, 3c, or 3e of the Anti-Drunk Driving Act of 1982, effective April 27, 2013 (D.C. Law 19-266; D.C. Official Code §§ 50-2206.11, 50-2206.12, and 50-2206.14);

"(F) Unauthorized use of a motor vehicle under section 115 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3215); and

"(G) An offense under any state or federal law or under the law of any other jurisdiction in the United States involving conduct that would constitute an offense described in subparagraphs (A), (B), (C), (D), (E), and (F) of this paragraph if committed in the District; or

"(4) Has been convicted within the past 3 years of driving with a suspended or revoked license under section 13(e) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1123; D.C. Official Code § 50-1403.01(e)), according to the driving record check conducted in accordance with subsection (b)(3) of this section.

"(d) A motor vehicle used as a private vehicle-for-hire shall:

"(1) Have a manufacturer's rated seating capacity of 8 persons or fewer, including the private vehicle-for-hire operator;

"(2) Have at least 4 doors and meet applicable federal motor vehicle safety standards for vehicles of its size, type, and proposed use; and

"(3) Be no more than 10 model years of age at entry into service and no more than 12 model years of age while in service.

"(e) A person registered with a private vehicle-for-hire company as a private vehicle-for-hire operator under this section shall be deemed by the District to hold the necessary authorization to operate in the District as may be required by another jurisdiction or interstate authority.

"Sec. 20j-3. Insurance requirements for private vehicles-for-hire.

"(a) A private vehicle-for-hire company or operator shall maintain a primary automobile liability insurance policy that provides coverage of at least $1 million per occurrence for accidents involving a private vehicle-for-hire operator at all times when the operator is engaged in a prearranged ride.

"(b) A private vehicle-for-hire operator or a private vehicle-for-hire company on the operator's behalf shall maintain a primary automobile liability insurance policy that, for the time period when a private vehicle-for-hire operator is logged onto a private vehicle-for-hire company's digital dispatch showing that the operator is available to pick up passengers but is not engaged in a prearranged ride:

"(1) Recognizes that the operator is a private vehicle-for-hire operator and covers the operator's provision of private vehicle-for-hire service while the operator is logged into the private vehicle-for-hire company's digital dispatch showing that the operator is available to pick up passengers;

"(2) Provides minimum coverage of at least $50,000 per person per accident, with up to $100,000 available to all persons per accident, and $25,000 for property damage per accident; and

"(3) Either:

"(A) Offers full-time coverage similar to the coverage required by section 15 of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-314);

"(B) Contains an insurance rider to, or endorsement of, the operator's personal automobile liability insurance policy required by section 7 of the Compulsory/No Fault Motor Vehicle Insurance Act of 1982, effective September 18, 1982 (D.C. Law 4-155; D.C. Official Code § 31-2406); or

"(C) Offers a liability insurance policy purchased by the private vehicle-for-hire company that provides primary coverage for the time period in which an operator is logged into the private vehicle-for-hire company's digital dispatch showing that the operator is available to pick up passengers.

"(c) If a private vehicle-for-hire company purchases an insurance policy under this section, it shall provide proof to the Commission that the private vehicle-for-hire company has secured the policy.

"(d) A private vehicle-for-hire company shall not allow a private vehicle-for-hire operator who has purchased his or her own policy to fulfill the requirements of this section to accept a trip request through the digital dispatch service used by the private vehicle-for-company until the private vehicle-for-hire company verifies that the operator maintains insurance as required under this section. If the insurance maintained by a private vehicle-for-hire operator to fulfill the insurance requirements of this section has lapsed or ceased to exist, the private vehicle-for-hire company shall provide the coverage required by this section beginning with the first dollar of a claim.

"(e) Nothing in this section shall require an operator to obtain a personal automobile insurance policy that provides coverage for the time period in which an operator is logged into a private vehicle-for-hire company's digital dispatch.

"(f) If more than one insurance policy purchased by a private vehicle-for-hire company provides valid and collectable coverage for a loss arising out of an occurrence involving a motor vehicle operated by a private vehicle-for-hire operator, the responsibility for the claim shall be divided on an equal basis among all of the applicable polices; provided, that a claim may be divided in a different manner by written agreement of all of the insurers of the applicable policies and the policy owners.

"(g) In a claims coverage investigation, a private vehicle-for-hire company shall cooperate with any insurer that insures the private vehicle-for-hire operator's motor vehicle, including providing relevant dates and times during which an accident occurred that involved the operator to determine whether the operator was logged into a private vehicle-for-hire company's digital dispatch showing that the operator is available to pick up passengers.

"(h) The insurance requirements set forth in this section shall be disclosed on a private vehicle-for-hire company's website, and the company's terms of service shall not contradict or be used to evade the insurance requirements of this section.

"(i) Within 90 days of the effective date of the Vehicle-for-Hire Innovation Amendment Act of 2014, passed on 2nd reading on October 28, 2014 (Enrolled version of Bill 20-753)("2014 Act"), a private vehicle-for-hire company that purchases insurance on an operator's behalf under this section shall disclose in writing to the operator, as part of its agreement with the operator:

"(1) The insurance coverage and limits of liability that the private vehicle-for-hire company provides while the operator is logged into the company's digital dispatch showing that the operator is available to pick up passengers; and

"(2) That the operator's personal automobile insurance policy may not provide coverage, including collision physical damage coverage, comprehensive physical damage coverage, uninsured and underinsured motorist coverage, or medical payments coverage because the operator uses a vehicle in connection with a private vehicle-for-hire company.

"(j) An insurance policy required by this section may be obtained from an insurance company authorized to do business in the District or with a surplus lines insurance company with an AM Best rating of at least A-.

"(k) A private vehicle-for-hire company or operator shall have 120 days from the effective date of the 2014 Act to procure primary insurance coverage that complies with the requirements of subsection (b) of this section; provided, that until such time, a company shall maintain a contingent liability policy meeting at least the minimum limits of subsection (b) of this section that will cover a claim in the event that the operator's personal insurance policy denies a claim.

"(l) Within one year of the effective date of the 2014 Act, the Mayor shall assess whether the insurance requirements of this section are appropriate to the risk of private vehicle-for-hire services and shall report its findings to the Council.

"(m) For the purposes of this section, the term "pre-arranged ride" shall mean a period of time that begins when a private vehicle-for-hire operator accepts a requested ride through digital dispatch, continues while the operator transports the passenger in the operator's vehicle, and ends when the passenger departs from the vehicle.

"Sec. 20j-4. Trade dress requirements for private vehicles-for-hire.

"A private vehicle-for-hire shall display a consistent and distinctive trade dress consisting of a logo, insignia, or emblem at all times while the operator is logged into the private vehicle-for-hire company's digital dispatch. The trade dress shall be:

"(1) Sufficiently large and color contrasted so as to be readable during daylight hours at a distance of at least 50 feet; and

"(2) Reflective, illuminated, or otherwise patently visible in darkness.

"Sec. 20j-5. Requirements for private vehicle-for-hire operators.

"(a) A private vehicle-for-hire operator shall:

"(1) Accept only rides booked through a private vehicle-for-hire company's digital dispatch and shall not solicit or accept street hails;

"(2) Use the trade dress required by section 20j-4 at any time that the operator is logged into a private vehicle-for-hire company's digital dispatch;

"(3) Possess a valid driver's license issued by the District of Columbia, the State of Maryland, or the Commonwealth of Virginia;

"(4) Possess proof of personal motor vehicle insurance for the motor vehicle used as a private vehicle-for-hire; and

"(5) Be at least 21 years of age.

"(b) If an accident occurs involving a motor vehicle that is logged into the private vehicle-for-hire's digital dispatch, the private vehicle-for-hire operator or company shall provide law enforcement officials and insurance representatives with proof of the insurance required by section 20j-3.".

"Sec. 20j-6. Charges for private vehicle-for-hire service.

"A private vehicle-for-hire company may offer service at no charge, suggest a donation, or charge a fare; provided, that if a fare is charged the company shall comply with the fare transparency provisions pursuant to section 20l(b)(2).

"Sec. 20j-7. Certification, enforcement, and regulation of private vehicles-for-hire.

"(a) Every 24 months, a private vehicle-for-hire company shall certify on a form provided by the Commission that the private vehicle-for-hire company has complied with the requirements of this act.

"(b) The Commission is authorized to inspect and copy the relevant safety and consumer protection-related records of a private vehicle-for-hire company to ensure compliance with this act when it has a reasonable basis to suspect non-compliance; provided, that any records disclosed to the Commission under this act shall not be subject to disclosure to a third party by the Commission, including through a request submitted pursuant to the District of Columbia Freedom of Information Act of 1976, effective March 25, 1976 (D.C. Law 1-96; D.C. Official Code § 2-501 *et seq.*).

"(c) If the Mayor determines that a private vehicle-for-hire company knowingly certified an intentionally false or misleading statement on a form required by this act, the Mayor may impose a civil fine as determined by rulemaking. A civil fine prescribed by this section shall be applicable only after the private vehicle-for-hire company is afforded an opportunity for a hearing. These penalties shall be in addition to any other penalties available by law.

"(d) Failure by a private vehicle-for-hire company or operator to adhere to the requirements of this act may result in sanction by the Commission, including fines and other penalties, pursuant to the Commission's authority in section 8(c)(7).

"(e) Notwithstanding any other provision of law, the Commission shall not require a private vehicle-for-hire company to provide the Commission with a list or inventory of private vehicle-for-hire operators or vehicles associated with a private vehicle-for-hire company.".

(l) Section 20k (D.C. Official Code § 50-329.01) is amended to read as follows:

"Sec. 20k. Vehicle inspection officers.

"(a) Vehicle inspection officers shall undergo training on the rules and regulations governing private and public vehicles-for-hire and undergo yearly performance evaluations. Vehicle inspection officers shall be prohibited from making traffic stops of on-duty private or public vehicles-for-hire in the act of transporting a fare, unless there is reasonable suspicion of a violation, and shall act in accordance with all rules governing their duties, as established through rulemaking.

"(b) Upon reasonable suspicion of an illegal street hail, a public or private vehicle-for-hire operator shall provide a law enforcement official or vehicle inspection officer with access to a device containing an electronic record of trips sufficient to establish that the ride in question was prearranged through digital dispatch. Failure to have or provide access to a device containing such a record shall constitute a civil infraction punishable by fine or other penalty as established by the Mayor; provided, that an operator shall not be required to relinquish custody of a device containing evidence of a trip arranged through digital dispatch.".

(m) Section 20l (D.C. Official Code § 50-329.02) is amended as follows:

ENROLLED ORIGINAL

(1) Subsection (b) is amended as follows:

(A) The lead-in language is amended to read as follows:

"(b) A company that provides digital dispatch shall be exempt from regulation by the Commission, other than the rules issued pursuant to this subsection and subsection (c-1) of this section. The Commission may establish rules only to the extent necessary to ensure compliance with the following service requirements; provided that, the rules shall protect the personal privacy rights of customers and operators, and shall not result in the disclosure of confidential business information:".

(B) Paragraph (1) is amended as follows:

(i) Strike the phrase "the digital dispatch service" and insert the phrase "a company that uses digital dispatch" in its place.

(ii) Strike the word "system" and insert the phrase "system or through a time and distance charge set by the company" in its place.

(C) A new paragraph (1A) is added to read as follows:

"(1A) If a company that uses digital dispatch connects a customer to a private or public vehicle-for-hire other than a taxicab, the company shall calculate the fare in compliance with the method required for that class of service;".

(D) Paragraph (2) is amended to read as follows:

"(2) If a company that uses digital dispatch charges a fare other than the metered taxicab rate, before booking a vehicle the company shall disclose to the customer the fare calculation method, the applicable rates being charged, and the option for an estimated fare. The company shall review any customer complaint about fares that exceed estimated fares by 20% or $25, whichever is less;".

(E) Paragraph (3) is amended by striking the phrase "using a digital dispatch service" and inserting the phrase "affiliated with a company using digital dispatch" in its place.

(F) Paragraph (4) is amended by striking the phrase "The digital dispatch service and the operators" and inserting the phrase "A company that uses digital dispatch and the public vehicle-for-hire operators" in its place.

(G) Paragraph (6) is amended by striking the phrase "The digital dispatch service" and inserting the phrase "A company that uses digital dispatch" in its place.

(H) Paragraph (7) is amended by striking the phrase "The digital dispatch service" and inserting the phrase "A company that uses digital dispatch" in its place.

(I) Paragraph (8) is amended as follows:

(i) Strike the word "public" wherever it appears and insert the phrase "private or public" in its place

(ii) Strike the phrase "The digital dispatch service" and insert the phrase "A company that uses digital dispatch" in its place.

(iii) Strike the phrase "a digital dispatch service" and insert the phrase "a company that uses digital dispatch" in its place

(iv) Strike the phrase "the digital dispatch service includes" and insert the phrase "the company that uses digital dispatch includes" in its place.

(v) Strike the phrase "the digital dispatch service provides" and insert the phrase "the company that uses digital dispatch provides" in its place.

(J) Paragraph (9) is amended to read as follows:

"(9) A company that uses digital dispatch shall provide service throughout the entire District;".

(K) Paragraph (10) is amended to read as follows:

"(10) A company that uses digital dispatch for public vehicles-for-hire service shall register with the Commission by submitting proof to the Commission that it is licensed to do business in the District, maintains a registered agent in the District, and maintains a website containing information on its method of fare calculation, the rates and fees charged, and a customer service telephone number or email address. A company that uses digital dispatch for private vehicles-for-hire shall comply with the registration requirements of section 20j-1(12);".

(L) New paragraphs (11), (12), (13), (14), and (15) are added to read as follows:

"(11) Every 3 months, a company that uses digital dispatch for private or public vehicles-for-hire other than taxicabs shall transmit to the Office of the Chief Financial Officer 1% of all gross receipts for trips that physically originate in the District. The money collected shall be deposited in the Public Vehicles-for-Hire Consumer Service Fund established by section 20a. The company shall certify that the amount transmitted is consistent with the amount collected for such trips arranged through digital dispatch. The Office of the Chief Financial Officer may inspect records of the company to ensure compliance with the requirements of this paragraph; provided, that any records disclosed to the Office of the Chief Financial Officer shall not be subject to disclosure to a third party, including through a request submitted pursuant to the District of Columbia Freedom of Information Act of 1976, effective March 25, 1976 (D.C. Law 1-96; D.C. Official Code § 2-501 *et seq.*);

"(12) A company that uses digital dispatch for taxicabs or an approved payment service provider pursuant to the Commission's regulations shall transmit the per trip passenger surcharge to the Office of the Chief Financial Officer to be deposited in the Public Vehicles-for-Hire Consumer Service Fund established by section 20a in a manner prescribed by the Commission pursuant to its authority in section 20a(g). The Office of the Chief Financial Officer may inspect records of the company to ensure compliance with the requirements of this paragraph; provided, that any records disclosed to the Office of the Chief Financial Officer shall not be subject to disclosure to a third party, including through a request submitted pursuant to the District of Columbia Freedom of Information Act of 1976, effective March 25, 1976 (D.C. Law 1-96; D.C. Official Code § 2-501 *et seq.*);

"(13) During a state of emergency as declared by the Mayor, a company that provides digital dispatch that engages in surge pricing shall limit the multiplier by which its base fare is multiplied to the next highest multiple below the 3 highest multiples set on different days

in the 60 days preceding the declaration of a state of emergency for the same type of service in the Washington Metropolitan Area;

"(14) A private or public vehicle-for-hire operator may affiliate with more than one company for the purpose of using digital dispatch unless otherwise provided for by an agreement between the company and the operator; and

"(15) A trip manifest maintained in an electronic format by a private or public vehicle-for-hire operator who connects with a passenger through a digital dispatch service may include the phrase "as directed" or a similar phrase in lieu of including a passenger's trip destination; provided, that the destination is included upon completion of the trip.".

(2) A new subsection (c-1) is added to read as follows:

"(c-1) The Commission shall not require a company that provides or uses digital dispatch for private or public vehicles-for-hire to collect or transmit data or information about a customer or a customer's trip; provided, that anonymous trip data collected by a taxicab meter system shall be collected and transmitted to the Commission for all trips.".

(3) Subsection (d) is repealed.

(n) Section 20m (D.C. Official Code § 50-329.03) is amended as follows:

(1) Paragraph (3) is amended by striking the word "taxicab" and inserting the phrase "private or public vehicle-for-hire" in its place.

(2) Paragraph (4) is amended by striking the word "taxicab" and inserting the phrase "private or public vehicle-for-hire" in its place.

(3) Paragraph (6) is amended by striking the word "taxicab" and inserting the phrase "private or public vehicle-for-hire" in its place.

(o) Section 20o (D.C. Official Code § 50-329.05) is amended as follows:

(1) The heading is amended to read as follows:

"Sec. 20o. Fleeing from a vehicle inspection officer in a public or private vehicle-for-hire.".

(2) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended as follows:

(i) Strike the phrase "public vehicle-for-hire" wherever it appears and insert the phrase "public or private vehicle-for-hire" in its place.

(ii) Strike the phrase "public vehicle inspection officer" wherever it appears and insert the phrase "vehicle inspection officer" in its place.

(B) Paragraph (2) is amended by striking the phrase "public vehicle-for-hire" wherever it appears and inserting the phrase "public or private vehicle-for-hire" in its place.

(3) Subsection (b) is amended as follows:

(A) The lead-in text is amended by striking the phrase "public vehicle-for-hire" and inserting the phrase "public or private vehicle-for-hire" in its place.

(B) Paragraph (2) is amended by striking the phrase "public vehicle inspection officer" wherever it appears and inserting the phrase "vehicle inspection officer" in its place.

(C) Paragraph (3) is amended as follows:

(i) Strike the phrase "public vehicle-for-hire" and insert the phrase "public or private vehicle-for-hire" in its place.

(ii) Strike the phrase "public vehicle inspection officer" and insert the phrase "vehicle inspection officer" in its place.

(4) Subsection (c) is amended by striking the phrase "public vehicle-for-hire" wherever it appears and insert the phrase "public or private vehicle-for-hire" in its place.

Sec. 3. Section 105(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2023; D.C. Official Code § 50-381(a)), is amended by striking the phrase "system." and inserting the phrase "system; provided that a company that uses digital dispatch for taxicabs may charge fares pursuant to section 20l(b)(1) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-329.02(b)(1)).".

Sec. 4. Section 47-2829 of the District of Columbia Official Code is amended by adding new subsections (k) and (l) to read as follows:

"(k) A person who resides in the District of Columbia, the State of Maryland, or the Commonwealth of Virginia shall be eligible to apply for an operator and vehicle license to operate a public vehicle-for-hire.

"(l) This section shall not apply to a private vehicle-for-hire operator affiliated with a private vehicle-for-hire company pursuant to the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-301 *et seq.*).".

Sec. 5. Subsection 601.4(e) of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 601.4(e)) is amended by striking the phrase "semi-annually" and inserting the word "annually" in its place.

Sec. 6. Title 31 of the District of Columbia Municipal Regulations is amended as follows:

(a) Section 1001.9 (31 DCMR § 1001.9) is amended by striking the phrase "Metropolitan Area" wherever it appears and inserting the phrase "District of Columbia, the State of Maryland, or the Commonwealth of Virginia" in its place.

(b) Section 1209.4 (31 DCMR § 1209.4) is amended by striking the phrase "Washington Metropolitan Area" wherever it appears and inserting the phrase "District of Columbia, the State of Maryland, or the Commonwealth of Virginia" in its place.

Sec. 7. Applicability.

Section 1, section 2, section 3, and section 4 of this act shall apply as of the effective of date of this act. Section 5 shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

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Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 18, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-490

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 20, 2014

To establish, on a temporary basis, that it shall be unlawful for the owner or operator of a grocery store to impose a restrictive land covenant or use restriction on the sale, or other transfer, or lease of real property used as a grocery store that prohibits the subsequent use of the property as a grocery store.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Grocery Store Restrictive Covenant Prohibition Temporary Act of 2014".

Sec. 2. (a) It shall be unlawful for the owner or operator of a grocery store to impose a restrictive land covenant or use restriction in a contract for the sale, or other transfer, or lease of real property being used as a grocery store that prohibits the subsequent use of the real property as a grocery store.

(b) Any contract, including a private agreement, that includes a restrictive land covenant or use restriction on real property as described in subsection (a) of this section shall be void and unenforceable.

(c) The prohibition imposed by this section shall not apply to an owner or operator of a grocery store or food retail store that terminates operations at a site for purposes of relocating the grocery or food retail store into a comparable or larger store located within the District of Columbia within one-half mile of the site where the prior operation was terminated; provided, that relocation and commencement of the operation of the new grocery store or food retail store at the new site occurs within 2 years of the sale, transfer, or lease of the prior site, and the restrictive covenant imposed on the prior site does not have a term in excess of 3 years. If the new grocery store or food retail store is not relocated within the District within one-half mile of the prior site within 2 years, the restrictive land covenant or use restriction shall not be enforceable.

(d) For the purposes of this act, the term:

(1) "Grocery store" means a retail establishment with a primary business of selling grocery products and includes a selling area that is used for a general line of food and nonfood grocery products.

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(2) "Private agreement" means a mutually agreed upon and entered into exchange of promises.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Phil Mendelson
Chairman
Council of the District of Columbia

Vincent C. Gray
Mayor
District of Columbia
APPROVED
November 20, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-491

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 26, 2014

To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to specify that a salary of a re-employed District of Columbia employee annuitant shall not be reduced below the federal minimum wage and to make a confirming amendment; to amend An Act to increase compensation for District of Columbia policemen, firemen, and teachers; to increase annuities payable to retired teachers in the District of Columbia; to establish an equitable tax on real property in the District of Columbia; to provide for additional revenue for the District of Columbia; and for other purposes to update the name of the Police and Firemen's Retirement and Relief Board to the Police and Firefighters Retirement and Relief Board, to specify that the public members of the board have alternates, and to make technical amendments; to amend the Policemen and Firemen's Retirement and Disability Act to specify that the salary of a re-employed District police officer or firefighter annuitant shall not be reduced below the federal minimum wage and to make conforming amendments; to amend An Act For the retirement of public-school teachers in the District of Columbia to provide that the salary of a re-employed District teacher annuitant shall not be reduced below the federal minimum wage; and to amend the District of Columbia Retirement Reform Act and Omnibus Police Reform Amendment Act of 2000 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Retirement Technical Amendments Act of 2014".

Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

(a) Section 1103(b) (D.C. Official Code § 1-611.03(b)) is amended by striking the phrase "reemployed annuitant." and inserting the phrase "reemployed annuitant. No salary subject to this reduction shall be reduced to less than any applicable minimum wage set forth in the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 *et seq.*), or any other applicable federal minimum wage statute or regulation." in its place.

(b) Section 1108(c)(2)(C) (D.C. Official Code § 1-611.08(c)(2)(C) is amended by striking the phrase "Police and Firemen's Retirement and Relief Board" and inserting the phrase "Police and Firefighters Retirement and Relief Board" in its place.

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Sec. 3. Section 122 of An Act To increase compensation for District of Columbia policemen, firemen, and teachers; to increase annuities payable to retired teachers in the District of Columbia; to establish an equitable tax on real property in the District of Columbia; to provide for additional revenue for the District of Columbia; and for other purposes, approved September 3, 1974 (88 Stat. 1041; D.C. Official Code § 5-722), is amended as follows:

(a) Subsection (a) is amended as follows:

(1) The lead-in language is amended by striking the phrase "Firemen's Retirement" and inserting the phrase "Firefighters Retirement" in its place.

(2) Paragraph (1)(A) and (B) is amended to read as follows:

"(A) Members and alternates appointed from among persons who are employees of the District of Columbia, one member and one or more alternates from each of the following:

"(i) The District of Columbia Department of Human Resources;

"(ii) The Office of the Attorney General;

"(iii) The Department of Health;

"(iv) The Metropolitan Police Department; and

"(v) The Fire and Emergency Medical Services Department; and

"(B)(i) One member, and one or more alternates, each of whom shall be a physician, and shall be appointed from among persons who are not officers or employees of the District of Columbia; and

"(ii) One member, and one or more alternates, who shall be appointed from among persons who are not officers or employees of the District of Columbia.".

(3) Paragraph (2) is amended to read as follows:

"(2) The member, and one or more alternates, appointed from among employees of the Department of Health shall be physicians.".

(4) A new paragraph (3) is added to read as follows:

"(3) All appointments shall be made by the Mayor.".

(b) Subsection (d) is amended as follows:

(1) Strike the phrase "who contributes to the Policemen and Firemen's Relief Fund of the District of Columbia" and insert the phrase "who is covered by the Policemen and Firemen's Retirement and Disability Act, approved September 1, 1916 (39 Stat. 718; D.C. Official Code § 5-701 *et seq.*)" in its place.

(2) Strike the phrase "Firemen's Retirement" and insert the phrase "Firefighters Retirement" in its place.

Sec. 4. The Policemen and Firemen's Retirement and Disability Act, approved September 1, 1916 (39 Stat. 718; D.C. Official Code § 5-701 *et seq.*), is amended as follows:

(a) Section 12(g)(7) (D.C. Official Code § 5-710(g)) is amended by striking the phrase "Police and Firemen's Retirement and Relief Board" wherever it appears and inserting the phrase "Police and Firefighters Retirement and Relief Board" in its place.

(b) Section 12(i) (D.C. Official Code § 5-713) is amended by striking the phrase "Police and Firemen's Retirement and Relief Board" and inserting the phrase "Police and Firefighters Retirement and Relief Board" in its place.

(c) Section 12(n)(5) (D.C. Official Code § 5-723(e)), is amended by striking the phrase "held by such annuitant." and inserting the phrase "held by such annuitant. No salary subject to this reduction shall be reduced to less than any applicable minimum wage set forth in the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 *et seq.*), or any other applicable federal minimum wage statute or regulation." in its place.

Sec. 5. Section 25 of An Act For the retirement of public-school teachers in the District of Columbia, approved November 17, 1979 (93 Stat. 922; D.C. Official Code § 38-2061.01), is amended by adding the following sentence at the end:

"No salary subject to this reduction shall be reduced to less than any applicable minimum wage set forth in the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 *et seq.*), or any other applicable federal minimum wage statute or regulation.".

Sec. 6. Conforming amendments.

(a) Section 162(a)(2) of the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 885; D.C. Official Code § 1-732(a)(2)), is amended by striking the phrase "Police and Firemen's Retirement and Relief Board" and inserting the phrase "Police and Firefighters Retirement and Relief Board" in its place.

(b) Section 205(r) of the Omnibus Police Reform Amendment Act of 2000, effective October 4, 2000 (D.C. Law 13-160; D.C. Official Code § 5-107.04(r)), is amended by striking the word "Firefighter's" and inserting the word "Firefighters" in its place.

Sec. 7. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 26,2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-492

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 2, 2014

To require the Office of the State Superintendent of Education to develop a plan to provide healthy meals to low-income students on days when public schools are closed due to inclement weather.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Student Nutrition on Winter Weather Days Act of 2014".

Sec. 2. (a) On or before July 1, 2015, the Office of the State Superintendent of Education ("OSSE"), shall submit a plan to the Mayor and the Council for providing free meals to District of Columbia Public Schools ("DCPS") students in high-poverty areas who qualify for free or reduced-price meals on school days when DCPS schools are closed due to inclement weather. The plan shall include, at a minimum:

(1) A determination as to whether distributing meals to eligible students would be more feasible the day before school is likely be canceled due to inclement weather or on a day that school is actually cancelled due to inclement weather;

(2) A list of schools to receive meals based on meeting the following criteria:

(A) At least 50% of students qualify for free or reduced-price meals;

(B) At least 50% of the enrolled students have family incomes that are less than 185% of the federal poverty level; and

(C) The school has the physical capacity to store sufficient amounts of nonperishable food to distribute to students; and

(3) A plan to distribute as many meals and snacks as feasible and as allowed through the federal Summer Food Service Program, authorized by section 13 of the National School Lunch Act, approved May 8, 1968 (82 Stat. 117; 42 U.S.C. § 1761) ("Summer Food Service Program"), to an eligible student on a day when school is cancelled due to inclement weather.

(b) The plan required by subsection (a) of this section shall be implemented on October 1, 2015.

(c) In creating a plan for providing meals on days when school is cancelled due to inclement weather, the OSSE shall strive to comply with the nutritional requirements of section 202 of the Healthy Schools Act of 2010, effective July 27, 2010 (D.C. Law 18-209; D.C. Official Code § 38-822.02), where feasible.

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(d) The meals provided to students in accordance with this section may be submitted for federal reimbursement through the Summer Food Service Program.

Sec. 3. Applicability.

Section 2(b) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c) (1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

VETOED

Mayor
District of Columbia
November 18, 2014

COUNCIL OVERRIDE: DECEMBER 2, 2014

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days**. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

RESOLUTION

PR20-1139 Public Building Sign Prohibition Rules Approval Resolution of 2014

Intro. 11-20-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment with comments from the Committee on Business, Consumer, and Regulatory Affairs

Council of the District of Columbia
Committee on Economic Development
Committee on Government Operations
Notice of Joint Public Roundtable
1350 Pennsylvania Avenue, N.W. Washington, DC 20004

REVISED

COUNCILMEMBER MURIEL BOWSER, CHAIRPERSON
COMMITTEE ON ECONOMIC DEVELOPMENT

AND

COUNCILMEMBER KENYAN MCDUFFIE, CHAIRPERSON
COMMITTEE ON GOVERNMENT OPERATIONS

ANNOUNCE A JOINT PUBLIC ROUNDTABLE

On
Proposed Resolution 20-1135, the Fifth Street, N.W. and I Street, N.W. Surplus Declaration Resolution of 2014,
And
Proposed Resolution 20-1136, the Fifth Street, N.W. and I Street, N.W. Disposition Approval Resolution of 2014

DECEMBER 9, 2014
2:00 P.M.
ROOM 500
JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.

On Tuesday, December 9, 2014, Councilmember Muriel Bowser, Chairperson of the Committee on Economic Development, and Councilmember Kenyan McDuffie, Chairperson of the Committee on Government Operations, will hold a joint public roundtable to consider Proposed Resolution 20-1135, the Fifth Street, N.W. and I Street, N.W. Surplus Declaration Resolution of 2014, and Proposed Resolution 20-1136, the Fifth Street, N.W. and I Street, N.W. Disposition Approval Resolution of 2014.

Proposed Resolutions 20-1135 and 20-1136 will, respectively, declare District owned property at the intersection of Fifth and I Streets NW., as surplus, and authorize the Office of the Deputy Mayor for Planning and Economic Development (DMPED) to dispose of this property located in the Mount Vernon Triangle for redevelopment. The DMPED has selected TPC 5th & I Partners, LLC to redevelop the Property into a mixed use development. The proposed redevelopment project consists of an approximately 200 key hotel, approximately 60 condominium units, 7,600 square-feet of retail, and below-grade parking. The Developer will also renovate two parks in the immediate are. In addition, the Developer will construct

approximately 61 units of affordable housing for households earning at or below 60% of the area median income at 2100 Martin Luther King Jr, Avenue SE.

The joint public roundtable will begin at 2:00 p.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

Individuals and representatives of community organizations wishing to testify should contact Tsega Bekele, Legislative Counsel to the Committee on Economic Development, at (202) 724-8052, or tbekele@dccouncil.us and furnish his or her name, address, telephone number, and organizational affiliation, if any, by the close of business on December 8, 2014. Persons presenting testimony may be limited to 3 minutes in order to permit each witness an opportunity to be heard. Please provide the Committee with 20 copies of any written testimony.

If you are unable to testify at the joint public roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee on Economic Development, Council of the District of Columbia, Suite 110 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004 no later than December 8, 2014.

This hearing notice has been revised to reflect the addition of the Committee on Government Operations, which will consider the additional measure, Proposed Resolution 20-1135, the "Fifth Street, N.W. and I Street, N.W. Surplus Declaration Resolution of 2014." Also, this notice has been revised to reflect a change in start time from 1:00pm to 2:00pm.

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B20-1005, "Trauma Technologists Licensure Temporary Amendment Act of 2014", **B20-1009**, Early Learning Quality Improvement Network Temporary Amendment Act of 2014", **B20-1011**, "Education Licensure Commission Temporary Amendment Act of 2014", **B20-1013**, "Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2014", **B20-1016**, "Prohibition of Pre-Employment Marijuana Testing Temporary Act of 2014", and **B20-1018**, "Parkside Parcel E and J Mixed-Income Apartments Tax Abatement Temporary Amendment Act of 2014" were adopted on first reading on December 2, 2014. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on December 16, 2014.

COUNCIL OF THE DISTRICT OF COLUMBIA
EXCEPTED SERVICE APPOINTMENTS AS OF NOVEMBER 30, 2014

NOTICE OF EXCEPTED SERVICE EMPLOYEES

D.C. Code § 1-609.03(c) requires that a list of all new appointees to Excepted Service positions established under the provisions of § 1-609.03(a) be published in the D.C. Register. In accordance with the foregoing, the following information is hereby published for the following positions.

COUNCIL OF THE DISTRICT OF COLUMBIA			
NAME	**POSITION TITLE**	**GRADE**	**TYPE OF APPOINTMENT**
McKeever, Marissa	Senior Legislative Assistant	5	Excepted Service - Reg Appt
Lowery, Terese	Chief of Staff	9	Excepted Service - Reg Appt

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of reprogramming requests are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 20-269: Request to reprogram $16,000,000 of Capital funds budget authority and allotment within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on November 28, 2014. This reprogramming will enable the Department of General Services (DGS) to complete the FY 2015 school modernization plan in conformance with the revised scopes of work.

RECEIVED: 14 day review begins December 1, 2014

Reprog. 20-270: Request to reprogram $866,382 of Fiscal Year 2015 Local fund budget authority within the Department of Corrections (DOC) was filed in the Office of the Secretary on November 28, 2014. This reprogramming ensures that DOC is able to procure contractual services that include staff training for the Prison Rape Elimination Act (PREA) program, fleet services for the Inmate Work Squad, Central Cell Block food services, and in-house laundry services.

RECEIVED: 14 day review begins December 1, 2014

Reprog. 20-271: Request to reprogram $13,833 of Capital funds budget authority and allotment from the Department of General Services (DGS) to the Reverse Pay-As-You-Go (Paygo) Capital Project and subsequently to the Local Funds Budget of DGS was filed in the Office of the Secretary on November 28, 2014. This reprogramming will support the Local funds budget cost of security cameras and various fixtures, furniture, and equipment (FF&E) for the Congressional Heights Recreation Center renovations and modernization.

RECEIVED: 14 day review begins December 1, 2014

Reprog. 20-272: Request to reprogram $680,796 of Capital funds budget authority and allotment from the District of Columbia Public Schools (DCPS) to the Reverse Pay-As-You-Go (Paygo) Capital Project and subsequently to the Local funds budget of DPS was filed in the Office of the Secretary on November 28, 2014. This reprogramming will support the Local funds budget to purchase security cameras and various fixtures, furniture, and equipment (FF&E) for the Anacostia HS, Rose Reno School, Mann ES, Brookland MS, and Ballou HS Modernization projects.

RECEIVED: 14 day review begins December 1, 2014

Reprog. 20-273: Request to reprogram $90,000 of Capital Funds Budget Authority and Allotment within the Department of Parks and Recreation was filed in the Office of the Secretary on November 28, 2014. This reprogramming is needed to support the cost modernization and renovation of various playgrounds that are part of the "active" PlayDC initiative throughout the District of Columbia.

RECEIVED: 14 day review begins December 1, 2014

Reprog. 20-274: Request to reprogram $1,000,000 of Fiscal Year 2015 Special Purpose Revenue funds budget authority within the District Department of the Environment (DDOE) and then to the Pay-As-You-Go (Paygo) Capital Fund was filed in the Office of the Secretary on November 28, 2014. This reprogramming ensures that DDOE is able to conduct capital projects for ongoing efforts to retrofit public land with green storm water practices.

RECEIVED: 14 day review begins December 1, 2014

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	December 5, 2014
Petition Date:	January 20, 2015
Roll Call Hearing Date:	February 2, 2015

License No.:	ABRA-097368
Licensee:	DTRS Washington LLC
Trade Name:	Eno Wine Bar
License Class:	Retailer's Class "C" Restaurant
Address:	2810 Pennsylvania Avenue, N.W.
Contact:	Michael D. Fonseca, Esq., 202-625-7700

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this applicant has applied for a transfer of location of license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF OPERATION

Licensee is transferring from safekeeping, formerly The Williamsburg, to a new location at 2810 Pennsylvania Avenue, N.W. This establishment will serve fine cuisine and alcoholic beverages with a focus on wine and will occasionally provide live entertainment from bands or solo artists. Total occupancy load will be 78. Sidewalk Cafe with seating for 4.

HOURS OF OPERATION, ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION AND LIVE ENTERTAINMENT

Sunday through Thursday 8am-2am, Friday and Saturday 8am-3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ

Sunday through Saturday 8am-12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: December 5, 2014
Petition Date: January 20, 2015
Hearing Date: February 2, 2015
Protest Date: April 15, 2015

License No.: ABRA-097277
Licensee: Lemlem Gebrewahd
Trade Name: To Be Determined
License Class: Retailer's Class "C" Restaurant
Address: 1920 9th Street, N.W.
Contact: Jermaine Matthews, 240-838-1622

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on April 15, 2015.

NATURE OF OPERATION
Small restaurant that will provide food and entertainment. 25 seats with a total occupancy load of 35. Entertainment will be in the form of a DJ or live band to include cover charge.

HOURS OF OPERATION
Sunday through Tuesday 11 am – 2 am, Wednesday & Thursday 11 am - 3 am and
Friday & Saturday 11 am – 4 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday 11 am – 2 am and Friday & Saturday 11 am - 3 am

HOURS OF LIVE ENTERTAINMENT OCCURRING OR CONTINUING AFTER 6PM
Sunday through Tuesday 6 pm – 2 am, Wednesday & Thursday 6 pm – 3 am and
Friday & Saturday 6 pm - 4 am

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, February 5, 2015, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 14-17 (AE Tower, LLC – Map Amendment @ Square 4310)

THIS CASE IS OF INTEREST TO ANC 5C

On September 29, 2014, the Office of Zoning received an application from AE Tower, LLC, contract purchaser, on behalf of property owner Evangelical Holy Trinity Church, Inc. (the "Applicant"). The Applicant is requesting approval of an amendment to the Zoning Map to rezone property located in Square 4310 from a mix of R-1-B and C-2-A Zone District to the C-2-A Zone District.

The C-2-A Zone District permits low-to-medium density commercial and residential uses. The purpose of the C-2-A Zone District is to provide facilities for shopping and business needs, to allow a mix of uses including residential, and to accommodate commercial developments serving local residential areas.

The R-1-B Zone District allows for low-density single-family detached residential development on lots of 5,000 square feet. It does not permit commercial or mixed use development.

The Office of Planning provided its report on October 31, 2014, and the case was set down for hearing on November 10, 2014. The Applicant provided its prehearing statement on November 12, 2014.

The property that is the subject of this application consists of approximately 27,618 square feet of land area and is located at 2911 Rhode Island Avenue, N.E. (Square 4310, Lot 808).

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of·1938, approved June 20, 1938 (52 Stat. 797; DC Official Code Section 6-641.01 et. seq.).

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Zoning Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3022.3.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: http://dcoz.dc.gov/services/app.shtm**. This form may also be obtained from the Office of Zoning at the address stated below.

If an affected Advisory Neighborhood Commission (ANC), pursuant to 11 DCMR 3012.5, intends to participate at the hearing, the ANC shall also submit the information cited in § 3012.5 (a) through (i). The written report of the ANC shall be filed no later than seven (7) days before the date of the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

1.	Applicant and parties in support	60 minutes collectively
2.	Parties in opposition	60 minutes collectively
3.	Organizations	5 minutes each

4. Individuals 3 minutes each

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at http://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, AND MICHAEL G. TURNBULL -------- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Fees for Stormwater Management, and Soil Erosion and Sediment Control

The Director of the District Department of the Environment (Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006, as amended (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2012 Repl.)); the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, as amended (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq*. (2012 Repl.)); the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008, effective March 26, 2008 (D.C. Law 17-138; 55 DCR 1689 (February 22, 2008)), as amended by the Anacostia Waterfront Environmental Standards Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-192; D.C. Official Code §§ 2-1226.31 *et seq*.) (2012 Repl. & 2014 Supp.)); the Soil Erosion and Sedimentation Control Act of 1977, effective September 28, 1977 (D.C. Law 2-23; D.C. Official Code §§ 8-1701 *et seq*. (2012 Repl.)), as amended by the Soil Erosion and Sedimentation Control Amendment Act of 1994, effective August 26, 1994 (D.C. Law 10-166; 41 DCR 4892 (July 22, 1994)); the Uniform Environmental Covenants Act of 2005, effective May 12, 2006, as amended (D.C. Law 16-95; D.C. Official Code §§ 8-671.01 *et seq.* (2012 Repl.)); the Water Pollution Control Act of 1984, effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.* (2012 Repl.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to adopt the following amendments to Chapter 5 (Water Quality and Pollution) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR), by the adoption of final rules.

The Stormwater Management, and Soil Erosion and Sediment Control Regulations were published as final in the *D.C. Register* on July 19, 2013 at 60 DCR 10640, after several proposed rulemakings and extensive public participation. These amendments update existing fees that the Department adjusts annually for inflation, using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics, as required by 21 DCMR § 501.1. All fees are rounded to the nearest cent. Adjustments in future years will be applied to the adjusted value of the prior year rather than the rounded value.

These rules were previously published as a Notice of Proposed Rulemaking at 61 DCR 10583 on October 10, 2014. No comments were received; therefore the Director will publish the rules as final. These final rules were adopted on November 20, 2014 and will be effective as of their publication of this notice in the *D.C. Register*.

Chapter 5, WATER QUALITY AND POLLUTION, of Title 21, WATER AND SANITATION, DCMR is amended as follows:

Section 501, FEES, is amended as follows:

Subsection 501.3 is amended to read as follows:

501.3 An applicant for Department approval of a soil erosion and sediment control plan shall pay the fees in Table 1 for Department services at the indicated time, as applicable:

Table 1. Fees for Soil Erosion and Sediment Control Plan Review

Payment Type	Payment Requirement	Fees by Land Disturbance Type		
		Residential	All Other	
		≥ 50 ft^2 and < 500 ft^2	≥ 50ft^2 and < 5,000 ft^2	≥ 5,000 ft^2
Initial	Due upon filing for building permit	$51.04	$444.01	$1,092.17
Final • Clearing and grading > 5,000 ft^2	Due before building permit is issued	n/a		$0.15 per 100 ft^2
• Excavation base fee		n/a	$444.01	
• Excavation > 66 yd^3		$0.10 per yd^3		
• Filling > 66 yd^3		$0.10 per yd^3		
Supplemental	Due before building permit is issued	$102.07	$102.07	$1,020.72

Subsection 501.04 is amended to read as follows:

501.4 An applicant for Department approval of a Stormwater Management Plan (SWMP) shall pay the fees in Table 2 for Department services at the indicated time, as applicable:

Table 2. Fees for Stormwater Management Plan Review

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≥ 5,000 ft^2 and ≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$3,368.39	$6,226.41
Final	Due before building permit is issued	$1,531.09	$2,449.74
Supplemental	Due before building permit is issued	$1,020.72	$2,041.45

Subsection 501.6 is amended to read as follows:

501.6 An applicant shall be required to pay the fees in Table 3 for review of a Stormwater Pollution Prevention Plan only if the site is regulated under the Construction General Permit issued by Region III of the Environmental Protection Agency.

Table 3. Additional Fees

Review or Inspection Type	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
	≤ 10,000 ft^2	> 10,000 ft^2
Soil characteristics inquiry	$153.11	
Geotechnical report review	$71.45 per hour	
Pre-development review meeting	No charge for first hour $71.45 per additional hour	
After-hours inspection fee	$51.04 per hour	
Stormwater pollution plan review	$1,122.80	
Dewatering pollution reduction plan review	$1,122.80	$2,143.52
Application for relief from extraordinarily difficult site conditions	$510.36	$1,020.72

Subsection 501.7 is amended to read as follows:

501.7 An applicant for Department approval of a SWMP for a project being conducted solely to install a Best Management Practice (BMP) or land cover for Department certification of a Stormwater Retention Credit (SRC) shall pay the fees in Table 4 for Department services at the indicated time, as applicable, except that:

(a) A person who is paying a review fee in Table 2 for a major regulated project shall not be required to pay a review fee in Table 4 for the same project; and

(b) A person who has paid each applicable fee to the Department for its review of a SWMP shall not be required to pay a review fee in Table 4 for the same project:

Table 4. Fees for Review of Stormwater Management Plan to Certify Stormwater Retention Credits

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$586.92	$867.61
Final	Due before building permit is issued	$127.59	$204.14
Supplemental	Due before building permit is issued	$510.36	

Subsection 501.10 is amended to read as follows:

501.10 An applicant for Department approval of a Green Area Ratio plan shall pay the fees in Table 5 for Department services at the indicated time:

Table 5. Fees for Review of Green Area Ratio Plan

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$586.92	$867.61
Final	Due before building permit is issued	$127.59	$204.10
Supplemental	For reviews after first resubmission	$510.36	

Subsection 501.11 is amended to read as follows:

501.11 The in lieu fee shall be three dollars and fifty-seven cents ($3.57) per year for each gallon of Off-Site Retention Volume (Offv).

Subsection 501.13 is amended to read as follows:

501.13 A person shall pay the fees in Table 6 for the indicated resource before receipt of the resource:

Table 6. Fees for Resources

Paper Copies of Documents	Cost
District Standards and Specifications for Soil Erosion and Sediment Control	$51.04
District Stormwater Management Guidebook	$51.04
District Erosion and Sediment Control Standard Notes and Details (24 in x 36 in)	$25.52

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 ("the Act"), effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.05 (2012 Repl.)); Sections 4902(a) and (b) of the Department of Health Functions Clarification Act of 2001 (Act), effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code §§ 7-731(a)(5) and (b) (2012 Repl.)); and Mayor's Order 2004-46, dated March 22, 2004, hereby gives notice of amendments to Chapter 36 (Department of Health (DOH) Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking amends the Section 3620 schedule of fines for food operations, to correspond with the new Notice of Final Rulemaking for Food and Food Operations in Subtitle A of Title 25 of the DCMR, which were published in the *D.C. Register* on November 30, 2012 at 59 DCR 013690.

On September 19, 2014, the Notice of Proposed Rulemaking was published in the *D.C. Register* at 61 DCR 009617. The Department of Health did not receive any comments on the Notice of Proposed Rulemaking and therefore no changes were made to the proposed rules. These rules were adopted as final by the Director on November 12, 2014, and will take effect immediately upon publication of this notice in the *D.C. Register*.

Chapter 36, DEPARTMENT OF HEALTH (DOH) INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:

3620 FOOD AND FOOD OPERATIONS INFRACTIONS

3620.1 [RESERVED]

3620.2 Violation of the following Imminent Health Hazards of Title 25-A of the DCMR as determined by the Department of Health shall be a Class 2 infraction:

(a) Operating a food establishment without a valid Certificate of Occupancy in violation of § 4408.1(i) [P];

(b) Operating a food establishment without a license in violation of §§ 4300.1 [Pf] and 4408.1(k)(1) [P];

(c) Operating a food establishment with an expired license in violation of §§ 4300.2 [Pf] and 4408.1(k)(2) [P];

(d) Operating a food establishment with a suspended license in violation of §§ 4300.3 [Pf], 4718, and 4408.1(k)(3) [P];

(e) Operating a depot, commissary or service support facility that services a mobile food unit without a valid license to operate issued by the Mayor in violation of §§ 3700.7 [P], 4300.1 [Pf], and 4408.1(l)(7) [P];

(f) Operating a depot, commissary or service support facility that services a mobile food unit with a license that has been suspended for violations of this chapter and applicable provisions of this Code in violation of §§ 3700.8 [P], 4300.3 [Pf], 4718, and 4408.1(l)(8) [P];

(g) Operating a mobile food unit without a valid Health Inspection Certificate issued by the Department in violation of §§ 3700.5 [P], 3706.1(a) – (f) [P], and 4408.1(l)(5) [P];

(h) Operating as a food vendor without a license in violation of §§ 3700.1 [P], 4300.1 [Pf], and 4408.1(l)(1) ;

(i) Operating as a food vendor with an expired license in violation of §§ 3700.2 [Pf], and 4408.1(l)(2) [P];

(j) Operating as a food vendor with a suspended license in violation of §§ 3700.3 [Pf], 4718, and 4408.1(l)(3) [P];

(k) Operating a residential kitchen in a bed and breakfast without a license in violation of §§ 3800.1 [P] and 4300.1 [Pf];

(l) Operating a residential kitchen in a bed and breakfast with an expired license in violation of §§ 3800.1 [P] and 4300.1 [Pf];

(m) Operating a residential kitchen in a bed and breakfast with a suspended license in violation of §§ 3800.3 [P], 4300.3 [Pf] and 4718;

(n) Operating as a caterer without a license in violation of §§ 3900.1[P] and 4300.1 [Pf];

(o) Operating as a caterer with an expired license in violation of § 3900.2 [Pf];

(p) Operating as a caterer with a suspended license in violation of §§ 3900.3 [P] and 4718;

(q) Operating a food establishment without a full-time person-in-charge who is a certified food protection manager recognized by the Department in violation of §§ 203.1[P] and 203.3 [P];

(r) Operating a food establishment without a full-time person-in-charge who is a certified food protection manager recognized by the Department and

who is present at the food establishment during all hours of operation in violation of §§ 200.1[Pf], 200.2, 200.3, 203, 4408.1(k)(4)[P], or 4408.1(k)(5) [P];

(s) Operating a food establishment without a full-time person-in-charge who is a certified food protection manager recognized by the Department and who is able to demonstrate knowledge in violation of §§ 201 and 4408.1(k)(6) [P];

(t) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit without a Food Protection Manager Certificate and a DOH-Issued Certified Food Protection Manager Identification Card during all hours of operation in violation of §§ 203[P], 3700.4[P], 3800.2[P], 3900.4[P], and 4408.1(k)(4) [P];

(u) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with extensive fire damage that affects the establishment's ability to operate in compliance with this Code [P] in violation of § 4408.1(a) [P];

(v) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit with a flood or serious flood damage that affects the establishment's ability to operate in compliance with this Code [P] in violation of § 4408.1(b) [P];

(w) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with an extended interruption of electrical services that affects the establishment's ability to operate in compliance with this Code in violation of § 4408.1(c) [P];

(x) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with an interruption of water service resulting in insufficient capacity to meet water demands throughout the establishment that affects the establishment's ability to operate in compliance with this Code in violation of §§ 2305.1[P], and 4408.1(d) [P];

(y) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with a sewage backup that affects the establishment's ability to operate in with this Code in violation of § 4408.1(e) [P];

(z) Misuse of poisonous or toxic materials in a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit in violation of § 4408.1(f)[P];

(aa) Onset of an apparent foodborne illness outbreak in a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit in violation of § 4408.1(g)[P];

(bb) Operating a food establishment in a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with gross insanitary occurrence or condition or other circumstances that may endanger public health in violation of § 4408.1(h)[P];

(cc) Failing to minimize or eliminate the presence of insects, rodents, or other pests in a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit in violation of §§ 3210.1(a) through (d)[Pf], and 4408.1(j)[P];

(dd) Selling, exchanging or delivering, or having in his or her custody or possession with the intent to sell or exchange, or expose, or offer for sale or exchange, any article of food which is adulterated in violation of §§ 4408.1(k)(7)[P], 4408.1(l)(12)[P] or 4408.1(m)(14)[P], and D.C. Official Code § 48-101 (2012 Repl.);

(ee) Operating a food establishment without hot water in violation of §§ 1808.1[Pf], 1809.1(a) through (d)[Pf], 1810.1[P], 1811.1, 2002.1(a)-(b)[P], 2305.1[Pf], 2305.2[Pf], 2402.1[Pf], 4408.1(k)(8)[P], 4408.1(l)(13), or 4408.1(m)(15)[P];

(ff) Operating with incorrect hot or cold holding temperatures for potentially hazardous foods that do not comply with this Code and that cannot be corrected during the course of the inspection in violation of Chapter 10[P], and §§ 4408.1(k)(9)[P], 4408.1(l)(14)[P], or 4408.1(m)(16)[P];

(gg) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with six (6) or more PRIORITY ITEMS or six (6) or more PRIORITY FOUNDATION ITEMS, or a combination thereof, which cannot be corrected on site during the course of the inspection in violation of § 4408.1(k)(10)[P];

(hh) Failing to hire a D.C. licensed Pesticide Operator/contractor in violation of §§ 3210.2[Pf], 4408.1(k)(11) [P];

(ii) Failing to allow access to the Department's representatives during the food establishment's hours of operation and other reasonable times as determined by the Department in violation of §§ 4402.1, 4408.1(k)(12)[P], and 4408.1(m)(17) [P];

(jj) Hindering, obstructing, or in any way interfering with any inspector or authorized Department personnel in the performance of his or her duty in violation of §§ 4408.1(k)(13)[P], 4408.1(l)(15)[P], 4408.1(m)(18)[P], and D.C. Official Code § 48-108 (2012 Repl.); or

(kk) Failing to designate a non-smoking area in a restaurant with a capacity of fifty (50) or more in violation of § 4408.1(k)(14)[P], and D.C. Official Code § 7-1703.01(a) or (b) (2012 Repl.); or

(ll) Using a deep fryer or other cooking equipment that requires a hood suppression system, except with the written approval from the District of Columbia Fire and Emergency Medical Services Department in violation of §§ 3703.1[P] and 4408.1(l)(9) [P].

3620.3 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 3 (Food Employee/Applicant Health) shall be a Class 2 infraction:

(a) Failing to notify the Department when a food employee is jaundiced or diagnosed with an illness due to a pathogen specified in § 300.4 in violation of § 301.1[Pf];

(b) Failing to prohibit a conditional employee who exhibits or reports a symptom or reports a diagnosed illness specified in §§ 300.3 through 300.5 from becoming a food employee until the conditional employee satisfies the requirements for reinstatement associated with specific symptoms or diagnosed illnesses as specified in § 307 in violation of § 302.1[P];

(c) Failing to prohibit a conditional employee who will work as a food employee in a food establishment that serves a highly susceptible population when the conditional employee reports a history of exposure specified in §§ 300.6 and 300.7 from becoming a food employee until the conditional employee satisfies the requirements associated with specific symptoms or diagnosed illnesses as specified in § 307.10 in violation of § 302.2 [P];

(d) Failing to exclude a food employee as specified in § 305, and § 306.1(a) and § 306.2(a), except as provided in § 307, when the food employee exhibits or reports a symptom or reports a diagnosed illness or a history of exposure as specified in §§ 300.3 through 300.7 in violation of § 303.1(a) [P];

(e) Failing to restrict a food employee as specified in § 306, except as provided in § 307, when the food employee exhibits or reports a symptom or reports a diagnosed illness or a history of exposure as specified in §§ 300.3 through 300.7 in violation of § 303.1(b) [P];

(f) Failing to exclude food employee from a food establishment when the food employee is symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, *Shigella* spp., or Enterohemorragic or Shiga Toxin Producing Escherichia *colia* in violation of § 305.1 [P];

(g) Failing to exclude a food employee who is jaundiced from the food establishment when the onset of jaundice occurred within seven (7) calendar days in violation of § 305.2(a) [P];

(h) Failing to exclude a food employee who is diagnosed with an infection from hepatitis A virus within fourteen (14) calendar days after the onset of any illness symptoms, or within seven (7) calendar days after the onset of jaundice in violation of § 305.2(b) [P];

(i) Failing to exclude a food employee who is diagnosed with an infection from hepatitis A virus without developing symptoms in violation of § 305.2(c) [P];

(j) Failing to exclude a food employee who is diagnosed with an infection from *Salmonella Typhi*, or reports a previous infection with *Salmonella Typhi* within the past three (3) months without having received antibiotic therapy in violation of § 305.3 [P];

(k) Failing to exclude a food employee, who is diagnosed with an infection from Norovirus, *Shigella spp*., or Enterohemorrhagic or Shiga Toxin-Producing Escherichia *coli*, and is asymptomatic, from a food establishment that serves a highly susceptible population in violation of § 306.1(a) [P];

(l) Failing to restrict a food employee, who is diagnosed with an infection from Norovirus, *Shigella spp*., or Enterohemorrhagic or Shiga Toxin-Producing Escherichia *coli*, and is asymptomatic, from a food establishment that does not serve a highly susceptible population in violation of § 306.1(b) [P];

(m) Failing to exclude a food employee who is ill with symptoms of acute onset of sore throat with fever from a food establishment that serves a highly susceptible population in violation of § 306.2(a) [P];

(n) Failing to restrict a food employee who is ill with symptoms of acute onset of sore throat with fever from a food establishment that does not serve a highly susceptible population in violation of § 306.2(b) [P];

(o) Failing to restrict a food employee who is infected with a skin lesion containing pus, such as a boil or infected wound that is open or draining and not properly covered as specifying in § 300.3(e)[P] in violation of § 306.3 [P]; or

(p) Failing to restrict a food employee who has been exposed to a foodborne pathogen as specified in §§ 300.6 and 300.7 from a food establishment that serves a highly susceptible population in violation of § 306.4 [P].

3620.4 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 2 (Supervision & Training of Food Employees); Chapter 3 (Food Employee/Applicant Health); and Chapter 5 (Hygienic Practices of Food Employees) shall be a Class 3 infraction:

(a) Failing to demonstrate knowledge in violation of §§ 201.1, and 201.2(a), (b), and (c)(1) through (c)(17) [Pf];

(b) Failing to require food employees and food employee applicants to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food in violation of § 300.1;

(c) Failing to notify the Department when a food employee is jaundiced or diagnosed with an illness due to a pathogen specified in § 300.4 in violation of § 301.1[Pf];

(d) Failing to exclude or restrict food employee as specified in § 305 and § 306, except as provided in § 307, from a food establishment when the food employee exhibits or reports a symptom or reports a diagnosed illness or history of exposure as specified in § 300.3 through §300.7 in violation of § 303.1 [P];

(e) Failing to comply with an exclusion or restriction imposed pursuant to §§ 305 and 306, unless reinstated pursuant to § 307, in violation of § 304.1 [P];

(f) Failing to exclude food employee from a food establishment when the food employee is symptomatic with vomiting or diarrhea and diagnosed

with an infection from Norovirus, *Shigella* spp., or Enterohemorragic or Shiga Toxin Producing Escherichia *colia* in violation of § 305.1 [P];

(g) Failing to exclude a food employee who is jaundiced from the food establishment when the onset of jaundice occurred within seven (7) calendar days of the in violation of § 305.2(a) [P];

(h) Failing to exclude food employee who is diagnosed with an infection from hepatitis A virus within fourteen (14) calendar days after the onset of any illness symptoms, or within seven (7) calendar days after the onset of jaundice in violation of § 305.2(b) [P];

(i) Failing to exclude food employee, who is diagnosed with an infection from hepatitis A virus without developing symptoms, from a food establishment in violation of § 305.2(c) [P];

(j) Failing to exclude a food employee, who is diagnosed with an infection from *Salmonella Typhi*, or reports a previous infection with *Salmonella Typhi* within the past three (3) months without having received antibiotic therapy, from a food establishment in violation of § 305.3 [P];

(k) Failing to exclude a food employee who is diagnosed with an infection from Norovirus, *Shigella spp*., or Enterohemorrhagic or Shiga Toxin-Producing Escherichia *coli*, and is asymptomatic, from a food establishment that serves a highly susceptible population in violation of § 306.1(a) [P];

(l) Failing to restrict a food employee, who is diagnosed with an infection from Norovirus, *Shigella spp*., or Enterohemorrhagic or Shiga Toxin-Producing Escherichia *coli*, and is asymptomatic, from a food establishment that does not serve a highly susceptible population in violation of § 306.1(b) [P];

(m) Failing to exclude a food employee, who is ill with symptoms of acute onset of sore throat with fever from a food establishment that serves a highly susceptible population, in violation of § 306.2(a) [P];

(n) Failing to restrict a food employee, who is ill with symptoms of acute onset of sore throat with fever from a food establishment that does not serve a highly susceptible population, in violation of § 306.2(b) [P];

(o) Failing to restrict a food employee who is infected with a skin lesion containing pus, such as a boil or infected wound that is open or draining and not properly covered as specified in § 300.3(e) in violation of § 306.3 [P];

(p) Failing to restrict a food employee who has been exposed to a foodborne pathogen as specified in §§ 300.6 and 300.7 and who works in a food establishment that serves a highly susceptible population in violation of § 306.4[P];

(q) Failing to prohibit an employee from eating, drinking, chewing gum or using any form of tobacco in areas where the contamination of exposed food, clean equipment, utensils, linens, unwrapped single-service and single-use articles, or other items needing protection can result, except as in designated areas, in violation of § 500.1;

(r) Failing to prohibit food employees who are experiencing persistent sneezing, coughing, or runny nose that causes discharges from the eyes, nose, or mouth from working with exposed food, clean equipment, utensils, linens, or unwrapped single-service or single-use articles in violation of § 501.1; or

(s) Failing to prohibit food employees from caring for, or handling animals that are allowed on the premises of a food establishment pursuant to §§ 3214.2(b) through (e), except as specified in § 503.2, in violation of § 503.1.

3620.5 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 6 (Characteristics of Food); Chapter 7 (Sources, Specifications, and Original Containers and Records for Food); Chapter 8 (Protection of Foods from Contamination after Receiving); Chapter 9 (Destruction of Organisms of Public Health Concern); Chapter 10 (Limitation of Growth of Organisms of Public Health Concern); Chapter 11 (Food Identity, Presentation, and On-Premises Labeling); Chapter 12 (Contamination or Adulterated Food); and Chapter 13 (Special Requirements for Food for Highly Susceptible Populations) shall be a Class 3 infraction:

(a) Using, offering or selling prohibited food from an unapproved source in violation of § 600, or §§ 700 through 706;

(b) Receiving potentially hazardous food that is not at the required temperature in violation of § 707.1[P] through § 707.5[Pf];

(c) Receiving food that contains unapproved additives or additives that exceed amounts specified in 21 C.F.R. §§ 170 through 180; 21 C.F.R. §§ 181 through 186; and 9 C.F.R. Subpart C Section 424.21(b) in violation of § 708.1[P];

(d) Receiving shell eggs that are not clean and sound, and that exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in C.F.R. United States Standards, Grades, and Weight Classes for Shell Eggs, AMS

56.200, *et seq.*, administered by the Agricultural Marketing Service of the USDA in violation of § 709.1;

(e) Receiving egg and milk products that are not pasteurized as specified by the USDA or the C.F.R. in violation of §§ 710.1[P] through 710.4[P];

(f) Receiving food packages that are not in good condition so that the food is exposed to adulteration or potential contaminants in violation of § 711.1[Pf];

(g) Receiving ice for use as a food or a cooling medium that is not made from drinking water in violation of § 712.1[P];

(h) Receiving shellstock in containers that do not bear legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the Food Code in violation of §§ 714.1[Pf] through 714.3 [Pf];

(i) Failing to ensure that shellstock tags remain attached to the container in which the shellstock was received until the container is empty, except as specified in § 717.4, in violation of § 717.1[Pf];

(j) Failing to retain shellstock tags or labels for ninety (90) calendar days from the date the container is emptied using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served as specified in § 717.2 in violation of §§ 717.3[Pf] and 717.4(a) [Pf];

(k) Failing to ensure shellstock removed from one (1) container are not commingled with shellstock from another container with certification numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer in violation of § 717.4(b) [Pf];

(l) Failing to prominently display easily understood pull dates on the containers of all pasteurized fluid milk, fresh meat, poultry, fish, bread products, eggs, butter, cheese, cold meat cuts, mildly processed pasteurized products, and potentially hazardous foods sold in food-retail establishments which are pre-wrapped foods and not intended for consumption on premises in violation of § 718.1;

(m) Failing to retain the original pull date on food that is rewrapped and prominently display the word "REWRAPPED" on the new package in violation of § 718.2;

(n) Failing to obtain pre-packaged juice from a processor with a HACCP system as specified in 21 C.F.R. Part 120 Hazard Analysis and Critical Control (HACCP) Systems in violation of § 719.1(a) [Pf];

(o) Failing to obtain pre-packaged juice that has been pasteurized or otherwise treated to attain a five (5)-log reduction of the most resistant microorganism of public health significance as specified in 21 C.F.R. Part 120.24 Process Controls in violation of § 719.1(b) [P];

(p) Failing to prevent food employees from contaminating ready-to-eat food with his or her bare hands in violation of §§ 800.1 through 800.4;

(q) Failing to prevent food employees from contaminating food by using a utensil more than once to taste food that is to be sold or served in violation of § 801.1 [P];

(r) Failing to protect food from cross contamination, except as provided for by § 802.2, in violation of §§ 802.1(a) through (h);

(s) Failing to substitute pasteurized eggs or egg products for raw shell eggs in the preparation of foods as specified in violation of §§ 804.1(a) or (b)[P];

(t) Failing to protect food from contamination that may result from the addition of unsafe or unapproved food or color additives, or unsafe or unapproved levels of approved food and color additives as specified in § 708 in violation of §§ 805.1(a) and (b) [P];

(u) Applying sulfiting agents to fresh fruit and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B_1 in violation of § 805.2(a) [P];

(v) Serving or selling food specified in § 805.2(a) that is treated with sulfiting agents before receipt by the food establishment, except for grapes, which are not included in this subsection, in violation of § 805.2(b) [P];

(w) Failing to prevent contamination of food through contact with equipment and utensils that are not cleaned as specified in Chapter 19 and sanitized as specified in Chapter 20 of the Food Code, or are not single-serve and single-use articles in violation of §§ 809.1(a) or (b) [P];

(x) Failing to protect food from contamination by consumers in violation of §§ 822.1 through 822.3 or §§ 823.1through 823.2;

(y) Failing to cook raw animal foods such as eggs, fish, meat, poultry, and foods containing raw animal foods at required temperatures and holding times in violation of §§ 900.1[P] through 900.4;

(z) Failing to properly cook raw animal foods in a microwave as specified in violation of §§ 901.1(a) through (d);

(aa) Failing to freeze throughout raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish at required temperatures and time controls, except as specified in § 903.2, in violation of § 903.1 [P];

(bb) Failing to heat ready-to-eat foods or to reheat potentially hazardous foods for hot holding at required temperatures and time controls, except as provided, in violation of §§ 906.1[P] through 906.5;

(cc) Failing to comply with required temperatures and time controls for cooling methods for hot and cold holding and for food display in violation of §§ 1003 through 1006;

(dd) Failing to clearly date mark at the time of preparation ready-to-eat, potentially hazardous foods held refrigerated at required temperatures and time controls for more than twenty-four (24) hours in violation of §§ 1007.1[Pf] through 1007.6;

(ee) Failing to discard ready-to-eat, potentially hazardous foods, prepared and held refrigerated at required temperatures and time controls for more than twenty-four (24) hours, which was not consumed within the time specified in § 1007.1 in violation of § 1008.2[P];

(ff) Failing to comply with requirements when using time as a public health control in violation of § 1009;

(gg) Failing to obtain a variance before smoking food as a flavor enhancement, curing food, brewing alcoholic beverages, using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food so that it is not potentially hazardous in violation of § 1010.1;

(hh) Failing to obtain a variance before packaging food using a reduced oxygen method of packaging except as specified in Section 1011 where a barrier to *Clostridium botulinum* in addition to refrigeration exists, before custom processing animals that are for personal use as food and not for sale or service in a food establishment, or before preparing food by another method that is determined by the Department to require a variance in violation of § 1010.1;

(ii) Failing to control the growth and toxin formation of *Clostridium botulinum* where a food establishment packages foods using a reduced

oxygen method of packaging and *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form in violation of § 1011.1[P];

(jj) Failing to have a HACCP Plan and maintain specific information as required where a food establishment packages foods using a reduced oxygen packaging methods and *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form in violation of §§ 1011.2[Pf] and 4205.1(d)[Pf];

(kk) Failing to provide written notification to consumers of the potential health risks associated with eating animal food that is raw, undercooked, or not otherwise processed to eliminate pathogens where the food establishment offers such foods in ready-to-eat form or as a raw ingredient in another ready-to-eat food), (except as specified in §§ 900.3, 900.4 and 1300.1), in violation of § 1105.1;

(ll) Failing to discard or recondition food that is unsafe, adulterated, or not honestly presented as specified in § 600 in violation of § 1200.1;

(mm) Failing to discard food that is not from an approved source as specified in §§ 700 through 706, in violation of § 1200.2;

(nn) Failing to discard ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified in § 301 in violation of § 1200.3;

(oo) Failing to discard food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means in violation of § 1200.4; or

(pp) Failing to comply with specialized requirements for serving, re-serving or offering for sale food to a highly susceptible population in violation of § 1300.

3620.6 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 14 (Materials Used for Construction and Repair of Equipment, Utensils and Linens); Chapter 15 (Design and Construction of Equipment, Utensils, and Linens); Chapter 18 (Maintenance and Operation of Equipment and Utensils); Chapter 19 (Cleaning of Equipment and Utensils); and Chapter 20 (Sanitization of Equipment and Utensils); shall be a Class 3 infraction:

(a) Failing to use utensils or food-contact surfaces of equipment that are constructed of materials in violation of §§ 1400.1(a) through (e) [P];

(b) Using ceramic, china and crystal utensils, and decorative utensils, such as hand painted ceramic or china that are in contact with food that are not lead-free or contain excessive levels of lead in violation of § 1402.1 [P];

(c) Using pewter alloys containing lead in excess of five hundredth of a percent (0.05%) as a food contact surfaces in violation of § 1402.2 [P];

(d) Using copper and copper alloy such as brass in contact with acidic food that has a pH below six (6) such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator, except as specified in § 1403.2, in violation of § 1403.1 [P];

(e) Using galvanized metal for utensils or food-contact surfaces of equipment that are used in contact with acidic food that has a pH below six (6) such as vinegar, fruit juice or wine) in violation of § 1404.1 [P];

(f) Using single-service and single-use articles made of materials in violation of § 1409.1 [P];

(g) Using food temperature measuring devices with sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used, in violation of § 1501.1 [P];

(h) Failing to use multi-use food-contact surfaces that are smooth; free of breaks, open seams, cracks, chips, pits, and similar imperfections; free of sharp internal angles, corners, and crevices; and that have smooth welds and joints in violation of § 1502.1 [Pf];

(i) Failing to use multi-use food-contact surfaces that are accessible for cleaning and inspection in violation of §§ 1502.2(a) through (c) [Pf];

(j) Using a machine that vends potentially hazardous food that is not equipped with an automatic control that prevents the machine from vending food if there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified in Chapters 6 through 13, and until the machine is serviced and restocked with food that has been maintained at temperatures specified in Chapters 6 through 13 in violation of § 1523.1 [P];

(k) Failing to maintain hot water temperature at 77°C (171°F) or above when immersion of equipment in hot water is used for sanitizing equipment in a manual operation in violation of § 1810.1 [P];

(l) Failing to use a chemical sanitizer in a sanitizing solution for a manual or mechanical operation at contact times specified in § 2002.2 that meets criteria specified in § 3404 Sanitizer, Criteria in accordance with the EPA-registered label use instructions, in violation of § 1813.1[P];

(m) Failing to use a chlorine solution that has a minimum temperature based on the concentration and pH of the solutions in violation of § 1813.2 [P];

(n) Failing to use an iodine solution in violation of §§ 1813.3(a) through (c)[P];

(o) Failing to use a quaternary ammonium compound solution in violation of §§ 1813.4(a) through (c) [P];

(p) Failing to use a test kit or other device to accurately determine the concentration of a sanitizer solution in violation of § 1815.1[Pf];

(q) Failing to provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers in a food establishment that operates without facilities specified in Chapters 19 and 20 for cleaning and sanitizing kitchenware and tableware in violation of § 1817.1[P];

(r) Re-using single-service and single-use articles in violation of § 1818.1;

(s) Re-using serving containers for mollusk and crustacean shells in violation of § 1819.1;

(t) Failing to keep equipment food-contact surfaces and utensils clean to sight and touch in violation of § 1900.1[Pf];

(u) Failing to keep food-contact surfaces of cooking equipment and pans free of encrusted grease deposits and other soil accumulations in violation of § 1900.2;

(v) Failing to keep nonfood-contact surfaces of equipment free of an accumulation of dust, dirt, food residue, and other debris in violation of § 1900.3;

(w) Failing to clean equipment food-contact surfaces and utensils as specified in violation of §§ 1901.1 through 1901.5[P];

(x) Failing to return empty containers to a regulated food processing plant for cleaning and refilling with food in violation of § 1910.1; or

(y) Failing to sanitize equipment, food-contact surfaces, and utensils before use after cleaning at the required temperature and hold time, frequency, and methods in violation of §§ 2001.1 through 2002[P].

3620.7 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 23 (Water); Chapter 24 (Plumbing System); Chapter 25 (Mobile Water Tank and Mobile Food Establishment Water Tank); Chapter 26 (Sewage, Other Liquid Waste, and Rainwater); Chapter 27 (Refuse, Recyclables, and Returnables); Chapter 29 (Design, Construction, and Installation of Physical Facilities); Chapter 30 (Numbers and Capacities of Physical Facilities); and Chapter 31 (Location and Placement of Physical Facilities); shall be a Class 3 infraction:

(a) Use drinking water from a system other than the District of Columbia public water system or other approved sources in violation of §§ 2300.1, 2302.1, or 2304.1 [P];

(b) Failing to flush and disinfect drinking water system before placing it in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system in violation of § 2301.1 [P];

(c) Failing to use nondrinking water for non-culinary purposes only in violation of § 2304.2 [P];

(d) Failing to use a water source and system that is of sufficient capacity to meet peak water demands of the food establishment in violation of § 2305.1 [Pf];

(e) Failing to use a hot water generation and distribution systems that are of sufficient capacity to meet peak hot water demands throughout the food establishment in violation of § 2305.2 [Pf];

(f) Failing to provide hot or cold water under pressure to all fixtures, equipment, and nonfood equipment that are required to use hot or cold water, (except as specified in § 2308), in violation of § 2306.1 [Pf];

(g) Receiving water from a source that is not from an approved public water main, or is not from a water source constructed, maintained, and operated according to 40 C.F.R. § 141 – National Primary Drinking Water Regulations and District of Columbia drinking water quality standards in violation of §§ 2307.1(a)- (b) [Pf];

(h) Failing to provide water meeting the requirements specified in §§ 2300 through 2306 to a mobile facility, temporary food establishment without a

permanent water supply, or a food establishment with a temporary interruption of its water supply in violation of §§ 2308.1(a) through (e) [Pf];

(i) Conveying water through a plumbing system and hoses that are not constructed and repaired with approved materials according to the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of §§ 2400.1, or 2401.1 [P];

(j) Using a water filter that is not made of safe materials in violation of § 2400.2 [P];

(k) Failing to use an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment that is at least twice the diameter of the water supply inlet and that is not less than twenty-five millimeters (25mm) or one inch (1 in.) in violation of § 2403.1 [P];

(l) Failing to install a backflow or backsiphonage prevention device on a water supply system that meets American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device in violation of § 2404.1 [P];

(m) Failing to provide hand washing sinks for employees' use as specified in § 2411, in accordance with the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2406.1 [Pf];

(n) Failing to provide toilets for employees' use and convenience in accordance with the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of §§ 2407.1[P] ;

(o) Failing to install a plumbing system that precludes backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment in violation of § 2409.1[P];

(p) Failing to locate a handwashing sink to allow convenient use by employees in food preparation, food dispensing, and warewashing areas and in, or immediately adjacent to, toilet rooms in violation of § 2411.1 [Pf];

(q) Failing to provide areas in which fresh meat is handled with its own handwashing sink located not more than twenty feet (20 ft.) or less from where the meat is handled in violation of § 2411.5 [P];

(r) Failing to maintain a handwashing sink so that it is accessible at all times for employees' use in violation of § 2414.1 [Pf];

(s) Using a handwashing sink for purposes other than for handwashing in violation of § 2414.2 [Pf];

(t) Failing to use an automatic handwashing facility in accordance with the manufacturer's instructions in violation of § 2414.3 [Pf];

(u) Operating with a prohibited cross-connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality in violation of § 2415.1 [P];

(v) Failing to durably identify piping of nondrinking water system so that it is distinguishable from piping that carries drinking water in violation of § 2415.2 [Pf];

(w) Failing to schedule inspection and service of water treatment device or backflow preventer in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and failing to maintain records demonstrating inspection and service by person in charge in violation of § 2416.1 [Pf];

(x) Failing to clean and maintain a reservoir that is used to supply water to a device such as a produce fogger in accordance with manufacturer's specifications or in accordance with the procedures specified in § 2712.2, whichever is more stringent in violation of §§ 2417.1 through 2417.2 [P];

(y) Failing to repair and maintain a plumbing system in good repair in accordance with the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2418.1;

(z) Failing to install a filter that does not pass oil or oil vapors in the air supply line between the compressor and drinking water system when compressed air is used to pressurize a water tank system in violation of § 2507.1 [P];

(aa) Failing to flush and sanitize a water tank, pump, and hoses before placing items in service in service after construction, repair, modification, and periods of nonuse in violation of § 2510.1 [P];

(bb) Using a water tank, pump, and hoses used for conveying drinking water for other purposes, except as provided in § 2513.2, in violation of § 2513.1 [P];

(cc) Using a direct connection between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed, except as specified in §§ 2602.2 through 2602.4, in violation of § 2602 [P];

(dd) Failing to convey sewage to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated in accordance with the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2604.1 [P];

(ee) Failing to remove sewage and other liquid waste, including grease collection, from an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created in violation of §§ 2605.1 or 2605.2 [Pf];

(ff) Failing to maintain copies of the food establishment's professional service contract in violation of § 2605.1 (a) through (c) [Pf];

(gg) Failing to dispose of sewage through an approved facility that is a public sewage treatment plant or an individual sewage disposal system that is sized, constructed, maintained, and operated in accordance with the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2607.1 [P]; or

(hh) Failing to have and use one (1) or more food waste grinders that are conveniently located near an activity or activities which generate food wastes in violation of § 2607.2 [P];

(ii) Operating commercial food waste grinders that are not connected to a drain that is a minimum of two inches (2 in.) fifty-one millimeters (51 mm) in diameter in violation of § 2607.3 [P];

(jj) Operating commercial food waste grinders that are not connected and trapped separately from any other fixture or sink compartments, and that is not provided with a supply of cold water in accordance the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code

of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2607.3 [P];

(kk) Failing to maintain copies of the food establishment's professional service contract in violation of §§ 2717.2(a) through (c) [Pf];

(ll) Operating a food establishment with toilet rooms that open directly into a room used for the preparation of food for service to the public in violation of § 2911.1 [Pf];

(mm) Operating a food establishment with toilet rooms that are not provided with tight-fitting and self-closing doors in accordance the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR) (excepted as specified in § 2911.2), in violation of § 2911.1 [Pf];

(nn) Failing to provide each handwashing sink or group of two (2) adjacent sinks with a supply of hand cleaning liquid, powder, or bar soap in violation of § 3001.1 [Pf];

(oo) Failing to provide each handwashing sink or group of adjacent sinks with required items in violation of §§ 3002.1(a) through (d) [Pf];

(pp) Failing to provide a supply of toilet tissue to each toilet in violation of § 3007.1 [Pf];

(qq) Failing to maintain restrooms consisting of a toilet room or toilet rooms, proper and sufficient water closets, and sinks that are conveniently located and readily accessible to all employees as specified in § 3101.3 in violation § 3101.1;

(rr) Failing to display gender-neutral signs on the door of all single-occupancy toilet rooms that read "Restroom," or that have a universally recognized pictorial indicating that persons of any gender may use each restroom, in accordance with 4 DCMR § 802.2 in violation of § 3101.2; or

(ss) Failing to segregate and hold products held by the licensee for credit, redemption, or return to the distributor, including damaged, spoiled, or recalled products in designated areas that are separated from food, equipment, utensils, linen, and single-service and single-use articles in violation of § 3103.1 [Pf];

3620.8 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 32 (Maintenance and Operation of Physical Facilities), (Chapter 33 (Certifications, Labeling and Identification of Poisonous or Toxic Materials);

Chapter 34 (Operational Supplies and Applications of Poisonous or Toxic Materials; and Chapter 35 (Stock and Retail Sale of Poisonous or Toxic Materials) shall be a Class 3 infraction:

(a) Using food preparation sinks, hand washing lavatories, and warewashing equipment to clean maintenance tools, to prepare or hold maintenance materials, or disposal of mop water and similar liquid wastes in violation of § 3204.1 [Pf];

(b) Failing to maintain copies of the food establishment's professional service contract and service schedule, which includes the documents specified in §§ 3210.1(a) through (c), in violation of § 3210.2 [Pf];

(c) Failing to maintain the premises free of insects, rodents, and pests and to minimize the presence of insects, rodents, and pests on the premises in violation of § 3210.1[Pf];

(d) Failing to maintain the premises of a food establishment free of unnecessary items and litter in violation of § 3213.1;

(e) Failing to prohibit live animals on the premises, except as specified in §§ 3214.2 and 3214.3, in violation of § 3214.1 [Pf];

(f) Failing to store live or dead fish bait so that contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot occur in violation of § 3214.3;

(g) Using a pest extermination service that does not possess a current certification as a District Licensed Pesticide Operator issued by the District's Department of the Environment, Toxic Substances Division, Pesticide Program in violation of § 3300.1 [Pf];

(h) Allowing the application of restricted-use pesticides by an individual who is not a licensed certified commercial applicator or a registered employee working under the direct supervision of a licensed commercial or public applicator in violation of § 3300.2 [Pf];

(i) Using containers of poisonous or toxic materials and personal care items that do not bear a legible manufacturer's label in violation of § 3301.1 [Pf];

(j) Failing to clearly and individually identify working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies with the common name of the material in violation of § 3302.1 [Pf];

(k) Failing to properly store poisonous or toxic materials so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles in violation of §§ 3400.1(a) and (b) [P];

(l) Allowing poisonous or toxic materials that are not required for the operation and maintenance of the food establishment on the premises of a food establishment, except as specified in § 3401.2, in violation of § 3401.1 [Pf];

(m) Using poisonous or toxic materials in violation of D.C. pesticide laws in violation of §§ 3402.1 and 3402.2 [P];

(n) Using a container previously used to store poisonous or toxic materials to store, transport, or dispense food in violation of § 3403.1 [P];

(o) Applying chemical sanitizers and other chemical antimicrobials to food-contact surfaces that do not meet the requirements of 40 C.F.R. § 180.940 – Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions), in violation of § 3404.1 [P];

(p) Using chemicals to wash peel raw, whole fruits and vegetables that do not meet the requirements of 21 C.F.R. § 173.315 – Chemicals used in washing or to assist in the peeling of fruits and vegetables, in violation of § 3405.1 [P];

(q) Using ozone that does not meet the requirements of 21 C.F.R. § 173.368 – Ozone, as an antimicrobial agent in a food establishment for the treatment, storage, and processing of fruits and vegetables that do not meet the requirements of 21 C.F.R. § 173.368 – Ozone, in violation of § 3405.2;

(r) Using chemicals as boiler water additives that do not meet the requirements of 21 C.F.R. § 173.310 – Boiler water additives, in violation of § 3406.1 [P];

(s) Using drying agents in conjunction with sanitization that contain components not approved in violation of §§ 3407.1(a) through (e), and § 3407.2 [P];

(t) Using lubricants that do not meet the requirements specified in 21 C.F.R. § 178.3570 – Lubricants with incident food contact, in violation of § 3408.1 [P];

(u) Using restricted- use pesticides that do not meet the requirements specified in 40 C.F.R. Part 152 subpart I – Classification of Pesticides, in violation of § 3409.1 [P];

(v) Using rodent bait that is not contained in a covered, tamper-resistant bait station in violation of § 3410.1 [P];

(w) Using tracking powder pesticide in a food establishment, except as specified in § 3411.2, in violation of § 3411.1 [P];

(x) Allowing medicines not necessary for the health of the employees in a food establishment, except for medicines that are stored or displayed for retail sale, in violation of § 3412.1 [Pf];

(y) Failing to properly label, as specified in § 3301, and locate medicines that are for employees' use in a food establishment to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles in violation of § 3412.2 [P];

(z) Failing to label, as specified in § 3301, first aid supplies that are for employees' use in a food establishment in violation of § 3414.1(a) [Pf];

(aa) Failing to store first aid supplies that are for employees' use in a food establishment in a kit or container that is located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles in violation of § 3414.1(b) [P];

(bb) Failing to meet the requirements for medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator in violation of § 3413.1 [P];

(cc) Storing and displaying poisonous or toxic materials for retail sale without physically separating or partitioning by a wall or structure to prevent the contamination of food, equipment, utensils, and single-service and single-articles in violation § 3500.1(a) [P]; or

(dd) Locating poisonous or toxic materials above food, equipment, utensils, linens, and single-service and single-use articles in violation of § 3500.1(b) [P].

3620.9 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 37 (Mobile Structures & Temporary Stands); Chapter 38 (Residential Kitchens in Bed And Breakfast Operations); Chapter 39 (Caterers); Chapter 40 (Catered Establishments); Chapter 41 (Code Applicability); and Chapter 42 (Plan Submission and Approval); shall be a Class 3 infraction:

(a) Possessing, preparing or vending any food requiring further processing from its original state aboard a mobile food unit without meeting the requirements of §§ 3700.4 and 3701 in violation of § 3700.6 [P];

(b) Possessing, preparing, selling, offering to sale, or giving away any food requiring further processing from its original state without the submission of a HACCP Plan, Parasite Destruction Letter, or Risk Control Plan depending on the food and/or process as requested by the Department in violation of § 3701.1 [P];

(c) Failing to submit to the Department an original and one (1) copy of a "Hazard Analysis Work Sheet" and a "HACCP Plan" on forms provided by the Department in accordance with Chapter 42 in violation of §§ 3701.2, or 3701.3 [P];

(d) Failing to submit HACCP Plans for review every six (6) months in conjunction with the issuance of a vendor's Health Inspection Certificate in violation of § 3701.4 [P];

(e) Implementing changes to a HACCP Plan's operating procedures, menu, ingredients or other products without the Department's approval in violation of § 3701.5 [P];

(f) Using propane in violation of § 3702.1(a)-(d) [P];

(g) Operating a mobile food unit without a current motor vehicle registration that is conspicuously displayed on the mobile food unit in violation of §§ 3704.1 and 3713.1(h) [P];

(h) Failing to prepare and protect food in a depot, commissary, or service support facility in accordance with the Food Code Regulations in violation of § 3708.1 [P];

(i) Failing to obtain food from approved sources in sound condition and safe for human consumption in violation of § 3708.2 [P];

(j) Failing to maintain food temperature requirements in violation of §§ 3708.5(a)-(b), 3708.6 [P];

(k) Failing to comply with employee health and hygiene requirements in Chapter 3 and 4 in violation of § 3709.1 [P];

(l) Failing to construct and maintain food service preparation and storage areas to prevent the entry of pests and other vermin in accordance with §§ 3210, 3211, and 3213 in violation of § 3711.1 [P];

(m) Failing to comply with § 700 and all applicable provisions of the Food Code Regulations in violation of § 3712.1(a)-(x) [P];

(n) Failing to conspicuously display on the vending vehicle, vending cart or vending stand, all required documents in violation of §§ 3713.1(a)-(h) [P];

(o) Failing to comply with all applicable provisions of the Food Code Regulations in violation of §§ 3714.2(a)-(d) [P];

(p) Failing to operate residential kitchens in bed & breakfast operations in compliance with § 700 and all applicable provisions of the Food Code Regulations in violation of §§ 3806.1(a)-(x) [P];

(q) Failing to use a currently licensed and inspected food establishment, which complies with the Food Code Regulations, as the caterer's base of operations in violation of § 3901.1 [P];

(r) Failing to comply with § 700 and all applicable provisions of the Food Code Regulations in violation of § 3903.1 [P];

(s) Failing to maintain a catered establishment's contract with a licensed caterer or licensed food establishment and other required documents on the premises in violation of §§ 4000.2(a)-(e) and (f)(1)-(8) [P];

(t) Failing to provide an approved refrigerator for the storage of potentially hazardous food (time/ temperature control for safety food) in violation of § 4001.1 [P];

(u) Failing to remove potentially hazardous food (time/temperature control for safety food) from transport container and store in an approved refrigerator until served in violation of § 4001.1 [P];

(v) Maintaining potentially hazardous food (time/temperature control for safety food) temporarily in transport containers that do not maintain proper temperatures in accordance with Chapters 7 through 13 in violation of § 4001.1 [P];

(w) Failure of catered establishment to obtain a "Food Establishment License" in violation of § 4000.1(a); [P]

(x) Failure of catered establishment to maintain a current copy of its contract on the premises in violation of §§ 4000.2(a) through (f); [P]

(y) Failing to serve milk in original individual commercially filled containers received from the distributor, or from an approved bulk milk dispenser, or

poured from a commercially filled container of not more than one gallon (1 gal.) capacity in violation of § 4001.2 [P];

(z) Failing to immediately refrigerate milk in violation of § 4001.2 [P];

(aa) Operating a catered establishment which receives food that is prepared elsewhere and transported hot or cold in individually portioned and protected servings without meeting the requirements set forth in §§ 4002.1(a)-(g) in violation of § 4002.1 [P];

(bb) Operating a catered establishment which receives and distributes hot or cold food that is prepared elsewhere and transported ready-to-serve in bulk containers without meeting the requirements set forth in §§ 4003.1(a)-(j) in violation of §§ 2305 and 4003.1 [P];

(cc) Operating a catered establishment which reheats food that is prepared elsewhere and transported in bulk containers without meeting the requirements set forth in §§ 4003.1(a)-(k) in violation of 4004.1 [P];

(dd) Failing to comply with a variance granted by the Department in violation of § 4104.2(a) [P]; or

(ee) Failing to maintain and provide to the Department upon request records in violation of §§ 4101, 4104.2(b), 4201.1, or 4202 [P].

3620.10 Violations of Title 25-A DCMR that are not cited elsewhere in Section 3620 shall be Class 4 infractions.

D.C. DEPARTMENT OF HUMAN RESOURCES

NOTICE OF FINAL RULEMAKING

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with the provisions of Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-608.01 *et seq*. (2012 Repl. & 2014 Supp.)), hereby gives notice of final rulemaking action was taken to adopt the following rules to amend Chapter 8 (Career Service), of Subtitle B of Title 6 (Government Personnel), of the District of Columbia Municipal Regulations (DCMR).

These rules are to amend Sections 823 (Term Appointment) and 830 (Noncompetitive Placement), to allow agencies to noncompetitively convert employees serving in term appointments to a regular Career Service appointment.

A Notice of Proposed Rulemaking was published August 1, 2014 at 61 DCR 7855. No comments were received and no changes were made to the rules as published under the Notice of Second Proposed Rulemaking, published August 8, 2014 at 61 DCR 008140. The rules were adopted as final on October 20, 2014 and shall become effective upon publication of this notice of the *D.C. Register*.

D.C. PERSONNEL REGULATIONS

Chapter 8, CAREER SERVICE, of Title 6-B, GOVERNMENT PERSONNEL, DCMR is amended to read as follows:

Section 823, TERM APPOINTMENT, is being amended and renumbered as follows:

823.1 A personnel authority may make a term appointment for a period of more than one (1) year when the needs of the service so require and the employment need is for a limited period of four (4) years or less.

823.2 Unless supported by grant funds, an employee continuously serving in a term appointment four (4) years or more, which is acquired through open competition, shall:

(a) Be separated from District government service; or

(b) Have his or her position converted to a regular Career Service appointment with permanent status.

823.3 If an employee is serving in a term appointment supported by grant funds, the conversion of his or her position shall be determined by the personnel authority.

823.4 Term appointments at and above grade level CS-13 or equivalent shall result from open competition, except in the case of a candidate who is eligible for reinstatement.

823.5 An agency may make a non-competitive term appointment to a position at or below grade level CS-12, or equivalent; except that the Chief, Metropolitan Police Department, is authorized to make non-competitive term appointments to positions at any grade level.

823.6 Except as provided in Subsection 823.7 of this section, a person appointed to a term appointment shall meet the minimum qualification requirements for the position.

823.7 A veteran who is an applicant for a term appointment at grade level CS-3 or below, or equivalent, shall be considered to be qualified to perform the duties of the position on the basis of his or her total experience, including military service, without regard to the qualification requirements.

823.8 An employee serving under a term appointment shall not acquire permanent status on the basis of the term appointment, and shall not be converted to a regular Career Service appointment, unless the initial term appointment was through open competition within the Career Service and the employee has satisfied the probationary period.

823.9 Employment under a term appointment shall end automatically on the expiration of the appointment, unless the employee has been separated earlier.

823.10 Except as specified in Subsection 813.2 of this chapter in the case of correctional officers, a term employee shall serve a probationary period of one (1) year upon initial appointment.

823.11 A term employee may be promoted and reassigned to another term position by new term appointment; provided that the competitive and non-competitive promotion provisions in Sections 829 and 830 of this chapter are followed.

823.12 Notwithstanding any other provision of this section and this chapter, in the case of grant funded positions, promotions and reassignments of term employees paid under the grant shall be made by new term appointment with specific time limitations coterminous (same) with the expiration date of the grant.

Subsection 830.1 of Section 830, NONCOMPETITIVE PLACEMENT, is being amended to add subparagraph (1) as follows:

(l) A conversion from a term appointment to a regular Career Service appointment with permanent status, unless the initial term appointment was through open competition within the Career Service.

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD

NOTICE OF FINAL RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board (D.C. Lottery), pursuant to the authority set forth in the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (Pub. L. No. 109-356, § 201, 120 Stat. 2019; D.C. Official Code §§ 1-204.24a(c)(6) (2012 Repl.)); Section 4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code §§ 3-1306 and 3-1321 (2012 Repl.)); the District of Columbia Financial Responsibility and Management Assistance Authority Order, issued September 21, 1996; and the Office of the Chief Financial Officer Financial Management Control Order No. 96-22, issued November 18, 1996, hereby gives notice of its intent to amend Chapter 15 (Raffles) of Title 30 (Lottery and Charitable Games), of the District of Columbia Municipal Regulations (DCMR).

These amendments will allow D.C. Lottery and its agents the option of accepting debit cards as a method of payment from customers for lottery sales. The purpose of this amendment is to clarify that a uniform price for 50/50 raffle tickets includes a uniformed tiered pricing schedule approved by the Executive Director.

The Notice of Proposed Rulemaking was published in *D.C. Register* on October 17, 2014 at 61 DCR 10806. The rules were adopted as final on November 25, 2014. No comments were received, and no substantive changes were made to the rulemaking. These final rules will become effective upon publication of this notice in the *D.C. Register*.

Chapter 15, RAFFLES, of Title 30, LOTTERY AND CHARITABLE GAMES, DCMR is amended as follows:

Amend Subsection 1509.2 (p) to read as follows:

1509.2

(p) All 50/50 raffle tickets shall be sold at a uniform price, including a uniformed tiered pricing schedule approved by the Executive Director. The licensed organization may not change Agency approved 50/50 raffle ticket prices during the licensed event.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth in Sections 8(c)(2), (3), (4), (5), (7), (19), 14, 20, and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2) (3), (4), (5), (7), (19)), 50-313, 50-319, and 50-320 (2012 Repl. & 2014 Supp.)), and D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Repl. & 2014 Supp.), hereby gives notice of its intent to adopt amendments to Chapter 8 (Operation of Taxicabs) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

These amendments to Chapter 8 allow digital dispatch services (not taxicab owners or operators) to set the entire fare when dispatching a taxicab, without use of the metered rates set by the Commission. These amendments would continue to require the operator to use the modern taximeter system for all trips, to ensure that payment service providers (PSPs) continue to report trip data to the Office of Taxicabs ("Office") for dispatched trips, for enforcement, research, passenger surcharge reconciliation, and other lawful purposes.

The original proposed rulemaking was adopted by the Commission on April 9, 2014 and published in the *D.C. Register* on May 9, 2014 at 61 DCR 4737. The Commission held a public hearing on April 30, 2014, to receive oral comments on the proposed rules. The Commission received valuable comments from the public at the hearing and throughout the comment period which expired on June 15, 2014. The comments received were carefully considered and necessitated a second publication. The second proposed rulemaking was adopted by the Commission on August 6, 2014 and published in the *D.C. Register* on October 3, 2014 at 61 DCR 10307. The Commission received comments on the second proposed rulemaking during the comment period which ended on November 3, 2014. The comments received were carefully reviewed and considered, but did not require the Commission to make any substantial changes and no substantial changes have been made. The changes made correct grammar, clarify initial intent, clarify proposed procedures, or lessen the burdens established by the proposed rules.

This final rulemaking was adopted by the Commission on November 12, 2014, and will take effect upon publication in the *D.C. Register*.

CHAPTER 8, OPERATION OF TAXICABS, is amended as follows:

Section 801, PASSENGER RATES AND CHARGES, is amended to read as follows:

Subsections 801.3 through 801.4 are repealed.

Subsections 801.5 through 801.8 are amended to read as follows:

801.5 Each taxicab company, independent owner, taxicab operator, payment service provider ("PSP"), and digital dispatch service shall charge only the applicable

taxicab fare established by § 801.7 and shall use only the equipment specified in § 801.6 to process payments.

801.6 The equipment used by taxicab operators to process payments shall be as follows:

(a) The taximeter shall be engaged for each trip by taxicab, regardless of whether the trip is booked by street hail, telephone dispatch, or digital dispatch.

(b) If a taxicab trip is booked through a street hail, a telephone dispatch, or a DDS which does not process digital payments, the operator shall use the vehicle's MTS unit to process an in-vehicle payment for the entire trip and shall not use any other device.

(c) If a taxicab trip is booked through a DDS which processes digital payments, the operator shall process the payment according to the passenger's choice of payment method (digital payment or in-vehicle payment), provided however, that the operator shall only accept a digital payment processed through the digital payment solution (app) provided by the DDS and shall not use the vehicle's MTS unit to process an in-vehicle payment except where the DDS and the PSP have an integration agreement approved by the Office pursuant to Chapter 4 to ensure compliance with all provisions of Chapters 4 and 6 applicable to both the DDS and the PSP, including collection and reporting of trip data, and collection and payment to the District of the passenger surcharge.

801.7 Taxicab fares shall be as follows:

(a) Each taximeter fare shall consist only of the time and distance charges, and authorized additional charges, provided in this subsection, as applicable.

(b) Fare for trips booked on a time basis by advance contract. The hourly rate for a taxicab trip booked on a time basis shall be thirty-five dollars ($35) for the first one (1) hour or fraction thereof, and eight dollars and seventy-five cents ($8.75) for each additional fifteen (15) minutes or fraction thereof, without regard to distance. No additional charges are authorized.

(c) Fare for trips booked by a street hail, a telephone dispatch or a digital dispatch by a DDS that does not process digital payments (in-vehicle payment only).

(1) Time and distance charges. The time and distance charges that shall be automatically generated by the taximeter for a taxicab trip booked by a street hail, telephone dispatch, or digital dispatch by a

DDS that does not process digital payments are established as follows:

(A) Three dollars and twenty-five cents ($3.25) for entry (drop rate) and the first one-eighth (1/8) of a mile;

(B) Twenty-seven cents ($0.27) for each one-eighth (1/8) of a mile after the first one-eighth (1/8) of a mile;

(C) The rate for wait time is thirty-five dollars ($35.00) per hour. Wait time begins five (5) minutes after the taxicab arrives at the place to which it was dispatched. No wait time shall be charged for premature response to a dispatch. Wait time shall also be charged for time consumed while the taxicab is stopped or slowed to a speed of less than ten (10) miles per hour for longer than sixty (60) seconds and for time consumed for delays or stopovers en route at the direction of the passenger. Wait time shall be calculated in sixty (60) second increments. Wait time does not include time lost due to taxicab or operator inefficiency.

(2) Authorized additional charges. The additional charges which shall be included in the taximeter fare for a trip booked by a street hail, or a telephone dispatch, or a digital dispatch by a DDS that does not process digital payments are the following:

(A) A fee for telephone dispatch, if any, which shall be two dollars ($2.00);

(B) A taxicab passenger surcharge, which shall be twenty-five cents ($.25) (per trip, not per passenger);

(C) A charge for delivery service (messenger service and parcel pick-up and delivery), which shall be at the same rate as for a single passenger unless the vehicle is hired by the hour pursuant to § 801.4;

(D) An airport surcharge or toll paid by the taxicab operator, if any, which shall be charged in an amount equal to the amount paid by the operator;

(E) An additional passenger fee, if there is more than one (1) passenger, which shall be one dollar ($1.00) regardless of the number of additional passengers (the total fee shall not exceed one dollar ($1.00)); and

(F) A snow emergency fare when authorized under § 804.

(d) Fare for trips booked by digital dispatch and paid by digital payment.

(1) Time and distance charges. The time and distance charges for a taxicab trip booked by a digital dispatch are established as follows: zero dollars ($0) regardless of the amount displayed on the taximeter.

(2) Authorized additional charges. The additional charges which shall be included in the taximeter fare for a trip booked by a digital dispatch are the following: zero dollars ($0) regardless of the amount displayed on the taximeter.

(3) DDS charges. The only charges, if any, which may be assessed to the passenger for a trip paid by digital payment shall be those charges billed directly to the passenger by the DDS, which shall not be displayed on the taximeter, and which shall adhere to the requirements of § 1402.11, in the same manner and to the same extent as if the taxicab were a sedan, including the requirement that the District be paid the passenger surcharge in the manner required by this title.

801.8 Charges for group and shared rides shall be assessed as follows:

(a) For shared rides, as each passenger reaches his or her destination, the metered fare shall be paid by the passenger(s) leaving the taxicab, at which time there shall be a new flag drop and the passenger(s) remaining in the group shall pay in the same manner until the last passenger(s) arrives at his or her destination and the final metered taxicab fare is then paid. There shall be a new flag drop for each leg of the trip.

(b) For group rides booked by street hail, telephone dispatch, and digital dispatch without digital payment, the metered fare, including the additional passenger fee under § 801.7 (c)(2)(E), shall be paid by the last passenger(s) leaving the taxicab.

(c) For group rides booked by digital dispatch and paid through digital payment, the fare shall be charged and paid in the same manner as a non-group ride.

Subsection 801.9 is repealed.

Section 803, RECEIPTS FOR TAXICAB SERVICE, is amended as follows:

Subsection 803.1 is amended to read as follows:

803.1 At the end of each taxicab trip, the operator shall provide the passenger with a printed receipt (except as authorized by § 803.3). The printed receipt shall contain the following information:

(a) The taxicab owner's name and telephone number;

(b) The taxicab's PVIN number;

(c) The operator's DCTC commercial operator's license number;

(d) The trip number;

(e) The date;

(f) The starting and ending times;

(g) The distance traveled;

(h) The form of payment, including:

(1) If the payment was an in-vehicle payment, whether it was made in cash, by payment card (including the type of card, the last four digits of the card number, and the transaction authorization code), by voucher, or by account; and

(2) If the payment was a digital payment, the name, customer service telephone number or URL for the DDS's customer service website;

(i) If the passenger made an in-vehicle payment:

(1) The total charges established by § 801.7(c), itemized to show the time and distance charge pursuant to § 801.7(c)(1), and any authorized additional charges pursuant to § 801.7(c)(2), the passenger surcharge, and any gratuity; and

(2) The last four digits of any payment card processed and the transaction authorization code.

(j) Where pursuant to this title a DDS determined the amount of the fare, if any:

"[NAME OF DDS] DETERMINED THE AMOUNT OF YOUR TAXICAB FARE. THE AMOUNT YOU HAVE BEEN CHARGED MAY BE HIGHER OR LOWER THAN THE AMOUNT DISPLAYED ON THE TAXIMETER, WHICH DID NOT APPLY TO YOUR TRIP."

(k) The following statement:

"DCTC COMPLAINTS LINE AND WEBSITE ADDRESS: 855-484-4966, TTY 711, www.dctaxi.dc.gov".

Subsection 803.3 is amended to read as follows:

803.3 When payment is made by digital payment, the passenger shall receive a printed receipt or an electronic receipt containing the information required by § 803.1, which shall be sent to the passenger via email address or SMS text message not later than when the passenger exits the vehicle.

Section 823, MANIFEST RECORD, is amended as follows:

Subsection 823.1 is amended to read as follows:

823.1 An operator of a public vehicle-for-hire shall maintain a daily log record (manifest) of all trips made by the vehicle while under his or her control. A manifest shall be on a form approved by the Office or, when applicable, in an electronic form as part of a digital payment solution for taxicab dispatch and payment, or a digital payment solution for sedans. An electronic manifest shall contain, at a minimum, all the information required by § 823, all information required for each receipt by § 803, and all information required by Chapter 16. An electronic manifest for a taxicab must be capable of providing a printed record immediately upon demand by a District enforcement official.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth in Sections 8(c) (3), (7), (12), and (19), 14, 20, and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307 (c) (3), (7), (12), and (19)), 50-313, 50-319, and 50-320 (2012 Repl. & 2014 Supp.)), hereby gives notice of its intent to adopt amendments to Chapter 8 (Operation of Taxicabs) and Chapter 99 (Definitions) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments to Chapters 8 and 99 clarify the definition of "shared riding" and allow the Chief of the Office of Taxicabs to designate shared riding locations as needed to best serve the interests of passengers, owners, operators, and the venues at which shared riding may be allowed, and for other lawful purposes within the authority of the Commission.

The proposed rulemaking was adopted by the Commission on August 6, 2014 and published in the *D.C. Register* on October 3, 2014 at 61 DCR 10313. The Commission did not receive any comments on the proposed rulemaking during the comment period which ended on November 2, 2014. The Commission did not need to make any substantial changes and no substantial changes have been made. The changes made correct grammar, clarify initial intent, clarify proposed procedures, or lessen the burdens established by the proposed rules

This final rulemaking was adopted by the Commission on November 12, 2014, and will take effect upon publication in the *D.C. Register*.

Chapter 8, OPERATION OF TAXICABS, is amended as follows:

Section 808, GROUP RIDING AND SHARED RIDING, is amended to read as follows:

Subsection 808.2 is amended to read as follows:

808.2 Shared riding, as defined in § 9901.1 is authorized under this chapter only at a shared riding location designated by the Chief of the Office in an administrative issuance issued pursuant to Chapter 7. An operator shall not pick up a passenger at a designated shared riding location except at the designated taxi stand nor discharge a passenger except at the designated discharge stand. Violations of this subsection are subject to a civil fine of one hundred dollars ($100).

Chapter 99, DEFINITIONS, is amended as follows:

Section 9901, is amended as follows:

Subsection 9901.1, is amended to read as follows:

"Shared riding" – a group of two (2) or more passengers arranged by a starter at a location which has been designated by the Chief of the Office in an Office Issuance issued pursuant to Chapter 7 of this title, where there are common or different destinations.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2014 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of a new Section 975 (Transplantation Services) under Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The emergency and proposed rulemaking is being promulgated to: (1) establish standards governing Medicaid reimbursement of transplantation services; (2) identify the types of transplantation services available under the Medicaid program; (3) authorize Medicaid coverage for two new transplantation procedures—lung and autologous hematopoietic stem cell transplantation; and (4) establish provider participation standards. Expanding coverage of transplantation services will allow the District's Medicaid program to focus on the patient's severity of illness, needed resources and risk of mortality. This will ensure that District residents have continued access to quality transplantation services.

Emergency action is necessary for the preservation of the health, safety and welfare of persons receiving transplant services. The corresponding amendment to the District of Columbia State Plan for Medical Assistance (State Plan) requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The State Plan Amendment (SPA) was approved by the Council through the Medical Assistance Program Emergency Amendment Act of 2014, signed July 14, 2014 (D.C. Act 20-377; 61 DCR 007598 (August 1, 2014)). The SPA is under review by CMS. These rules shall become effective for services rendered on or after October 1, 2014 if the corresponding SPA is approved by CMS with an effective date of October 1, 2014, or the effective date established by CMS in its approval of the corresponding SPA, whichever is later. If approved, DHCF will publish a notice which sets forth the effective date. The fiscal impact anticipated during fiscal year 2015 is $6,000,000.

The emergency rulemaking was adopted on September 26, 2014 and will become effective for services rendered on or after October 1, 2014. The emergency rules will remain in effect for one hundred and twenty (120) days or until January 24, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt this emergency and proposed rule as final not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new Section 937 of Chapter 9, MEDICAID PROGRAM, of Title 29, PUBLIC WELFARE, DCMR, entitled ORGAN TRANSPLANT SERVICES, is added to read as follows:

937 ORGAN TRANSPLANT SERVICES

937.1 The purpose of this section is to establish standards governing Medicaid reimbursement of transplantation services, identify types of transplantation services offered under the Medicaid program, authorize Medicaid coverage for two new transplantation procedures—lung and autologous hematopoietic stem cell transplantation; and to establish conditions of participation for Medicaid-enrolled providers.

937.2 Medicaid reimbursement shall be provided for transplantation services performed on a person who is currently enrolled in the District's Medicaid program and continues to be eligible throughout the period of hospitalization and follow-up treatment.

937.3 In order to qualify for reimbursement of transplantation services, the following criteria shall be used:

(a) The recipient is or has been diagnosed and recommended by his/her physician(s) for an organ or stem cell transplantation as the medically necessary treatment for the patient's survival;

(b) There is a reasonable expectation by the physician that the recipient possesses sufficient mental capacity and awareness to undergo the mental and physical rigors of post-transplantation rehabilitation, with adherence to the long-term medical regimen that may be required;

(c) There is a reasonable expectation that the recipient shall recover sufficiently to resume physical and social activities of daily living;

(d) Alternative medical and surgical therapies that might be expected to yield both short and long term survival have been tried or considered and determined not sufficient to prevent progressive deterioration and death; and

(e) The recipient is diagnosed as having no other system disease, major organ disease, or condition considered likely to complicate, limit, or preclude expected recuperation and rehabilitation after transplantation.

937.4 The types of transplants eligible for reimbursement under the Medicaid program are the following:

(a) Liver transplantation;

(b) Heart transplantation;

(c) Lung transplantation;

(d) Kidney transplantation;

(e) Allogeneic stem cell transplantation; and

(f) Autologous hematopoietic stem cell transplantation.

937.5 In order to receive Medicaid reimbursement, transplantation services shall be performed by a transplant program or center.

937.6 In order to be eligible for Medicaid reimbursement of transplant services, transplant centers shall meet the following requirements:

(a) Be located in a Medicare-enrolled hospital;

(b) Be certified and is a member in good standing by the Organ Procurement and Transplantation Network (OPTN) for the specific organ/organs being transplanted consistent with 42 C.F.R §§ 482.72, 482.74, and 482.76;

(c) If located in the District, maintain the applicable Certificate of Need (CON) issued by the State Health Planning and Developmental Agency (SHPDA) in accordance with D.C. Official Code § 44-406;

(d) If located outside of the District of Columbia, maintain any requirements of that particular state or jurisdiction for transplant program/centers; and

(e) Be enrolled in the D.C. Medicaid program.

937.7 All transplantation procedures shall be "prior authorized" by the Department of Health Care Finance, or its designee, and performed in accordance with the clinical standards established under the State Plan for Medical Assistance consistent with 42 C.F.R § 441.35.

937.8 Standards governing Medicaid reimbursement of liver transplantation are as follows:

(a) Diagnosis/clinical conditions which shall include but are not limited to cirrhosis with hepatic decompensation, primary biliary cirrhosis (PBC), primary sclerosing cholangitis (PSC), fulminant hepatic failure, cirrhosis with hepatocellular carcinoma (HCC); and

(b) D.C. Medicaid beneficiaries with hepatocellular carcinoma (HCC) initially staged outside of the Milan Criteria or "downstaged" to within the Milan Criteria by locoregional therapy(ies) shall not be eligible for liver transplantation services.

937.9 In order to be eligible for Medicaid reimbursement for heart transplantation services, each recipient shall have a diagnosis/clinical condition that includes end-stage heart disease.

937.10 Standards governing Medicaid reimbursement of lung transplantation are as follows:

(a) Diagnosis/clinical conditions which shall include chronic, irreversible, progressively disabling, end-stage lung disease who is failing medical therapy, or for whom no effective medical therapy exists; and

(b) The recipient has been diagnosed with one or more of the following conditions:

(1) Alpha-1 antitrypsin deficiency;

(2) Bilateral bronchiectasis;

(3) Bronchiolitis obliterans;

(4) Bronchopulmonary dysplasia;

(5) Chronic obstructive pulmonary disease;

(6) Cystic fibrosis;

(7) Eisenmenger's syndrome;

(8) Emphysema;

(9) Idiopathic pulmonary fibrosis;

(10) Lymphangiomyomatosis;

(11) Primary pulmonary hypertension;

(12) Pulmonary fibrosis;

(13) Pulmonary hypertension due to cardiac disease;

(14) Recurrent pulmonary embolism;

(15) Sarcoidosis; or

(16) Scleroderma.

937.11 Standards governing Medicaid reimbursement of lung transplants for recipients with a contraindication are as follows:

(a) A recipient with a contraindication shall be considered to be a poor candidate for a lung transplant under the Medicaid Program, but shall not be automatically denied coverage if based on the assessment of the patient's total clinical condition and co-morbidities, it is determined by their treating physician that the patient's condition would not compromise a successful transplant outcome; and

(b) Contraindications for lung transplant shall include but are not limited to the following:

(1) Malignancy in the last two (2) years, with the exception of cutaneous squamous and basal cell tumors; in general, a five (5) year disease-free interval is prudent;

(2) Untreatable advanced dysfunction of another major organ system (*e.g.*, heart, liver, or kidney), including coronary artery disease not amenable to percutaneous intervention or bypass grafting, or associated with significant impairment of left ventricular function;

(3) Non-curable chronic extrapulmonary infection including chronic active viral hepatitis B, hepatitis C, and human immunodeficiency virus;

(4) Significant chest wall/spinal deformity;

(5) Documented nonadherence or inability to follow through with medical therapy or office follow-up, or both;

(6) Untreatable psychiatric or psychologic condition associated with the inability to cooperate or comply with medical therapy;

(7) Absence of a consistent or reliable social support system;

(8) Substance addiction (*e.g.*, alcohol, tobacco, or narcotics) that is either active or within the last six (6) months;

(9) Critical or unstable clinical condition (*e.g.*, shock, mechanical ventilation or extra-corporeal membrane oxygenation);

(10) Severely limited functional status with poor rehabilitation potential;

(11) Colonization with highly resistant or highly virulent bacteria, fungi, or mycobacteria;

(12) Severe obesity defined as a body mass index (BMI) exceeding thirty (30) kg/m^2; or

(13) Mechanical ventilation.

937.12 Standards governing Medicaid reimbursement of kidney transplants are as follows:

(a) The recipient must have:

(1) A diagnosis/clinical condition which shall include stage 4 or stage 5 renal disease on chronic dialysis and have a glomerular filtration rate less than or equal to twenty (20) mL/min/1.73 m^2 ; or

(2) A diagnosis of End-Stage Renal Disease (ESRD).

(b) The standards under § 937.12(a) shall be documented by one or more of the following:

(1) The recipient shall be receiving chronic dialysis and have a Glomerular Filtration Rate (GFR) less than or equal to (≤) 20 mL/min/1.73 m^2; or

(2) The recipient shall have stage IV chronic kidney disease with all of the following:

(i) Written documentation from the United Network for Organ Sharing (UNOS) that the recipient has been officially activated on the wait-list as "ACTIVE";

(ii) Clinical documentation that the recipient's renal failure is rapidly progressing.

937.13 Reimbursement for kidney transplants shall not include recipients diagnosed with one or more of the following conditions:

(a) Reversible renal failure;

(b) Active infection including hepatitis, cytomegalovirus, Epstein-Barr virus and Human immunodeficiency virus infections;

(c) Anatomic anomaly that precludes kidney transplantation;

(d) Cancer (except for localized non-melanoma skin cancer);

(e) Advanced or uncorrectable coronary artery disease or congestive heart failure;

(f) Advanced or severe pulmonary disease;

(g) Cerebrovascular disease;

(h) Severe peripheral vascular disease or claudication;

(i) Other organ system failure.

937.14 Standards governing Medicaid reimbursement of allogeneic stem cell transplantation standards are as follows:

(a) Diagnosis/clinical conditions include, but are not limited to, Acute Myelogenous Leukemia (AML), Acute lymphocytic leukemia (ALL), Myelodysplastic syndrome (MDS), Chronic Myelogenous Leukemia (CML), Non-Hodgkin's lymphoma (NHL), Chronic lymphocytic leukemia (CLL); and

(b) The recipient shall not be diagnosed with multiple myeloma.

937.15 Standards governing Medicaid reimbursement of autologous hematopoietic stem cell transplantation standards are as follows:

(a) Diagnosis/clinical conditions include, but are not limited to, Acute Myelogenous Leukemia (AML), Non-Hodgkins' Lymphoma (NHL), Hodgkin's Lymphoma (HL), Multiple Myeloma (MM),recurrent neuroblastoma with localized brain recurrence after surgical resection (RN); and

(b) The recipient shall not be diagnosed with one or more of the following conditions:

(1) Acute leukemia not in remission;

(2) Chronic granulocytic leukemia;

(3) Solid tumors (other than neuroblastoma); or

(4) Tandem transplantation (multiple rounds of hematopoietic stem cell transplantation) for recipients with multiple myeloma.

937.99 DEFINITIONS

For purposes of this section, the following terms shall have the meanings ascribed:

Allogeneic stem cell transplantation – A procedure in which the transplanted stem cells come from a donor whose tissue type closely matches the recipient's.

Autologous hematopoietic stem cell transplantation - A procedure in which the recipient's healthy stem cells are harvested and transplanted into the recipient.

Contraindication - A specific situation in which a drug, procedure, or surgery is typically not to be used because it may be harmful to the patient.

Department of Health Care Finance – The single state agency responsible for the administration of the District of Columbia's Medicaid program.

Period of hospitalization - The total period of time that the person is receiving medical services related to the transplantation procedure.

Prior authorization- The process of obtaining authorization from the Department of Health Care Finance before the beneficiary receives services.

Recipient - The Medicaid-enrolled person who is receiving transplantation services.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D, Senior Deputy Director/Interim Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2014 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 4209 of Chapter 42 (Home and Community-Based Services Waiver for Persons who are Elderly and Individuals with Physical Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Register (DCMR).

These emergency and proposed rules amend the previously published final rules governing reimbursement of providers of personal care services under the Home and Community-Based Services Waiver for Persons who are Elderly and Individuals with Physical Disabilities (EPD Waiver) by increasing the rates by one dollar and twenty cents ($1.20) per hour, or thirty (30) cents per fifteen (15) minute increment. This adjustment was made after DHCF analyzed the home health care agency cost reports.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who are in need of personal care aide services. A rate increase is necessary at this time to ensure that there is an adequate provider supply and to maintain continuity of care for beneficiaries who are receiving personal care aide services. To preserve beneficiaries' health, safety, and welfare and to avoid any lapse in access to personal care aide services, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on October 10, 2014 and shall become effective for services rendered on or after November 1, 2014. The emergency rules shall remain in effect for one hundred and twenty (120) days or until February 7, 2015 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 4209, REIMBURSEMENT RATES: PERSONAL CARE AIDE SERVICES, of Chapter 42, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS WITH PHYSICAL DISABILITIES, of Title 29, PUBLIC WELFARE, of the DCMR is amended as follows:

Subsection 4209.2 and 4209.3 are amended to read as follows:

4209.2 Each Provider shall be reimbursed four dollars and sixty-five cents ($4.65) per fifteen (15) minutes for allowable services rendered by a personal care aid (PCA), of which no less than three dollars and forty cents ($3.40) per fifteen minutes shall be paid to the PCA to comply with the Living Wage Act of 2006, effective

June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.1 *et seq*. (2012 Repl.)).

4209.3 A unit of service for PCA services shall be fifteen (15) minutes spent performing the allowable services in accordance with Subsection 4222.5.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, Acting Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, 9th Floor, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2014 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 5015 of Chapter 50 (Medicaid Reimbursements for Personal Care Aide Services) of Title 29 (Public Welfare) of the District of Columbia Municipal Register (DCMR).

These emergency and proposed rules amend the previously published final rules governing reimbursement of providers of personal care services under the District of Columbia State Plan for Medical Assistance by increasing the rates by one dollar and twenty cents ($1.20) per hour, or thirty (30) cents per fifteen (15) minute increment for services rendered by a personal care aide. This adjustment was made after DHCF analyzed the home health care agency cost reports.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who are in need of personal care aide services. A rate increase is necessary at this time to ensure that there is an adequate provider supply and to maintain continuity of care for beneficiaries who are receiving personal care aide services. To preserve beneficiaries' health, safety, and welfare, and to avoid any lapse in access to personal care aide services, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on October 10, 2014 and shall become effective for services rendered on or after November 1, 2014. The emergency rules shall remain in effect for one hundred and twenty (120) days or until February 7, 2015 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 5015, REIMBURSEMENT, of Chapter 50, MEDICAID REIMBURSEMENT FOR PERSONAL CARE AIDE SERVICES, of Title 29, PUBLIC WELFARE, of the DCMR is amended and replaced as follows:

Subsection 5015.1 is amended to read as follows:

5015.1 Each Provider shall be reimbursed four dollars and sixty-five cents ($4.65) per fifteen minutes for allowable services rendered by a Personal Care Aid (PCA), of which no less than three dollars and forty cents ($3.40) per fifteen (15) minutes shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq*. (2012 Repl.)).

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, Acting Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, 9th Floor, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-278
November 25, 2014

SUBJECT: Reappointment -- Board of Dietetics and Nutrition

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 202 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1202.02 (2012 Repl.), it is hereby **ORDERED** that:

1. **MELISSA EMILY MUSIKER**, who was nominated by the Mayor on June 27, 2014, and was deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0930 on October 31, 2014, is reappointed as a licensed dietician member of the Board of Dietetics and Nutrition, for a term to end March 12, 2016.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Sharon D. Anderson

SHARON D. ANDERSON
INTERIM SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-279
November 25, 2014

SUBJECT: Appointment -- Real Estate Commission

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 1002(h) of the Non-Health Related Occupations and Professions Licensure Act of 1998, effective April 20, 1999, D.C. Law 12-261, D.C. Official Code § 47-2853.06(h) (2014 Supp.), and Mayor's Order 2009-11, dated February 2, 2009, it is hereby **ORDERED** that:

1. **CHRISTINE M. WARNKE**, who was nominated by the Mayor on June 25, 2014 and was deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0905 on October 31, 2014, is appointed as a consumer member of the Real Estate Commission, to complete the remainder of an unexpired term to end December 13, 2016.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Sharon D. Anderson

SHARON D. ANDERSON
INTERIM SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-280
November 25, 2014

SUBJECT: Reappointments -- Water and Sewer Authority Board of Directors

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code 1-204.22(2) (2012 Repl.), and pursuant to section 204 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996, D.C. Law 11-111, D.C. Official Code § 34-2202.04 (2012 Repl.), it is hereby **ORDERED** that:

1. **RACHNA BUTANI BHATT**, who was nominated by the Mayor on June 20, 2014 and approved by the Council of the District of Columbia pursuant to Resolution 20-0656 on October 28, 2014, is reappointed as a principal member of the Water and Sewer Authority Board of Directors (**"Board"**), for a term to end September 12, 2018.

2. **HOWARD GIBBS**, who was nominated by the Mayor on June 20, 2014 and approved by the Council of the District of Columbia pursuant to Resolution 20-0655 on October 28, 2014, is reappointed as an alternate member of the Board, for a term to end September 12, 2018.

3. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Sharon D. Anderson

SHARON D. ANDERSON
INTERIM SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, DECEMBER 10, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On December 10, 2014 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#14-CMP-00680 R & M Market, 4003 GAULT PL NE Retailer B Retail - Grocery, License#: ABRA-075184

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2. Case#14-CMP-00683 Target Store T-2259, 3100 14TH ST NW Retailer B Retail - Grocery, License#: ABRA-078895

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3. Case#14-CMP-00681 China Cafe Carryout, 612 DIVISION AVE NE Retailer B Retail - Grocery, License#: ABRA-072566

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4. Case#14-CC-00193 Missouri Avenue Market, 5900 GEORGIA AVE NW Retailer B Retail - Grocery, License#: ABRA-023503

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5. Case#14-251-00292 Barcode, 1101 17TH ST NW Retailer C Tavern, License#: ABRA-082039

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6. Case#14-CMP-00686 Cornercopia, 1000 3RD ST SE Retailer B Retail - Grocery, License#: ABRA-082665

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7. Case#14-CMP-00687 Dirty Martini Inn Bar/Dirty Bar, 1223 CONNECTICUT AVE NW Retailer C Nightclub, License#: ABRA-083919

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8. Case#14-CMP-00682 Vita Restaurant and Lounge/Penthouse Nine, 1318 9TH ST NW Retailer C Tavern, License#: ABRA-086037

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9. Case#14-CC-00194 Menomale, LLC, 2711 12TH ST NE Retailer C Restaurant, License#: ABRA-088564

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10. Case#14-CC-00196 Caucus Room Brasserie, 2350 M ST NW Retailer C Restaurant, License#: ABRA-090259

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11. Case#14-CC-00180 Peace Lounge, 2632 GEORGIA AVE NW Retailer C Tavern, License#: ABRA-094013

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12. Case#14-CC-00181 Cheerz, 7303 GEORGIA AVE NW Retailer C Restaurant, License#: ABRA-095178

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13. Case#14-251-00294 Uptown Ethiopian Fusion Cuisine, 1608 7TH ST NW Retailer C Restaurant, License#: ABRA-081849

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, DECEMBER 10, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Amendment to Settlement Agreement between ANC 2F and Capitol Supermarket, dated November 10, 2014. ***Capitol Supermarket,*** 1231 11th Street, NW, Retailer B, License No.: 001688.*

*** In accordance with D.C. Official Code §2-574(b) Open Meetings Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, DECEMBER 10, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request to Extend Safekeeping Status of License for One Year – Second Request. Original Safekeeping Date: 08/2008. ANC 2E. SMD 2E05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***To Be Determined (Formerly Balducci's),*** 3263 M Street NW (formerly), Retailer B Grocery, License No. 088667.

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2. Review Request for Change of Hours. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday 5pm-10pm, Monday-Thursday 11:30am-10pm, Friday 11:30am-11:00pm, Saturday 5pm-11pm. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday-Saturday 11:30am to 2am. ANC 3C. SMD 3C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Coppi's Organic Restaurant,*** 3321 Connecticut Avenue NW, Retailer CR, License No. 096458.

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3. Review Application for Entertainment Endorsement. Entertainment to Include Live Jazz, Live Flamenco, Live Poetry, and Live Music. ANC 3C. SMD 3C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Coppi's Organic Restaurant,*** 3321 Connecticut Avenue NW, Retailer CR, License No. 096458.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

CHILD AND FAMILY SERVICES AGENCY

Mayor's Advisory Committee on Child Abuse and Neglect (MACCAN)
Tuesday – December 9, 2014
10:30 a.m. – 12:00 p.m.
Child and Family Services Agency
200 I Street SE, 2658 Conference Room
Washington, DC 20003

Agenda

1. Call to Order

2. Ascertainment of Quorum

3. Acknowledgement of Adoption of the Minutes of the September 30, 2014, meeting

4. Report by the Chair and Co-Chair of MACCAN

    a. 2015 Meeting Calendar
    b. Review of Membership of MACCAN/Vacancies
        i. The Following Members were sworn in on October 27, 2014:
            1. Yuliana Del Arroyo (term ends POM)
            2. Philip Lucas (term ends 9.24.15)
            3. Charlotte St. Pierre (term ends POM)
            4. Charmetra Parker (term ends POM)
        ii. Vacancies
            1. Department of Health
            2. Community Based Child Welfare Provider
            3. Department of Youth Rehabilitation Services
    c. Presentations:
        i. Andrea Guy: Child & Family Service Review
        ii. Joyce Thomas: Overlap of domestic violence and child maltreatment, related trauma and needs
    d. National Child Abuse Prevention Month (April 2015)

5. Opportunity for Public Comment

6. Adjournment

7. Next Meeting February 24, 2015, 10:30-12:00 pm @ CFSA

If any questions/comments, please contact Roni Seabrook at (202) 724-7076 or roni.seabrook@dc.gov.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

AIR QUALITY TITLE V OPERATING PERMIT AND GENERAL PERMIT FOR CJUF II DESTINATION HOTEL, LLC DBA THE WASHINGTON HILTON HOTEL

Notice is hereby given that CJUF II Destination Hotel, LLC dba The Washington Hilton Hotel has applied for a Title V air quality permit pursuant to the requirements of Title 20 of the District of Columbia Municipal Regulations, Chapters 2 and 3 (20 DCMR Chapters 2 and 3) to operate two (2) 29.7 million BTU per hour boilers, one 1,100 kW emergency generator and several miscellaneous/insignificant sources at its facility located at 1919 Connecticut Avenue NW, Washington, DC. The contact person for the facility is Kenneth Hall, Director, Property Operations at (202) 797-5801.

With the potential to emit approximately 44.508 tons per year of oxides of nitrogen (NO_x), the source has the potential to emit greater than the District's major source threshold of 25 tons per year of NO_x. Therefore, the facility is classified as a major source of air pollution and is subject to 20 DCMR Chapter 3 and must obtain an operating permit under that regulation.

The District Department of the Environment (DDOE) has reviewed the permit application and related documents and has made a preliminary determination that the applicant meets all applicable air quality requirements promulgated by the U.S. Environmental Protection Agency (EPA) and the District. Therefore, draft permit #034-R1 has been prepared.

The application, the draft permit, and all other materials submitted by the applicant [except those entitled to confidential treatment under 20 DCMR 301.1(c)] considered in making this preliminary determination are available for public review during normal business hours at the offices of the District Department of the Environment, 1200 First Street NE, 5th Floor, Washington DC 20002. Copies of the draft permit and related fact sheet are available at http://ddoe.dc.gov.

A public hearing on this permitting action will not be held unless DDOE has received a request for such a hearing within 30 days of the publication of this notice. Interested parties may also submit written comments on the permitting action. Hearing requests or comments should be directed to Stephen S. Ours, DDOE Air Quality Division, 1200 First Street NE, 5th Floor, Washington DC 20002. Questions about this permitting action should be directed to Olivia Achuko at (202) 535-2997 or olivia.achuko@dc.gov. Comments or hearing requests will not be accepted after January 5, 2015, unless they have been postmarked by that date.

FRIENDSHIP PUBLIC CHARTER SCHOOL

NOTICE OF REQUEST FOR PROPOSAL

Friendship Public Charter School is seeking bids from prospective vendors to provide;

HIGH SPEED WAN & INTERNET SERVICE: Friendship Public Charter School is soliciting proposals from qualified vendors for **HIGH SPEED WAN & INTERNET SERVICE**. The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement.
Proposals are due no later than 4:00 P.M., EST, January 30th, 2015. No proposal will be accepted after the deadline. Questions can be addressed to: ProcurementInquiry@friendshipschools.org. -- **Bids not addressing all areas as outlined in the RFP will not be considered.**

DEPARTMENT OF HEALTH
HEALTH PROFESSIONAL LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Medicine
December 11, 2014

On DECEMBER 11, 2014 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 8:30 am until 10:30 am to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be open to the public from 10:30 am to 11:30 am to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations until 2:00 pm.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website www.doh.dc.gov/bomed and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Jacqueline A. Watson, DO, MBA.

DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY
BOARD OF DIRECTORS MEETING
December 9, 2014
815 Florida Avenue, NW
Washington, DC 20001
5:30 pm

AGENDA

I. Call to order and verification of quorum.

II. Approval of minutes from the November 25, 2014 board meeting.

III. Introduction – Marisa Gaither Flowers, Green Door Advisors, LLC

IV. Presentation – Peter Tatian, Senior Fellow, Urban Institute's Metropolitan Housing and Communities Policy Center

V. Vote to close meeting to discuss the approval of the Maycroft Apartments project and bond transaction and the approval of the use of a McKinney Act Loan associated with the Plaza West project and bond transaction.

Pursuant to the District of Columbia Administrative Procedure Act, the Chairperson of the Board of Directors will call a vote to close the meeting in order to discuss, establish, or instruct the public body's staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of the Maycroft Apartments project and bond transaction and a McKinney Act Loan associated with the Plaza West project and bond transaction. An open meeting would adversely affect the bargaining position or negotiation strategy of the public body. (D.C. Code §2-575(b)(2)).

VI. Re-open meeting.

VII. Consideration of DCHFA Eligibility Resolution No. 2014-23 for Maycroft Apartments.

VIII. Consideration of DCHFA Resolution No. 2014-12(G) for the approval of the use of a McKinney Act Loan associated with the Plaza West project.

IX. Interim Executive Director's Report.

X. Other Business.

XI. Adjournment.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

DC Main Streets Grant for Lower Georgia Avenue, NW

The Department of Small and Local Business Development (DSLBD) is soliciting applications to **study the feasibility of a DC Main Streets program for the Lower Georgia Avenue commercial corridor in Ward 1.**

Grant Purpose and Availability

DSLBD will award one (1) grant of up to $50,000 to be used to produce a feasibility study which outlines how a DC Main Streets® program could be implemented to benefit retail businesses located along Georgia Avenue, NW between Florida Avenue, NW and Rock Creek Church Road, NW. The plan should address the following issues.

- **Boundaries.** The feasibility study should describe a district which would have the most likelihood of launching a successful revitalization program.
- **Support from Business Owners and Commercial Property Owners.** As the most crucial stakeholders in any commercial revitalization effort, the business and property owners should be included in any planning effort. A successful study will demonstrate how these two groups intend to help fund and lead a new Main Streets organization. It will also demonstrate how they will continue working together whether or not a new Main Street program is established.
- **Support from Community Stakeholders**. Neighborhood residents are the indirect beneficiaries and primary customers of the commercial revitalization effort. A successful study should demonstrate that neighborhood residents and community groups will support a revitalization effort as donors and as volunteer leaders. The study should also demonstrate the commercial district's ability to serve residents, including Howard University students, as customers.
- **Sustainable Funding.** The new Main Streets organization should be able to operate effectively whether or not funding from DC Government is available in future years. This feasibility study should include a detailed five-year funding plan for the organization. Funding should include private organizations and neighborhood civic groups, as well as commitments from business and property owners.
- **Main Street Four Point Approach®.** The new organization will be expected to follow the Main Street Four Point Approach, designed by the National Main Street Center. The feasibility should explore whether this Approach is a good fit for this commercial district and how the Approach would benefit the proposed district.
- **Pilot Project.** Applicants should propose at least one (1) pilot project which could be completed with grant funds and which would benefit the commercial district. Examples of pilot projects could include a joint advertising campaign which was funded by participating businesses, a business promotional event funded by participating businesses

and sponsors, or physical improvement to the commercial district, such as planting flowers.

The grantee will be announced in February 2015. The grant performance period is six months and all work must be completed between March 1, 2015 and August 31, 2015.

Selection Criteria

Applicants should demonstrate the following in their applications.

- **Capacity and history of the applicant organization** to complete the work requested. Previous projects and the experience of team leaders will show that the applicant possesses the expertise to successfully complete the grant. (25 points)
- **Strength of the project implementation** plan to achieve the desired outcome. Through a description of the implementation plan, including detailed timelines and budgets, applicants will show that they have a sound methodology for addressing the issues outlined above. (25 points)
- **Community "buy in"** to support all projects from the feasibility study and to support a revitalization effort of the identified project area. Business and property owners should be involved with preparing the grant application and implementing the study. They should demonstrate their support with matching funding. (25 points)
- **Creativity and innovation** in addressing revitalization issues along Georgia Avenue. (25 points)

Eligible Applicants

Any type of organization, for profit or not-for profit, which is based in Washington, DC may submit an application.

Application Process

Interested applicants must complete an application and submit it electronically via email on or before **Friday, January 9, 2015 at 2:00 p.m.** DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be reviewed.**

The **Request for Application** (RFA) will be posted at www.dslbd.dc.gov (click on the *Our Programs* tab and then *Solicitations and Opportunities* on the left navigation column) on or before December 5, 2015.

Instructions and guidance regarding application preparation can be found in the RFA. DSLBD will host an **Information Session** on December 11, 2014 at 3:00 p.m. at DSLBD's office (441 4th Street, NW, Washington DC 20001). A photo ID is required to enter the building.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

For more information

Cristina Amoruso, DC Main Streets Coordinator
Department of Small and Local Business Development
441 4th Street, NW, Suite 850N, Washington, DC 20001
(202) 727-3900
cristina.amoruso@dc.gov
www.dslbd.dc.gov

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE

REQUESTS FOR WAIVER OF SUBCONTRACTING REQUIREMENT

In accordance with *The Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014, L20-0108, D.C. Code 2-218.01 et. Seq ("the Act")*, Notice is hereby given that the following agencies have requested waivers from the 35% subcontracting requirement of the Act for the below identified solicitations/contracts with values estimated over $250,000:

Agency Acronym	Solicitation/ Contract	Description	Contracting Officer/Spec	DSLBD Contact
OSSE	CW33009	Science Alt CAS for OSSE, Program Office ODM	marie.niestrath@dc.gov	jacarl.melton@dc.gov
DOES	Doc183649	Actuarial	jerome.johnson@dc.gov	audrey.buchanan2@dc.gov
DCHBX	DCHBX-2015-S-0002	Independent Verification and Validation for the DCAS project	annie.white2@dc.gov	cory.jefferson2@dc.gov
DMV	Doc142966	Queuing System	tyrone.sweatt@dc.gov	dian.herrman2@dc.gov

As outlined in D.C. Code §2-218.51, as amended, draft approvals are to be posted for public comment on DSLBD's website: www.dslbd.dc.gov for five (5) days in order to facilitate feedback and input from the business community. The five day period begins the day after DSLBD posts its draft letter to its website. The five days includes week day and the weekend. Following the five (5) day posting period, DSLBD will consider any feedback received prior to issuing a final determination on whether to grant the waiver request.

Pursuant to D.C. Code 2-218.51, the subcontracting requirements of D.C. Code 2-218.46, may only be waived if there is insufficient market capacity for the goods or services that comprise the project and such lack of capacity leaves the contractor commercially incapable of achieving the subcontracting requirements at a project level.

More information and links to the above waiver requests can be found on DSLBDs website: www.dslbd.dc.gov

Attachment

WASHINGTON YU YING PCS

REQUEST FOR PROPOSALS

General Counsel / Legal Services

RFP for General Counsel & Legal Services
Washington Yu Ying PCS is seeking competitive bids for an attorney to provide general counsel and legal services on an as needed basis. Proposals must include suggested rates (per hour or per year), evidence of experience, and references. Washington Yu Ying PCS reserves the right to cancel this RFP at any time.

Deadline for submissions is close of business December 23, 2014. Please e-mail proposals and supporting documents to rfp@washingtonyuying.org.

ZONING COMMISSION ORDER NO. 08-24B/04-25
Z.C. Case No. 08-24B/04-25
Bozzuto Group
(PUD Minor Modification @ Square 3655 – Monroe Street Market)
October 20, 2014

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public meeting on October 20, 2014, and approved an application from the Bozzuto Group ("Applicant") for a minor modification to an approved planned unit development ("PUD") for Parcel A2 of the project now known as Monroe Street Market. The application requested approval for minor refinements to the approved elevations, approval to provide an additional story on two townhomes, and approval to incorporate an additional curb cut in the site plan (Square 3655, Lot 3).

FINDINGS OF FACT

By Z.C. Order No. 08-24/08-24A/04-25, dated December 25, 2009, the Commission approved an application for an amendment to The Catholic University of America's Campus Plan and approved a consolidated PUD and PUD-related map amendment for the Monroe Street Market project. The PUD enabled the redevelopment of 8.9 acres of land south of Michigan Avenue with 725-825 residential units and 75,000-85,000 square feet of ground-floor retail.

The project consisted of six building blocks: A1, A2, B, C, D, and E. The Applicant proceeded with the construction of Blocks A1, B, C, and D. To date, 562 units and 57,000 square feet of retail have been constructed, which accounts for approximately 75% of the density in the project. The only two remaining blocks to be constructed are Blocks A2 and E.

The subject application concerns Block A2, which accounts for 10% of the density approved in the PUD and represents the only parcel with single-family housing in the PUD. This minor modification application reflects minor refinements in the plans since the Commission's approval of the PUD. The Applicant specifically requested approval for the following modifications:

1) Slight modification of the elevations, including the provision of a bay window on the rear of the townhomes. The Applicant also modified the roofline of the townhomes to accommodate the necessary HVAC equipment for each townhouse. The Applicant relocated the HVAC equipment from the ground level to the roof of the townhomes. The relocation of the HVAC units requires a "cutout" in the roofline, which allows for the required air circulation. The visual impact of the cutout on the roofline is mitigated by painting it the same color as the roof;

2) Modification of the site plan to add a curbcut on Lawrence Street. This curb cut eliminates the dead-end drive serving the western row of townhomes and provides direct access to Lawrence Street. The curb cut was approved previously by the Public Space Committee; and

3) An additional story will be added to the units on Lots 44 and 45. The units on these lots are a "B1" style unit, which means that they are 16-foot-wide houses with garages and no

basements. Every other "B1" unit was approved with a fourth story; however, these two inexplicably did not include the fourth story.

(Exhibit ["Ex."] 1.)

By letter dated October 10, 2014, the Office of Planning ("OP") submitted a report in support of the minor modifications. OP concluded "this request consists of minor changes to the original design which are consistent with § 3030 as being 'of little or no importance or consequence' and would be consistent with the original approval." (Ex. 4.)

By letter dated October 13, 2014, Advisory Neighborhood Commission ("ANC") 5E01 Single Member District representative, Debbie Steiner, submitted a report in support of the modifications. She specifically stated that she found the modifications consistent with the initial approval and that they did nothing but enhance the project. She urged the Commission to approve the modifications as soon as possible. (Ex. 5.)

Pursuant to 11 DCMR § 3030.11, the Director of the Office of Zoning placed the request for a minor modification on the Commission's Consent Agenda for its public meeting of October 20, 2014. At that meeting, the Commission voted to approve the modification as a minor modification.

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modifications are minor and consistent with the intent of the Commission's prior approval. The Commission concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The approval of the modifications is not inconsistent with the Comprehensive Plan. The modifications are of such a minor nature that its consideration as a consent calendar item without public hearing is appropriate and is consistent with the standards of 11 DCMR § 3030, *et seq*.
In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of a minor modification to modify the approved elevations and site plan of the PUD that was previously approved in Z.C. Order No. 08-24/08-24A/04-25.

On October 20, 2014, upon the motion of Commissioner Miller, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR 3028.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on December 5, 2014.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-04
Z.C. Case No. 14-04
Professional Associates and International Finance Corporation
(Consolidated Planned Unit Development and Related Zoning Map Amendment @ Square 74)
November 10, 2014

Pursuant to proper notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on July 31, 2014 to consider an application by Professional Associates and the International Finance Corporation ("IFC") (together, the "Applicant") for consolidated review and approval of a planned unit development ("PUD") for the entirety of Square 74 (the "Application"). The Commission considered the Application pursuant to Chapter 24 and Chapter 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. The Commission approves the Application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The project site consists of the entirety of Square 74 (Lots 49, 832, and 840) ("Property") and is bounded by Pennsylvania Avenue N.W., 21st Street N.W., K Street N.W., and 22nd Street N.W.

2. On March 5, 2014, the Applicant filed an application for consolidated review and approval of a PUD. (Exhibit ["Ex."] 2.)

3. During its public meeting on April 15, 2014, the Commission unanimously voted to set down the Application for a public hearing. Notice of the public hearing was published in the *D.C. Register* on June 13, 2014 and was mailed to Advisory Neighborhood Commission ("ANC") 2A and to owners of property within 200 feet of the Property.

4. The Application was further updated by pre-hearing submissions filed on May 19, 2014 and July 11, 2014. (Ex. 11, 20.)

5. A public hearing was conducted on July 31, 2014. The Commission accepted Shalom Baranes as an expert in the field of architecture and Erwin Andres as an expert in the field of traffic engineering. The Applicant provided testimony from these experts as well as from a representative of Professional Associates on behalf of the Applicant.

6. In addition to the Applicant, ANC 2A was automatically a party in this proceeding and submitted a report in support of the Application. (Ex. 24.) The Commission received no other requests for party status.

7. At the hearing, the Commission heard testimony and received evidence from the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), and ANC 2A

in support of the application. (Ex. 22-24, 29.) The West End Citizens Association ("WECA") submitted a letter indicating concerns regarding the proposed amenities package. (Ex. 21.) The Commission heard no other testimony from persons in support of or in opposition to the Application.

8. At the close of the hearing, the Commission asked the Applicant to address certain design issues and concerns and permitted the Applicant to state its final position on the applicability of housing linkage to the development and to request any flexibility it considered available as a result of its costs to acquire transferable development rights ("TDRs") for the project. The Applicant stated its position on these issues in a post-hearing submission dated September 15, 2014. (Ex. 32.)

9. DDOT submitted a supplemental report dated September 22, 2014. (Ex. 36.)

10. At its public meeting on September 29, 2014, the Commission took proposed action to approve the Application and plans that were submitted into the record. The Commission also determined the proper method for crediting the Applicant's cost for acquiring TDRs in calculating its housing linkage contribution, and determined that the Applicant's request for bonus density exceeded what could be granted pursuant to § 2405.3 of the Zoning Regulations.

11. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. No response was received from NCPC.

12. The Applicant submitted its list of proffers and draft conditions on October 6, 2014. (Ex. 37.) The Applicant submitted its final list of proffers and draft conditions on October 20, 2014. (Ex. 39.)

13. The Commission took final action to approve the Application on November 10, 2014.

THE MERITS OF THE APPLICATION

Overview of the Property

14. The Property consists of approximately 83,201 square feet of land area. The northeast corner of the Property (the "Development Site") is located at the intersection of 21st Street and K Street, and it is currently improved with a nine-story commercial office building and a portion of a private alley. The remainder of the Property is improved with the IFC's international headquarters and the remaining portion of the private alley. (Ex. 2.)

15. The entrance to the Foggy Bottom-GWU Metrorail Station is approximately three blocks to the southwest of the Property. (Ex. 2.)

16. The Property is generally surrounded by high-density commercial office buildings. The Commission recently approved a PUD and map amendment to the C-4 Zone District to permit the construction of a new commercial office building in Square 75, immediately to the south of the Property. (Ex. 2; see Z.C. Order No. 06-11G/06-12G (2013).)

17. The Property is located in the C-3-C Zone District. The Property is also located in the New Downtown Receiving Zone, which consists of the C-3-C- zoned portions of Squares numbered 72 through 74, 76, 78, 85, 86, 99, 100, and 116 through 118. (*See* 11 DCMR 1709.16.)

18. Property to the north and east is also located in the C-3-C Zone District and in the New Downtown Receiving Zone.

19. The Future Land Use Map designates the Property in the High-Density Commercial Land Use Category. Property to the north and east is also located in the High-Density Commercial Land Use Category.

The Project

20. The Applicant requested approval to construct an 11-story commercial office building with approximately 4,000 square feet of space devoted to retail or service uses (the "Project"). (Ex. 2.)

21. The Project has been massed and designed as a complementary but contrasting structure to the existing IFC headquarters. The Project will integrate with and function as an addition to the existing IFC headquarters. The Project will connect to the existing building as a single building for zoning purposes, and the underlying property will be combined into a single lot of record. (Ex. 2.)

22. The Project includes approximately 48 parking spaces, accessed from a curb cut located on 21st Street. The Applicant submitted plans demonstrating that the parking entrance could not be located off the private alley due to the topography and small footprint of the Development Site. (Ex. 11, 32.) DDOT testified that the proposed parking entrance, while not ideal, meets DDOT standards for curb cuts. Loading is accessed from the existing private alley. (Ex. 2.)

23. The Applicant's traffic expert submitted a transportation impact analysis that concluded that the proposed Project would not generate an adverse traffic impact on the surrounding roadway network or cause objectionable impacts in the surrounding neighborhood due to traffic or parking impacts. The Applicant's traffic consultant also concluded that the

number of parking and loading spaces as well as the location of the parking and loading entrances would accommodate the parking and loading needs for the Project and not generate adverse or objectionable impacts on neighboring property. (Ex. 20, Tab C.)

24. The Project will be designed to meet the equivalent of a Gold rating under the LEED-CS 2009 rating system. (Ex. 2.) Although exempt from the Green Area Ratio ("GAR") requirements, the project will also meet the requirements for a 0.20 GAR on the Development Site through a green roof. To the extent that the Project cannot accommodate the green roof required to meet 0.20 GAR for the Development Site, additional green roof area will be constructed on the IFC headquarters to meet this goal. (Ex. 2.)

25. The total gross floor area for the Project is approximately 154,765 square feet; when added to the existing IFC headquarters, the combined building will have a total floor area ratio ("FAR") of approximately 10.49 and a lot occupancy of approximately 99%. The Project will reach a maximum height of approximately 130 feet as measured from the existing measuring point on Pennsylvania Avenue, N.W. (Ex. 2.)

Housing linkage Requirement and PUD Flexibility Requested

26. As noted, the property is located in a C-3-C Zone District and therefore is ordinarily subject to a matter-of-right density limit of 6.5 FAR (§ 771.2) and a PUD FAR limit of 8.0 (§ 2405.2). The property is also located in the New Downtown Receiving Zone established by § 1709.16. A property in a receiving zone may increase its mater of right height and FAR through obtaining transferrable development rights ("TDRs"). Such TDRs are generated by properties mapped in the Downtown Development Overlay District by the construction of residential or bonus uses or as a result of historic preservation limits or historic preservation activities.

27. Subsection 1709.21 permits certain properties in the New Downtown Receiving Zone, including the Applicant's, to use TDRs to achieve a height of 130 feet and a density of 10.0 FAR.

28. An additional 0.5 FAR is permitted for this property by § 1709.24, which provides in part:

> In addition to the matter-of-right transfers authorized by this section, a lot that is approved and developed as a Planned Unit Development pursuant to chapter 24 of this title may serve as a receiving lot for transferable development rights; provided:
>
> (b) The ... maximum permitted FAR shall be 10.5 for buildings permitted a height of one hundred thirty feet (130 ft.)

29. The Applicant initially requested approval to construct an office building to a maximum density of 10.49 FAR pursuant to § 1709.24. (Ex. 2, 20.)

30. The Comprehensive Plan imposes a housing linkage requirement "whenever the Zoning Commission approves a discretionary and otherwise appropriate zoning density increase which results in the provision of additional commercial office space." (D.C. Official Code § 1-306.33.) The Commission adopted implementing regulations that appear at 11 DCMR § 2404.

31. Because the Commission must approve the transfer of § 1709.24 TDRs, and because the additional density will be used for office uses, the Applicant is subject to housing linkage unless an exemption applies.

32. An applicant that is subject to a housing linkage requirement "may either provide the required housing by means of new construction or rehabilitation … or make a financial contribution" to a housing trust fund. (11 DCMR § 2404.3.) The Applicant has indicated its preference to contribute to a housing trust fund.

33. A housing trust fund contribution must equal one-half of the assessed value of the increase in permitted gross floor area for office use. (§ 2404.7.) Both OP and the Applicant agree that the additional 0.49 FAR of density equals 41,776 square feet of gross floor area and that the assessed value of this additional square footage equals $5,280,446. Therefore the Applicant ordinarily would have to contribute $2,640,223 to an eligible housing trust fund unless an exemption applied.

34. The Applicant contended that the property was exempt from the housing linkage requirement by virtue of 11 DCMR § 2404.4 (c), which exempts properties "located within the boundaries of the Downtown Development Overlay District provisions of chapter 17 of this title." The Applicant asserts that because the Property is located within a receiving zone established by chapter 17, it is "located within the boundaries of the … provisions of chapter 17."

35. The Commission concludes that a property located in a receiving zone does not fall within this exception. Section 2404 was intended only to implement the housing linkage provision of the Comprehensive Plan; not to expand its exemptions. The most analogous provision in the Comprehensive Plan only exempts "a development that already is subject to a housing, retail, arts, or historic preservation requirement pursuant to the zoning regulations set forth in the Downtown Development District." (D.C. Official Code § 1-306.41 (6).) The Property is subject to no such requirement and therefore the exemption does not apply.

36. In anticipation of the potential for this ruling, the Applicant requested that the Commission either (a) reduce the housing linkage contribution of $2,640,223 by the

Applicant's cost to acquire the TDRs needed to achieve the additional 0.49 FAR, rather than the traditional method of subtracting TDR costs from the assessed value of the increased density (in this case $5,280,446) before that figure is divided by two; or (b) permit the Applicant to modify the application to eliminate the proposal to use TDRs to achieve the additional 0.49 FAR, and instead request the Commission utilize its discretion to approve the additional 4.9% increase in density (0.49 FAR) it asserted was available pursuant to § 2405.3 of the Regulations. (Ex. 32.)

37. As to the issue of calculating the TDR credit, the Commission understands that the traditional means of doing so is to first subtract the TDR costs from the assessed value of the density increase and then divide the resulting figure by two. The Applicant instead would first divide the assessed value of the additional density by two and then subtract its TDR costs. The Applicant can point to no instance in which such a calculation was used and the Commission does not believe it serves any purpose to diverge from the traditional calculation. Therefore, for this application, the Applicant linkage contribution is the amount equal to one-half of the total of: (a) $5,280,446, the assessed value of the increased commercial density less (b) the Applicant's costs to purchase of 41,776 square feet of TDRs.

38. As an alternative to making this contribution, the Applicant requested that the Commission use its authority under the PUD regulation to grant the additional .49 FAR. This would result in a housing linkage contribution of $2,640,223, but obviate the need to purchase TDRs.

39. In support of its position that such an increase is permissible, the Applicant cites § 2405.3, which in pertinent part provides:

> 2405.3 The Commission may authorize the following increases …:
>
> (b) not more than five percent (5%) in *the maximum floor area ratio*.

(Emphasis added).

40. The Applicant argues that the TDR provisions allowed the Property a "maximum floor area ratio" of 10, which § 2405.3 permits the Commission to increase by five percent.

41. However, § 2405.2 provides in pertinent part:

> 2405.2 The floor area ratio of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the *several zone districts* included within the project area; provided, that the Commission may authorize minor deviations for good cause pursuant to § 2405.3:

FLOOR AREA RATIO (FAR)			
ZONE DISTRICT	RESIDENCE	COMMERCIAL, INCLUDING HOTELS AND MOTELS	TOTAL
C-3-C	8.0	8.0	8.0

42. The Commission concludes that the term "maximum floor area ratio" as used in § 2405.3 refers to the maximum FAR figures listed in § 2405.2. In this case, because the property is located in a C-3-C Zone District, the Commission cannot grant more than a five percent increase in the maximum 8.0 FAR permitted by § 2405.2. Put another way, the Commission cannot use § 2405.3 to increase the density of a property in a C-3-C Zone District above an 8.4 FAR. It is therefore beyond the Commission's authority to increase the Property's maximum density to 10.49 FAR.

43. The Applicant initially requested no other flexibility from the Zoning Regulations in order to accommodate the proposed design of the Project. (Ex. 2.) However, after the close of the hearing and in response to the Commission's request to restudy the proposed architectural embellishment, the Applicant eliminated the architectural embellishment and modified the design to step down the front portion of the roof structure. Accordingly, in the Applicant's posthearing submission, the Applicant requested flexibility to permit a roof structure with varying heights. (Ex. 32.)

44. The Applicant also requested additional, limited flexibility to modify specified design details of the Project as is set forth in the conditions of approval.

Project Amenities and Public Benefits

45. As detailed in the Applicant's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits:

(a) Exemplary urban design, architecture, and landscaping, including high-quality materials, pedestrian-oriented streetscape improvements, and sustainable features; (Ex. 2.)

(b) Site planning and efficient land utilization, through the redevelopment of a strategic underutilized site located along K Street, N.W. near the Foggy Bottom-GWU Metrorail station; (Ex. 2.)

(c) Effective and safe vehicular and pedestrian access and transportation management measures, including 39 bicycle parking spaces within the building, a transit screen in the building in the office lobby, and showers and changing facilities for employees. (Ex. 2; Transcript ["Tr."] July 31, 2014 at 28.) The Applicant will also implement Transportation Demand Management ("TDM") Plan that will: identify a TDM coordinator for planning, construction, and operations, and provide DDOT/Zoning Enforcement with annual TDM coordinator contact updates; post all TDM commitments on IFC intranet, publicize availability to employees, and allow employees to see what commitments have been promised (including providing website links to CommuterConnections.com and godcgo.com and information regarding nearby transit, carsharing, and bikesharing services on the IFC intranet); and provide reserved spaces for carpools that are conveniently located with respect to elevators serving the building;

(d) Housing and affordable housing, through the direct contribution equal to $5,280,446 minus the Applicant's costs to purchase 41,776 square feet of TDRs, with the difference divided by one-half to a housing trust fund. Although required, the housing linkage contribution would not otherwise be made under a matter of right project, and thus qualifies as a public benefit of the PUD. (See 11 DCMR § 2403.6; see also Z.C. Order No. 13-04 at p. 9.) Further, § 2403.14 recognizes compliance with § 2404 as a public benefit and the Comprehensive Plan itself requires that the "the Zoning Commission …shall consider an applicant's compliance with the housing linkage' requirements …as providing public amenities associated with an applicant's project"; (§ 1-306.40.)

(e) Environmental benefits, through the development of a building to the equivalent of a Gold rating under the LEED-CS 2009 rating system; and (Ex. 2.)

(f) Uses of special value, including:

(i) $50,000 to the Foggy Bottom/West End Village for its Medical Advocacy Program;

(ii) $105,881 to Cultural Tourism DC for the planning, research, and graphic design for the development of the North Loop of the Foggy Bottom Heritage Trail;

(iii) Community meeting space within the existing IFC headquarters, subject to certain restrictions; and

(iv) Approximately 4,000 square feet of retail space.

(Ex. 20.)

Compliance with PUD Standards

46. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects." The Commission finds that the development incentives for the density and flexibility are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines as set forth in the Applicant's statement and the OP report. (Ex. 2, 23, 32.)

47. The Commission credits the testimony of the Applicant and its architectural experts as well as OP, DDOT, and ANC 2A, and finds that the superior design, site planning, transportation planning, sustainable design features, housing and affordable housing, and uses of special value all constitute acceptable project amenities and public benefits.

48. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing and affordable housing, site planning, transportation planning, environmental benefits, and uses of special value to the neighborhood and District as a whole.

49. The Commission credits the testimony of ANC 2A that the Project will provide benefits and amenities of substantial value to the community and the District. The Commission disagrees with the testimony of WECA that the proposed amenities package is inconsistent with the requirements of either the Zoning Regulations or the Comprehensive Plan.

    (a) First, all of the elements of the amenities package negotiated with ANC 2A – the medical advocacy program, the heritage trail, the community meeting space, and the retail space – will all be located within the boundaries of ANC 2A, as required by § 2403.13;

    (b) Second, nothing in the portion of the Comprehensive Plan cited by WECA indicates a requirement that a majority of the benefits accrue to the community in which the PUD is located.[1] All that the Plan requires is that a "substantial" part of

[1] As codified at 10A DCMR §2502.12, the Comprehensive Plan provision states "that a substantial part of the amenities proposed in the … [PUD] shall accrue to the community in which the PUD would have an impact." The Commission assumes that the reference to "amenities" was intended to refer to all public benefits rather than just amenities, which the Zoning Regulations describe as "one type of public benefit, specifically a functional or

public benefits accrue to the affected community. Here, the public benefits package consisted of hundreds of thousands of dollars of benefits and was specifically approved by ANC 2A, which indicates that the affected ANC concluded the package was adequately "substantial" for the community; and

(c) Third, the Zoning Regulations specifically provide that, in the case of off-site affordable housing, such benefit must be provided in accordance with the housing linkage provisions of the Zoning Regulations and D.C. law. (11 DCMR § 2403.14.) Put another way, once the Commission concluded that housing linkage was required, the Applicant was bound to provide such housing in accordance with the Zoning Regulations, and had no control over the amount of the contribution or the community that might benefit from it. The Commission credits the testimony of ANC 2A that the amenities package is sufficient and significant, and reflected community preferences and priorities.

50. The Commission finds that the character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant's architectural and transportation planning experts that the PUD represents a strategic use of a transit-oriented parcel located near a Metrorail station entrance.

51. The Commission credits OP's testimony that the impact of the PUD on the level of services will not be unacceptable.

52. The Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.

53. The Commission credits the testimony of the Applicant and OP regarding the compliance of the Project with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the Plan, including:

(a) Designation of the Property as High Density Commercial use on the Future Land Use Map as well as provisions of the Framework Element that explicitly state that density and height gained through the PUD process are bonuses that may exceed the typical ranges listed in the Plan;

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aesthetic feature of the proposed development that adds to the attractiveness, convenience, or comfort of the project for occupants and immediate neighbors." (11 DCMR § 2403.7.)

(b) Land Use Element policies promoting redevelopment around Metrorail stations and concentration of commercial development in and around the Central Employment Area;

(c) Economic Development Element policies supporting the major economic impact of the IFC and other World Bank Group organizations as well as generally promoting additional office space in the downtown core;

(d) Housing Element policies promoting funding for affordable housing;

(e) Other policies in the Transportation, Environmental, and Urban Design Elements related to the Land Use policies and goals stated above; and

(f) Policies in the Near Northwest Area Element regarding location of commercial development away from residential neighborhoods and encouraging institutions to "build up" on existing property.

Agency Reports

54. By report dated July 22, 2014 and by testimony at the public hearing, OP recommended approval of the application subject to conditions. (Ex. 23.) OP supported the height and massing of the Project as appropriate given the location in an intensely developed commercial area within close proximity to Metrorail and Metrobus. OP concluded that the PUD was not inconsistent with the Property's Policy Map and Future Land Use Map designations in the Comprehensive Plan and would further the Land Use, Housing, Economic Development, and Environment Elements. OP evaluated the PUD under the evaluation standards set forth in Chapter 24 of the Zoning Regulations and concluded that the Project's benefits and amenities package was appropriate given the size and nature of the PUD.

(a) OP requested that the Applicant agree to DDOT's proposed TDM measures, which the Applicant has agreed to do;

(b) OP also requested that the Applicant agree to fulfill the housing linkage requirement. The Commission has determined that the housing linkage requirement applied to the Applicant, and the Applicant has indicated that it will comply with the requirement; and

(c) Finally, OP requested that the Applicant commit to enter into First Source Employment and CBE agreements. The Applicant indicated that it was not willing to agree to these provisions, and cited the financial burden of the housing linkage requirement. The Commission concludes that the First Source Employment and CBE agreements are not necessary here given the extent of the

amenities package, the housing linkage requirement, and the limited flexibility requested by the Applicant.

55. By report dated July 21, 2014 and by testimony at the public hearing, DDOT recommended approval of the PUD. (Ex. 22, 36.) DDOT found that the site design would minimize impact on the external roadway network, the traffic analysis was sound, and the Project would generally facilitate multimodal access through proximity to transit and long-term bicycle parking. DDOT requested that the Applicant agree to install a transit screen in the office lobby and incorporate showers and changing facilities for employees within the office building, and the Applicant agreed to these conditions.

ANC 2A Report

56. At a regularly scheduled and duly noted public meeting on July 16, 2014, with a quorum present, ANC 2A voted to support the proposed PUD. (Ex. 24.) The ANC concluded that the density sought was not incompatible with the surrounding area and had no objection to the design of the Project. The ANC noted that the Applicant reached out to the ANC early to discuss the PUD's amenities package, and concluded that the proposed package reflected a responsiveness to the community's goals that the value of the amenities be commensurate with the additional density being sought and the type of amenities proposed be responsive to the community's interest. ANC 2A conditioned its support on the Applicant's agreement to waive the requirement for photo identification for use of the proposed community meeting space. The Applicant agreed to this condition.

Other Testimony

57. The West End Citizens Association submitted a letter that did not object to the Project but raised concerns regarding the proposed amenities package as follows:

(a) WECA argued that the proposed amenities package did not comply with the requirement that a substantial portion of the amenities accrue to the affected community. As set forth above, the Commission does not agree with WECA's claim; and

(b) WECA also requested that the Commission encourage the Applicant to provide funding for elevators for a second entrance to the Foggy Bottom-GWU Metrorail station. The Commission declines to do so here. The Commission has consistently held that "that it cannot require that Applicant agree to augment its public benefits in this way. Proffered public benefits are either sufficient or they are not. It is not the obligation of the Commission to cure a deficient public benefits package." (Z.C. Order No. 06-11G/06-12G at p. 20.) In that case, the

Commission rejected an almost identical request by WECA, noting that the proffered benefits sufficed. The Commission makes the same finding here.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)

3. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

4. Proper notice of the proposed PUD was provided in accordance with the requirements of the Zoning Regulations.

5. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate, and the proposed construction of an attractive commercial office building that complements the design of the existing IFC headquarters and capitalizes on the Property's transit-oriented location is compatible with the citywide and area plans of the District of Columbia.

6. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.

7. The PUD is within the applicable height and bulk standards of the Zoning Regulations. The proposed height and density will not cause an adverse effect on nearby properties,

are consistent with the height and density of surrounding and nearby properties, and will create a more appropriate and efficient utilization of land near the commercial core and near a Metrorail station. The proposed commercial uses are also appropriate for the site's location.

8. The project provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe traffic circulation, sustainable features, housing and affordable housing, retail, and other uses of special value all are significant public benefits. The impact of the project is acceptable given the quality of the public benefits of the Project.

9. The impact of the Project on the surrounding area and the operation of city services are not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed project will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area for the Project will be mitigated.

10. Approval of the PUD is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed project is consistent with the Property's High Density Commercial Designation on the Future Land Use Map and furthers numerous goals and policies of the Comprehensive Plan in the Land Use Element, Economic Development, Housing Element, and other citywide elements and policies as delineated in the OP Report.

11. The PUD for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

12. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. OP recommended approval, provided that the Applicant agree to DDOT's TDM conditions, agree to provide housing linkage, and agree to enter into a CBE and First Source Employment Agreement. The Commission concludes that the Applicant has addressed the first condition by agreeing to DDOT's proposed TMD measures. The second condition, concerning compliance with housing linkage is required as a matter of law, and is included in this Order. The third condition is not warranted given the level of flexibility requested through the PUD. Accordingly, approval of the consolidated PUD should be granted.

13. In accordance with § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)), the

Commission must give great weight to the written issues and concerns of the affected ANC. The Commission accorded the issues and concerns raised by ANC 2A the "great weight" to which they are entitled, and in so doing fully credited the unique vantage point that ANC 2A holds with respect to the impact of the proposed application on the ANC's constituents. ANC 2A recommended approval. Accordingly, the PUD should be approved.

14. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the Application for consolidated approval of a PUD for the entirety of Square 74 ("Property"). This approval is subject to the following guidelines, conditions, and standards of this Order.

A. Project Development

1. This Project shall be developed in accordance with the plans marked as Exhibit 20, Tab A and Exhibit 32, Tab A of the record, as modified by guidelines, conditions, and standards herein.

2. The Project shall not exceed a density of 10.49 FAR. Pursuant to § 1719.24, the Commission approves the non-matter of right transfer of 41,776 square feet of TDRs to be acquired by the Applicant needed to increase the properties maximum density from 10 FAR to 10.49 FAR.

3. The Applicant shall have flexibility from the roof structure requirements of the Zoning Regulations as shown on the approved plans. (Ex. 32A.)

4. The Property shall be used for office use provided that at least 4,000 square feet of gross floor area is set aside for retail or service uses. After a term of 40 years from the effective date of this order, the Property may be used for any use permitted in the C-3-C Zone District provided that at least 4,000 square feet of gross floor area is set aside for retail or service uses.

5. The Project shall provide parking as shown on the approved plans, except that the Applicant shall be permitted to make alterations to the size and design of the underground parking garage, provided that the garage contains approximately 48 parking spaces, which requirement may be satisfied with any combination of accessible, full-sized, or compact spaces.

6. The Project shall provide a minimum of 39 bicycle parking spaces within the building. The Project shall also include showers and changing facilities for office building employees.

7. The Project shall include a transit screen in the office lobby.

8. The Project shall provide loading as shown on the approved plans.

9. The Applicant shall have flexibility with the design of the PUD in the following areas:

   (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

   (b) To vary final selection of the exterior materials within the color ranges, quality, and materials types as proposed based on availability at the time of construction;

   (c) To vary the final streetscape design and materials if required by District public space permitting authorities;

   (d) To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or other similar changes required to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems;

   (e) To vary the number, size, location, and design features of retail entrances and windows, including the size, location, and design of windows, doors, awnings, canopies, and similar features, to accommodate the needs of specific retail tenants and storefront design, provided that the number of entrances or the amount of glazing at street level is not less than the amount shown on the approved plans;

   (f) To vary the number, size, location, and other features of proposed retail and building entrance signage, provided that such signage is otherwise permitted under the applicable provisions of the District of Columbia Municipal Regulations; and

   (g) To vary the height of the front portion of the roof structure between a height of 12’ and 16’ as well as the location of roof terrace doors.

B. Public Benefits

1. Sustainable Design. The Applicant shall submit with its building permit application a LEED checklist indicating that the Project includes sustainable design features such that the Project would be able to meet the standards for certification at a minimum of Gold rating on the LEED-CS 3.0 2009 rating system, although the Applicant is not required to seek such LEED Gold certification for the Project.

2. Community Meeting Space. The IFC shall continue to offer ANC 2A and members of the community the opportunity to use IFC's auditorium for public events. IFC will absorb the annual cost required to cover electricity, security, heating, air conditioning, and ventilation services as needed for these events. To balance the IFC's security and use concerns, the following guidelines apply to use of the auditorium:

   (a) Events shall be limited to weekday evenings (after 6:00 p.m.) and weekends;

   (b) No more than two public events per month;

   (c) Advance notice of 30-60 days prior to scheduling of a public event;

   (d) Advance notice of two weeks will be given by IFC to an external user if their event comes in conflict with important IFC business functions and the user event must be rescheduled; and

   (e) Security screening for public event participants, including magnetometer, x-ray, or bag inspection), but ID verification shall not be required. Advance notice of the names of event participants is not necessary, but providing such names within 24 hours in advance of the event will facilitate the check-in process.

3. Contributions to Community Organizations. Prior to the issuance of a building permit, the Applicant shall demonstrate that it has provided the following public benefits:

   (a) Contribute $50,000 to the Foggy Bottom/West End Village for its medical advocacy program; and

   (b) Contribute $105,881 to Cultural Tourism DC for the planning, research, and graphic design for the development of the North Loop of the Foggy Bottom Heritage Trail.

Compliance with the above conditions shall be demonstrated by letters from the recipients listed above stating that the items or services funded have been or are being provided.

4. Housing Linkage.

(a) The Applicant shall contribute to the Housing Production Trust Fund established under § 3 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802) or such other housing trust fund defined under § 2499.2 of the Zoning Regulations an amount equal to one-half of the total of: (i) $5,280,446, the assessed value of the increased commercial density less (ii) the Applicant's costs to purchase of 41,776 square feet of TDRs; and

(b) Consistent with § 2404.9 of the Zoning Regulations, not less than one-half of the required total financial contribution shall be made prior to the issuance of a building permit, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy.

C. Traffic Demand Management

1. The Applicant shall also provide the following Transportation Demand Management ("TDM") measures:

(a) Identify a TDM coordinator for planning, construction, and operations, and provide DDOT/Zoning Enforcement with annual TDM coordinator contact updates;

(b) Post all TDM commitments on IFC intranet, publicize availability to employees, and allow employees to see what commitments have been promised including providing website links to CommuterConnections.com and godcgo.com and information regarding nearby transit, carsharing, and bikesharing services on the IFC intranet); and

(c) Provide reserved spaces for carpools that are conveniently located with respect to elevators serving the building.

D. Miscellaneous

1. No building permit shall be issued for this project until the owner of the Property has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office

of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, et seq. ("Act") and this Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 29, 2014, on a motion made by Commissioner May, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On November 10, 2014, on a motion made by Commissioner Miller, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on December 5, 2014.