

District of Columbia

REGISTER

HIGHLIGHTS

- DC Council passes DC Law 20-61, Fiscal Year 2014 Budget Support Act of 2013
- Department of Health Care Finance establishes reimbursement guidelines for physical therapy and respite services
- Office of Human Rights and Relations proposes guidelines for implementing the Language Access Act for individuals with limited or no English proficiency
- Office of the State Superintendent of Education announces funding availability for the FY14 DC Physical Activity for Youth Grant
- District Department of Transportation announces funding availability for the Performance Parking Zone Community Benefits
- Public Service Commission announces public comment period for the Washington Gas Light Company's 2013 Annual Report on the Replacement and Encapsulation Program

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances (ODAI) publishes the *District of Columbia Register* (ISSN 0419-439X) (*D.C. Register*) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979 (25 DCR 6960). The policies which govern the publication of the *D.C. Register* are set forth in Title 1 of the District of Columbia Municipal Regulations, Chapter 3 (Rules of the Office of Documents and Administrative Issuances.) Copies of the Rules may be obtained from the Office of Documents and Administrative Issuances. Rulemaking documents are also subject to the requirements of the *District of Columbia Administrative Procedure Act*, District of Columbia Official Code, §§2-501 *et seq.*, as amended.

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The deadline for receiving documents from the District of Columbia Agencies, Boards, Commissions, and Public Charter schools is TUESDAY, NOON of the week of publication. The deadline for receiving documents from the District of Columbia Council is WEDNESDAY, NOON of the week of publication. If an official District government holiday falls on Monday or Friday, the deadline for receiving documents remains the same as outlined above. If an official District government holiday falls on Tuesday, Wednesday or Thursday, the deadline for receiving documents is one day earlier from the deadlines outlined above.

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Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *D.C. Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act*. The Administrator of the Office of Documents hereby certifies that this issue of the *D.C. Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act*.

DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-61

“Fiscal Year 2014 Budget Support Act of 2013”

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-199 on first and second readings May 22, 2013 and June 26, 2013, respectively. Following the signature of the Mayor on August 28, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-157 and was published in the September 6, 2013 edition of the D.C. Register (Vol. 60, page 12472). Act 20-157 was transmitted to Congress on September 20, 2013 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 20-157 is now D.C. Law 20-61, effective December 24, 2013.



PHIL MENDELSON
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

Sept. 20,23,24,25,26,27,30

Oct. 1,2,3,4,7,8,9,10,11,15,16,17,18,21,22,23,24,25,26,29,30,31

Nov. 1,4,5,6,7,8,12,13,14,15,18,19,20,21,22

Dec. 2,3,4,5,6,9,10,11,12,13,16,17,18,19,20,23

ENROLLED ORIGINAL

AN ACT
D.C. ACT 20-271

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 23, 2014

To amend the Procurement Practices Reform Act of 2010 to exempt from the act the procurements of goods and services directly related to the production of permanent supportive housing units for which the District has obligated funding and procurements by the District of Columbia Health Benefit Exchange Authority and Captive Insurance Agency through fiscal year 2018, to clarify the applicability of Council review for certain contracts as required by the District of Columbia Home Rule Act, and to make technical changes; and to amend the Health Benefit Exchange Authority Establishment Act of 2011 to make conforming amendments and require publication of the procurement policies and procedures of the District of Columbia Health Benefit Exchange Authority.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Procurement Practices Reform Exemption Amendment Act of 2014".

Sec. 2. The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

(a) Section 105(c) (D.C. Official Code § 2-351.05(c)) is amended as follows:

(1) The lead-in language is amended by striking the phrase "This act" and inserting the phrase "This act, except for section 202," in its place.

(2) Paragraph (14) is amended by striking the word "and" after the semicolon.

(3) Paragraph (15) is amended by striking the period at the end and inserting a semicolon in its place.

(4) New paragraphs (16) through (18) are added to read as follows:

"(16) The procurement of goods and services directly related to the production of permanent supportive housing units for which the District has obligated funding pursuant to an agreement between any combination of the following agencies:

Development;

"(B) District of Columbia Housing Finance Agency;

"(C) District of Columbia Housing Authority;

"(D) Department of Human Services;

"(E) Department of Behavioral Health; and

ENROLLED ORIGINAL

“(F) Any other agency that has entered into an agreement with any of the agencies listed in subparagraphs (A) through (E) of this paragraph directly related to the production of permanent supportive housing;

“(17) District of Columbia Health Benefit Exchange Authority; and

“(18) Captive Insurance Agency.”.

(b) Section 201 (D.C. Official Code § 2-352.01) is amended as follows:

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

(A) Paragraph (2) is repealed.

(B) Paragraph (3)(B) is amended by striking the word “Mental” and inserting the word “Behavioral” in its place.

(2) Subsection (b)(7) is repealed.

Sec. 3. The Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 *et seq.*), is amended as follows:

(a) Section 5(a)(5) (D.C. Official Code § 31- 3171.04(a)(5)) is amended by striking the phrase “consistent with” and inserting the phrase “and shall not be subject to” in its place.

(b) Section 7(f) (D.C. Official Code § 31-3171.06(f), is amended by striking the phrase “policies and procedures” and inserting the phrase “policies and procedures, which shall be made publicly accessible on the Authority’s website and published in the District of Columbia Register,” in its place.

Sec. 3. Sunset.

Sections 2(a)(2), (3), and (4) and 3(a) shall expire at the end of fiscal year 2018.

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.

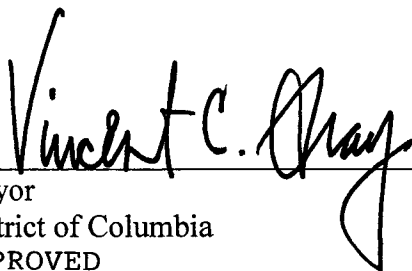
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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
January 23, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-272

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 24, 2014

To amend the Historic Landmark and Historic District Protection Act of 1978 to require that a proposed subdivision of, or demolition, alteration, or new construction on, a property owned by or under the jurisdiction of the District of Columbia government by a public charter school or other entity not part of the District of Columbia government be subject to review by the State Historic Preservation Officer.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Public Charter School Historic Preservation Amendment Act of 2014".

Sec. 2. The Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Official Code § 6-1101 *et seq.*), is amended as follows:

(a) Section 3(4A) (D.C. Official Code § 6-1102(4A)) is amended to read as follows:

"(4A) "District of Columbia undertaking" means a project of the District of Columbia government, a public charter school as defined in section 2002(29) of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1800.02(29)), or any other entity not part of the District of Columbia government, that involves or contemplates subdivision of or demolition, alteration, or new construction on a property owned by or under the jurisdiction of the District of Columbia government."

(b) Section 9b (D.C. Official Code § 6-1108.02) is amended by striking the phrase "the Deputy Mayor, head of the subordinate agency, or head of the independent agency" and inserting the phrase "the head of the District of Columbia governmental entity, public charter school, or other entity" in its place.

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, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

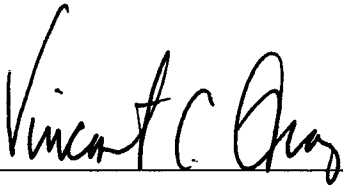
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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
January 24, 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.

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COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS

B20-639 DC Business Improvement District Economic Development Act of 2014

Intro. 01-07-14 by Councilmembers Evans and Alexander and referred to the Committee on Finance and Revenue with comments from the Committee on Business, Consumer, and Regulatory Affairs

B20-653 Closing of a Portion of a Public Alley in Square 316, S.O. 18 Act of 2014

Intro. 01-23-14 by Councilmember Evans and referred to the Committee of the Whole

B20-654 Office on Ex-Offender Affairs and Commission on Re-entry and Ex-Offender Affairs Amendment Act of 2014

Intro. 01-27-14 by Councilmember Wells and referred to the Committee on Judiciary and Public Safety

PROPOSED RESOLUTIONS

PR20-628 3825-29 Georgia Avenue, N.W. Surplus Declaration and Approval Resolution of 2014

Intro. 01-28-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

PROPOSED RESOLUTIONS CON'T

PR20-629 3825-29 Georgia Avenue, N.W., Disposition Approval Resolution of 2014

Intro. 01-28-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Economic Development

PR20-630 Foster Youth Statement of Rights Rules Approval Resolution of 2014

Intro. 01-29-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Human Services

PR20-631 East Dupont Moratorium Zone Approval Resolution of 2014

Intro. 01-29-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

COUNCIL OF THE DISTRICT OF COLUMBIA
CONSIDERATION OF TEMPORARY LEGISLATION

B20-667, “Classroom Animal Temporary Amendment Act of 2014” and **B20-669**, “Vending Regulation Temporary Amendment Act of 2014” were adopted on first reading on February 4, 2014. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on March 4, 2014.

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, N.W., Room 5 Washington, D.C. 20004. Copies of reprogramming requests are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 20-150: Request to reprogram \$1,003,520 of Fiscal Year 2014 Local funds budget authority within the District of Columbia Office on Aging (DCOA) was filed in the Office of the Secretary on January 29, 2014. This reprogramming ensures that the DCOA will be able to fund the Commodity Supplemental Food program and the Senior Farmers' Market Nutrition program, as well as hire staff needed to administer and oversee DCOA's enhanced programs and services.

RECEIVED: 14 day review begins January 30, 2014

Reprog. 20-151: Request to reprogram \$896,084 of Local funds budget authority within the Department of General Services (DGS) was filed in the Office of the Secretary on January 31, 2014. This reprogramming is needed to support the costs associated with providing heating fuel to District agencies.

RECEIVED: 14 day review begins February 3, 2014

Reprog. 20-152: Request to reprogram \$801,494 of Fiscal Year 2014 Special Purpose Revenue funds budget authority within the District Department of the Environment (DDOE) was filed in the Office of the Secretary on February 3, 2014. This reprogramming ensures that DDOE will support the implementation of the revised storm water management and erosion and sediment control regulations.

RECEIVED: 14 day review begins February 4, 2014

Reprog. 20-153: Request to reprogram \$506,049 of Fiscal Year 2014 Special Purpose Revenue budget authority within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on February 3, 2014. This reprogramming ensures that DCPS' budget is aligned with the expected programmatic outcomes for food service activities.

RECEIVED: 14 day review begins February 4, 2014

Reprog. 20-154: Request to reprogram \$1,372,861 of capital funds budget authority and allotment within the District of Columbia Public Library (DCPL) was filed in the Office of the Secretary on February 3, 2014. This reprogramming is necessary to support the ongoing design work for the renovation of the Martin Luther King Jr. Memorial Library and to fund necessary safety improvements to the exterior of the central library building.

RECEIVED: 14 day review begins February 4, 2014

Reprog. 20-155: Request to reprogram \$621,500 of Capital funds budget authority and allotment from the Deputy Mayor for Planning and Economic Development (DMPED) and the Department of Consumer and Regulatory Affairs (DCRA) to the District of Columbia Public Library (DCPL) and within DCPL was filed in the Office of the Secretary on February 3, 2014. This reprogramming is necessary to support the costs of construction of a temporary library facility.

RECEIVED: 14 day review begins February 4, 2014

Reprog. 20-156: Request to reprogram \$576,580 of Fiscal Year 2014 Local funds budget authority within the Office of the State Superintendent of Education (OSSE) was filed in the Office of the Secretary on February 3, 2014. This reprogramming ensures that OSSE's budget is aligned with the expected programmatic outcomes, obtain professional services, and reallocate additional staff for the new Career and Technical Education (CTE) Innovation initiative.

RECEIVED: 14 day review begins February 4, 2014

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF PUBLIC HEARINGS
CALENDAR**

**WEDNESDAY, FEBRUARY 12, 2014
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009**

**Ruthanne Miller, Chairperson
Members: Nick Alberti, Donald Brooks, Herman Jones
Mike Silverstein, Hector Rodriguez, James Short**

Show Cause Hearing (Status)	9:30 AM
Case # 12-CMP-00688; Hak, LLC, t/a Midtown, 1219 Connecticut Ave NW License #72087, Retailer CN, ANC 2B Sale to Minor, Failed to Take Steps Necessary to Ascertain Legal Drinking Age	
Show Cause Hearing (Status)	9:30 AM
Case # 12-CMP-00044(NCBO); 1819 14th Ventures, LLC, t/a El Centro D.F. 1819 14th Street NW, License #84847, Retailer CR, ANC 1B Failed to Comply with Board Order No. 2013-323	
Show Cause Hearing (Status)	9:30 AM
Case # 13-CMP-00342; Whiskey Black, LLC, t/a Black Whiskey, 1410 14th Street NW, License #91434, Retailer CT, ANC 2F Allowed a Patron to leave the Establishment with an Alcoholic Beverage in an Open Container, Failed to Post License in a Conspicuous Place	
Show Cause Hearing (Status)	9:30 AM
Case # 13-CMP-00451; Park Place, Inc., t/a The Park at 14 th , 920 14th Street NW, License #81276, Retailer Caterer, ANC 2F Failed to File Semiannual Caterer's Report	
Show Cause Hearing (Status)	9:30 AM
Case # 13-AUD-00003(NCBO); Astede Corporation, t/a Nile Market & Kitchen 7815 Georgia Ave NW, License #60432, Retailer CR, ANC 4B Failed to Comply With the Terms of its Offer in Compromise dated July 17, 2013.	
Fact Finding Hearing	9:30 AM
Cyril W. Smith and Warren J. Smith, t/a California Liquors, 1801 California Street NW, License #5018, Retailer A, ANC 1C License in Safekeeping	

Board's Calendar
February 12, 2014

Show Cause Hearing

10:00 AM

Case # 13-CMP-00228; R I Associates, t/a Holiday Inn Central, 1501 Rhode Island Ave NW, License #16066, Retailer CH, ANC 2B

Failed to Post Legal Drinking Age Sign, Failed to Post Pregnancy Sign

Show Cause Hearing

11:00 AM

Case # 13-AUD-00004; CSBT, Inc., t/a Town House Tavern Restaurant, 1631 R Street NW, License #24682, Retailer CR, ANC 2B

Failed to provide invoices for purchased food and alcoholic beverages,

Failed to Maintain Books and Records

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: February 7, 2014
Petition Date: March 24, 2014
Hearing Date: April 7, 2014
Protest Hearing Date: May 28, 2014

License No.: ABRA-094064
Licensee: Fresh Pizza, LLC
Trade Name: Bergami's
License Class: Retailer's Class "C" Restaurant
Address: 2350 Washington Place, NE Suite 109 N
Contact: Mark Bergami 571-257-9122

WARD 5 ANC 5C SMD 5C05

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for May 28, 2014 at 1:30 pm.

NATURE OF OPERATION

This is new quick service pizzeria. Pizza, salads, coffee, beer/wine and liquor will be served. There will be 20 tables for seating and counter service only. Will not have a wait staff for full service dining. Total # of seats is 20 and the occupancy load is 40.

HOURS OF OPERATION

Sunday 10 am - 10 pm; Monday through Thursday 6 am - 10pm
Friday 6 am - 12 am Saturday 10 am - 12 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 11 am - 10 pm
Friday through Saturday 11 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: February 7, 2014
Petition Date: March 24, 2014
Hearing Date: April 7, 2014
Protest Date: May 28, 2014

License No.: ABRA-094180
Licensee: Clover M Street, LLC
Trade Name: Café Deluxe
License Class: Retailer’s Class “C” Hotel
Address: 2201 m St. NW
Contact: Andrew Kline, Esq. 202-676-7600

WARD 2

ANC 2A

SMD 2A06

Notice is hereby given that this applicant has applied for a 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 May 28, 2014.

NATURE OF OPERATION

Hotel with 238 Rooms and total occupancy load of 1249. Restaurant with 162 seats and total load of 214. Entertainment Endorsement to include dancing and Sidewalk cafe with 60 seats.

HOURS OF OPERATION

Sunday through Thursday 7 am – 2 am and Friday & Saturday 7 am – 3am

HOURS OF ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION

Sunday through Thursday 8 am – 2 am and Friday & Saturday 8 am – 3am

HOURS OF OPERATION ON SIDEWALK CAFE

Sunday through Thursday 7 am – 2 am and Friday & Saturday 7 am – 3 am

HOURS OF ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION ON SIDEWALK CAFE

Sunday through Thursday 8 am – 2 am and Friday & Saturday 8 am – 3 am

HOURS OF ENTERTAINMENT

Sunday through Thursday 6 pm – 2 am and Friday & Saturday 6 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**NOTICE OF PUBLIC HEARING**

Posting Date: February 7, 2014
Petition Date: March 24, 2014
Hearing Date: April 7, 2014

License No.: ABRA-091887
Licensee: Gebtri, Inc.
Trade Name: Cedar Hill Bar & Grill
License Class: Retail Class "C" Tavern
Address: 2200 Martin Luther King, Jr. Avenue SE
Contact: Jermaine Matthews 240-838-1622

WARD 8

ANC 8A

SMD 8A06

Notice is hereby given that this licensee has applied for a substantial change to its 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.

Licensee requests the following substantial change to its nature of operation: Request a change of hours to its Entertainment Endorsement.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE**SALES/SERVICE/CONSUMPTION**

Sunday through Thursday 11am – 2am, Friday and Saturday 11am – 3am

HOURS OF LIVE ENTERTAINMENT OCCURING OR CONTINUING AFTER 6PM

Sunday 10am – 10pm, Monday through Thursday 4pm – 11pm, Friday 4pm-1am, Saturday 10am-1am

PROPOSED HOURS OF LIVE ENTERTAINMENT OCCURING OR CONTINUING AFTER 6PM

Sunday through Thursday 10am to 2am, Friday and Saturday 10am to 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: February 7, 2014
 Petition Date: March 24, 2014
 Roll Call Hearing Date: April 7, 2014
 Protest Hearing Date: May 28, 2014

License No.: ABRA- 094230
 Licensee: Cellar Trading, LLC
 Trade Name: Cellar Trading
 License Class: Retailer’s Class “A” Online Liquor Store
 Address: 25 Potomac Avenue SE
 Contact: Paul L. Pascal, Esq 202 -544-2200

WARD 3

ANC 3F

SMD 3F02

Notice is hereby given that this applicant has applied for a 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. The Protest Hearing Date is scheduled for 1:30 pm on May 28, 2014.

NATURE OF OPERATION

Online retailer liquor store. This location is for storage delivery only and no public access. Confirmation of identification of the purchases will be made at the time of delivery.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 8 am -8 pm

Correction

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 31, 2014

Petition Date: March 17, 2014

Hearing Date: March 31, 2014

License No.: ABRA- 021925

Licensee: Jaime T. Carrillo

Trade Name: Don Jaime

License Class: Retail Class "C" Restaurant

Address: 3209 Mt Pleasant Street, NW

Contact: Jaime Carrillo 202-232-3875

WARD 1

ANC 1D

SMD 1D04

**Notice is hereby given that this licensee has applied for a substantial change to his 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.

Licensee requests the following substantial change to its nature of operation:

Request a class change from Class CR license to Class CT license

HOURS OF OPERATION

Sunday through Thursday 7 am – 2 am and Friday & Saturday 7 am – 3 am

SALES/SERVICE/CONSUMPTION OF ALCOHOLIC BEVERAGE

Sunday 10 am – 2 am; Monday through Thursday 8 am – 2 am

Friday & Saturday 8 am – 3 am

Correction

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 31, 2014

Petition Date: March 17, 2014

Hearing Date: March 31, 2014

License No.: ABRA-060144
Licensee: Malaysian Kopitiam Inc.
Trade Name: Malaysia Kopitiam
License Class: Retailer’s Class “C” Tavern
Address: 1827 M Street, NW
Contact: Choong Phoon 202-833-6232

WARD 2

ANC 2B

SMD 2B06

**Notice is hereby given that this licensee has applied for a substantial change to this 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.

Licensee requests the following substantial change to its nature of operation:

Request for Change of Hours

HOURS OF OPERATION AND SALES/SERVICE/CONSUMPTION OF ALCOHOLIC BEVERAGE

Sunday through Thursday 11 am – 2 am and Friday & Saturday 11 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: February 7, 2014
Petition Date: March 24, 2014
Hearing Date: April 7, 2014
Protest Date: May 28, 2014

License No.: ABRA-094013
Licensee: Benti Lounge, LLC
Trade Name: Peace Lounge
License Class: Retailer's Class "C" Tavern
Address: 2632 Georgia Ave., NW
Contact: Shewakena Etana 202-390-5182

WARD 1

ANC 1B

SMD 1B03

Notice is hereby given that this applicant has applied for a 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 May 28, 2014.

NATURE OF OPERATION

Neighborhood lounge offering Ethio-American style cuisine with a seating capacity for 86 patrons. Total occupancy load of 99. The following endorsements summer garden with 13 seats and entertainment to include dancing and cover charge featuring occasional acoustics jazz band, karaoke, open mic and DJ.

HOURS OF OPERATION

Sunday through Thursday 6 am - 2 am and Friday & Saturday 6 am - 3am

HOURS OF ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION

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

HOURS OF OPERATION AND ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION ON SUMMER GARDEN

Sunday through Thursday 8 am - 12 am and Friday & Saturday 8 am - 12 am

HOURS OF ENTERTAINMENT

Sunday through Thursday 11 am - 2 am and Friday & Saturday 11 am - 3 am

Correction

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 31, 2014
Petition Date: March 17, 2014
Hearing Date: March 31, 2014
Protest Hearing Date: May 21, 2014

License No.: ABRA-093948
Licensee: Pinnacle Consumption, LLC
Trade Name: TBD
License Class: Retailer’s Class “C” Tavern
Address: 716 Monroe Street, NE
Contact: Andrew Kline 202-686-7000

WARD 5 ANC 5E SMD 5E01

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for May 21, 2014 at 1:30 pm.

NATURE OF OPERATION

This is new restaurant with a summer garden serving classic American food. No entertainment, no dancing, and no nude performances. Total # of seats is 165 and the occupancy Load is 199. Total # of summer garden seats is 48.

HOURS OF OPERATION

Sunday through Thursday 7 am – 2 am Friday through Saturday 7 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

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

HOURS OF OPERATION FOR THE SUMMER GARDEN

Sunday through Thursday 7 am – 2 am Friday and Saturday 7 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR THE SUMMER GARDEN

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

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, APRIL 1, 2014
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

9:30 A.M. MORNING HEARING SESSION

A.M.

WARD THREE

18733
ANC-3D **Application of Viva K. Goettinger**, pursuant to 11 DCMR § 3104.1, for a special exception for a two-story side addition to a one-family detached dwelling under section 223, not meeting the side yard requirements under section 405 in the R-1-B District at premises 5009 Weaver Terrace, N.W. (Square 1437E, Lot 835).

WARD TWO

18734
ANC-2B **Application of 1815 RIGGS LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the nonconforming structure provisions under subsection 2001.3, to allow an addition to an existing building for residential use in the DC/R-5-B District at premises 1815 Riggs Place, N.W. (Square 133, Lot 818).

WARD TWO

18735
ANC-2A **Appeal of NH Street Holdings LLC**, pursuant to 11 DCMR §§ 3100 and 3101, from a November 27, 2013, decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs to permit the construction of a nine story hotel in the DC/CR District at premises 2121 M Street, N.W. (Square 70, Lot 880).

WARD TWO

18737
ANC-2A **Appeal of Chadbourne & Park LLP**, pursuant to 11 DCMR §§ 3100 and 3101, from a November 27, 2013, decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs to permit the construction of a nine story hotel in the DC/CR District at premises 2121 M Street, N.W. (Square 70, Lot 880).

BZA PUBLIC HEARING NOTICE

APRIL 1, 2014

PAGE NO. 2

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4, of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

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 Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, VICE CHAIRPERSON, JEFFREY L. HINKLE AND A MEMBER OF THE ZONING COMMISSION ----- BOARD OF ZONING ADJUSTMENT, CLIFFORD W. MOY, SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **March 24, 2014 @ 6:30 p.m.**
 Jerrily R. Kress Memorial Hearing Room
 441 4th Street, N.W., Suite 220-S
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 06-42A – Further Processing of Trinity Washington University Campus Plan and Amendment of Approved 2006 Campus Plan (Square 3548, Lot 2 and Parcels 120/33 and 120/34)

THIS CASE IS OF INTEREST TO ANC 5E

Application of Trinity Washington University (Trinity) pursuant to 11 DCMR §§ 3104.1 and 210, for review and approval of the construction of the Trinity Academic Center and for amendments of the approved 2006 Campus Plan, including an amendment of the approved circulation on campus, location and density of the Academic Center, and approval for the demolition of the Science Building.

The Trinity campus is located in the R-5-A Zone District within the Diplomatic Overlay. The new Trinity Academic Center is proposed for the southwest corner of the campus, along Franklin Street and east of Michigan Avenue. It will be an 80,000 square foot housing 21 new academic classrooms, eight science laboratories and four laboratories for Nursing and Health Professions. The building will have a maximum height of 71 feet and it will increase the lot occupancy of the campus from 14% to 15% once the Science building is demolished.

PLEASE NOTE:

- Failure of the Applicant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Commission.
- Failure of the Applicant to be adequately prepared to present the application to the Commission, and address the required standards of proof for the application, may subject the application to postponement, dismissal, or denial.

The public hearing in this case will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, Zoning. Pursuant to § 3117.4 of the Regulations, the Commission will impose time limits on the testimony of all individuals.

Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 06-42A
PAGE 2

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The 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 § 3106.2.

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 |

Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 06-42A
PAGE 3

- 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. Written statements may 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.

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA NOTICE

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to the authority set forth in Section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-559 (2012 Repl.)), hereby gives notice of a correction to Section 810 (Behavior Rules Governing the Use of the District of Columbia Public Library) of Chapter 8 (Public Library), Title 19 (Amusements, Parks and Recreation), of the District of Columbia Municipal Regulations (DCMR).

Section 810 was amended by a Notice of Final Rulemaking issued by the District of Columbia Public Library and published in the *D.C. Register* on July 26, 2013 at 60 DCR 10967.

In Section 810.5(c) a typographical error was printed in subparagraph 22, prohibiting bringing into the library large duffel bags and plastic bags measuring over 12' x 36', instead of 12" x 36". This Errata Notice corrects the language as intended by the District of Columbia Public Library.

Chapter 8 (Public Library) of Title 19 (Amusements, Parks and Recreation) of the DCMR is amended as follows:

Subsection 810.5(c)(22) is amended as follows:

22. Bringing in items excluding personal items (purse, laptop, and briefcase) that occupy floor space in excess of 9" L x 14" W x 22" H. Items are measured in totality and must fit easily into a measuring box of the above dimensions. Bedrolls, blankets (except for use by babies and infants), and frame backpacks are prohibited. Bringing large duffel bags and plastic bags measuring over 12" x 36" and bringing infested personal items into the library.

Any questions or comments regarding this notice shall be addressed by mail to Victor L. Reid, Esq., Administrator, Office of Documents and Administrative Issuances, 441 4th Street, N.W., Suite 520 South, Washington, D.C. 20001, email at victor.reid@dc.gov, or via telephone at (202) 727-5090.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL 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. & 2013 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 repeal of Section 934, entitled “Physical Therapy Services” and adoption of a new Section 1928, entitled “Physical Therapy Services”, of Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement for physical therapy services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. Physical therapy services treat physical dysfunctions or reduce the degree of pain associated with movement to prevent disability, promote mobility, maintain health and maximize independence. These rules amend the previously published final rules by: (1) deleting Section 934 and codifying the rules in Section 1928; (2) specifying the service authorization requirement for physical therapy services; (3) specifying the documents to be maintained for audits and monitoring reviews; and (4) establishing administrative procedures to request additional hours for physical therapy services.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on December 27, 2013 at 60 DCR 17239. No comments were received and no changes were made. The Director adopted these rules on February 4, 2014, and they shall become effective on the date of publication in the *D.C. Register*.

Section 934 (Physical Therapy Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1928 (Physical Therapy Services) is added to Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1928 PHYSICAL THERAPY SERVICES

- 1928.1 This section establishes the conditions for Medicaid providers enumerated in § 1928.9 (“Medicaid Providers”) and physical therapy services professionals enumerated in § 1928.8 (“professionals”) to provide physical therapy services to persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver).
- 1928.2 Physical therapy services are services that are designed to treat physical dysfunctions or reduce the degree of pain associated with movement, prevent disability, promote mobility, maintain health and maximize independence.
- 1928.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) prior to providing, or allowing any professional to provide physical therapy services. In its request for prior authorization, the Medicaid provider shall document the following:
- (a) The ID/DD Waiver participant’s need for physical therapy services as demonstrated by a physician’s order; and
 - (b) The name of the professional who will provide the physical therapy services.
- 1928.4 In order to be eligible for Medicaid reimbursement, each physical therapy professional shall conduct an assessment of physical therapy needs within the first four (4) hours of service delivery, and develop a therapy plan to provide services.
- 1928.5 In order to be eligible for Medicaid reimbursement, the therapy plan shall include therapeutic techniques, training goals for the person’s caregiver, and a schedule for ongoing services. The therapy plan shall include measureable outcomes and a schedule of approved physical therapy services to be provided, and shall be submitted by the Medicaid provider to DDS before services are delivered.
- 1928.6 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person’s Individual Support Plan (ISP) and Plan of Care.
- (a) The date, amount, and duration of physical therapy services provided;
 - (b) The scope of the physical therapy services provided; and
 - (c) The name of the professional who provided the physical therapy services.
- 1928.7 Medicaid reimbursable physical therapy services shall consist of the following activities:

- (a) Consulting with the person, their family, caregivers and support team to develop the therapy plan;
- (b) Implementing therapies described under the therapy plan;
- (c) Recording progress notes and quarterly reports during each visit;
- (d) Assessing the need for the use of adaptive equipment and verifying the equipment's quality and functioning;
- (e) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines; and
- (f) Conducting periodic examinations and modified treatments for the person, as needed.

1928.8 Medicaid reimbursable physical therapy services shall be provided by a licensed physical therapist.

1928.9 In order to be eligible for Medicaid reimbursement, a physical therapist shall be employed by the following providers:

- (a) An ID/DD Waiver Provider enrolled by DDS; and
- (b) A Home Health Agency as defined in Section 1999 of Title 29 of the DCMR.

1928.10 Each Medicaid provider shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1928.11 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:

- (a) The physician's order;
- (b) A copy of the physical therapy assessment and therapy plan in accordance with the requirements of Sections 1928.4 and 1928.5; and
- (c) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.

1928.12 Each Medicaid provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of DCMR.

- 1928.13 If the person enrolled in the ID/DD Waiver is between the ages of eighteen (18) and twenty-one (21), the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefits under the Medicaid State Plan are fully utilized and the ID/DD Waiver service is neither replacing nor duplicating EPSDT services.
- 1928.14 Medicaid reimbursable physical therapy services shall be limited to four (4) hours per day and one hundred (100) hours per year. Requests for additional hours may be approved when accompanied by a physician's order documenting the need for additional physical therapy services and approved by a DDS staff member designated to provide clinical oversight.
- 1928.15 The Medicaid reimbursement rate for physical therapy services shall be sixty-five dollars (\$65.00) per hour. The billable unit of service shall be fifteen (15) minutes.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL 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. & 2013 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 repeal of Section 994, entitled “Respite Services” and adoption of a new Section 1930, entitled “Respite Services” of Chapter 19 (Home and Community-based Waiver Services for Persons with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of respite services provided to participants in the Home and Community-Based Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 15, 2013 (60 DCR 15892). Comments were received but no substantive changes have been made. The Director adopted these rules on January 31, 2014 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 994 (Respite Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1930 (Respite Services) is added to Chapter 19 (Home and Community-Based services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1930 RESPITE SERVICES

1930.1 The purpose of this chapter is to establish standards governing Medicaid eligibility for respite services for persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for respite providers.

1930.2 Respite services provide relief to a person’s family or primary caregiver to enable them to participate in scheduled or unscheduled time away from the person, and to prevent gaps in the delivery of the person’s services.

- 1930.3 Medicaid-eligible respite services shall:
- (a) Consist of daily or hourly respite;
 - (a) Be authorized by the person's support team and provided in accordance with the ISP and Plan of Care; and
 - (b) Be provided to persons who live in their own home, or their families' home.
- 1930.4 To be eligible for Medicaid reimbursement, providers shall ensure that each person receives hands-on supports including, but not be limited to, the following areas:
- (a) Assistance with activities of daily living;
 - (b) Ensuring access to community activities, including coordination and provision of transportation to participate in community activities consistent with the person's ISP and Plan of Care to allow the person's routine not to be interrupted; and
 - (c) Monitoring of the person's health and physical condition, as well as assistance with medication administration or other medical needs.
- 1930.5 Medicaid reimbursable daily respite services shall be provided by:
- (a) A Group Home for a Person with an Intellectual Disability (GHPID) meeting the requirements set forth in Chapter 35 of Title 22 of the DCMR and certified as an intermediate care facility for persons with intellectual disabilities in accordance with the federal conditions of participation;
 - (b) A Department on Disability Services (DDS) certified Residential Habilitation Services facility; or
 - (c) A DDS certified Supported Living Residence operated by a provider who has an approved human care agreement with DDS that stipulates the conditions for accepting respite placements.
- 1930.6 Medicaid reimbursable hourly respite services shall be provided by a home care agency licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*) in accordance with the requirements of Chapter 39 of Title 22-B of the DCMR.
- 1930.7 To be eligible for Medicaid reimbursement all respite providers shall:

- (a) Be certified by DDS as a Respite Provider Agency pursuant to the DDS Provider Certification Review Policy; and
 - (b) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.
- 1930.8 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.
- 1930.9 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of the DCMR.
- 1930.10 To be eligible for Medicaid reimbursement, each Direct Support Professional (DSP) providing respite services shall comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.
- 1930.11 Medicaid reimbursement is not available if respite services are provided by the following individuals or provider:
- (a) The person's primary caregiver;
 - (b) A spouse, parent of a minor child, or legal guardian of the person receiving respite services; or
 - (c) A provider already receiving reimbursement for the general care of the person.
- 1930.12 A relative not listed under Section 1930.11(b), including the person's sibling, aunt, uncle, or cousin, may deliver respite services if they meet the DSP requirements referenced under Section 1930.10 and are employed and trained by the respite provider.
- 1930.13 Medicaid reimbursement is not available for respite services when those services are provided to persons receiving Supported Living, Host Home or Residential Habilitation Services.
- 1930.14 Medicaid reimbursement for hourly respite services shall be nineteen dollars and ninety six cents (\$19.96) per hour and shall be limited to seven hundred twenty (720) hours per calendar year.
- 1930.15 The limitation set forth in § 1930.14 may be extended in situations when the primary caretaker is hospitalized or otherwise unable to continue as a primary caretaker and may only be extended until other arrangements are made for the person.

- 1930.16 Any request for reimbursement of hours in excess of seven hundred and twenty (720) shall be submitted to DDS for approval and include a justification and supporting documentation.
- 1930.17 To be eligible for Medicaid reimbursement, hourly respite services billed on the same day cannot exceed the reimbursement rate for daily respite services.
- 1930.18 Medicaid reimbursement for daily respite services shall be three hundred ten dollars (\$310) per day and shall be limited to thirty (30) days per calendar year.
- 1930.19 Daily respite service may be extended in situations when the primary caretaker is hospitalized or otherwise unable to continue as a primary caretaker and may only be extended until other arrangements are made for the person.
- 1930.20 Any request for hours in excess of thirty (30) calendar days shall be submitted to DDS for approval and include a justification and supporting documentation.

CHILD AND FAMILY SERVICES AGENCY**NOTICE OF PROPOSED RULEMAKING**

The Director of the Child and Family Services Agency (CFSA), pursuant to Section 372 of the Prevention of Child Abuse and Neglect Act of 1977 (Act), as amended, effective April 23, 2013 (D.C. Law 19-276; 60 DCR 2060) and Mayor's Order 2013-145, dated August 8, 2013, hereby gives notice of her intent to adopt the following amendments to Chapters 60 (Foster Homes) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of notice in the *D.C. Register*, and following approval of the rules by the D.C. Council.

The purpose of the amendments is to implement provisions of the Act regarding the care and treatment of foster youth. However, these amendments do not establish any additional private right of action beyond that which already exists under federal or District law. The implementation of specific rights and responsibilities shall be consistent with each foster child's health, welfare, age, and level of development.

Pursuant to the § 372(c) of the Act, the proposed rules will also be transmitted to the Council for approval of the rules by resolution within the forty-five (45) day review period.

Chapter 60, FOSTER HOMES, of Title 29, PUBLIC WELFARE, of the DCMR is amended as follows:

Section 6004.1 is amended to read as follows:

6004.1 The following principles and rights are to govern the care and treatment of foster children.

Each child is:

- (a) To receive (or have his or her legal representative or guardian *ad litem*) a printed copy of this section.
- (b) To be treated with fairness, dignity, and respect.
- (c) To receive appropriate and reasonable adult guidance, support, and supervision, consistent with his or her age and level of development.
- (d) Not to be abused, mistreated, threatened with harm, harassed, subjected to corporal punishment or other unusual or extreme methods of discipline.
- (e) Not to be denied the opportunity to have visits, telephone calls, or mail contact with his or her family members, social workers, guardian *ad litem*, or attorney, as a form of discipline.

- (f) To receive language translation in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).
- (g) Not to be subjected to discrimination as provided in the D.C. Human Rights Act of 1977, as amended, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*)
- (h) As appropriate and consistent with his or her age and level of development, to know the reason he or she came into foster care and his or her permanency goal.
- (i) As appropriate for his or her age and level of development, to be informed of decisions made on his or her behalf by the Agency and have the opportunity to participate in meetings where decisions are being made regarding him or her.
- (j) To receive a social security card, state or District identification card, and available copies of his or her birth certificate, immunization records, medical insurance information, health records, education records, and immigration documents at least 30 days before leaving care. If the foster child is not 18 years of age, copies of these documents will be given to his or her guardian *ad litem* and legal guardian.
- (k) To receive assistance in opening an individual interest bearing savings account in a financial institution that is federally insured, as appropriate and consistent with his or her age and level of development.
- (l) To have his or her records and personal information kept confidential and disclosed only in accordance with law.
- (m) To have reasonable privacy with respect to his or her person and property and when using the telephone and computer.
- (n) To receive reasonable accommodation to attend religious services, events, and activities of his or her choice.
- (o) Not to be coerced into attending religious services, events, or activities against his or her belief.
- (p) To reside in a foster home that is maintained in a safe, sanitary condition with reasonable measures being taken to keep it free from rodent and insect infestation.

- (q) To be permitted to bring personal belongings into foster care, acquire them while in care and take these belongings when he or she changes placements or exits foster care.
- (r) Subject to the availability of appropriate placements, to be placed with all or some siblings unless the placement is precluded by court order or not appropriate to the safety, best interest, or needs of the children.
- (s) To have visitation and communication with parents and siblings consistent with applicable court orders and reasonable, age and clinically appropriate visitation and communication with other relative or friends.
- (t) To have opportunities for continued connections with his or her family and others with whom he or she has meaningful relationships unless such a connection would be harmful to his or her safety or is precluded by court order.
- (u) To have the contact information of his or her current social worker, guardian *ad litem*, attorney and court-appointed special advocate, as applicable.
- (v) To have regular communication and visitation from his or her social worker and his or her telephone calls and emails to his or her social worker returned within a reasonable amount of time.
- (w) To receive adequate and healthy food in accordance with his or her religious beliefs and reasonable dietary preferences, including vegetarianism, or medically or specially prescribed dietary needs.
- (x) To have his or her own adequate and appropriate seasonable clothing and footwear as well as necessary uniforms and professional clothing. Depending on his or her age and level of development, he or she should have the opportunity to provide input on the choice of clothing and footwear.
- (y) To have his or her own appropriate personal hygiene items.
- (z) To receive timely, adequate, and appropriate medical, dental, vision, mental health services, and drug and alcohol abuse and addiction services.
- (aa) To have information and the opportunity to communicate a preference or concern regarding treatment, medication, and medication options, as appropriate and consistent with his or her age and level of development.
- (bb) To receive a free and appropriate public education if he or she is of compulsory school age.

- (cc) To remain in his or her school of origin and maintain school continuity, unless it is contrary to his or her best interests or is inconsistent with the provision of special services to the child.
- (dd) Be permitted to participate in school-related extracurricular and recreational activities, and receive appropriate educational supports, as appropriate and consistent with his or age and her level of development.
- (ee) To receive post-secondary education, job readiness, and vocational training support, as needed.
- (ff) To receive timely notice of and have the ability to attend and be heard at court hearings relating to his or her case, as applicable and consistent with his or her age and level of development.
- (gg) To be represented by a guardian *ad litem* subject to the order of appointment by the Superior Court.
- (hh) To be permitted to request the court to appoint an attorney to represent his or her interest.
- (ii) To participate in the development of service plans and a transition plan that includes or addresses specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports, and employment services as applicable, consistent with his or her age and level of development and the availability of such program services.
- (jj) To be provided with opportunities to participate in age appropriate independent living activities and programs.
- (kk) To receive assistance in applying for a state identification card or driver's license.
- (ll) To be considered for limited financial assistance for a driver's education program at age 18, as funding allows if he or she has demonstrated the maturity and personal, social, and educational responsibility necessary for the operation of a motor vehicle.
- (mm) To receive a copy of consumer credit report annually at age 16 and assistance in interpreting and attempting to resolve any inaccuracies in the report as required by 42 U.S.C. § 675(5)(I).
- (nn) To be provided reasonable transportation to and from normal daily activities, including school, after school activities, medical appointments,

employment, family visitation, religious events, cultural events, and activities, as funding allows, included in his or her case plan or service plan.

- (oo) To be permitted to report concerns under this section or concerns regarding care, placement, and services to the Agency and to be free from retaliation or threats of retaliation for reporting a concern.
- (pp) To receive an explanation of the process for reporting concerns to the Agency and receive a timely response when a concern is reported to the Agency.

Section 6004.3 is amended to read as follows:

6004.3 This section does not establish any additional private right of action beyond that which already exists under federal or District law.

Chapter 62 (Licensing of Youth Shelters, Runaway Shelters, Emergency Care Facilities, and Youth Group Homes) is amended as follows:

Section 6203 (Statement of Resident's Rights and Responsibilities) is amended to read as follows:

6203.1 A resident in a facility not intended exclusively for children who have been abused or neglected has the following rights. The facility shall conspicuously post the "Statement of Residents' rights and Responsibilities" in the facility. This statement shall include all of the material contained in this section.

Each resident is:

- (a) To be treated with fairness, dignity, and respect.
- (b) To receive appropriate and reasonable adult guidance, support, and supervision, consistent with the resident's age and level of development.
- (c) Not to be abused, mistreated, threatened, harassed, or subjected to corporal punishment or to other unusual or extreme methods of discipline.
- (d) To have his or her opinion heard and to be included, to the greatest extent possible, and consistent with the resident's age and level of development, when any major decisions, including regular case planning meetings, are being made affecting his or her life.
- (e) To have reasonable and clinically appropriate visitation, mail, and telephone communication with relatives, friends, significant others, attorneys, social workers, therapists, and guardians *ad litem*.

- (f) To have his or her relatives and designated representatives, who are authorized in writing by the contracting entity, be able to communicate with the facility, ask questions of the facility, and have their questions answered promptly by the facility.
- (g) To have language translation, if necessary.
- (h) In accordance with the District of Columbia Human Rights Act of 1977, as amended, effective December 13, 1977 (D.C. Law 2-38, D.C. Official Code § 1-2501 *et seq.*), not to be discriminated against on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income or place of residence or business.
- (i) To have all other rights specifically set forth in this chapter.

6203.2

The following principles and rights are to govern the care and treatment of a foster child who is a resident of a facility for children who have been abused or neglected. Each such foster child is:

- (a) To receive (or have his or her legal representative or guardian *ad litem*) a printed copy of this section.
- (b) To be treated with fairness, dignity, and respect.
- (c) To receive appropriate and reasonable adult guidance, support, and supervision, consistent with his or her age and level of development.
- (d) Not to be abused, mistreated, threatened with harm, harassed, subjected to corporal punishment or other unusual or extreme methods of discipline.
- (e) Not to be denied the opportunity to have visits, telephone calls, or mail contact with his or her family members, social workers, guardian *ad litem*, or attorney, as a form of discipline.
- (f) To receive language translation in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).
- (g) Not to be subjected to discrimination as provided in D.C. Human Rights Act of 1977, as amended, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*).

- (h) As appropriate and consistent with his or her age and level of development, to know the reason he or she came into foster care and his or her permanency goal.
- (i) As appropriate for his or her age and level of development, to be informed of decisions made on his or her behalf by the Agency and have the opportunity to participate in meetings where decisions are being made regarding him or her.
- (j) To receive a social security card, state or District identification card, and available copies of his or her birth certificate, immunization records, medical insurance information, health records, education records, and immigration documents at least 30 days before leaving care. If the foster child is not 18 years of age, copies of these documents will be given to his or her guardian *ad litem* and legal guardian.
- (k) To receive assistance in opening an individual interest bearing savings account in a financial institution that is federally insured, as appropriate and consistent with his or her age and level of development.
- (l) To have his or her records and personal information kept confidential and disclosed only in accordance with law.
- (m) To have reasonable privacy with respect to his or her person and property and when using the telephone and computer.
- (n) To receive reasonable accommodation to attend religious services, events, and activities of his or her choice.
- (o) Not to be coerced into attending religious services, events, or activities against his or her belief.
- (p) To reside in a facility that is maintained in a safe, sanitary condition with reasonable measures being taken to keep it free from rodent and insect infestation.
- (q) To be permitted to bring personal belongings into foster care, acquire them while in care and take these belongings when he or she changes placements or exits foster care.
- (r) Subject to the availability of appropriate placements, to be placed with all or some siblings unless the placement is precluded by court order or not appropriate to the safety, best interest or needs of the children.

- (s) To have visitation and communication with parents and siblings consistent with applicable court orders and reasonable, age and clinically appropriate visitation and communication with other relative or friends.
- (t) To have opportunities for continued connections with his or her family and others with whom he or she has meaningful relationships unless such a connection would be harmful to his or her safety or is precluded by court order.
- (u) To have the contact information of his or her current social worker, guardian *ad litem*, attorney and court-appointed special advocate, as applicable.
- (v) To have regular communication and visitation from his or her social worker and his or her telephone calls and emails to his or her social worker returned within a reasonable amount of time.
- (w) To receive adequate and healthy food in accordance with his or her religious beliefs and reasonable dietary preferences, including vegetarianism, or medically or specially prescribed dietary needs.
- (x) To have his or her own adequate and appropriate seasonable clothing and footwear as well as necessary uniforms and professional clothing. Depending on his or her age and level of development, he or she should have the opportunity to provide input on the choice of clothing and footwear.
- (y) To have his or her own appropriate personal hygiene items.
- (z) To receive timely, adequate, and appropriate medical, dental, vision, mental health services, and drug and alcohol abuse and addiction services.
- (aa) To have information and the opportunity to communicate a preference or concern regarding treatment, medication, and medication options, as appropriate and consistent with his or her age and level of development.
- (bb) To receive a free and appropriate public education if he or she is of compulsory school age.
- (cc) To remain in his or her school of origin and maintain school continuity, unless it is contrary to his or her best interests or is inconsistent with the provision of special services to the child.
- (dd) To be permitted to participate in school-related extracurricular and recreational activities, and receive appropriate educational supports, as appropriate and consistent with his or her age and level of development.

- (ee) To receive post-secondary education, job readiness, and vocational training support, as needed.
- (ff) To receive timely notice of and have the ability to attend and be heard at court hearings relating to his or her case, as applicable and consistent with his or her age and level of development.
- (gg) To be represented by a guardian *ad litem* subject to the order of appointment by the Superior Court.
- (hh) To be permitted to request the court to appoint an attorney to represent his or her interest.
- (ii) To participate in the development of service plans and a transition plan that includes or addresses specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports, and employment services as applicable, consistent with his or her age and level of development and the availability of such program services.
- (jj) To be provided with opportunities to participate in age appropriate independent living activities and programs.
- (kk) To receive assistance in applying for a state identification card or driver's license.
- (ll) To be considered for limited financial assistance for a driver's education program at age 18, as funding allows if he or she has demonstrated the maturity and personal, social, and educational responsibility necessary for the operation of a motor vehicle.
- (mm) To receive a copy of consumer credit report annually at age 16 and assistance in interpreting and attempting to resolve any inaccuracies in the report as required by 42 U.S.C. § 675(5)(I).
- (nn) To be provided reasonable transportation to and from normal daily activities, including school, after school activities, medical appointments, employment, family visitation, religious events, cultural events, and activities, as funding allows, included in his or her case plan or service plan.
- (oo) To be permitted to report concerns under this section or concerns regarding care, placement, and services to the Agency and to be free from retaliation or threats of retaliation for reporting a concern.

(pp) To receive an explanation of the process for reporting concerns to the Agency and receive a timely response when a concern is reported to the Agency.

(qq) To be informed of the facility's grievance procedure.

6203.3 Section 6203.2 does not establish any additional private right of action beyond that which already exists under federal or District law.

6203.4 A resident shall have the following responsibilities:

(a) A resident shall accept responsibility, consistent with his or her age and level of development, for keeping his or her room(s) and possessions in good order and for completing assigned daily or weekly chores.

(b) A resident shall comply with the policies and procedures governing his or her conduct.

(c) A resident shall participate in the facility's programs and activities.

(d) A resident of school age shall attend school or other alternative education programs, except in extenuating circumstances and such circumstances shall be documented in the resident's case record.

(e) A resident shall follow appropriate minimum personal care and hygiene standards established by the facility, consistent with each resident's physical and developmental capabilities.

Chapter 63, Independent Living Programs, of Title 29, PUBLIC WELFARE, of the DCMR is amended as follows:

Section 6303.1 is amended to read as follows:

6301.1 The following principles and rights are to govern the care and treatment of residents.

Each resident is:

(a) To receive (or have his or her legal representative or guardian *ad litem*) a printed copy of this section.

(b) To be treated with fairness, dignity, and respect.

(c) To receive appropriate and reasonable adult guidance, support, and supervision, consistent with his or her age and level of development.

- (d) Not to be abused, mistreated, threatened with harm, harassed, subjected to corporal punishment or other unusual or extreme methods of discipline.
- (e) Not to be denied the opportunity to have visits, telephone calls, or mail contact with his or her family members, social workers, guardian *ad litem*, or attorney, as a form of discipline.
- (f) To receive language translation in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).
- (g) Not to be subjected to discrimination as provided in D.C. Human Rights Act of 1977, as amended, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*).
- (h) As appropriate and consistent with his or her age and level of development, to know the reason he or she came into foster care and his or her permanency goal.
- (i) As appropriate for his or her age and level of development, to be informed of decisions made on his or her behalf by the Agency and have the opportunity to participate in meetings where decisions are being made regarding him or her.
- (j) To receive a social security card, state or District identification card, and available copies of his or her birth certificate, immunization records, medical insurance information, health records, education records, and immigration documents at least 30 days before leaving care. If the foster child is not 18 years of age, copies of these documents will be given to his or her guardian *ad litem* and legal guardian.
- (k) To receive assistance in opening an individual interest bearing savings account in a financial institution that is federally insured, as appropriate and consistent with his or her age and level of development.
- (l) To have his or her records and personal information kept confidential and disclosed only in accordance with law.
- (m) To have reasonable privacy with respect to his or her person and property and when using the telephone and computer.
- (n) To receive reasonable accommodation to attend religious services, events, and activities of his or her choice.

- (o) Not to be coerced into attending religious services, events or activities against his or her belief.
- (p) To reside in a facility that is maintained in a safe, sanitary condition with reasonable measures being taken to keep it free from rodent and insect infestation.
- (q) To be permitted to bring personal belongings into foster care, acquire them while in care and take these belongings when he or she changes placements or exits foster care.
- (r) Subject to the availability of appropriate placements, to be placed with all or some siblings unless the placement is precluded by court order or not appropriate to the safety, best interest or needs of the children.
- (s) To have visitation and communication with parents and siblings consistent with applicable court orders and reasonable, age and clinically appropriate visitation and communication with other relative or friends.
- (t) To have opportunities for continued connections with his or her family and others with whom he or she has meaningful relationships unless such a connection would be harmful to his or her safety or is precluded by court order.
- (u) To have the contact information of his or her current social worker, guardian *ad litem*, attorney and court-appointed special advocate, as applicable.
- (v) To have regular communication and visitation from his or her social worker and his or her telephone calls and emails to his or her social worker returned within a reasonable amount of time.
- (w) To receive adequate and healthy food in accordance with his or her religious beliefs and reasonable dietary preferences, including vegetarianism, or medically or specially prescribed dietary needs.
- (x) His or her own adequate and appropriate seasonable clothing and footwear as well as necessary uniforms and professional clothing. Depending on his or her age and level of development, he or she should have the opportunity to provide input on the choice of clothing and footwear.
- (y) To have his or her own appropriate personal hygiene items.
- (z) To receive timely, adequate, and appropriate medical, dental, vision, mental health services, and drug and alcohol abuse and addiction services.

- (aa) To have information and the opportunity to communicate a preference or concern regarding treatment, medication, and medication options, as appropriate and consistent with his or her age and level of development.
- (bb) To receive a free and appropriate public education if he or she is of compulsory school age.
- (cc) To remain in his or her school of origin and maintain school continuity, unless it is contrary to his or her best interests or is inconsistent with the provision of special services to the child.
- (dd) To be permitted to participate in school-related extracurricular and recreational activities, and receive appropriate educational supports, as appropriate and consistent with his or age and her level of development.
- (ee) To receive post-secondary education, job readiness, and vocational training support, as needed.
- (ff) To receive timely notice of and have the ability to attend and be heard at court hearings relating to his or her case, as applicable and consistent with his or her age and level of development.
- (gg) To be represented by a guardian *ad litem* subject to the order of appointment by the Superior Court.
- (hh) To be permitted to request the court to appoint an attorney to represent his or her interest.
- (ii) To participate in the development of service plans and a transition plan that includes or addresses specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports, and employment services as applicable, consistent with his or her age and level of development and the availability of such program services.
- (jj) To be provided with opportunities to participate in age appropriate independent living activities and programs.
- (kk) To receive assistance in applying for a state identification card or driver's license.
- (ll) To be considered for limited financial assistance for a driver's education program at age 18, as funding allows if he or she has demonstrated the maturity and personal, social, and educational responsibility necessary for the operation of a motor vehicle.

- (mm) To receive a copy of consumer credit report annually at age 16 and assistance in interpreting and attempting to resolve any inaccuracies in the report as required by 42 U.S.C. § 675(5)(I).
- (nn) To be provided reasonable transportation to and from normal daily activities, including school, after school activities, medical appointments, employment, family visitation, religious events, cultural events, and activities, as funding allows, included in his or her case plan or service plan.
- (oo) To be permitted to report concerns under this section or concerns regarding care, placement, and services to the Agency and to be free from retaliation or threats of retaliation for reporting a concern.
- (pp) To receive an explanation of the process for reporting concerns to the Agency and receive a timely response when a concern is reported to the Agency.
- (qq) To be informed of the facility's grievance procedure.

A new Subsection 6303.7 is added to read as follows:

6303.7 Section 6303 does not establish any additional private right of action beyond that which already exists under federal or District law.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Lionel Sims, General Counsel, Child and Family Services Agency, 400 6th Street, S.W., Washington, D.C. 20024, at Lionel.Sims@dc.gov or online at dcregs.dc.gov. Copies of these proposed rules may be obtained without charge at the address above or online at dcregs.dc.gov.

OFFICE OF HUMAN RIGHTS

NOTICE OF SECOND PROPOSED RULEMAKING

The Director of the Office of Human Rights (“OHR Director”), pursuant to the authority set forth in Sections 2(3)(C) and 6(b)(6) of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.* (2012 Repl.)) (“Language Access Act”), and Mayor’s Order 2007-127, dated May 31, 2007, hereby gives notice of his intent to adopt an amendment to Title 4 (Human Rights and Relations) of the District of Columbia Municipal Regulations (“DCMR”).

The amendment will delete the existing Chapter 12 (Language Access Act) of Title 4 in its entirety and add a new Chapter 12 (Language Access Act), to provide guidance and assistance to District agencies and members of the public with the implementation of the Language Access Act for individuals with limited English proficiency or no English proficiency who are encountered or served by the District of Columbia government.

After the first Notice of Proposed Rulemaking on May 17, 2013 at 60 DCR 7023, the OHR Director received comments from the Consultative Agencies listed in § 1209 and the D.C. Language Access Coalition. Many of the comments were incorporated into this Second Proposed Rulemaking.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

A new Chapter 12, LANGUAGE ACCESS ACT, of Title 4, HUMAN RIGHTS AND RELATIONS, of the DCMR is added to read as follows:

CHAPTER 12 LANGUAGE ACCESS ACT

1200 SCOPE

The provisions of this chapter shall apply to all District government agencies that constitute “covered entities” and “covered entities with major public contact” as defined in Sections 2(2) and 2(3) of the Language Access Act of 2004 (D.C. Official Code § 2-1931(2) and § 2-1931(3)) (“the Act”).

1201 PURPOSE

1201.1 In order for covered entities to meet their obligations under the Act and to provide enforcement of the Act, the Office of Human Rights adopts this chapter to:

- (a) Define the roles and responsibilities of parties assigned to oversee and implement the Act;

- (b) Provide assistance with data collection on the languages spoken by limited-English proficient or non-English proficient (“LEP/NEP”) populations as required under the Act;
- (c) Provide assistance and guidance to covered entities regarding reporting requirements, and to covered entities with major public contact in implementing Biennial Language Access Plans (“BLAPs”) pursuant to § 1212; and
- (d) Set forth guidelines for the investigation of complaints filed under the Act and for enforcement of the Act.

1202 ROLE OF THE OFFICE OF HUMAN RIGHTS

- 1202.1 The Office of Human Rights (“OHR”) shall provide covered entities with oversight, central coordination, and technical assistance in their implementation of the provisions of the Act.
- 1202.2 OHR shall ensure that the delivery of services by covered entities meets acceptable standards of translation and interpretation by providing information to the Office of Contracting and Procurement (“OCP”) to assist in the development of a quality procurement process.
- 1202.3 OHR shall ensure that staff members of covered entities in public contact positions are trained regarding their legal obligations to serve limited-English proficient or non-English proficient (“LEP/NEP”) customers under the Act. These trainings shall include information on how to improve accessibility for LEP/NEP customers, including, but not limited to, the use of professional and qualified multilingual telephonic interpretation services and how to appropriately direct LEP/NEP customers to such services.
- 1202.4 OHR shall collect and publish statistical information regarding language access public complaints received by OHR, including those not assigned to an investigator. The statistical information shall be included in the Language Access Report required by § 1203.2.

1203 ROLE OF THE DIRECTOR OF THE OFFICE OF HUMAN RIGHTS

- 1203.1 The Director of the Office of Human Rights (“OHR Director”) shall designate an employee of OHR as the Language Access Director (“LA Director”) to coordinate activities under the Act. The LA Director shall carry out all job functions under the direction and supervision of the OHR Director. The OHR Director may also designate additional staff to assist the Language Access Director.
- 1203.2 The OHR Director shall prepare an annual Language Access Report and deliver it to the Mayor and the Office of the City Administrator (“OCA”) on the

deficiencies found, progress made, and overall compliance with the Act for each covered entity. The report shall be delivered to the Mayor and the OCA no later than ninety (90) days after the end of the fiscal year, and shall include:

- (a) Results of the annual implementation reports required by § 1205.3;
- (b) A summary of language-access-related data reported throughout the fiscal year to OHR by covered entities with major public contact; and
- (c) A summary of the results of audits and field tests conducted by OHR pursuant to § 1227.

1204 ROLE OF THE LANGUAGE ACCESS DIRECTOR

- 1204.1 The Language Access Director (“LA Director”) shall be responsible for coordinating activities of covered entities under the Act and for carrying out the language access responsibilities of the Office of Human Rights (“OHR”), as described in § 1202.1.
- 1204.2 The LA Director shall oversee the language access complaint procedures for the OHR.
- 1204.3 The LA Director shall conduct education and outreach regarding the Act to covered entities and community-based organizations directly serving limited-English proficient or non-English proficient (“LEP/NEP”) residents.
- 1204.5 The LA Director shall provide training resources to personnel in public contact positions for covered entities regarding compliance with the Act. The LA Director will deliver this training and/or ensure that Language Access Coordinators deliver this training to personnel either in person or via web-based resources. In addition, all District personnel shall have access to in-person or web-based training regarding compliance with the Act.
- 1204.6 The LA Director shall provide all covered entities with a policy manual that contains baseline policies and procedures that ensure agency-wide compliance with the Act.
- 1204.7 The LA Director shall issue an annual survey to all covered entities that are not designated as covered entities with major public contact. The survey shall request implementation reports addressing agency encounters with LEP/NEP constituents and available resources and/or systems in place to serve LEP/NEP customers, as required by § 1205.3.
- 1204.8 The LA Director shall review and monitor each Biennial Language Access Plan (“BLAP”) required by § 1212 for compliance with the Act. If a BLAP fails to

comply with the Act, the LA Director shall assist the agency in revising the BLAP and shall set a deadline for submission of the revised BLAP.

1204.9 The LA Director shall review covered entities’ implementation reports and provide an annual synopsis to the OHR Director on the deficiencies found and progress made in implementing the Act. The synopsis shall be included in the annual Language Access Report required by § 1203.2.

1204.10 The LA Director shall monitor the performance and responsibilities of the Language Access Coordinators as described in §1207, and of the Language Access Points of Contact as described in § 1205.17.

1204.11 The LA Director shall consult with the D.C. Language Access Coalition as specified in § 1208 and the Consultative Agencies listed in § 1209 regarding the implementation of the Language Access Act.

1204.12 The LA Director shall advise the District’s Department of Human Resources and the personnel authorities of covered entities who have independent hiring authority on issues related to the recruitment and hiring of bilingual public contact personnel.

1204.13 The LA Director shall serve as the Language Access Coordinator for OHR and shall fulfill the responsibilities listed in § 1207 for that agency.

1205 ROLES OF COVERED ENTITIES

1205.1 Pursuant to Section 2(2) of the Act, all District government agencies, departments, or programs that furnish information or render services, programs, or activities directly to the public or that contract with other entities, either directly or indirectly, to conduct programs, services or activities to the public are covered entities.

1205.2 Each covered entity shall provide written translation of vital documents into any non-English language spoken by a limited-English proficient or non-English proficient (“LEP/NEP”) population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be encountered, by the covered entity.

1205.3 At the end of each fiscal year, each covered entity shall submit an implementation report reflecting its assessment of non-English languages spoken by LEP/NEP populations constituting three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity, as well as resources available to these LEP/NEP populations.

- (a) Each covered entity shall also submit the data it relied on to make the determination of each non-English language spoken by an LEP/NEP population constituting three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity. This data shall include, but not be limited to, resources cited in Section 3(c)(1) of the Act (D.C. Official Code § 2-1932(c)(1)).
- (b) The covered entity shall provide the determination to the Language Access Director (LA Director) no later than thirty (30) days after the end of the fiscal year.
- (c) The LA Director shall evaluate whether the data submitted by the covered entity supports the covered entity's determination, and whether the data relied upon by the covered entity is sufficient and appropriate. If the LA Director concludes that a covered entity's determination is not supported by sufficient and appropriate data, the LA Director shall make a revised determination of any non-English language spoken by a LEP/NEP population that constitutes three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity. In making this determination the LA Director shall rely upon resources cited in Section 3(c)(1) of the Act (D.C. Official Code § 2-1932(c)(1)).
- (d) The covered entity may appeal a determination of the Language Access Director to the Director of the Office of Human Rights ("OHR Director").

1205.4 The covered entity shall ensure that all vital documents that are translated into a non-English language spoken by a LEP/NEP population are widely distributed within the agency, accessible at points of entry, and available online, to the extent that the same vital documents in the English language are widely distributed within the agency, accessible at points of entry, or available online.

1205.5 Each covered entity shall provide oral language services to LEP/NEP individuals who seek to access or participate in the services, programs, or activities offered by the covered entity, as further described in this chapter.

1205.6 The covered entity shall determine the type of oral language services it must provide in order for the LEP/NEP customers it serves to access or participate in the services, programs, or activities offered by the covered entity, based on the following factors, as set forth in Section 3(b)(1) of the Act (D.C. Official Code § 2-1932(b)(1)):

- (a) The number or proportion of LEP/NEP persons of the population served or encountered, or likely to be serve or encountered, by the covered entity;

- (b) The frequency with which LEP/NEP individuals come into contact with the covered entity;
- (c) The importance of the service provided by the covered entity; and
- (d) The resources available to the covered entity.

- 1205.7 Each covered entity shall provide oral language services to LEP/NEP customers who seek to access or participate in public meetings conducted by the covered entity, if the request is made at least five (5) business days in advance of the public meeting. Requests for oral language services in advance of public meetings shall be made to the covered entity's Language Access Coordinator ("LAC") or other designated point of contact, as described in § 1207, in person, by telephone, or by electronic mail.
- 1205.8 To the extent that a covered entity requires additional personnel to provide the type of oral language services needed, it shall, in consultation with its personnel authority, give preference to hiring qualified bilingual personnel into existing budgeted vacant public contact positions.
- 1205.9 In order to assist in providing oral language services to LEP/NEP customers, each covered entity shall maintain a current account (either directly or through a District-wide or multi-agency contract) with a professional and qualified multilingual telephonic interpretation service that provides immediate oral language services to LEP/NEP customers and District staff who are both within and outside of LEP/NEP target languages as determined under § 1205.6.
- 1205.10 When the services described in § 1205.9 are not reasonably sufficient to ensure access to the services provided by the covered entity, the covered entity shall provide qualified and experienced in-person interpretation services to LEP/NEP customers.
- 1205.11 Each covered entity shall update databases, applications, and tracking systems to contain fields that will capture and/or produce data about the specific languages spoken and the number of LEP/NEP customers speaking a given language in the population(s) served.
- 1205.12 Each covered entity shall work closely with OHR and the LA Director to ensure that all staff members of covered entities in public contact positions are trained regarding their legal obligations for serving LEP/NEP customers under the Act.
- 1205.13 Each covered entity shall place appropriate signs or posters communicating the availability of language accessible services at a conspicuous location within customer service location (including mobile locations) operated by the covered entity. The signs or posters shall be in the language(s) identified as those spoken by three percent (3%) or five hundred (500) individuals, whichever is less, of the

population served or encountered, or likely to be served or encountered, by the covered entity.

- 1205.14 Each covered entity shall provide oral language services to LEP/NEP customers who participate directly in an administrative hearing conducted by the covered entity.
- 1205.15 If the covered entity offers oral interpretation and/or written translation to a LEP/NEP customer and the customer refuses the interpretation or translation services, then the covered entity shall provide an OHR-promulgated waiver form to the customer. The form shall be in the language of the customer and shall confirm that the LEP/NEP customer is voluntarily waiving his or her right to free interpretation and/or translation services provided by the covered entity. The covered entity may provide an oral translation of the written text of the waiver form if a written translation is not available in the customer's language or if the customer is unable to read his or her native language.
- 1205.16 Each covered entity shall:
- (a) Ensure that contractors hired by the covered entity to carry out services, programs, or activities directly to the public collect data required by this section regarding contact with LEP/NEP customers and report this data to the covered entity on a quarterly basis, provide oral interpretation services and translate vital documents according to the same standards required of the covered entity, and train personnel on all compliance requirements;
 - (b) Ensure that any grantee that provides services under a covered entity's mandate complies with the requirements of the Act;
 - (c) Require that contractors and grantees certify in writing that the compliance requirements required by paragraphs (a) and (b) of this subsection will be satisfied by their subcontractors and sub-grantees; and
 - (d) Ensure that contractors and grantees receive language access compliance training or guidance in accordance with standards set forth by OHR. Any required training shall be provided by OHR, unless the agency agrees to provide the training and OHR approves the provision of training by the agency.
- 1205.17 Each covered entity that is not designated as a covered entity with major public contact shall designate a Language Access Point of Contact ("LAPOC"). The LAPOC shall serve as a language access information coordinator and assist in implementing all of the covered entity's requirements under the Act and these regulations. The LAPOC shall also:

- (a) Receive, maintain, update, and disseminate information regarding language access resources for the covered entity, including, but not limited to, annual distribution of the covered entity’s language access policy;
- (b) Complete the annual implementation report for the covered entity consistent with the requirements in § 1205.3; and
- (c) Attend an annual training on Language Access Act obligations and resources made available by OHR.

1205.18 Each covered entity that is not designated as a covered entity with major public contact shall respond to the annual survey issued by the LA Director pursuant to § 1204.7.

1206 ROLES OF COVERED ENTITIES WITH MAJOR PUBLIC CONTACT

1206.1 Pursuant to Section 2(3)(A) of the Act, covered entities with major public contact are covered entities whose primary responsibility consists of meeting, contracting, and dealing with the public. “Dealing” with the public refers to providing direct services to and interacting with the public.

1206.2 Covered entities with major public contact are:

- (a) The agencies listed in Section 2(3)(B) of the Act, which are as follows:
 - Alcoholic Beverage Regulation Administration;
 - Child and Family Services Agency
 - Department of Consumer and Regulatory Affairs
 - Department of Corrections
 - Department of Employment Services
 - Department of Health;
 - Department of Housing and Community Development;
 - Department of Human Services;
 - Department of Behavioral Health Department of Motor Vehicles;
 - Department of Parks and Recreation;
 - Department of Public Works;
 - District of Columbia general ambulatory and emergency care centers;
 - District of Columbia Housing Authority;
 - District of Columbia Public Library;
 - District of Columbia Public Schools;
 - Fire and Emergency Medical Services Department;
 - Homeland Security and Emergency Management Agency;
 - Metropolitan Police Department;
 - Office on Aging;
 - Office of Contracting and Procurement;

Office of Human Rights;
 Office of Planning;
 Office of Tax and Revenue; and
 Office of the People’s Counsel.

- (b) Pursuant to Section 2(3)(B) of the Act, agencies designated by the Language Access Director (“LA Director”) under the direction of the Director of the Office of Human Rights (“OHR Director”), which are as follows:

Department of General Services;
 Department of Health Care Finance;
 Department of Small and Local Business Development;
 Department of the Environment;
 Department of Transportation;
 Department on Disability Services;
 District of Columbia Lottery and Charitable Games Control Board;
 District of Columbia Public Charter Schools;
 Office of Administrative Hearings;
 Office of the Attorney General-Child Support Services Division;
 Office of the State Superintendent of Education;
 Office of the Tenant Advocate;
 Office of Unified Communications: and
 Office of Zoning.

- 1206.3 In addition to the requirements contained in this section, each covered entity with major public contact must meet all of the responsibilities for covered entities under the Act and § 1205 (other than those responsibilities that are specifically limited to covered entities without major public contact).
- 1206.4 Each covered entity with major public contact shall establish and implement a complete Biennial Language Access Plan (“BLAP”) required by § 1212 that is approved by the LA Director and published in the *D.C. Register* every two (2) years.
- 1206.5 Each covered entity with major public contact shall designate a Language Access Coordinator (LAC) who shall carry out the responsibilities described in § 1207. Each covered entity with major public contact may also work with the LA Director to establish a language access team. The functions of a language access team may include, but are not limited to, designating the covered entity’s LAC, providing translated vital documents, ascertaining served and likely to be served populations, providing for the training needs of the covered entity, and investigating complaints of non-compliance with the Act.

- 1206.6 Each covered entity with major public contact shall have all staff members in public contact positions attend either web-based or in-person training, provided by OHR, on the requirements for serving limited-English proficient or non-English proficient (“LEP/NEP”) customers under the Act and on the use of professional and qualified multilingual telephonic interpretation services and how to appropriately direct LEP/NEP customers to such services.
- 1206.7 Each covered entity with major public contact shall develop a plan to conduct outreach to LEP/NEP communities to disseminate information about the language access benefits and services offered by the covered entity as well as LEP/NEP goals stated in the covered entity’s BLAP. Outreach activities may include, but are not limited to, the following:
- (a) Conducting public meetings with reasonable advance notice to the public in locations where LEP/NEP populations are known to congregate, such as schools, community centers, or places of worship;
 - (b) Organizing events (such as fairs, community meetings, forums, and educational workshops) in LEP/NEP communities;
 - (c) Deploying mobile units to visit community centers, community based organizations, or schools;
 - (d) Disseminating information through in-language or ethnic media outlets (including local television, newspapers, and radio);
 - (e) Deploying outreach personnel to perform regular walk-throughs in LEP/NEP communities;
 - (f) Partnering with community-based organizations for the implementation of projects and/or delivery of services;
 - (g) Distributing flyers, brochures, and other printed material in diverse languages and at diverse locations;
 - (h) Disseminating information through covered entities’ websites;
 - (i) Issuing press releases in diverse languages and directing those press releases to media outlets serving LEP/NEP communities;
 - (j) Implementing a topic-specific campaign to raise awareness of a particular service or project in an LEP/NEP community;
 - (k) Sponsoring educational, informational, cultural, and/or social events in LEP/NEP communities;

- (l) Participating in LEP/NEP community events and/or meetings;
- (m) Inviting LEP/NEP community members to visit agency service site(s) and government facilities;
- (n) Cosponsoring community events with community-based organizations that serve LEP/NEP communities;
- (o) Participating in and/or cosponsoring events that target the District’s LEP/NEP communities with other District government agencies; and
- (p) Organizing regular needs assessment meetings with LEP/NEP community-based organizations.

1207 ROLE OF LANGUAGE ACCESS COORDINATORS

- 1207.1 Each Language Access Coordinator (“LAC”) shall coordinate and assist in implementing the requirements of the Act and these regulations that apply to covered entities with major public contact.
- 1207.2 Each LAC shall report directly to his or her agency director, or the director’s designee, on issues related to compliance with the Act and implementation of the Act, including budget issues related to the delivery of language access services required by the Act.
- 1207.3 Each LAC shall establish and be responsible for ensuring implementation of the agency’s Biennial Language Access Plan (“BLAP”).
- 1207.4 The LAC shall submit a quarterly report, as described in § 1214, to the LA Director regarding the agency’s implementation of its BLAP.
- 1207.5 Each LAC shall receive reports of alleged violations of the Language Access Act from individuals, Consultative Agencies, or other organizations, and shall provide the reports to the LA Director as they are received.

1208 ROLE OF D.C. LANGUAGE ACCESS COALITION

- 1208.1 The D.C. Language Access Coalition (“LA Coalition”) shall serve in an external non-governmental role consulting on the implementation of the Act.
- 1208.2 The Language Access Director (“LA Director”) shall consult with the LA Coalition on the following:
 - (a) Data collection;
 - (b) Development and modification of BLAPs;

(c) Identification of additional covered entities to be designated under the Act as covered entities with major public contact; and

(d) Overall implementation of the Language Access Act.

1208.3 Consultation pursuant to § 1209.2 requires that the LA Director:

(a) Notify the LA Coalition of activities that would significantly impact the implementation of the Act with sufficient notice so as to allow the LA Coalition to provide meaningful input; and

(b) Give reasonable consideration to the LA Coalition’s input, which may, where appropriate, lead to changes to decisions.

1209 ROLE OF THE CONSULTATIVE AGENCIES

1209.1 The following agencies shall serve as consultative bodies to the Language Access Director (“LA Director”) and the Director of the Office of Human Rights (“OHR Director”) to develop and update covered entities’ Biennial Language Access Plans (BLAPs) and assist in the implementation of the Act: the Office on African Affairs, Office of Asian and Pacific Islander Affairs, and the Office on Latino Affairs (collectively, the “Consultative Agencies”).

1209.2 The Consultative Agencies shall furnish demographic data on their respective communities to the LA Director, who shall provide the data to Language Access Coordinators (“LACs”) and Language Access Point of Contacts (“LAPOCs”).

1209.3 The Consultative Agencies shall provide outreach to limited-English proficient or non-English proficient (“LEP/NEP”) communities in the District on the Act and assist the LACs to develop and implement outreach efforts.

1209.4 The Consultative Agencies shall assist OHR in the development of quality control instruments in their respective languages.

1209.5 The Consultative Agencies shall provide technical assistance to the Department of Human Resources and the personnel authorities of covered entities with independent hiring authority (collectively, “personnel authorities”) regarding issues related to the recruitment and hiring of bilingual public contact personnel.

1209.6 The Consultative Agencies shall assist their constituents with language access concerns by first referring the concern to the LAC or LAPOC of the covered entity in question. If the concern is not addressed by the covered entity, the consultative agency shall refer the concern to the LA Director.

1210 ROLE OF PERSONNEL AUTHORITIES FOR COVERED ENTITIES

1210.1 The personnel authority for each covered entity shall develop strategies for recruiting and maintaining bilingual personnel, including assessing the non-English language abilities of all future and current District personnel who both self-identify as bilingual and apply for or currently fill an employment position designated as “bilingual” or “bilingual preferred.”

1210.2 Pursuant to § 1205.8, the personnel authority shall assist the staff of covered entities in assessing the covered entity’s budgeted vacant public contact positions and classifying identified positions as “bilingual” or “bilingual preferred.”

1211 BASELINE ASSESSMENTS

1211.1 Prior to implementing its first Biennial Language Access Plan (“BLAP”), each covered entity with major public contact shall complete a baseline assessment of its compliance with the Act. The baseline assessment shall include a description of current service interaction with limited-English proficient or non-English proficient (“LEP/NEP”) communities, current outreach activities to LEP/NEP communities, resources available to personnel serving LEP/NEP customers (such as translation and interpretation services and translated documents), and the number and position titles of current staff that self-identify as bilingual. The baseline assessment information shall be provided to the Language Access Director (“LA Director”) and included in the covered entity’s initial BLAP.

1211.2 Upon the completion of each two (2)-year BLAP cycle, each covered entity with major public contact shall update the information in the prior assessment with current information. The updated information shall be included in the covered entity’s BLAP.

1211.3 The Language Access Coordinator (LAC) for each covered entity with major public contact shall facilitate the work required for completing the baseline assessments within the agency, as well as complete and submit the assessments to the LA Director.

1211.4 The LA Director shall meet with each LAC and respective agency director or designee to review the agency’s baseline assessment.

1212 BIENNIAL LANGUAGE ACCESS PLAN

1212.1 A covered entity with major public contact shall establish a Biennial Language Access Plan (“BLAP”). Each BLAP shall be established in consultation with:

- (a) The Language Access Director (“LA Director”);
- (b) The D.C. Language Access Coalition;

- (c) The covered entity's Language Access Coordinator ("LAC");
- (d) The covered entity's Director; and
- (e) The Consultative Agencies.

1212.2 Each BLAP shall set forth, at a minimum, the following:

- (a) The types of oral language services that the covered entity will provide and a description of how the covered entity made this determination;
- (b) Which languages are spoken by a limited-English proficient or non-English proficient ("LEP/NEP") population that constitutes three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered or likely to be served or encountered by the covered entity, and how the covered entity made this determination;
- (c) The titles and types of each document that the covered entity will provide in translation and a description of how the covered entity made this determination;
- (d) The total number of public contact positions in the covered entity, the number of bilingual employees in public contact positions, and the languages spoken by the bilingual employees identified on the list;
- (e) The number, position, and location of bilingual employees the covered entity plans to hire in public contact positions;
- (f) The names, titles and contact information of members of the covered entity's language access team, if one has been established pursuant to § 1206.5;
- (g) An evaluation of the language access services provided, the language access data collection systems in place, and whether the goals stated in the previous BLAP were met;
- (h) A policy, administrative issuance, or procedures and guidelines that inform personnel of the protocols to follow when an LEP/NEP customer requests language assistance, and provide direction regarding other language access compliance requirements.
- (i) A plan to conduct outreach to the District's LEP/NEP communities served or likely to be served by the covered entity;
- (j) A plan to provide training to employees in public contact positions about the covered entity's legal obligations under the Act, and to develop

cultural competency skills to support them in providing quality customer service to LEP/NEP customers; and

- (k) A description of the budgetary resources with which the covered entity will implement the BLAP.

1212.3 Each BLAP shall be subject to approval by the LA Director. The LA Director shall meet with each LAC and respective agency director to review draft agency BLAPs prior to approval of the BLAP. The LA Director shall consult resources including but not limited to those listed in Section 3(c)(1) of the Act (D.C. Official Code § 2-1932(c)(1) (2012 Repl.) to verify the identification of the languages which are spoken by a LEP/NEP population that constitutes three percent (3%) or five hundred (500) individuals, whichever is less, of the population served or encountered, or likely to be served or encountered by the covered entity.

1212.4 A covered entity with major public contact shall complete its initial BLAP after completion of the baseline assessments, within a time period designated by the LA Director.

1212.5 Each BLAP shall be updated every two (2) fiscal years.

1212.6 The LA Director shall report to the Director of the Office of Human Rights (“OHR Director”) the failure by any covered entity with major public contact to submit a BLAP in a timely manner. The OHR Director shall include a list of these failures in the OHR Director’s annual Language Access Report to the Office of the City Administrator.

1213 QUARTERLY REPORTS

1213.1 Each covered entity with major public contact shall submit to the Language Access Director (“LA Director”) a quarterly report describing its progress in implementing the covered entity’s Biennial Language Access Plan (“BLAP”) within thirty (30) days after the end of each quarter of the fiscal year.

1213.2 Each quarterly report shall:

- (a) Provide the status of all tasks required of the covered entity with major public contact in accordance with its BLAP and requirements of the Act; and
- (b) Report the number of complaints received during the quarter in question and the steps taken to resolve each complaint.

1213.3 Failure to submit quarterly reports in a timely manner shall be reported to the

Director of the Office of Human Rights (“OHR Director”), and such failure shall be included in the OHR Director’s annual Language Access Report to the Office of the City Administrator (“OCA”), required by § 1203.2.

1214 ANNUAL REPORT

1214.1 Each covered entity with major public contact shall submit to the Language Access Director (“LA Director”) an annual language compliance and progress report. The report shall be submitted within sixty (60) days after the end of each fiscal year.

1214.2 The annual report shall be submitted in such a form as may be designated by the LA Director and shall contain the following information regarding entities with major public contact:

- (a) The total number of limited-English proficient or non-English proficient (“LEP/NEP”) individuals served or encountered by the entity during the fiscal year (delineated by language);
- (b) The total number of all individuals served or encountered by the entity during the fiscal year;
- (c) A list of vital documents that have been translated into non-English languages by the entity and the specific non-English languages into which they have been translated;
- (d) A description of oral language services offered by or through the entity;
- (e) An itemized list of funds expended by the entity for language access purposes;
- (f) A list of the bilingual staff employed in public contact positions by the entity;
- (g) A list of the covered entity with major public contact’s contractors and grantees, as described in §§ 1205.16, and the status of their compliance with the Act;
- (h) The number of waiver forms signed in accordance with the provisions in § 1205.15;
- (i) The number of language access complaints received during the course of the fiscal year and the steps taken to resolve those complaints; and

- (j) A description of actions taken by the entity to improve the delivery of services to LEP/NEP customers and a description of any remaining challenges in providing services to LEP/NEP customers.

1214.3 The LA Director shall report failures to fulfill the criteria set forth in § 1214.2 to the Director of the Office of Human Rights (“OHR Director”), and the OHR Director may include a list of these failures in the OHR Director’s annual Language Access Report to the OCA required by § 1203.2

1214.4 The LA Director shall provide copies of the annual reports to the D.C. Language Access Coalition and the Consultative Agencies.

1214.5 Annual reports shall be made available to the public within thirty (30) days of a request.

1215 INQUIRIES, REQUESTS FOR ASSISTANCE, AND PUBLIC COMPLAINTS OF NONCOMPLIANCE WITH THE LANGUAGE ACCESS ACT

1215.1 The Office of Human Rights (“OHR”) shall receive and track all inquiries and requests for assistance or information concerning language access. Inquiries and requests for assistance may be submitted in writing or verbally by a limited-English proficient or non-English proficient (“LEP/NEP”) customer or an individual or third party acting on the customer’s behalf. Each inquiry or request shall be addressed and resolved by the Language Access Director (“LA Director”) and documented in accordance with the OHR Standard Operating Procedures Manual.

1215.2 OHR shall accept information concerning alleged violations of the Act through the filing of a public complaint.

1215.3 The filing of a public complaint alleging noncompliance with the Act does not supersede or preclude the filing of a complaint alleging intentional illegal discrimination under the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38, D.C. Official Code § 2-1401.01 *et seq.*). Discrimination complaints shall be filed in accordance with the procedures in Chapters 1 and 7 of Title 4 of the District of Columbia Municipal Regulations.

1216 FILING OF PUBLIC COMPLAINTS

1216.1 The procedures in this section apply to the filing of a public complaint alleging a violation of the Act.

1216.2 Any person or organization may file with the Office of Human Rights (“OHR”) a public complaint alleging a violation of the Act. If a complainant lacks capacity,

the public complaint may be filed on his or her behalf by a person or organization with an interest in the welfare of the complainant.

- 1216.3 The public complaint may be submitted in writing on a complaint form promulgated by OHR, online via the OHR's website, verbally to an OHR staff member by telephone or in person, or through a covered entity.
- 1216.4 If a covered entity receives a public complaint, the covered entity shall forward the complaint to the Language Access Director ("LA Director").
- 1216.5 A public complaint may request an investigation into individual or systemic noncompliance with the Act.
- 1216.6 A public complaint shall be deemed filed when OHR receives a statement sufficiently precise to identify the parties and to describe generally the action or practice complained of.
- 1216.7 The LA Director shall commence the investigation process on his or her own initiative whenever he or she has reason to believe that an agency covered under the Act, or an employee of such an agency, has failed to comply with the Act.
- 1216.8 A public complaint shall be processed by OHR in accordance with OHR's Standard Operating Procedures Manual. The LA Director shall administer or supervise the investigation and resolution of the complaint.
- 1216.9 If the alleged act(s) of noncompliance was committed by OHR, the complaint shall be brought before the Office of the City Administrator ("OCA"), or an agency or person designated by OCA, for review and investigation.

1217 DISMISSAL FOR LACK OF JURISDICTION

- 1217.1 Prior to investigating a complaint, the Language Access Director ("LA Director") shall determine, based on the face of the complaint, whether the following jurisdictional requirements have been met:
- (a) The public complaint has been filed with the Office of Human Rights ("OHR") within one (1) year of the occurrence of the alleged act of noncompliance or the discovery of the alleged act of non-compliance, whichever occurs later; and
 - (b) The respondent is identified as a covered entity, a covered entity with major public contact, or a grantee or contractor of a covered entity or a covered entity with major public contact.
- 1217.2 The LA Director shall perform the jurisdictional review required by this section within two (2) business days after the complaint is received by the LA Director.

1217.3 If the LA Director determines that the jurisdictional requirements of Subsection 1217.1 have not been met, the LA Director shall issue an order dismissing the complaint without an investigation. The order shall be issued promptly after the jurisdictional review has been completed.

1217.4 No complaint shall be assigned to an investigator until the jurisdictional review required by this section has been completed.

1217.5 If at any time after an informal resolution process or investigation has begun the LA Director determines that the jurisdictional requirements of this section have not been met, the LA Director shall promptly issue an order dismissing the complaint on jurisdictional grounds.

1218 ADMINISTRATIVE DISMISSALS

1218.1 The Language Access Director (“LA Director”) shall dismiss a public complaint without prejudice for the following administrative reasons:

(a) The complainant has failed to respond to the Office of Human Rights (“OHR”) or cannot be reached by OHR;

(b) The complaint fails to state a claim of noncompliance with the Act.

1218.2 An Order dismissing a complaint for an administrative reason shall state the reason for the dismissal in writing, and shall be served on the parties.

1219 WITHDRAWAL OF COMPLAINTS

1219.1 A public complaint may be voluntarily withdrawn at the request of the complainant at any time before a final decision and order is issued pursuant to § 1223. The circumstances of a withdrawal may be investigated by the Language Access Director (“LA Director”).

1220 REOPENING OF WITHDRAWN OR ADMINISTRATIVELY DISMISSED COMPLAINTS

1220.1 A complainant may request that a complaint previously dismissed for an administrative reason or voluntarily withdrawn be reopened, provided that the complainant submits a written request within thirty (30) days after receiving the order dismissing the complaint and states specifically the reasons why the complaint should be reopened.

1220.2 The Language Access Director (“LA Director”), upon receipt of a request to reopen a complaint, may, within his or her discretion, reopen the case for good reason or in the interest of justice.

1220.3 The decision of the LA Director to reopen a complaint shall be served on all parties to the complaint.

1221 RESOLUTION OF COMPLAINTS PRIOR TO INVESTIGATION

1221.1 The Language Access Director (“LA Director”) shall attempt to resolve a public complaint with the covered entity against which the complaint was filed before assigning the complaint for investigation by:

- (a) Working with the covered entity to ensure the complainant, within a reasonable period of time, receives the information and language access services they are seeking from the covered entity or, alternatively, working to develop a solution that is acceptable to the complainant, the covered entity, and the LA Director; or
- (b) Allowing the covered entity to acknowledge its non-compliance with the Act rather than be subject to an investigation. In such cases, the LA Director shall find the covered entity in noncompliance, and shall use the information acquired during the Office of Human Rights (OHR) intake procedure to fashion and issue an order as described in Section 1223.

1221.2 If a complaint is not resolved pursuant to § 1221.1(a) or (b) within forty-five (45) days after the complaint was filed, the complaint shall be assigned to an OHR investigator.

1222 INVESTIGATION

1222.1 Upon assignment of the case to an investigator, the investigator shall serve a copy of the public complaint by electronic mail to the director and Language Access Point of Contact (“LAPOC”) or Language Access Coordinator (“LAC”) of the covered entity that is the subject of the complaint (the “Respondent”).

1222.2 The investigation may include site visits, interviews of witnesses, and inspection of Respondent’s records.

1222.3 After receiving all requested documents from the Respondent, the investigator shall provide the Complainant with an opportunity to rebut relevant information submitted by the Respondent.

1222.4 At the completion of the investigation, the investigator shall prepare a report setting forth his or her findings. The report shall include any supporting documents.

1223 DETERMINATION AND ORDER

- 1223.1 After receiving the investigator's report, the Language Access Director ("LA Director") shall review and analyze the case and prepare a preliminary decision and order. The preliminary decision and order shall include findings of fact and conclusions of law. If there is a finding of noncompliance with the Act, the preliminary decision and order may also include requirements for remedial actions to be taken by the Respondent, including, where appropriate, providing language access services to the Complainant's and/or other limited-English proficient or non-English proficient ("LEP/NEP") individuals within a reasonable timeframe. The LA Director shall submit the preliminary decision and order to the General Counsel of the Office of Human Rights ("OHR") for review.
- 1223.2 After consultation with the LA Director, the Office of Human Rights Director ("OHR Director") shall issue a final decision and order. The final decision and order shall be issued within six (6) months of the date the complaint is filed.
- 1223.3 If Respondent does not take action required by the final decision and order within the timeframe designated in the final decision and order, Respondent's failure to act will be reported to the Office of the City Administrator ("OCA") or Office of the Mayor for further action.
- 1223.4 If the OHR Director, in consultation with the LA Director, determines that no violation of the Act has taken place, the LA Director may issue a letter to the parties stating the Respondent was found in compliance with the Act. The letter may be issued in lieu of a decision and order.

1224 RIGHTS AND RESPONSIBILITIES OF PARTIES

- 1224.1 All parties are entitled to, and shall receive, a fair and impartial investigation by the Language Access Director ("LA Director").
- 1224.2 All parties shall:
- (a) Cooperate with, and comply with all requests of, the LA Director or the Office of Human Rights ("OHR") during the investigation of the complaint; and
 - (b) Furnish OHR with the following:
 - (1) All documents, records, names of witnesses, and any other necessary information needed to investigate the complaint; and
 - (2) Current contact information.

1224.3 If a complainant fails to perform any of the duties described in § 1224.2, the LA Director may, in his or her discretion, dismiss the complaint.

1224.4 Noncompliance by the covered entity against which the complaint is filed shall be reported to the OCA for further action.

1225 RECONSIDERATION

1225.1 A Complainant may request reconsideration of a determination of compliance, or a respondent may request reconsideration of a determination of non-compliance, by submitting a written application for reconsideration to the Director of the Office of Human Rights (“OHR Director”). The application shall state specifically the grounds upon which the request for reconsideration is based.

1225.2 An application for reconsideration shall be filed with the Language Access Director (“LA Director”) within fifteen (15) calendar days after the party filing the application (the “moving party”) receives the LA Director’s final decision and order.

1225.3 After receiving an application for reconsideration, the LA Director shall send letters acknowledging receipt of the application to both the moving party and the non-moving party. The LA Director shall send with the letter to the non-moving party a copy of the application for reconsideration, and the non-moving party shall be given fifteen (15) calendar days after receipt of the LA Director’s letter to file a response.

1225.4 In considering whether to grant a motion for reconsideration, the OHR Director, in consultation with the LA Director, shall determine:

(a) Whether the moving party has:

- (1) Presented newly discovered, material facts that were not reasonably available during the OHR investigation; or
- (2) Identified a material error in the decision and order; or
- (3) Identified statements in the application which, if deemed true and accurate, would warrant modification of the final decision and order; or

(b) Whether the moving party has demonstrated that reconsideration is necessary in order to avoid an injustice.

1225.5 If, after review of a timely-filed application for reconsideration and the response to the application for reconsideration, the OHR Director, in consultation with the LA Director, concludes that the moving party has not satisfied the standards for

reconsideration set forth in § 1225.3, the OHR Director shall deny the application for reconsideration.

1225.6 If the OHR Director, in consultation with the LA Director, concludes that the application for reconsideration has satisfied the standards for reconsideration set forth in § 1225.3, the complaint shall be reopened for further investigation.

1225.7 If, at the end of further investigation and after considering the record as a whole, the OHR Director, in consultation with the LA Director, concludes that the complainant has not presented sufficient evidence to warrant a modification to the final decision and order, the final decision and order shall be affirmed, and the parties shall be notified in writing.

1225.8 If the OHR Director, in consultation with the LA Director, determines, after further investigation, that the final decision and order should be modified, the LA Director shall issue a final decision and order on reconsideration, which shall include a detailed written basis for the modification of the final decision and order. The final decision and order on reconsideration shall be transmitted to both parties.

1226 APPEALS

1226.1 An appeal from a final decision and order or a final decision and order on reconsideration may be filed with the District of Columbia Office of Administrative Hearings (OAH).

1226.2 The moving party shall file an appeal with the OAH within thirty (30) calendar days after the date the Office of Human Rights' final decision and order or final decision and order on reconsideration is issued.

1226.3 OAH shall adjudicate the appeal consistent with its own policies, procedures, and standards of review.

1227 AUDITS AND FIELD TESTS

1227.1 The Office of Human Rights ("OHR") shall conduct audits and field tests of covered entities, as deemed necessary, to ascertain the agency's level of compliance with the Act.

1227.2 After OHR completes each audit or field test, it shall issue a report describing the results of the audit or field test to the covered entity being audited and the Language Access Director ("LA Director"). The report shall also include a list of corrective actions that the agency should take to correct any violations or potential violations of the Act.

1227.3 The OHR Director shall include a list of negative audit findings in the OHR Director's annual report to the OCA required by § 1203.2.

1227.4 The LA Director may investigate any specific instance of noncompliance cited in an audit or field test and may issue a decision and order pursuant to §§ 1221, 1222, and 1223.

1227.5 Audits and field tests of OHR may be conducted by an agency designated by the OCA.

1299 DEFINITIONS

1299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act – the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.* (2012 Repl.)).

Administrative hearing – a hearing before a government agency or before an administrative law judge.

Biennial Language Access Plan (“BLAP”) – a two (2)-year mandatory compliance plan for each covered entity with major public contact that is to be revised and published in the *D.C. Register* biennially by the covered entity.

Bilingual employee – an employee who is certified as proficient in both the English language and a language other than English by the personnel authority of the covered entity in which the employee is employed.

Complainant – an individual, group of individuals, or organization(s) who files a public complaint alleging a violation of the Language Access Act against an agency.

Consultative Agencies – a collective term used to refer to the Office on African Affairs, Office on Asian and Pacific Islander Affairs, and Office of Latino Affairs. These agencies are referred to in Section 5(a)(2) of the Act (D.C. Official Code § 2-1934(a)(2)) as government offices that conduct outreach to communities with LEP/NEP populations.

Covered entity – a District government agency, department, or program that furnishes information or renders services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct such programs, services, or activities. The term “covered entity” does not include Advisory Neighborhood Commissions.

D.C. Language Access Coalition – the established alliance of diverse community-based organizations in the District that work with the District

government to foster and promote the civil rights of immigrant and LEP/NEP communities by advocating for meaningful language access within the District.

Interpretation – oral/verbal conversion of the meaning of a dialogue from one language to another language and vice versa. There are three (3) types of interpretation:

- (a) Sight translation, in which an interpreter reads a document written in one language and translates it orally into another language;
- (b) Consecutive interpretation, in which an interpreter translates a speaker's words orally after the speaker has stopped speaking; and
- (c) Simultaneous interpretation, in which an interpreter speaks simultaneously with the source language speaker.

Limited English Proficient (LEP) individual – an individual who does not speak English as his or her primary language and who has a limited ability to read, speak, write, or understand English.

Linguistic and cultural competency training – training that educates, informs, instructs, or provides guidance on how to provide readily available, culturally appropriate oral and written language services to LEP/NEP individuals through such means as bilingual/bicultural staff, trained interpreters, and qualified translators.

Non-English Proficient (NEP) individual – an individual who cannot speak or understand the English language at any level.

Oral language services – the provision of oral information necessary to enable LEP/NEP individuals to access or participate in programs or services offered by a covered entity. The types of oral language services include:

- (a) Commercial interpretation services, which are oral interpretation services provided by professional businesses;
- (b) Community interpretation services, in which members of a given language community serve as liaisons between monolingual speakers of their native language and English speakers;
- (c) Multilingual telephonic interpretation services, which are over-the-phone oral interpretation services that provide professionally trained and qualified interpreters in various languages;

- (d) Staff interpreter services, in which an employee who has been proven competent in oral interpretation through certification, training, or assessments offers oral interpretation.
- (e) Bilingual employee.

Personnel authority – the District of Columbia Department of Human Resources or, for covered entities with independent hiring authority, the individual or department responsible for hiring by the covered entity.

Public complaint – an administrative complaint filed with OHR or a covered entity alleging violation of the Act by a covered entity.

Public contact position – an employment position in a covered entity for which the primary responsibilities include greeting, meeting, serving, or providing information or services to the public. Public contact positions are positions that require personal contacts with the public.

Respondent – the agency against which a public complaint has been filed.

Translation – the written conversion of texts in the source language into texts written in another language, retaining the meaning and intent of the original source text and producing a culturally competent product.

Vital documents – applications and their instructions, notices, complaint forms, legal contracts, correspondence, and outreach materials published by a covered entity in a paper or electronic format including but not limited to those which inform individuals about their rights and responsibilities or eligibility requirements for benefits and participation, as well as documents that pertain to the health and safety of the public. The term “vital documents” shall include tax-related educational and outreach materials produced by the Office of Tax and Revenue, but shall not include tax forms and instructions.

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of Human Rights, Language Access Director, 441 4th Street, N.W., Suite 570N, Washington, D.C. 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.

OFFICE OF TAX AND REVENUE

NOTICE OF PROPOSED RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR) of the Office of the Chief Financial Officer, pursuant to the authority set forth in the Tax Clarity Act of 2000, effective June 9, 2001 (D.C. Law 13-305; D.C. Official Code § 47-1335 (2012 Repl.)); Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019; P.L. 109-356, D.C. Official Code § 1-204.24d (2012 Repl.)); and the Office of the Chief Financial Officer, Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of the intent to amend Section 105.13 of Chapter 1 (Income and Franchise Taxes), Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR).

The amended rules will clarify references to the Tax Clarity Act and reflect the current dollar requirement for electronic submission of payments, as well as to remove the penalty.

Section 105 of 9 DCMR provides guidance to taxpayers regarding electronic filing and payment of franchise tax. The dollar amount for which electronic payment is required has been changed by the Council several times during the last few years. This proposed regulation change in 105.11(3) reflects the current statutory requirement in D.C. Official Code § 47-4402 for electronic payments of greater than \$5000. This proposed regulation also eliminates the penalty for non-compliance in § 105.13.

OTR also gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

CHAPTER 1, INCOME AND FRANCHISE TAXES, of Title 9, TAXATION AND ASSESSMENTS, of the DCMR is amended as follows:

Subsection 105.1 is modified by deleting “Title 5 of the Act” between “under” and “shall” and replacing it with “Title 5 of the Tax Clarity Act of 2000 (hereinafter ‘the Act’).”

Subsection 105.10 is repealed in its entirety and replaced to read as follows:

105.10 Administration of Electronic [Internet] Filing: The following procedures and criteria are to be used by taxpayers in order to file and pay taxes by electronic funds transfer methods.

Subsection 105.11(a)(3) is modified by deleting “\$25,000,” between “exceed” and “and” and replacing it with “\$5000”.

Subsection 105.11(f) is modified by inserting a period after the word “charged” in the last sentence and deleting “and penalties may apply as set out in paragraph 105.13.”

Subsection 105.13 is repealed in its entirety.

Comments on this proposed rulemaking should be submitted to Rosalie Alligood, Assistant General Counsel, Office of Tax and Revenue, no later than thirty (30) days after publication of this notice in the *D.C Register*. Rosalie Alligood may be contacted by: mail at DC Office of Tax and Revenue, 1101 4th Street, SW, Suite 750, Washington, DC 20024; telephone at (202) 442-6680; or, e-mail at rosalie.alligood@dc.gov. Copies of this rule and related information may be obtained by contacting Rosalie Alligood as stated herein.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

Z.C. Case No. 13-06

(Text Amendment – 11 DCMR)

(Text Amendments Relating to Retaining Walls)

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its intent to amend § 199, Chapter 1 (Zoning Regulations), and adding a new § 413 to Chapter 4 (Residence District: Height, Area, and Density Regulations), of Title 11 (Zoning) of the District of Columbia Municipal Regulations (DCMR).

The proposed text amendments would clarify zoning regulations as they pertain to retaining walls. The text amendments define the term “retaining wall,” clarify the process for measuring retaining walls, and provide regulations for Residence Districts to determine the maximum height for retaining walls, based on: whether the wall is located between a property line and building line, whether the wall is located on a block with street frontage, and whether the wall abuts an improved alley. The text amendments permit the Board of Zoning Adjustment to grant special exception relief from these regulations for retaining walls not meeting the requirements of new § 413.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to the Zoning Regulations are proposed:

Chapter 1, THE ZONING REGULATIONS, is amended by adding the following definition to § 199 in alphabetical order:

Retaining Wall - a vertical, self-supporting structure constructed of concrete, durable wood, masonry or other material, designed to resist the lateral displacement of soil or other materials. The term shall include concrete walls, crib and bin walls, reinforced or mechanically stabilized earth systems, anchored walls, soil nail walls, multi-tiered systems, boulder walls or other retaining structures.

Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, is amended by adding a new § 413, Retaining Walls, to read as follows:

413 RETAINING WALLS

413.1 In R-1, R-2, R-3, and R-4 Districts a retaining wall may be erected in accordance with the requirements of this section.

- 413.2 The height of a retaining wall shall be determined as follows:
- (a) The height of a retaining wall is the vertical distance measured from the lowest level of the ground at the base of the wall to the top of the wall;
 - (b) When the height of a retaining wall varies, the height shall be measured at the highest point of the wall, from the lowest level of the ground at the base of the wall at that point; and
 - (c) Berms or other similar forms of intermittent terrain elevation shall not be included in measuring retaining wall height.
- 413.3 Subject to the height limitations of §§ 413.4 through 413.7, the maximum height of a retaining wall shall be six feet (6 ft.).
- 413.4 A retaining wall shall not exceed four feet (4 ft.) in height in the following locations, unless a lower height is required by §§ 413.5 and 413.6:
- (a) Along a street frontage or property line;
 - (b) Within any required side yard;
 - (c) In the R-1 Districts, within twenty-five feet (25 ft.) of the rear property line, as measured from the rear property line inward; and
 - (d) In the R-2, R-3, and R-4 Districts, within twenty feet (20 ft.) of the rear property line, as measured from the rear property line inward.
- 413.5 A retaining wall located along a street frontage on a block with adjacent existing retaining walls shall not be greater in height than the tallest adjacent existing retaining walls up to the maximum height of four feet (4 ft.).
- 413.6 A retaining wall located on any area between a property line and a building line shall not exceed a maximum height of forty-two inches (42 in.).
- 413.7 A retaining wall abutting an improved alley in the R-3 or R-4 Districts shall not exceed a maximum height of twelve feet (12 ft.).
- 413.8 Retaining walls may be tiered or terraced provided that the slope does not exceed a 2:1 horizontal to vertical ratio. The area between walls shall be pervious and may not be paved or otherwise covered with impervious materials.
- 413.9 Retaining walls not meeting the requirements of this section, may be approved by the Board of Zoning Adjustment as a special exception pursuant to § 3104.1. In addition to meeting the general conditions for being granted a special exception as set forth in that subsection, the applicant must demonstrate that conditions relating

to the building, terrain, or surrounding area would to make full compliance unduly restrictive, prohibitively costly, or unreasonable.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Ms. Schellin may also be contacted by telephone at (202) 727-6311 or by email: at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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. & 2013 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 1916, entitled “In-Home Supports”, Chapter 19 (Home and Community-based Waiver Services for Persons with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This Notice of Second Emergency and Proposed Rulemaking amends the previously published standards governing providers of in-home support services for participants enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver). These rules amend the previously published rules by: (1) establishing guidelines for family members to provide in-home supports; (2) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (3) establishing that providers shall submit quarterly reports to the Department of Disability Services (DDS) Service Coordinator no later than seven (7) business days at the end of each quarter to be consistent with the requirements in the General Provisions rulemaking; and (3) updating the definitions section.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of Waiver services. In-home supports services are essential to ensuring that persons enrolled in the Waiver continue to receive services and supports in the comfort of their own homes or family homes. By publishing this rule on an emergency basis, family members who provide in-home supports services shall reside in the same home as the person receiving the services. This new provision encourages persons to receive in-home supports from people who are more likely to understand their needs and thereby enhances the quality of services.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on August 16, 2013 at 60 DCR 11995. Numerous comments were received and taken into account in the publishing of this emergency and proposed rulemaking, which responds to the comments. The emergency rulemaking was adopted on December 23, 2013 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until April 21, 2014, 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 1916 (In-Home Supports) of Chapter 19 of Title 29, PUBLIC WELFARE of the DCMR is deleted in its entirety and amended to read as follows:

1916 IN-HOME SUPPORTS SERVICES

- 1916.1 The purpose of this section is to establish standards governing Medicaid eligibility for in-home supports services for persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of these services.
- 1916.2 In-home supports are services provided to a person to allow him or her to reside successfully at home. In-home supports include activities in which the person is assisted by a Direct Support Professional (DSP) to achieve the goals set forth in the Individual Service Plan (ISP). Services may be provided in the home or community, with the place of residence as the primary setting.
- 1916.3 To be eligible for reimbursement, in-home supports services shall be:
- (a) Included in a person's Individual Support Plan (ISP) and Plan of Care;
 - (b) Habilitative in nature; and
 - (c) Provided to a person living in one of the following types of residences:
 - (1) The person's own home;
 - (2) The person's family home; or,
 - (3) The home of an unpaid caregiver.
- 1916.4 In-home supports services include a combination of hands-on care, habilitative supports, and assistance with activities of daily living. In-home supports services eligible for reimbursement shall include the following:
- (a) Training and support in activities of daily living and independent living skills;
 - (b) Training and support to enhance community integration by utilizing community resources, including management of financial and personal affairs and awareness of health and safety precaution;
 - (c) Training on, and assistance in the monitoring of health, nutrition, and physical condition;

- (d) Training and support to coordinate or manage tasks outlined in the Health Management Care Plan;
- (e) Assistance in performing personal care, household, and homemaking tasks that are specific to the needs of the person;
- (f) Assistance with developing the skills necessary to reduce or eliminate behavioral episodes by implementing a Behavioral Support Plan (BSP) or positive strategies;
- (g) Assistance with the acquisition of new skills or maintenance of existing skills based on individualized preferences and goals identified in the In-home Supports Plan, ISP, and Plan of Care; and
- (h) Coordinating transportation to participate in community events consistent with this service.

1916.5 Each provider rendering in-home supports services shall:

- (a) Be a Waiver provider agency; and
- (b) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1916.6 Each Direct Support Professional (DSP) rendering in-home supports services shall comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.

1916.7 In-home support services shall be authorized in accordance with the following provider requirements:

- (a) The Department on Disability Services (DDS) shall provide a written service authorization before the commencement of services;
- (b) The service name and provider delivering services shall be identified in the ISP and Plan of Care;
- (c) The ISP and Plan of Care shall document the amount and frequency of services to be received;
- (d) The In-home Supports Plan, ISP, and Plan of Care shall be submitted to and authorized by DDS annually; and

- (e) The provider shall submit each quarterly review to the person's DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

1916.8 Each provider of in-home supports services shall maintain the following documents for monitoring and audit reviews:

- (a) The daily progress notes described in Section 1909 of Chapter 19 of Title 29 DCMR, which shall include the following:
 - (1) A listing of all community activities attended by the person and a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?"
 - (2) A listing of all habilitative supports provided in the home and a response to the following questions: "What supports worked well for the person?" and "What supports did not work well for the person?";
 - (3) Any special events attended, and any situation or event in the home that requires follow-up during the delivery of the in-home supports services; and
 - (4) The dates and times services are delivered.
- (b) The documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.

1916.9 Each provider shall comply with the requirements under Section 1908 (Reporting Requirements) of Chapter 19 of Title 29 DCMR and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1916.10 Each DSP providing in-home support services shall assist each person in the acquisition, retention, and improvement of skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social adaptive skills necessary to enable the person to reside in the community.

1916.11 Each DSP providing in-home supports services shall:

- (a) Be a member of the person's Support Team;
- (b) Assist with and actively participate in the development of the person's In-Home Supports Plan, ISP, and Plan of Care;

- (c) Record daily progress notes; and
 - (d) Review the person's In-home Supports Plan, ISP, and Plan of Care initially and at least quarterly, and more often as needed once the DSP initiates services.
- 1916.12 In-home supports services shall only be provided for eight (8) hours per day. DDS may authorize an increase in hours, for an additional eight (8) hours per day up to one hundred and eighty (180) days, in the event of a temporary emergency.
- 1916.13 In the event of a temporary emergency, a written justification for an increase in hours shall be submitted with the In-home Supports Plan, ISP, and Plan of Care by the provider to DDS. The written justification must include:
 - (a) An explanation of why no other resource is available;
 - (b) A description of the temporary emergency;
 - (c) An explanation of how the additional hours of in-home supports services will support the person's habilitative needs;
 - (d) A revised copy of the in-home Supports Plan, ISP, and Plan of Care reflecting the increase in habilitative supports to be provided; and
 - (e) The service authorization from the Medicaid Waiver Supervisor or other Department on Disability Services Administration designated staff.
- 1916.14 Payment for in-home supports services shall not be made for routine care and supervision that is normally provided by the family, legal guardian, or spouse.
- 1916.15 Family members who provide in-home Supports services shall comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.
- 1916.16 Family members who provide in-home supports services and reside in the same home as the person receiving services may only be paid for in home support services that are in accordance with the person's ISPs goals.
- 1916.17 In-home supports services shall not be provided to persons receiving the following residential services:
 - (a) Host Home;
 - (b) Shared Living;
 - (c) Residential Habilitation; and

- (d) Supported Living.
- 1916.18 In-home supports services may be used in combination with Medicaid State Plan Personal Care Aide (PCA) services or ID/DD PCA services, provided the services are not rendered at the same time.
- 1916.19 In-home supports services shall not be used to provide supports that are normally provided by medical professionals.
- 1916.20 In-home supports services shall be billed at the unit rate. The reimbursement rate shall be twenty dollars and eighty eight cents (\$20.88) per hour billable in units of fifteen (15) minutes at a rate of five dollars and twenty two cents (\$5.22), and shall not exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.
- 1916.21 Reimbursement for in-home supports services shall not include:
- (a) Room and board costs;
 - (b) Routine care and general supervision normally provided by the family or unpaid individuals who provide supports;
 - (c) Services or costs for which payment is made by a source other than Medicaid;
 - (d) Travel or travel training to Supportive Employment, Day Habilitation, Individualized Day Supports, or Employment Readiness; and
 - (e) Costs associated with the DSP engaging in community activities with the individuals.

Section 1999 (DEFINITIONS) is amended by adding the following:

Medical Professionals- Individuals who are trained clinicians and deliver medical services.

Comments on the emergency and proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 899 North Capitol Street, NE, Suite 6037, Washington, D.C. 20002, via telephone on (202) 442-9115, 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. & 2013 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 repeal of Section 907 and adoption, on an emergency basis, of a new Section 1927, entitled “Personal Emergency Response System Services” of Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. Personal Emergency Response System (PERS) is an electronic device that enables certain individuals at high risk for institutionalization to secure help in emergency situations. These rules amend the previously published rules by: (1) deleting Section 907 and codifying the rules in Section 1927; (2) specifying criteria for individual responders who will be in direct contact with the person receiving services; (3) specifying the documents to be maintained for monitoring and audit reviews; (4) specifying reports to be submitted to DDS; and (5) specifying the service authorization requirement for PERS services under the approved Waiver.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of PERS services. Based upon current service authorization requirements, there are insufficient safeguards in place to confirm that Medicaid providers of PERS services are taking the necessary steps to ensure that beneficiaries are receiving high quality and appropriate PERS services. Therefore, in order to ensure that the Waiver participant’s health, safety, and welfare are not threatened by the lapse in access to PERS services pursuant to the updated service authorization and delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on December 23, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until April 18, 2014, 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 these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 907 (Personal Emergency Response System) of Chapter 9(Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1927 (Personal Emergency Response System Services) is added to Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1927 PERSONAL EMERGENCY RESPONSE SYSTEM SERVICES

- 1927.1 This section establishes the conditions of participation for Medicaid providers enumerated in §§ 1927.7 and 1927.8 (“Medicaid Providers”) to provide Personal Emergency Response System (PERS) services for persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver).
- 1927.2 PERS is an electronic device that enables certain individuals at high risk for institutionalization to secure help in emergency situations by activating a system connected to the person’s phone that is programmed to signal a response when a portable “help” button is activated.
- 1927.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) prior to providing PERS services. The request for prior authorization shall include a written justification demonstrating how the services will aid the person in requesting emergency assistance because the person lives alone or is alone for significant parts of the day, or the person has no regular caregiver for extended periods of time and would otherwise require extensive routine supervision without the provision of the service.
- 1927.4 Medicaid reimbursable PERS services shall consist of the following activities:
- (a) In-home installation of equipment;
 - (b) Person, caregiver, and responder instruction on usage, and maintenance of system;
 - (c) Equipment maintenance, testing, and monitoring; and
 - (d) Twenty-four (24) hour, seven (7) day per week response center services.
- 1927.5 The PERS electronic device consists of a console or receiving base, which is connected to the person’s telephone, a portable emergency response activator or “help” button, and a response center that monitors calls.
- 1927.6 The PERS electronic device shall:
- (a) Have activation by a remote wireless device, such as a portable "help" button to allow for mobility;

- (b) Have hands-free voice-to-voice communication with the response center through the PERS console unit;
- (c) Be repaired or replaced by the provider within twenty-four (24) hours after the provider has been notified of a malfunction;
- (d) Have an emergency response activator that:
 - (1) Is activated by touch or breath and is usable by persons who have vision or hearing impairments or have a physical disability; and
 - (2) Will operate during a power failure for a minimum of twenty-four (24) hours.

1927.7 Each provider of Medicaid reimbursable PERS services shall be an approved home and community based services provider such as an emergency response center and shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1927.8 Each provider of Medicaid reimbursable PERS services shall have a current license, certification or registration with the District of Columbia as appropriate for the electronic system being purchased. Each provider shall also demonstrate knowledge of applicable standards of manufacture, design and installation.

1927.9 In order to be eligible for Medicaid reimbursement, the twenty four (24) hour seven (7) day a week emergency response center shall be monitored by trained operators capable of determining if an emergency exists and notifying emergency services and the person's responder.

1927.10 The person for whom PERS services are provided shall choose the responder who will answer emergency calls through the PERS. Responders may be relatives, friends, neighbors, or medical personnel.

1927.11 The responder who will be in direct contact with the person shall meet all of the requirements set forth in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1927.12 Each responder who will be in direct contact with the person shall have the language and communication skills to respond to emergency contacts (*i.e.*, calling 911 on behalf of the person).

1927.13 If the person chooses a medical professional to serve as a responder, the professional shall be licensed to practice medicine, registered nursing, practical nursing, or as a physician assistant in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law

6-99; D.C. Official Code § 3-1205.01), or be licensed to practice their respective profession within the jurisdiction where they provide service.

- 1927.14 Each provider of Medicaid reimbursable PERS services shall follow the Department of Disability Administration (DDA) incident reporting process within twenty four (24) hours of an emergency response. Emergency responses shall not include test signals or activations made by a person.
- 1927.15 In order to be eligible for Medicaid, all PERS equipment shall comply with applicable Federal Communication Commission laws, rules, and the applicable underwriter's Laboratories, Inc. standards.
- 1927.16 Each provider of Medicaid reimbursable PERS services shall maintain the following documents for monitoring and audit reviews:
- (a) A written report detailing, at a minimum, the date and time of each emergency response;
 - (b) Documentation verifying maintenance of the PERS equipment such as an invoice;
 - (c) A written service authorization provided by DDS; and
 - (d) Any records required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.
- 1927.17 Each provider of Medicaid reimbursable PERS services shall comply with Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) under Chapter 19 of Title 29 DCMR.
- 1927.18 Medicaid reimbursable PERS services shall only be provided in a person's personal residence and shall not be provided to persons receiving supported living services, residential habilitation services, or host home services.
- 1927.19 The billable units for PERS services shall be:
- (a) The initial installation and testing; and
 - (b) The monthly rental and service fee.
- 1927.20 Medicaid reimbursement for PERS services shall be as follows:
- (a) Fifty dollars (\$50.00) for the initial installation, training, and testing; and
 - (b) Thirty dollars (\$30.00) for the monthly rental, maintenance, and service fee.

Comments on these rules should be submitted in writing to Linda Elam, Ph.D., 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) 442-9115, 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 SECOND 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. 744; D.C. Official Code § 1-307.02 (2012 Repl.), and 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 1934, entitled “Supported Living Services,” of Chapter 19 (Home and Community-Based Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of supported living services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

This Notice of Second Emergency and Proposed Rulemaking amends the previously published standards governing providers of supported living services for participants enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver). These rules amend the previously published rules by: (1) establishing that providers of supported living services submit quarterly reports to the DDS Service Coordinator no later than seven (7) business days, instead of thirty (30) business days after the end of each quarter; (2) clarifying that the documents required to be submitted under Section 1934.6 are applicable to twenty-four (24) hour supported living with skilled nursing services; and (3) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of supported living services. The ID/DD Waiver serves some of the District’s most vulnerable residents. Supported living services are provided to persons with an assessed need for assistance with acquisition, retention, or improvement in skills related to activities of daily living, and the social and adaptive skills necessary to enable persons enrolled in the Waiver to reside and successfully participate in the community. The addition of new guidelines for the submission of quarterly reports will enable the Department of Disability Services (DDS) to oversee supported living services more frequently, and subsequently improve the quality of the overall services received by the person. In order to ensure that the residents’ health, safety, and welfare are not threatened by the lapse in enhanced quality of service delivery, it is necessary that that these rules be published on an emergency basis.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 18, 2013 at 60 DCR 14859. Comments were received and substantive changes have

been made as describe above. The emergency rules were adopted on January 2, 2014 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until May 1, 2014, 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 993 (Supported Living Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1934 (Supported Living Services) is added to Chapter 19 (Home and Community Based Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1934 SUPPORTED LIVING SERVICES

- 1934.1 The purpose of this section is to establish standards governing Medicaid eligibility for supported living services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of supported living services for Medicaid reimbursement.
- 1934.2 Supported living services are provided to persons enrolled in the Waiver who have limited informal supports and have an assessed need for assistance with acquisition, retention, or improvement in skills related to activities of daily living, and who require assistance with the development of social and adaptive skills that are necessary to enable the person to reside in the community and successfully participate in community activities.
- 1934.3 To be eligible for all Medicaid reimbursable supported living services, each person shall:
- (a) Have a documented need for assistance with acquisition, retention or improvement in skills related to activities of daily living:
 - (b) Require assistance with the development of social and adaptive skills necessary to enable the person to reside in the community and successfully participate in community activities; and
 - (c) Have an Individual Support Plan (ISP) and Plan of Care that identifies the need for supported living services.
- 1934.4 To be eligible for Medicaid reimbursement, twenty-four (24) hour one-to-one supported living services in a single occupancy supported living residence (SLR),

each person shall:

- (a) Have a history of challenging behaviors that may put others at risk;
- (b) Require intensive supports as determined by a psychological assessment which is updated annually or pursuant to a court order; and
- (c) Have a behavior support plan (BSP) that identifies the challenging behaviors and the need for one-to-one supervision that was approved by the Department on Disability Services (DDS).

1934.5 Persons eligible for Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing must have a circulatory, respiratory, gastrointestinal, or neurological condition or any other serious medical condition that requires frequent monitoring or at least hourly care.

1934.6 To be eligible for Medicaid reimbursable twenty-four (24) hour supported living with skilled nursing services, the following documents shall be required:

- (a) A physician's order or an advanced practice registered nurse's (APRN) order documenting the scope, frequency, and duration of skilled nursing services; and
- (b) A concise statement which sets forth the presenting problem that requires supported living with skilled nursing services and includes the responsibilities of the nurse.

1934.7 In order to be eligible for Medicaid reimbursable supported living periodic services in a supported living residence (SLR), each person shall:

- (a) Demonstrate a need for the acquisition, and improvement of skills related to activities of daily living and the social and adaptive skills necessary for community residence, as indicated in the ISP; and
- (b) Be willing to be supported in their own home or SLR's without twenty four (24) hour supports and supervision.

1934.8 Medicaid reimbursable supported living services shall be provided in one of the following types of residence:

- (a) An SLR owned or leased by a Waiver provider; or
- (b) A home owned or leased by the person receiving supported living services.

1934.9 In order to be eligible for Medicaid reimbursement, each provider, including an

out-of-state provider of supported living services, shall be a Waiver provider agency and meet the following requirements:

- (a) Comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR;
- (b) Provide verification of passing the DDS Provider Certification Review; and
- (c) Have at least three (3) years of experience providing in-home supports services or respite services, unless waived by DDS, when applicable.

1934.10 In addition to the requirements described under § 1934.9, each out-of-state provider shall comply with the following additional requirements to receive Medicaid reimbursement:

- (a) Remain in good standing in the jurisdiction where the program is located, if licensed or certified by the host state;
- (b) Submit a copy of the annual certification or survey performed by the host state and provider's corrective action, if applicable, to DDS; and
- (c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews.

1934.11 Medicaid reimbursable supported living services may be provided with or without transportation. Each Medicaid provider shall comply with the requirements set forth in Section 1904.5 of Title 29 DCMR, if transportation services are provided to enable persons to gain access to Waiver services and other community services and activities in a safe and efficient manner.

1934.12 If transportation services are provided by the Direct Support Professional (DSP), such that the DSP drives the person in the vehicle provided by the provider, the DSP shall meet the requirements governing transportation services set forth in Section 1904.5(j) and (k) (Provider Qualifications) of Chapter 19 of Title 29 of the DCMR.

1934.13 When Medicaid reimbursable supported living services are provided in a SLR, the SLR shall serve one (1) to three (3) related or unrelated persons. With the exception of couples who chose to share a bedroom, the number of persons in the SLR shall not exceed the number of bedrooms in the residence unless written approval from DDS is obtained.

1934.14 In order to receive Medicaid reimbursement, the Waiver provider shall include the person living in the residence in the lease, when the SLR is owned or leased by the Waiver provider, unless the person does not meet the leasing eligibility

criteria.

- 1934.15 In order to be eligible for Medicaid reimbursement, each SLR located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations and consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state.
- 1934.16 Each DSP shall meet all of the requirements set forth in Section 1906 (Requirements for Persons Providing Direct Services) of Chapter 19 of Title 29 of the DCMR.
- 1934.17 Each provider of Medicaid reimbursable supported living services shall assist persons in the acquisition, retention, and improvement of skills related to activities of daily living, and other social and adaptive skills necessary to enable the person to become a fully integrated member of their community. To accomplish these goals, the provider shall:
- (a) Use observation, conversation, and other interactions guided by a person-centered planning process to develop a functional assessment of the person's capabilities within the person's first month of service;
 - (b) Develop a support plan with measurable outcomes using the functional assessment that was developed using a person-centered planning process, the ISP and Plan of Care, and other available information;
 - (c) Develop and submit a quarterly report to the person, guardian, other members of the Support Team, and the DDS Service Coordinator describing the activities and support provided to help the person achieve identified outcomes and include progress to date; and
 - (d) Develop and implement the Health Management Care Plan, when necessary.
- 1934.18 Each provider of Medicaid reimbursable supported living services shall ensure that each person receives the level of support he/she needs for habilitation and other supports, when appropriate, which shall include, but not be limited to, support for the following categories:
- (a) Eating and food preparation;
 - (b) Personal hygiene;
 - (c) Dressing;
 - (d) Monitoring medication administration and healthcare needs;
 - (e) Communications;

- (f) Interpersonal and social skills;
- (g) Household chores;
- (h) Mobility;
- (i) Financial management;
- (j) Motor and perceptual skills;
- (k) Problem-solving and decision-making;
- (l) Human sexuality;
- (m) Opportunity for individual social, recreational, and religious activities utilizing community resources based on the person's interests, beliefs, culture, and preferences; and
- (n) Ensuring that adaptive equipment is appropriate, functioning and well maintained.

1934.19 Each provider of Medicaid reimbursable supported living services shall ensure that staff delivering day habilitation, employment readiness, or supported employment services shall receive training about the person's health care needs as identified by the nurse, and are informed about any needs identified in the person's Health Management Care Plan and BSP.

1934.20 Each provider of Medicaid reimbursable supported living services shall ensure that each person enrolled in the Waiver receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care. Professional services may include, but are not limited to, the following disciplines:

- (a) Medicine;
- (b) Dentistry;
- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational therapy;

- (g) Physical therapy;
- (h) Psychology;
- (i) Social work; and
- (j) Speech, hearing, and language therapy.

1934.21 Each provider of Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing shall:

- (a) Provide skilled nursing services and supports to the person living in the SLR;
- (b) Complete any skilled nursing assessment and document hourly nursing interventions and treatments; and
- (c) Provide as appropriate, all of the supported living activities listed in Sections 1934.18 and 1934.19, and Section 1934.20.

1934.22 In order to be eligible for Medicaid reimbursement, the duties of a registered nurse delivering twenty-four (24) hour supported living services with skilled nursing shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 of the DCMR. At a minimum, they may include the following duties:

- (a) Prepare an initial routine physical assessment, including an individualized service nursing plan and evaluation;
- (b) Assist in the development of the Health Management Care Plan;
- (c) Coordinate the person's care and referrals;
- (d) Administer medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements of the appropriate jurisdiction;
- (e) Provide oversight of non-licensed medication administration personnel;
- (f) Provide wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician, as needed;
- (g) Provide oversight and supervision to a licensed practical nurse, when delegating and assigning nursing interventions;

- (h) Record progress notes during each visit and complete quarterly reports; and
- (i) Provide training to the day habilitation, employment readiness, and supported employment staff on the person's healthcare needs by the nurse, including needs identified in the Health Management Care Plan, if applicable.

1934.23 In order to be eligible for Medicaid reimbursement, the duties of a licensed practical nurse delivering twenty-four (24) hour supported living services with skilled nursing, shall be consistent with the scope of practice standards for a licensed practical nurse set forth in Chapter 55 of Title 17 of the DCMR. At a minimum, they may include the following duties:

- (a) Record progress notes during each visit and quarterly reports;
- (b) Report immediately, any changes in the person's condition, to the supervising registered nurse;
- (c) Provide wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and
- (d) Administer medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements of the jurisdiction in which the healthcare professional is licensed.

1934.24 Medicaid reimbursable supported living one-to-one services in a single occupancy means services provided to one person exclusively by a supported living service provider who has been trained in all general requirements and possesses all training required to implement the person's specific behavioral and/or clinical protocols and support plans for a pre-authorized length of time.

1934.25 Medicaid reimbursable supported living one-to-one services in a single-occupancy SLR shall only be permitted with prior annual approval by the DDS Human Rights Committee and Restrictive Control Review Committee, or a medical treatment plan signed by the person's physician. Providers delivering one-to-one services shall require the person to have a BSP that reflects the need for one-to-one supervision.

1934.26 The BSP shall be developed according to the requirements set forth in the DDA/DDS Behavioral Supports Policy and Procedure available at <http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnnextrefresh=1>

- 1934.27 If providers of Medicaid reimbursable supported living services are delivering one-to-one supported living services pursuant to a BSP, the assessment shall be updated on an annual basis to determine if the services are necessary.
- 1934.28 If one-to-one supported living services are delivered pursuant to a court order, the order shall be verified on an annual basis, to determine if the services are necessary.
- 1934.29 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirement procedures:
- (a) DDS shall provide a written service authorization before the commencement of services;
 - (b) The service name and Waiver provider delivering services must be identified in the ISP and Plan of Care;
 - (c) The ISP, Plan of Care, and Summary of Supports and Services must document the amount and frequency of services to be received; and
 - (d) The services to be provided shall not conflict with the service limitations described under Section 1934.33.
- 1934.30 Each provider of Medicaid reimbursable supported living services shall maintain the records as prescribed under Section 1909 of Chapter 29 DCMR for monitoring and audit purposes for each person receiving services and shall also maintain the following documents:
- (a) If providing twenty-four (24) hour supported living services in a single occupancy or one-to-one supports, a copy of the annual BSP or court order;
 - (b) A daily log of scheduled activities to include those activities participated in by the person and a schedule of when the person is in his or her home;
 - (c) The records of any nursing care, procedures, and other supports related to the development and management of the Health Management Care Plan;
 - (d) A record of monitoring and maintenance of adaptive equipment, if applicable;
 - (e) A copy of the physician's order or an APRN's order specifying the type, frequency, scope, and duration of the skilled nursing services, if applicable;
 - (f) A copy of the job description detailing the duties of the nurse delivering the service, if applicable; and

- (g) A copy of each assessment that the nurse has conducted and documentation of the hourly nursing interventions and treatments, if applicable.
- 1934.31 Each provider of Medicaid reimbursable supported living services shall meet the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1934.32 Each provider of Medicaid reimbursable supported living services shall comply with the following requirements:
- (a) Provide access and information as requested for service coordination visits and reviews;
 - (b) Review the person's ISP and Plan of Care goals, objectives, and activities at least quarterly and more often, as necessary and submit the results of these reviews to the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter ;
 - (c) Submit a quarterly report to the person, guardian, other members of the Support Team, and the DDS Service Coordinator describing the activities and support provided to help the person achieve his/her identified outcomes and his/her progress to date;
 - (d) Propose modifications to the ISP and Plan of Care, as appropriate;
 - (e) Participate in ISP and Plan of Care development;
 - (f) Assist in the coordination of all services that a person may receive by ensuring that all recommended and accepted modifications to the ISP are amended to the current ISP; and
 - (g) Coordinate the delivery of necessary behavioral support services, skilled nursing services, and other services, such as occupational therapy, physical therapy, from approved Waiver providers of those services based on the requirements of the ISP and Plan of Care.
- 1934.33 Reimbursement for Medicaid reimbursable supported living services shall not include:
- (a) Cost of room and board;
 - (b) Cost of facility maintenance, upkeep and improvement, modifications or adaptations to a SLR or home to meet the requirements of the applicable life safety code;

- (c) Safety monitoring as a stand-alone task;
 - (d) Activities for which payment is made by a source other than Medicaid;
 - (e) Time when the person is in school or employed; and
 - (f) Time when the person is hospitalized, on vacation, or any other time in which the person does not sleep in the home and is provided with direct care staff support from a provider.
- 1934.34 Medicaid reimbursable supported living services shall not include services delivered by the person's relative.
- 1934.35 Medicaid reimbursable supported living skilled nursing services shall not include custodial care.
- 1934.36 Medicaid reimbursable supported living services shall not be authorized concurrently with the following Waiver services:
- (a) Residential Habilitation;
 - (b) Respite;
 - (c) Host Home;
 - (d) Shared Living;
 - (e) In-Home Supports; and
 - (f) Transportation, when the provider chooses to provide supported living services with transportation services.
- 1934.37 The reimbursement rate for Medicaid reimbursable supported living services shall be calculated based on the staff on duty and shall include:
- (a) All supervision of the Direct Support Professional;
 - (b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of a Health Management Care Plan;
 - (c) All transportation, if applicable;
 - (d) Programmatic supplies and fees;
 - (e) Functioning adaptive equipment as ordered by a clinician;

- (f) Quality assurance costs, such as incident management systems and staff development; and
- (g) General administrative fees for Waiver services.

1934.38 Supported living services shall be Medicaid reimbursable for emergency situations when the person is not physically residing at the SLR or home, but is temporarily residing in a hotel or other facility and continues to receive support from the provider.

1934.39 An acuity evaluation to set levels of support shall be determined by the Support Team and approved by the DDS Waiver Unit through review of current staffing levels; available health and behavioral records; and any available standardized acuity instrument results to determine if a person has a health or behavioral acuity that requires increased supports. A person may be assessed at a support level that is consistent with their current staffing level if other acuity indicators are not in place.

1934.40 Skilled nursing that is incorporated into the supported living Medicaid reimbursement rate is for routine physical assessment, the development of the Health Management Care Plan, nursing assessment, oversight of adaptive equipment, assistance with medication administration by non-licensed personnel, or actual administration of medication.

1934.41 The Medicaid reimbursement rate for supported living services without transportation shall be as follows:

- (a) Basic Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours when individuals are awake and receiving services. The reimbursement rate shall be two hundred thirty-three dollars (\$233.00) per day;
- (b) Basic Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours when the residents are receiving services. The reimbursement rate shall be two hundred fifty-two dollars (\$252.00) per day;
- (c) Moderate Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage. The reimbursement rate shall be two hundred eighty-six dollars (\$286.00) per day;
- (d) Moderate Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight

- (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage overnight. The reimbursement rate shall be three hundred eleven dollars (\$311.00) per day;
- (e) Intensive Support Level 1: Provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be three hundred forty-eight dollars (\$348.00) per day;
- (f) Intensive Support Level 2: Provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred three dollars (\$403.00) per day;
- (g) Basic Support Level 1: Provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 during all hours when individuals are awake and receiving services. The reimbursement rate shall be two hundred and ninety dollars (\$290.00) per day;
- (h) Basic Support Level 2: Provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the residents are receiving services. The reimbursement rate shall be three hundred and eighteen dollars (\$318.00) per day;
- (i) Moderate Support Level 1: Provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage over night. The reimbursement rate shall be three hundred and seventy-seven dollars (\$377.00) per day;
- (j) Moderate Support Level 2: Provides support in a SLR with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are in the home and adjusted for increased absenteeism. The rate shall be four hundred and fifty-six dollars (\$456.00) per day;
- (k) Intensive Support Level 1: Provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are in the home and

adjusted for increased absenteeism. The rate shall be four hundred and ninety-one dollars (\$491.00) per day;

- (l) Supported living periodic services, as described under Section 1934.6, shall be authorized up to sixteen (16) hours per day without transportation. The hourly rate shall be twenty-one dollars and eighty-four cents (\$21.84) billable in quarter hour units (fifteen minutes) of five dollars and forty-six cents (\$5.46) per billable unit;
- (m) There shall be a specialized service rate for supported living with skilled nursing services, described under Section 1934.5. The rate shall be five hundred and fifty-three dollars and seventy-nine cents (\$553.79) per day without transportation, when there are at least three (3) people living in the SLR or residing in a home that require skilled nursing services and demonstrate extraordinary medical needs; and
- (n) There shall be a specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Section 1934.4. The rate shall be five hundred eleven dollars and forty nine cents (\$511.49) for asleep overnight staff and five hundred and seventy-four dollars (\$574.00) for one-to-one awake overnight staff.

1934.42 The Medicaid reimbursement rate for supported living services with transportation shall be as follows:

- (a) Basic Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours. The reimbursement rate shall be two hundred fifty one dollars (\$251.00) per day;
- (b) Basic Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours. The reimbursement rate shall be two hundred and seventy dollars (\$270.00) per day;
- (c) Moderate Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage. The reimbursement rate shall be three hundred and four dollars (\$304.00) per day;
- (d) Moderate Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake

coverage overnight. The reimbursement rate shall be three hundred and twenty nine dollars (\$329.00) per day;

- (e) Intensive Support Level 1: Provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be three hundred and sixty six dollars (\$366.00) per day;
- (f) Intensive Support Level 2: Provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred and twenty-one dollars (\$421.00) per day;
- (g) Basic Support Level 1: Provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 staff asleep overnight coverage and 1:2 staff awake coverage when residents are receiving services. The reimbursement rate shall be three hundred and eight dollars (\$308.00) per day;
- (h) Basic Support Level 2: Provides overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the resident is receiving services. The reimbursement rate shall be three hundred and thirty six dollars (\$336.00) per day;
- (i) Moderate Support Level 1: Provides awake overnight daily rate for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage over night shall be three hundred and ninety-five dollars (\$395.00) per day;
- (j) Moderate Support Level 2: Provides support a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred and seventy four dollars (\$474.00) per day;
- (k) Intensive Support Level 1: Provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment

programs. The reimbursement rate shall be five hundred and nine dollars (\$509.00) per day;

- (l) Supported Living periodic services, described under Section 1934.6, shall be authorized up to sixteen (16) hours per day. The hourly rate shall be twenty four dollars and thirty six cents (\$24.36) per hour billable in quarter hour units of six dollars and nine cents (\$6.09) per fifteen (15) minute unit; and
- (m) There shall be a specialized service rate for supported living with skilled nursing services, described under Section 1934.5. The reimbursement rate is five hundred and seventy-four dollars and thirteen cents (\$574.13) per day, when there are at least three (3) people living in the SLR or home that require Skilled Nursing Services and demonstrate extraordinary medical needs.
- (n) There shall be a specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Section 1934.4. The reimbursement rate is five hundred thirty-one dollars and eighty-three cents (\$531.83) for asleep overnight staff and five hundred ninety two dollars (\$592.00) for one-to-one awake overnight staff.

1934.43 For purposes of staffing and determining the Medicaid reimbursement rates for supported living services, awake hours of the day with absence from day program, weekend, or holiday shall be the time period between 6:00 a.m. to 10:00 p.m., and for purposes of awake hours for all other days shall be the time period from 6:00 a.m. to 10:00 a.m. and 2:00 p.m. to 10:00 p.m.

1934.44 For purposes of staffing and determining the Medicaid reimbursement rates for supported living services, the overnight period shall be the time period between 10:00 p.m. to 6:00 a.m.

1934.45 The billable unit of service for Medicaid reimbursable supported living services excluding periodic supported living services, shall be one (1) day (*i.e.* twenty-four (24) hours).

1934.46 The Medicaid reimbursement rate assumes a ninety-three (93%) annual occupancy and includes any unanticipated absences due to illness from any day/vocational services.

1934.47 Each provider of Medicaid reimbursable supported living services shall maintain the staffing ratio, described under Sections 1934.40 and 1934.41, associated with the approved acuity rate for the residence. The DDA Service Coordinator shall generate an incident report if it is discovered that the staffing ratio is not maintained during DDA's quarterly visits to the SLR.

- 1934.48 The Medicaid provider shall notify the DDS Service Coordinator to schedule a meeting to address the cause of any unanticipated absences that may result in a less than 93% occupancy rate or a reduced staffing ratio.
- 1934.49 Daily activities including participation in day programs such as day habilitation services, individualized day supports services, employment readiness or supported employment services, and are typically scheduled for five (5) hours per day, five (5) days per week. The reimbursement rate for Medicaid reimbursable supported living periodic services shall not include any period of time during which the person is enrolled in a day program.
- 1934.50 Medicaid reimbursable supported living periodic services are calculated based on the time the person is scheduled to be in their place of residence, except the provider may include the time the person is being transported by the provider to day programs, employment, professional appointments, community activities, and events.

Section 1999 (DEFINITIONS) is amended by adding the following:

Couples - A couple refers to those married or unmarried persons in a relationship, including same-sex relationships.

Health Management Care Plan- A written document designed to evaluate a person's health care status and to provide recommendations regarding the treatment and amelioration of health care issues by identifying types of risk, interventions to manage identified risks, persons responsible for carrying out interventions, and persons responsible for providing an evaluation of outcomes and timeframes.

Person – An individual enrolled in the Home and Community Based Services Waiver for Individuals with Intellectual and Developmental Disabilities.

Supported Living Residence (SLR) - A residence owned or leased by the provider or a residence owned or leased by the person receiving services.

Comments on the proposed rules shall be submitted, in writing, to Linda Elam, Ph.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900, Washington, D.C. 20001, via telephone on (202) 442-9115, 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 proposed rules may be obtained from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM


Mayor's Order 2014 – 020
January 24, 2014

SUBJECT: Appointments – Commission on Fashion Arts and Events

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by 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 2 of the Commission on Fashion Arts and Events Establishment Act of 2008, effective April 15, 2008 (D.C. Law 17-148; D.C. Official Code § 3-651) (2012 Repl.), it is hereby **ORDERED** that:

1. **MARCUS WILLIAMS** was nominated by the Mayor on October 31, 2013 and, approved by the Council of the District of Columbia, pursuant to Resolution 20-0516, on January 7, 2014, and is appointed, as a member to the Commission on Fashion Arts and Events (hereinafter referred to as the "Commission"), replacing Brian Evans, to complete the remainder of an unexpired 3-year term, to end April 15, 2016.
2. **JENNIFER FISHER** was nominated by the Mayor on October 31, 2013 and, approved by the Council of the District of Columbia, pursuant to Resolution 20-0515, on January 7, 2014, and is appointed, as a member to the Commission, replacing Pamela Elam Walker, to complete the remainder of an unexpired 4-year term, to end April 15, 2017.
3. **EFFECTIVE DATE:** This Order shall be effective immediately.



 VINCENT C. GRAY
 MAYOR

ATTEST: 

 CYNTHIA BROCK-SMITH
 SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-021
January 24, 2014

SUBJECT: Temporary and Limited Suspension of the Enforcement of Certain Engine Idling Provisions of the District of Columbia Official Code and Municipal Regulations for Warming Buses Deployed by the District of Columbia During this Period of Extreme Cold

ORIGINATING AGENCY: Homeland Security Emergency Management Agency

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973 as amended, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2012 Rep.), it is hereby **ORDERED** that:

1. BACKGROUND AND PURPOSE:

- a. The District of Columbia, along with many other parts of the United States, has experienced extremely cold weather conditions that have included temperatures in the teens and wind chill that has reduced the already frigid conditions to temperatures in the single digits. In addition, four to eight inches of snow has accumulated in the region.
- b. These weather conditions pose a danger for many residents who are either homeless or are without adequate heating or shelter. Law enforcement personnel and other District employees working during this time may also be vulnerable to the extreme weather conditions.
- c. To mitigate the health hazards associated with being exposed to inclement weather for extended periods of time, the District of Columbia Homeland Security and Emergency Management Agency ("**HSEMA**") will be providing a limited number of buses to serve as warming stations at designated locations throughout the District for law enforcement personnel, District employees and members of the general public who may need to obtain warmth or require medical attention.
- d. Generally, the engine of a gasoline or diesel powered motor vehicle shall not idle for more than three (3) minutes while the motor vehicle is parked, stopped, or standing, except for limited purposes.

e. The District of Columbia acknowledges the necessity of having in place and enforcing engine idling regulations on a uniform and consistent basis to offset the harmful effects excessive engine idling may cause to both the environment and one's health. However, in light of the extremely low temperatures; the need for alternate locations where persons could obtain warmth or medical assistance or both; the potentially greater danger posed to public health and the environment if the District does not provide stations; and the narrow tailoring of this Order to apply to a limited number of warming stations, it is in the interest of the District of Columbia to suspend enforcement during this period of extreme cold of those provisions of the District of Columbia Code and District of Columbia Municipal Regulations that relate to engine idling, for the limited number of warming stations identified herein.

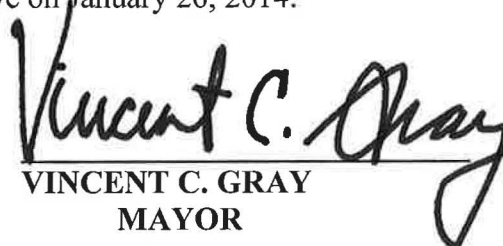
2. TEMPORARY AND LIMITED SUSPENSION OF ENFORCEMENT:


a. On January 21, 2014 Mayor's Order 2014-019 was issued suspending enforcement of the District of Columbia's engine idling regulations from January 21 through January 26, 2014, regarding a limited number of buses designated as warming stations by HSEMA. Because weather reports indicate that the cold weather will continue for several more days it is necessary to extend the suspension of enforcement.

b. No District of Columbia agency, including, but not limited to the Department of the Environment, Department of Health, Department of Public Works, Department of Motor Vehicles, and Metropolitan Police Department, shall enforce the District of Columbia's engine idling regulations from January 26, 2014 through February 3, 2014, regarding a limited number of buses designated as warming stations by HSEMA.

c. HSEMA shall take such action as is necessary to clearly identify the limited number of buses subject to the provisions of this Mayor's Order.

3. **EFFECTIVE DATE:** This Order shall become effective on January 26, 2014.


VINCENT C. GRAY
MAYOR

ATTEST: 
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-022
January 30, 2014

SUBJECT: Appointment – Interim Director, Department of Employment Services


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by 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.), it is hereby **ORDERED** that:

1. **F. Thomas Luparello** is appointed Interim Director of the Department of Employment Services, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2011-124, dated July 12, 2011.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to January 5, 2014.



 VINCENT C. GRAY
 MAYOR

ATTEST: 

 CYNTHIA BROCK-SMITH
 SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-023
January 30, 2014

SUBJECT: Delegation of Authority to the Director of the Department of General Services to Execute a Lease Agreement for the Benning School


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by 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.), it is hereby **ORDERED** that:

1. The Director of the Department of General Services (**DGS**) is delegated the authority vested in the Mayor pursuant to section 1(c) of An Act. To grant additional powers to the Commissioners of the District of Columbia, and for other purposes, approved December 20, 1944 (58 Stat. 821; D.C. Official Code § 1-301.01(c)) to execute a lease agreement between the District of Columbia and the D.C. Preparatory Academy for certain real property located at 100 41st Street, NE, most commonly known as the Benning School and more specifically designated for tax and assessment purposes as Square 5084, Lot 829 (the "**Property**") and all other documents necessary to effectuate the lease of the Property, including, but not limited to, a memorandum of ground lease and a real property recordation and tax form.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



VINCENT C. GRAY
MAYOR

ATTEST: 

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-024
February 04, 2014

SUBJECT: Appointment – District of Columbia Workforce Investment Council


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of and (11) 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) and (11) (2012 Repl.), and in accordance with Mayor's Order 2011-114, dated July 1, 2011, it is hereby **ORDERED** that:

1. **F. THOMAS LUPARELLO**, Interim Director of the Department of Employment Services, is appointed to the District of Columbia Workforce Investment Council, replacing Lisa Mallory, as a member, and shall serve in that capacity at the pleasure of the Mayor.
2. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to January 5, 2014.



 VINCENT C. GRAY
 MAYOR

ATTEST: 

 CYNTHIA BROCK-SMITH
 SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

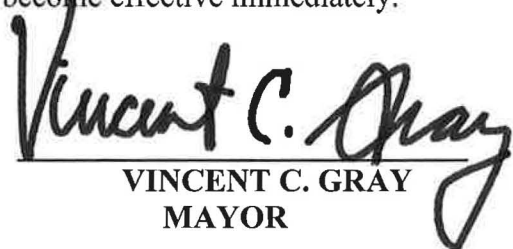
Mayor's Order 2014-025
February 4, 2014


SUBJECT: Appointment ---Mayor's Advisory Committee on Child Abuse and Neglect

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by 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 Mayor's Order 2012-164, dated October 3, 2012, it is hereby **ORDERED** that:

- I. **JUDGE JULIE BRESLOW** is appointed as member of the Mayor's Advisory Committee on Child Abuse and Neglect, representing the DC Superior Court Family Court Division, and shall serve in this capacity at the pleasure of the Mayor.
- II. **EFFECTIVE DATE:** This Order shall become effective immediately.


 VINCENT C. GRAY
 MAYOR

ATTEST: 
 CYNTHIA BROCK-SMITH
 SECRETARY OF THE DISTRICT OF COLUMBIA

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, FEBRUARY 12, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On February 12, 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#13-251-00128 (a) Midtown, 1219 CONNECTICUT AVE NW Retailer C Nightclub,
License#: ABRA-072087

2. Case#14-AUD-00004 Don Jaime, 3209 MT PLEASANT ST NW Retailer C Restaurant,
License#: ABRA-021925

3. Case#13-AUD-00080 Aroma Indian Restaurant, 1919 I ST NW Retailer C Restaurant,
License#: ABRA-001847

4. Case#14-251-00010 El Centro D. F., 1218 WISCONSIN AVE NW Retailer C Tavern,
License#: ABRA-000604

5. Case#14-251-00011 Fiesta Restaurant and Lounge, 1327 Connecticut AVE NW Retailer C
Restaurant, License#:ABRA-000882

6. Case#14-CMP-00041 Joint Chiefs, 3400 11TH ST NW Retailer C Tavern, License#: ABRA-
083926

7. Case#14-251-00018 Merkato Ethiopian Restaurant, 1909 9th ST NW Retailer C Restaurant,
License#: ABRA-089019

8. Case#14-251-00003 District, 2473 18TH ST NW Retailer C Restaurant, License#: ABRA-092742 (Previously published in the 1/8/14 Emergency Agenda)

9. Case#14-251-00003(a) District, 2473 18TH ST NW Retailer C Restaurant, License#: ABRA-092742 (Previously published in the 1/8/14 Emergency Agenda)

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, FEBRUARY 12, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Request to grandfather standing in second protest, dated January 30, 2014 from Jason Sadlack of 1407 W Street Group, Protestants against Renewal of Kiel, LLC. *MOVA*, 2204 14th Street NW, Retailer CT, Lic#: 87030.

2. Review of Request for ANC 3C to be notified by ABRA if any establishment applies for an Entertainment Endorsement.

3. Review of Five (5) Request from E & J Gallo to provide retailers with products valued at more than \$50 and less than \$500.

4. Review of Settlement Agreement dated, January 21, 2014 between ANC 6A and Raso Corporation. *Sahara Hooka Lounge*, 1200 H Street NE, Retailer CT, Lic#: 87558.

*** In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, 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, FEBRUARY 12, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review application to place license in Safekeeping. No outstanding fines/citations. No pending enforcement matters. Settlement Agreement. ANC 6A. SMD 6A06. *Pho Bar and Grill*, 1360 H Street NE, Retailer CR, License No. 87813.

2. Review request and application to place license in Safekeeping. No outstanding fines/citations. No pending enforcement matters. No Settlement Agreement. ANC 3E. SMD 3E01. *The Dancing Crab*, 4615 41st Street NW, Retailer CR, License No. 90297.

3. Review Application from Retailer Class C Tavern for Entertainment Endorsement. No pending enforcement matters. No outstanding fines/citations. Settlement Agreement. ANC 1B. SMD 1B12. *Bar Pilar*, 1833 14th Street NW, Retailer CT, License No. 72472.

4. Review Application from Retailer Class C Tavern for Entertainment Endorsement. No pending enforcement matters. No outstanding fines/citations. Settlement Agreement. ANC 2B. SMD 2B08. *Stetson's*, 1610 U Street NW, Retailer CT, License No. 60455.

5. Review Request for Retailer License Class Change from Retailer Class C Restaurant to Retailer Class C Tavern. No pending enforcement matters. No outstanding fines/citations. Settlement Agreement. ANC 4D. SMD 4D06. *Sandovan Restaurant & Lounge*, 4809 Georgia Avenue NW, Retailer CR, License No. 92705.

6. Review Request for Change of Hours. *Approved Hours of Operation, Sales and Consumption*: Sunday-Thursday 8am to 11pm, Friday-Saturday 8am to 12am. *Proposed Hours of Operation, Sales and Consumption*: Sunday-Thursday 8am to 12am, Friday-Saturday 8am to 1am. No pending enforcement matters. No outstanding fines/citations. Settlement Agreement. ANC 2B. SMD 2B03. *Circa at Dupont*, 1601 Connecticut Avenue NW, Retailer CR, License No. 76074.

Board's Agenda –February 12, 2014 - Page 2

7. Review Request from Wholesaler seeking approval to provide Hotel Sofitel gifts less than \$500.00. *Winebow Imports, Inc*, Wholesaler A, License No. 72284.
-

*** In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, 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.**

CESAR CHAVEZ PUBLIC CHARTER SCHOOLS
REQUEST FOR PROPOSALS

The Cesar Chavez Public Charter For Public Policy Schools invites interested and qualified vendors to submit proposals to provide services in the following areas:

Teacher Recruitment and Selection Provider who is adept at identifying key competencies of 6-12th grade teachers. The project will start in February. Providers will work approximately 10-20 hours a week screening candidate resumes and conducting telephone interviews through June with 5-10 hours per week in July. Ideally, candidate will also help Chavez identify additional qualified teacher candidates. Provider must coordinate and make recommendations to school leaders for in-person interviews. Provider must have at least five years of experience as a hiring manager in K-12 schools. Preference will be given to providers who can demonstrate academic success of hires in the past.

Proposals are due to jeff.cooper@chavezschools.org no later than 12:00 PM February 13, 2014.

Bidding requirements can be obtained by contacting: jeff.cooper@chavezschools.org

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF SPECIAL MEETING

The Construction Codes Coordinating Board will be holding a special meeting on Tuesday, February 25, 2014 at 10:00 a.m.

The meetings will be held at 1100 Fourth Street, SW, Fourth Floor Conference Room, Washington, D.C. 20024. The location is on the Metro Green Line, at the Waterfront/SEU stop. Limited paid parking is available on site.

Board information is available on the website of the Department of Consumer and Regulatory Affairs at dcra.dc.gov, under "Events Calendar".

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY

Fiscal Year 2014 DC Physical Activity for Youth Grant

Announcement Date: **January 24, 2014**Request for Application Release Date: **February 7, 2014**Pre-Application Question Period Ends: **February 18, 2014**Application Submission Deadline: **April 4, 2014**

The Office of the State Superintendent of Education (OSSE), Wellness and Nutrition Services Division is soliciting grant applications for the District of Columbia Physical Activity for Youth (DC PAY) grant. **The purpose of this grant is to increase the capacity of D.C. schools to provide physical activity to all students before, during, or after the school day.**

Eligibility: OSSE will accept applications from Washington D.C. public schools and public charter schools participating in the Healthy Schools Act (2010) and community-based organizations applying on behalf of a school. Past award recipients are eligible; however, a school may only receive the DC PAY Grant three times in a five year period. Community-based organizations may apply on behalf of up to four different schools.

Length of Award: The grant award period is one year.

Available Funding for Award: The total funding available for this award period is \$200,000. Eligible schools and organizations may apply for an award amount up to \$10,000 per school.

Anticipated Number of Awards: OSSE has funding available for at least twenty (20) awards.

For additional information regarding this grant competition, please contact:

Katie Lantuh
Physical Education & Physical Activity Specialist
Wellness and Nutrition Services Division
Office of the State Superintendent of Education
Government of the District of Columbia
810 1st Street NE, 4th Floor
Washington, DC 20002
Phone: 202.481.3401
Email: kathryn.lantuh@dc.gov

The RFA and applications will be available at <http://osse.dc.gov/service/dc-physical-activity-youth-dc-pay-grant>, or by contacting Katie Lantuh.

BOARD OF ELECTIONS**CERTIFICATION OF ANC/SMD VACANCY**

The District of Columbia Board of Elections hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 2F08

Petition Circulation Period: **Monday, February 10, 2014 Monday, March 3, 2014**

Petition Challenge Period: **Thursday, March 6, 2014 thru Wed., March 12, 2014**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001**

For more information, the public may call **727-2525**.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permits (#6364-R1 and 6365-R1) to Washington Navy Yard to operate one (1) 30 kW (49 hp) diesel fired emergency generator at the Display Ship Barry (W933) facility and one (1) 30 kW (49 hp) diesel fired emergency generator at Building 241, Sewage Pumping Station (W241), both located at the Washington Navy Yard facility located at 1411 Parsons Avenue SE, Washington, DC 20374. The contact person for facility is John Ness at (202) 433-4191. The applicant’s mailing address is 1411 Parsons Avenue SE, Washington, DC 20374.

Emissions:

Maximum emissions from each of the emergency generators, operating five hundred (500) hours per year each, are expected to be as follows:

	Maximum Annual Emissions
Pollutant	(tons/yr)
Particulate Matter (PM) (Total)	0.008
Sulfur Oxides (SOx)	0.072
Nitrogen Oxides (NOx)	0.152
Volatile Organic Compounds (VOC)	0.023
Carbon Monoxide (CO)	0.072

The proposed overall emission limits for the equipment are as follows:

- a. Emissions from the each unit shall not exceed those in the following table, as measured according to the procedures set forth in 40 CFR 89, Subpart E. [40 CFR 60.4205(b), 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]:

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
7.5	5.5	0.60

- b. Visible emissions shall not be emitted into the outdoor atmosphere from these generators, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].

- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The permit applications and supporting documentation, along with the draft permits are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after March 10, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue renewed air quality permits (#6436-R1 and 6437-R1) to Virginia Electric and Power Company dba Dominion Virginia Power to operate two existing 1,000 kW (1,502 bhp) diesel fired emergency generator sets at Building 64 (Lincoln Hall) at Fort Lesley J. McNair, 4th and P Streets SW, Washington DC. The contact person for applicant is Andy Gates at (804) 273-2950.

The permit applications and supporting documentation, along with the draft permits are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

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Emissions:

Maximum annual potential emissions from the unit are expected to be as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total)	0.14
Sulfur Oxides (SOx)	0.004
Nitrogen Oxides (NOx)	3.35
Volatile Organic Compounds (VOC)	0.25
Carbon Monoxide (CO)	0.81

The proposed overall emission limits for the equipment are as follows:

- a. Emissions from the unit shall not exceed those in the following table, as measured according to the procedures set forth in 40 CFR 89, Subpart E. [40 CFR 60.4205(b), 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]:

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
6.4	3.5	0.20

- b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].
- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are all available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6816) to Georgetown University to construct and operate one (1) 400 kW diesel fired emergency generator set at the Leavey Center at 3700 O Street NW, Washington, DC 20057. The contact person for the facility is Gregory Simmons, AVP Facilities Operation, Design & Construction at (202) 594-6523. The applicant’s mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the emergency generator, operating five hundred (500) hours per year, are expected to be as follows:

	Maximum Annual Emissions
Pollutant	(tons/yr)
Particulate Matter (PM) (Total)	0.05
Sulfur Oxides (SOx)	0.30
Nitrogen Oxides (NOx)	1.56
Volatile Organic Compounds (VOC)	0.36
Carbon Monoxide (CO)	0.85

The proposed emission limits for the unit are as follows:

- a. Emissions from the unit shall not exceed those in the following table, as measured according to the procedures set forth in 40 CFR 89, Subpart E. [40 CFR 60.4205(b), 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]:

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
4.0	3.5	0.20

- b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].
- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the

public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after March 10, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6817 to Cellco Partnership (DBA Verizon Wireless) to construct and operate a 50 kW (88.3 HP) natural gas fired emergency generator set at 3800 Reservoir Road NW, Washington DC. The contact person for the facility is Matthew Melito, Director Operations, at 800-488-7900.

The proposed emission limits are as follows:

Emissions from this unit shall not exceed those in the following table [40 CFR 60.4233(d) and Subpart JJJJ, Table 1]:

Pollutant Emission Limits (g/HP-hr)	
NO _x + HC	CO
10	387

- b. Visible emissions shall not be emitted into the outdoor atmosphere from the generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the Emergency Generator are as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
Carbon Monoxide (CO)	0.756
Oxides of Nitrogen (NO _x)	0.185
Total Particulate Matter, PM (Total)	0.001
Volatile Organic Compounds (VOCs)	0.019
Sulfur Dioxide (SO _x)	0.00

The application to construct and operate the emergency generator and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested

parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

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District Department of the Environment
1200 First Street NE, 5th Floor
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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6846 to Providence Hospital to operate a 25 kW (34 HP) natural gas fired emergency generator at Seton House, located at 1053 Buchanan Street NE Washington, DC 20017. The contact person for the facility is Tony Johnson, Engineering Manager, at (202)269-7140.

Emissions:

Maximum annual potential emissions from the unit are expected to be as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total)	0.018
Sulfur Oxides (SOx)	0.018
Nitrogen Oxides (NOx)	0.259
Volatile Organic Compounds (VOC)	0.021
Carbon Monoxide (CO)	0.056

The proposed overall emission limits for the equipment are as follows:

- a. Emissions from this unit shall not exceed those in the following table [40 CFR 60.4233(d) and Subpart JJJJ, Table 1]:

Pollutant Emission Limits (g/HP-hr)	
NO_x + HC	CO
10	387

- b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].
- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are all available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

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Stephen.Ours@dc.gov

No written comments postmarked after March 10, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6847) to Momen Auto Care Center, to operate an auto body paint spray booth at Silver Auto Care Center located at 2014 5th Street NE. The contact person for the facility is Mohammad R. Momen at (202) 635-3498.

Emissions:

The maximum estimated potential emissions of volatile organic compound (VOC) from the auto body paint spray booth equipment, operating fifty two weeks (52) per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	(tons/yr)
Volatile Organic Compounds (VOC)	5.85

The proposed emission limits are as follows:

- a. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201.1]
- b. Paints and refinishing coatings that contain volatile organic compounds (VOCs) in excess of the limits specified in Table I below, including any VOC containing materials added to the original coating supplied by the manufacturer, shall be prohibited. [20 DCMR 718.3]

Table I: Allowable Content of VOCs in Mobile Equipment Repair and Refinishing Coatings (*as applied*)

Coating Type	Weight	Limit*
	(Pounds per gallon)	(Grams per liter)
Automotive pretreatment primer	6.5	780
Automotive primer-surfacer	4.8	575
Automotive primer-sealer	4.6	550
Automotive topcoat:		
single stage-topcoat	5.0	600
2 stage basecoat/clearcoat	5.0	600
3 or 4-stage basecoat/clearcoat	5.2	625
Automotive multi-colored topcoat	5.7	680
Automotive specialty coating	7.0	840

*Weight of VOC per volume of coating (minus water and non-VOC solvents)

- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]
- d. Visible emissions shall not be emitted into the outdoor atmosphere from the paint spray booth. [20 DCMR 201.1, 606.1 and 903.1]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after March 10, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

**AIR QUALITY TITLE V OPERATING PERMIT AND
GENERAL PERMIT FOR
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (WMATA)**

Notice is hereby given that Washington Metropolitan Area Transit Authority (WMATA) 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) 14.7 million BTU per hour boilers, seven paint booths, six emergency generators, one gasoline dispensing station, one 8,000 gallon capacity gasoline storage tank, and miscellaneous other smaller equipment at the Bladensburg Bus Facility located at 2250 and 2251 26th Street NE, Washington, DC. The contact person for the facility is Carla A. Grano, Deputy Chief, Environmental Management & Industrial Hygiene at (202) 962-5077.

With the potential to emit approximately 49.92 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.

Emission Information for Emission Units being Permitted for the First Time:

For the two 14.7 million BTU/hour boilers:

Maximum annual potential emissions from each boiler are as follows:

Pollutant	Maximum Annual Emissions tpy
Carbon Monoxide (CO)	10.60
Oxides of Nitrogen (NO _x)	18.40
Total Particulate Matter (PM)	3.04
Volatile Organic Compounds (VOC)	0.69
Sulfur Dioxide (SO ₂)	66.23

The proposed emission limits for the boilers are as follows:

- a. Each boiler shall not emit pollutants in excess of those specified in the following table [20 DCMR 201]:

Boiler Hourly Emission Limits (By Fuel)		
Pollutant	Natural Gas (lb/hr)	No. 2 Fuel Oil (lb/hr)
Carbon Monoxide (CO)	1.210	0.525
Oxides of Nitrogen (NO _x)	0.519	2.100
Total Particulate Matter (including condensables)	0.110	0.347
Volatile Organic Compounds (VOC)	0.079	0.034
Sulfur Dioxide (SO ₂)	0.009	7.560

- b. Total suspended particulate matter (TSP) emissions from each boiler shall not exceed 0.09 pounds per million BTU. [20 DCMR 600.1]
- c. No visible emissions shall be emitted into the outdoor atmosphere from each boiler; except that no greater than 40% opacity (unaveraged) shall be permitted for two minutes per hour and for an aggregate of twelve minutes per 24-hour period during start-up, cleaning, soot blowing, adjustment of combustion controls, or malfunction. [20 DCMR 606.1]
- d. NO_x and CO emissions shall not exceed those achieved with the performance of annual combustion adjustments on each boiler. To show compliance with this condition, the Permittee shall, each calendar year, perform boiler combustion process adjustments with following characteristics [20 DCMR 805.1(a) and 20 DCMR 805.8(a) and (b)]:
 - i. Inspection, adjustment, cleaning or replacement of fuel burning equipment, including the burners and moving parts necessary for proper operation as specified by the manufacturer;
 - ii. Inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO_x and, to the extent practicable, minimize emissions of CO;
 - iii. Inspection of the air-to-fuel ratio control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer; and
 - iv. Adjustments shall be made such that the maximum emission rate for any contaminant does not exceed the maximum allowable emission rate as set forth in this section.

For the Emergency Generators Subject to New Source Performance Standards (NSPS):
 one (1) 1500 kW Caterpillar engine (EG5) and one (1) Cummins Engine (EG6).

Maximum annual potential emissions from each unit are as follows:

	Maximum Annual Emissions - EG5	Maximum Annual Emissions - EG6
Pollutant	(tons/yr)	(tons/yr)
Particulate Matter (PM) (Total) ¹	0.09	0.12
Sulfur Oxides (SOx)	0.01	0.33
Nitrogen Oxides (NOx)	10.01	8.44
Volatile Organic Compounds (VOC)	0.24	0.17
Carbon Monoxide (CO)	0.78	0.29

The proposed emission limits for each NSPS emergency generator are as follows:

- a. Emissions from each engine shall not exceed those found in the following table as measured following the procedures in 40 CFR 89, Subpart E. [40 CFR 60.4205(b) 40 CFR 60.4202(a) and 40 CFR 89.112(a)]

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
6.4	3.5	0.2

- b. Visible emissions shall not be emitted into the outdoor atmosphere from stationary sources (excluding fuel-burning equipment placed in initial operation before January 1, 1977); Provided, that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, soot blowing, adjustment of combustion controls, or malfunction of equipment. [20 DCMR 606.1]
- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

For the Non-NSPS Emergency Generators (EG1, EG2, EG3, and EG4): one (1) 80 kW Detroit Diesel engine (EG1), one (1) 100 kW Kohler Power System engine (EG2), and Two (2) 200 kW Cummins Onan engines (EG3 and EG4) all diesel emergency generators.

Maximum annual potential emissions from each unit are expected to be as follows:

	EG1 & EG2	EG3 & EG4
Pollutant	(tons/yr)	(tons/yr)
Particulate Matter (PM) (Total) ¹	0.07	0.15
Sulfur Oxides (SOx)	0.07	0.14
Nitrogen Oxides (NOx)	1.04	2.08
Volatile Organic Compounds (VOC)	0.08	0.17
Carbon Monoxide (CO)	0.22	0.45

The proposed emission limits for each non-NSPS emergency generator are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from stationary sources (excluding fuel-burning equipment placed in initial operation before January 1, 1977); Provided, that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, soot blowing, adjustment of combustion controls, or malfunction of equipment. [20 DCMR 606.1]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

For the seven (7) Paint booths PB1, PB2, PB3, PB4, PB5, PB6 and PB7: The emission limits are as follows:

Maximum annual potential emissions from each unit are expected to be as follows:

	PB1 – PB6	PB7
Pollutant	(tons/yr)	(tons/yr)
Particulate Matter (PM) (Total) ¹	1.70	0.07
Volatile Organic Compounds (VOC)	0.64	0.20

The proposed emission limits for the paint booths are as follows:

- A. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201.1]
- B. Paints and refinishing coatings that contain volatile organic compounds (VOCs) in excess of the limits specified in the table below, including any VOC containing materials added to the original coating supplied by the manufacturer, shall be prohibited. [20 DCMR 718.3]

Allowable Content of VOCs in Mobile Equipment Repair and Refinishing Coatings (as applied)		
Coating Type	Weight (pounds per gallon)	Limit* (grams per liter)
Automotive pretreatment primer	6.5	780
Automotive primer-surfacer	4.8	575
Automotive primer-sealer	4.6	550
Automotive topcoat:		
single stage-topcoat	5.0	600
2 stage basecoat/clearcoat	5.0	600
3 or 4-stage basecoat/clearcoat	5.2	625
Automotive multi-colored topcoat	5.7	680
Automotive specialty coating	7.0	840

*Weight of VOC per volume of coating (minus water and non-VOC solvents)

- C. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]
- D. Visible emissions shall not be emitted into the outdoor atmosphere from the paint booth. [20 DCMR 201, 606, and 903.1]

For Gasoline Dispensing Station (D1):

Maximum annual potential emissions from the gasoline dispensing station are expected to be as follows: 0.64 tons per year of VOCs.

The proposed emission limit for the gasoline dispensing station is as follows:

An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

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 #039 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 March 10, 2014.

DISTRICT DEPARTMENT OF THE ENVIRONMENT**NOTICE OF FILING OF AN APPLICATION
TO PERFORM VOLUNTARY CLEANUP**

2600 Connecticut Ave NW

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the “Act”)), the Voluntary Cleanup Program in the District Department of the Environment (DDOE), Land Remediation and Development Branch (LRDB), is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The applicant for real properties referenced as 2600 Connecticut Avenue, NW is Grosvenor Urban Retail, L.P, 1701 Pennsylvania Avenue, NW, Suite 1050, Washington DC 20006. The application identifies the presence of soil gas associated with volatile chlorinated organic solvents in the sub-slab. The applicant proposes no change to the existing commercial use of the property.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-3C) for the area in which the property is located. The application is available for public review at the following location:

Voluntary Cleanup Program
District Department of the Environment (DDOE)
1200 1st Street, N.E., 5th Floor
Washington, DC 20002

Interested parties may also request a copy of the application for a small charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-2289.

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within twenty one (21) days from the date of this publication. DDOE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP 2014-025 in any correspondence related to this application.

DISTRICT DEPARTMENT OF THE ENVIRONMENT**NOTICE OF FILING OF AN APPLICATION
TO PERFORM VOLUNTARY CLEANUP**

3500-3518 Connecticut Ave., NW

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the “Act”)), the Voluntary Cleanup Program in the District Department of the Environment (DDOE), Land Remediation and Development Branch (LRDB), is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The applicant for real properties referenced as 3500-3518 Connecticut Ave, NW is Grosvenor Urban Retail, L.P, 1701 Pennsylvania Avenue, NW Suite 1050, Washington DC 20006. The application identifies the presence of soil gas associated with volatile chlorinated organic solvents in the sub-slab. The applicant proposes no change to the existing commercial use of the property.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-3C) for the area in which the property is located. The application is available for public review at the following location:

Voluntary Cleanup Program
District Department of the Environment (DDOE)
1200 1st Street, N.E., 5th Floor
Washington, DC 20002

Interested parties may also request a copy of the application for a small charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-2289.

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within twenty one (21) days from the date of this publication. DDOE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP 2014-026 in any correspondence related to this application.

DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY
BOARD OF DIRECTORS MEETING

February 11, 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 December 17, 2013 board meeting.
- III. Approval of minutes from the January 14, 2014 board meeting.
- IV. Approval of minutes from the January 25, 2014 board meeting.
- V. Presentation: Auditor presentation by CohnReznick LLP.
- VI. Vote to close meeting to discuss the approval of the North Capitol Commons 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 North Capitol Commons 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)).

- VII. Re-open meeting.
- VIII. Consideration of DCHFPA Eligibility Resolution No. 2014-01 for the approval of the North Capitol Commons project and bond transaction.
- IX. Interim Executive Director's Report.
- X. Other Business.
- XI. Adjournment.

KIPP DC PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSAL****Natural Gas Generator**

KIPP DC is accepting bids for a 250 kW Natural Gas Generator. Proposals are due no later than 5:00 pm on Friday, February 7, 2014. More information can be obtained by contacting via email Jason Salsbury at jsalsbury@pmmcompanies.com and Lindsay Snow at Lindsay.snow@kipfdc.org.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

GT97-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND ITS RATE SCHEDULE NO. 6,**GT06-1, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND GENERAL SERVICE PROVISION NO. 23, and****FORMAL CASE NO. 1027, IN THE MATTER OF THE EMERGENCY PETITION OF THE OFFICE OF THE PEOPLE'S COUNSEL FOR AN EXPEDITED INVESTIGATION OF THE DISTRIBUTION SYSTEM OF WASHINGTON GAS LIGHT COMPANY**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice that, on December 16, 2013, the Washington Gas Light Company ("WGL") filed its 2013 Annual Report on Replacement and Encapsulation Program ("Program").¹ The Program was approved in Order No. 15627.² Pursuant to Order No. 16065, WGL is required to file its annual report on December 15.³

2. All persons interested in commenting on the 2013 Annual Report may submit written comments and reply comments not later than 15 and 30 days, respectively, after publication of this notice. Comments are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005. Copies of the 2013 Annual Report may be obtained by visiting the Commission's website at www.dcpsc.org or at cost, by contacting the Commission Secretary at (202) 626-5150 or PSC-Commission Secretary @psc.dc.gov.

¹ *Formal Case No. 1027, In the Matter of the Emergency Petition of the Office of the People's Counsel for an Expedited Investigation of the Distribution System of Washington Gas Light Company, GT97-3, GT06-1, Annual Report on Replacement and Remediation Program ("2013 Annual Report"), filed December 16, 2013.*

² *Formal Case No. 1027, GT97-3, GT06-1, Order No. 15627, rel. December 16, 2009; see also Order No. 17203, rel. July 31, 2013.*

³ Order No. 16065, ¶ 7.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION**

NOTICE OF GENERAL COMMISSION MEETING

The District of Columbia Taxicab Commission will hold its regularly scheduled General Commission Meeting on Wednesday, February 12, 2014 at 10:00 am. The meeting will be held in the Old Council Chambers at 441 4th Street, NW, Washington, DC 20001.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Commission on any issue of concern; the Commission generally does not answer questions. Statements are limited to five (5) minutes for registered speakers and two (2) minutes for non-registered speakers. To register, please call 202-645-6018 (ext. 4) no later than 3:30 pm on February 11, 2014. Registered speakers will be called first, in the order of registration. A fifteen (15) minute period will then be provided for **all** non-registered speakers. **Registered speakers must provide ten (10) printed copies of their typewritten statements to the Assistant Secretary to the Commission no later than the time they are called to the podium.**

DRAFT AGENDA

- I. Call to Order
- II. Commission Communication
- III. Commission Action Items
- IV. Government Communications and Presentations
- V. General Counsel's Report
- VI. Staff Reports
- VII. Public Comment Period
- VIII. Adjournment

**DISTRICT DEPARTMENT OF TRANSPORTATION
PUBLIC SPACE COMMITTEE MEETING DATES**

Notice of Regularly Scheduled Public Meetings
Calendar Year 2014

HEARING DATES	DEADLINE FOR FILING APPLICATIONS
January 23, 2014	November 28, 2013
February 27, 2014	January 2, 2014
March 27, 2014	January 30, 2014
April 24, 2014	March 3, 2014
May 22, 2014	March 31, 2014
June 26, 2014	May 1, 2014
July 24, 2014	May 29, 2014
August 28, 2014	July 3, 2014
September 25, 2014	July 31, 2014
October 23, 2014	September 1, 2014
November 20, 2014	September 29, 2014
December 18, 2014	October 26, 2014
January 22, 2015	November 27, 2014

MEETING LOCATION

1100 4th Street, SW
2nd Floor – Hearing Room
9:00 am

The locations, dates and/or dates may vary. To confirm attendance and location please contact:

Catrina Felder
Public Space Committee Coordinator
Government of the District of Columbia
Department of Transportation
Public Space Regulation Administration
1100 4th Street, SW – 3rd Floor
Washington, DC 20024
Phone: (202) 442-4960 or Fax: (202) 535-2221
PublicSpace.Committee@dc.gov

**DEPARTMENT OF TRANSPORTATION
POLICY, PLANNING AND SUSTAINABILITY ADMINISTRATION
PERFORMANCE PARKING ZONE COMMUNITY BENEFITS PROGRAM**

NOTICE OF FUNDING AVAILABILITY

Fiscal Year 2014 Funding for Performance Parking Zone Community Benefits

The Policy, Planning and Sustainability Administration (PPSA) within the District of Columbia (District) Department of Transportation (DDOT) is soliciting applications from eligible entities located within the three existing performance parking zones in the District (Ballpark Area, H Street NE, Columbia Heights). Within these areas, the following entities are eligible to apply: Advisory Neighborhood Committees (ANCs), Business Improvement Districts (BIDs/CIDs), and Main Street organizations.

The Neighborhood Performance Parking Fund establishes annual resources to provide or accelerate non-automobile transportation investments in the District's performance parking zones. Proposed projects must be within or immediately adjacent to the performance parking zone. Applicants will identify and prioritize eligible projects and locations, and submit them for review and selection by DDOT. The intention of this program is to accelerate maintenance or rehabilitation, implement new initiatives, or install "quick fix" improvements. The funding is not intended to support major capital projects, grant funds to outside entities or install non-standard furnishings.

Information about project prioritization and evaluation criteria, selection process, and funding availability is included in the Request for Application (RFA), which will be released on Friday, February 7, 2014.

A copy of the RFA may be obtained from PPSA's main office located at 55 M St. NE, 5th floor; Washington, DC 20003. An electronic version of the RFA, and additional information, may be obtained by contacting Kelly Peterson at (202) 671-4573, or by email at kelly.peterson@dc.gov.

The deadline for submission is Friday, March 21, 2014 at 5:00 p.m.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18560 of 3545 13th Street LLC, pursuant to 11 DCMR §§ 3103.2, for a variance from the lot area requirements under § 401.3 to allow the conversion of a flat into a four-unit apartment house in the R-4 District at premises 3545 13th Street, N.W. (Square 2833, Lot 120).

HEARING DATES: June 11 and July 16, 2013
DECISION DATE: July 16, 2013

DECISION AND ORDER

This self-certified application was submitted on March 11, 2013 by 3545 13th Street, LLC (the “Applicant”), the owner of the property that is the subject of the application. The application requested an area variance from the lot area requirement under § 401.3 of the Zoning Regulations to allow the conversion of a flat to a four-unit apartment house in the R-4 District at 3545 13th Street, N.W. (Square 2833, Lot 120). Following a public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 14, 2013, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the subject property is located; and Single Member District/ANC 1A04. Pursuant to 11 DCMR § 3112.14, on April 1, 2013 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 1A, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on April 1, 2013 (60 DCR 5128).

Party Status. The Applicant and ANC 1A were automatically parties in this proceeding. The Board denied a request for party status in opposition to the application submitted by Richard Klugman, a resident of the 3600 block of 13th Street.

Applicant’s Case. The Applicant provided evidence and testimony from Mohammad Pishvaeian, who described the proposed conversion of the building on the subject property into a four-unit apartment house; Alan Dalton, a real estate agent; James Killelte, an architect; and Allison Campbell, a neighbor living across the street from the subject property, who described past non-

BZA APPLICATION NO. 18560**PAGE NO. 2**

residential use of the subject property. With regard to the financial feasibility of the proposed conversion, the Applicant asserted that conversion to three apartments would result in a return on investment of 1.4%, while creation of a four-unit apartment house would produce a return of 10%.

OP Report. By memorandum dated July 9, 2013, OP recommended denial of the application. According to OP, the Applicant had not demonstrated any practical difficulty, since the Zoning Regulations did not contemplate a grant of relief “in anticipation of a higher return on an applicant’s investment and not in response to an established practical difficulty derived from a lot’s unique condition.” (Exhibit 32.)

DDOT. By memorandum dated April 4, 2013, DDOT indicated no objection to approval of the application. (Exhibit 25.)

ANC Report. By report submitted June 4, 2013, ANC 1A indicated that, at a properly noticed public meeting, held May 5, 2013 with a quorum present, the ANC voted 5-0-5 to adopt a report recommending denial of the application. The report stated that the “neighborhood has concerns with the disintegration of the single family home framework and fabric of the community.” According to the ANC, conversion of the building at the subject property to four residential units was “not necessary to make a profit, but to make a substantial profit” and the “argument that the developer must have four units [to make] the project feasible is insufficient justification” to approve the requested zoning relief. The report also noted a “predatory development trend” and concluded that ANC 1A did “not want a community of condo units.” (Exhibit 30.)

By report dated July 15, 2013, ANC 1A indicated that at its public meeting, held July 10, 2013 with a quorum present, the ANC reconsidered the application as modified to include the provision of pervious pavers and three off-street parking spaces. Although “the application received more support” from the ANC than at its prior public meeting, a motion in support of the application failed by a vote of 4-6-2. According to the ANC, its “primary concern, as related to the standards of the Zoning Regulations, was with density and the impact of the proposed 4th unit on parking, infrastructure, etc.,” while some members of the ANC also “supported community concerns with the loss of single-family dwellings in the area.” (Exhibit 37.)

Persons in support. The Board received letters and heard testimony in support of the application from persons living in the vicinity of the subject property, who commented generally that the Applicant’s plans to renovate the subject property would improve the neighborhood.

Persons in opposition. The Board heard testimony in opposition to the application from two residents of 13th Street, N.W. in the vicinity of the subject property. Richard Klugman testified that the subject property was a “standard pre-renovated home,” the “norm” for its location, and similar in size, footprint, layout, and age to nearby properties used as one-family dwellings or as flats. Mr. Klugman also argued that the Applicant had not satisfied the burden of proof necessary for a grant of variance relief, and that the application was “clearly in contradiction to

BZA APPLICATION NO. 18560**PAGE NO. 3**

the R-4 zone plan” and would have “a negative impact on the character of the neighborhood.” (Exhibit 33.) Byron McNeill opposed the conversion of a one-family dwelling into four apartments on the ground that increased density in the neighborhood has led to an increase in the number of vehicles and demand for parking for residents.

FINDINGS OF FACT**The Subject Property**

1. The subject property is an interior lot located on the east side of 13th Street, N.W. near its intersection with Otis Place (Square 2833, Lot 120).
2. The subject property is a rectangular parcel 20.25 feet wide, with an area of 2,936.25 square feet. The property is improved with a two-and-a-half-story brick row building that is set back 20 feet from the street and has a rear yard 60 feet deep. Existing lot occupancy is approximately 57%.
3. The property abuts a public alley along its rear lot line. The Applicant removed a dilapidated accessory garage formerly located at the rear of the lot so that two parking spaces are available, accessible from the alley.
4. The building on the subject property is attached to similar row buildings on both sides. Properties in the immediate vicinity are improved primarily with two- or three-story residential buildings. The surrounding neighborhood contains a mix of residential and institutional uses.
5. The building on the subject property was built approximately 100 years ago and was originally used as a one-family dwelling. In 2008, a prior owner of the lot obtained a building permit to convert the structure to a two-family flat. A certificate of occupancy was issued in 2009 to authorize use of the property as a two-family flat with storage in the basement. The building is currently vacant.
6. The Applicant testified that the building is now in poor condition due to extensive deferred maintenance and prior water damage, and that its floor plan is outdated and inefficient. The first floor lacks a kitchen but contains a bar, possibly reflecting past use of the space as a hookah bar and lounge. The staircase leading from the first floor to the second floor is wider than normal, while the staircase from the second floor to the third floor is located on the opposite side of the building and does not comply with building code requirements. The Applicant discovered unexpected dilapidation in the lower level of the building, related to mold, water infiltration, and structural damage, after purchasing the property.

The Applicant's Project

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7. The Applicant proposes to renovate the building at the subject property in a conversion to a four-unit apartment house. The conversion would not alter the building footprint but would create one dwelling unit per floor, including the basement. As proposed, the Applicant would provide three off-street parking spaces at the rear of the subject property, using permeable pavers. Parking for four bicycles would also be provided.
8. The majority of the costs attributable to the creation of the proposed fourth apartment would be incurred primarily in connection with the enlargement of the third floor, which presently does not extend as far back as the lower two floors, and adding brick to the building exterior.
9. Pursuant to § 401.3, conversion of a building in the R-4 Zone to an apartment house requires at least 900 square feet of lot area per unit. The Applicant could convert the building to a three-unit apartment house as a matter of right, but the subject property would require an additional 664 square feet in lot area to permit a four-unit apartment house without variance relief. With a lot area of 2,936 square feet, the Applicant's proposal would provide 734 square feet per unit.
10. The Applicant contended that the subject property was unusual and affected by an exceptional situation and condition as a result of a confluence of factors: (a) the inefficient layout and unique history of the existing structure, such that the existing structure must be reconfigured to achieve an efficient layout, unit size, and design for a residential building; (b) stairwells on both the first and second floors that require replacement to improve the efficient layout and use of the building in compliance with the building code; and (c) the physically deteriorated condition of the building such that a significant investment in renovation is needed to return the building to a marketable condition.
11. The Applicant contended that strict application of the minimum area requirement would result in practical difficulty because, in light of the extensive renovations required, a four-unit building was required for a financially feasible project. According to the Applicant, renovation of the building to three apartments would result in an economically infeasible project in light of the large renovation investment required, and the fourth unit was necessary so that the project would generate a fair and reasonable return on investment. According to the Applicant, the prior illegal use of the property for nonresidential purposes created a limited likelihood that an individual would purchase the subject property and invest the necessary funds to convert the building to a one-family dwelling.

Harmony with Zoning

12. The subject property is located in the R-4 District, which is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR

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§ 330.1.) Because its “primary purpose” is “the stabilization of remaining one-family dwellings,” the R-4 Zone is not intended to become an apartment house district as contemplated in the General Residence (R-5) Zones. (11 DCMR §§ 330.2, 330.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks an area variance from the minimum lot area requirement under § 401.3 of the Zoning Regulations to allow the conversion of a flat to a four-unit apartment house in the R-4 District at 3545 13th Street, N.W. (Square 2833, Lot 120). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (*See* 11 DCMR § 3103.2.)

Based on the findings of fact, the Board finds that the application does not satisfy the requirements for variance relief from the minimum lot area requirement of § 401.3 in accordance with § 3103.2.

The Board does not agree that the subject property is faced with an exceptional situation or condition, or that the strict application of the Zoning Regulations will create a practical difficulty to the Applicant as the owner of the property. As described by OP, which found no exceptional situation or practical difficulty in this application, the subject property is rectangular in shape, without significant changes in grade, and is one of several similarly sized and shaped lots in its square. The building on the subject property is similar to the buildings on the abutting properties, and to many properties in the immediate vicinity. The subject property meets the requirements for lot occupancy, lot width, and lot area in the R-4 Zone. The Applicant generally knew about the somewhat deteriorated condition, which is not unusual in a century-old building, before buying the property. The Board concurs with OP’s conclusions that the current state of the property does not constitute an exceptional condition, and that the current physical configuration of the existing building does not preclude its use as a flat or a three-unit apartment house, both of which, along with use as a one-family dwelling, are permitted as a matter of right, eliminating the need for zoning relief. The Applicant cited financial infeasibility as a justification for the additional dwelling unit due to construction costs and the building’s current condition. The Board concurs with OP’s conclusion that a variance cannot be granted where property conforming to the regulations will produce a reasonable income but, if put to another use, will yield a greater return.

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The Applicant asserts that the degree of zoning relief sought in the application, at approximately 18%, is small, and thus that “an applicant need only show a small amount of practical difficulty,” citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990) as well as prior cases in which the Board approved larger deviations in applications for variances from the minimum lot area requirement for apartment-house conversions. The Board was not persuaded by the list of prior cases approving similar lot area relief, since each case must stand on its own merits and each application must satisfy all elements of variance relief; the relative degree of relief alone does not merit approval of a request for a variance. Moreover, the Board does not consider an 18% variance in the minimum lot area requirement as insignificant or *de minimus*, particularly where the Applicant has not made a persuasive showing of an exceptional condition or practical difficulty arising from the strict application of the Zoning Regulations.

The Board concurs with OP’s conclusion that approval of the application would cause substantial detriment to the public good and would substantially impair the intent, purpose, and integrity of the zone plan. The Board credits testimony from the ANC and persons in opposition to the application expressing concern about “the loss of single-family dwellings in the area” and the changes in neighborhood character as a result of increased density. With regard to the zone plan, the Board notes that the Zoning Regulations allow conversion of a pre-1958 building to apartment house use in the R-4 Zone, but only where the minimum lot area requirement of 900 square feet per unit can be satisfied. The R-4 Zone was mapped for the primary purpose of stabilizing the remaining one-family dwellings, and is not intended to become an apartment house district. New apartment houses are not permitted as a matter of right in the R-4 District, and the conversion of existing buildings is “controlled by a minimum lot area per family requirement”; that is, the limit on conversions to apartment house use was put in place specifically to prevent the R-4 Zone from becoming an apartment house district as contemplated in the General Residence (R-5) zones. (11 DCMR § 330.3.) Approval of a variance from the minimum lot area requirement, without a showing of an exceptional situation of a specific property and practical difficulty upon the owner as the result of the strict application of the Zoning Regulations, would substantially impair the purpose and intent of the R-4 Zone District.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP’s recommendation that the application should be denied.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 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) (2001)).) In this case, ANC 1A initially voted to recommend denial of the application, and subsequently reconsidered its recommendation after the Applicant proposed to add three parking spaces and pervious pavers to the project. The ANC’s recommendation remained unchanged, reflecting concerns about density and the loss of one-family dwellings in the area. For the reasons

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discussed above, the Board concurs with the ANC's recommendation that the requested variance relief should not be approved.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for an area variance from the minimum lot area requirement under § 401.3 of the Zoning Regulations to allow conversion of a flat to a four-unit apartment house in the R-4 District at 3545 13th Street, N.W. (Square 2833, Lot 120). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 4-0-1 (Anthony J. Hood, S. Kathryn Allen, Lloyd J. Jordan, and Jeffrey L. Hinkle voting to Deny; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 28, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18696 of Michael A. Runyan, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, a variance from the court requirements under § 406, and a variance from the nonconforming structure provisions under § 2001.3, to allow a rear deck addition to a one-family row dwelling in the R-4 District at premises 1431 Parkwood Place, N.W. (Square 2688, Lot 63).

HEARING DATE: January 29, 2014

DECISION DATE: January 29, 2014

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated September 24, 2013, from the Zoning Administrator, which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for the following:

- “1. Variance pursuant to § 403.2 for the erection of a one-story rear deck to a Single Family Structure that does not comply with maximum lot occupancy requirements. (§ 3103.2)
2. Variance pursuant to § 404.1 for the erection of a one-story rear deck that does not comply with minimum rear yard setback requirements. (§ 3103.2)
3. Variance pursuant to § 406.1 for the erection of a one-story rear deck that does not comply with minimum open court width requirements. (§ 3103.2)
4. Variance pursuant to § 2001.3 for the erection of a one-story rear deck to a nonconforming Structure that has exceeded maximum lot occupancy requirements in R-4. (§ 3103.2)”

(Exhibit 6.)

The Board of Zoning Adjustment (“Board” or “BZA”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 1A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. ANC 1A filed a letter report, dated January 9, 2014, which indicated that at a properly noticed, regularly scheduled public meeting held on January 8, 2014, with a quorum of Commissioners present, the ANC voted unanimously (9:0:0) to support the application. (Exhibit 23.)

The Office of Planning (“OP”) submitted a timely report on January 21, 2014, indicating that it could not support the Board granting the application. (Exhibit 27.) By its letter, dated January 16, 2014, the District Department of Transportation (“DDOT”) submitted a report of “no objection” to the application. (Exhibit 26.)

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A letter of support for the application together with a petition of support signed by 19 neighbors was submitted by Mr. Keith Burnsteel, 1420 Parkwood Place, N.W. (Exhibit 24.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for variances from the strict requirements of the lot occupancy requirements under § 403, the rear yard requirements under § 404, the court requirements under § 406, and the nonconforming structure provisions under § 2001.3, to allow a rear deck addition to a one-family row dwelling in the R-4 District. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proving under 11 DCMR § 3103.2 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 9**.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this summary order.

VOTE: **3-0-2** (Lloyd L. Jordan, S. Kathryn Allen, and Robert E. Miller, to Approve; Jeffrey L. Hinkle, not participating or voting; the third Mayoral appointee vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 30, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, 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 PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4TH STREET, N.W.
SUITE 200-SOUTH
WASHINGTON, D.C. 20001**

PUBLIC NOTICE OF CLOSED MEETING

In accordance with § 405(c) of the Open Meetings Act, D.C. Official Code § 2-575 (c), on 1/29/14, the Board of Zoning Adjustment voted 3-0-2, to hold closed meetings telephonically on Monday, February 3, 10, and 24, 2014, beginning at 4:00 pm for the purpose of obtaining legal advice from counsel and/or to deliberate upon, but not voting on the cases scheduled to be publicly heard or decided by the Board on the day after each such closed meeting, as those cases are identified on the Board’s agendas for February 4, 11 and 25, 2014; and in accordance with § 407 of the District of Columbia Administrative Procedure Act, the Board will hold a closed meeting on Tuesday, February 18, 2014, from 9:00 a.m. to 1:00 p.m. for the purpose of conducting internal training, pursuant to § 405(b)(12) of the Open Meetings Amendment Act of 2010.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

**LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, JEFFREY L. HINKLE
AND A MEMBER OF THE ZONING COMMISSION ----- BOARD OF
ZONING ADJUSTMENT, CLIFFORD W. MOY, SECRETARY TO THE BZA,
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING.**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28J/05-28K**

Z.C. Case No. 05-28J/05-28K

CI GD Parkside 7, LLC

**(Review and Approval of Second-Stage Planned Unit Development Related Map
Amendment and Modification to a First Stage PUD @ Square 5041, Lot 808)
December 9, 2013**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 28, 2013, to consider an application of CI GD Parkside 7, LLC (“Applicant”) for the review and approval of a second-stage planned unit development (“PUD”) and related map amendment and simultaneous modification of a first-stage PUD. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. The Commission approves the application, subject to the conditions below.

FINDINGS OF FACT

PUD History and Application

1. The Property is located in Ward 7, northwest of the intersection of Minnesota Avenue and Benning Road. Specifically, it is situated in the Parkside neighborhood and is currently unimproved. The Subject Property (“Property”) is bounded by Kenilworth Terrace, N.E. on the south, Franklin Delano Roosevelt Street, N.E. on the east, Foote Street, N.E. on the west, and Parkside Place, N.E. on the north. The Property is comprised of approximately 34,663 square feet of land. (Exhibit [“Ex.”] 2, p. 8.)
2. The Parkside First Stage PUD approved 10 “building blocks” consisting of residential, mixed-use, commercial, and retail buildings containing approximately 3,003,000 square feet of gross floor area, including 1,500-2,000 dwelling units, 500,000-750,000 square feet of office space, and 30,000-50,000 square feet of retail. The density for the entire 15.5 acre PUD was approved at 4.4 floor area ratio (“FAR”) and a maximum height of 110 feet was approved for the office buildings and 90 feet for the mixed-use buildings. The Property was referred to as Block E in the First Stage PUD. (Ex. 2, p. 1.)
3. In 2008, the Commission approved a second-stage application for three of the 10 building blocks in the Parkside PUD – Blocks A, B, and C. The Commission approved a senior living facility consisting of 98 units to be reserved for individuals with an income no greater than 60% of the area median income (“AMI”). This project in Block A has been built and is currently occupied. It also approved 112 townhouses, 42 of which would be reserved for buyers with incomes between 80% and 120% AMI. This proposal was later modified to provide 100 townhomes in Z.C. Case No. 05-28G. Once built, the project will provide 42 workforce units. (*Id.*)
4. In 2010, the District of Columbia Primary Care Association (“DCPCA”) and Lano Parcel 12, LLC, working with the University of the District of Columbia Community College,

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- submitted second-stage applications for Block I and a portion of Block H. The Applicants submitted simultaneously a request to modify the first-stage approval in Z.C. Case No. 05-28E in order to accommodate the projects proposed in the second-stage applications. The Commission approved both second-stage applications (Z.C. Case Nos. 05-28B and C), as well as the first-stage modification (Z.C. Case No. 05-28E), and the DCPCA is currently operational. (Ex. 2, pp. 1-2.)
5. In 2011, the Commission approved a second-stage application for a one-acre park located on Block D (Z.C. Case No. 05-28F). The Applicant expects to submit permit applications for the park in December 2013. (Ex. 2, p. 2.)
 6. In Z.C. Case No. 05-28H, the Commission granted a two-year extension of the First-Stage PUD approval through October 3, 2013. The Commission approved a subsequent two-year extension of the PUD through October 3, 2015, in Z.C. Case No. 05-28L. (*Id.*)
 7. In sum, the final Parkside PUD approval allows approximately three million square feet of gross floor area: 43,000 square feet of health care uses, 270,000 square feet of educational uses, 750,000 square feet of commercial uses, and approximately two million square feet of residential uses. The Commission has already approved 324,988 square feet of residential development in Blocks A-C, leaving approximately 1.7 million square feet of residential development rights to be approved through second-stage PUD applications, including the instant application. (*Id.*)
 8. The Applicant filed a second-stage application for the Property, which was set down for a public hearing at the Commission's public meeting on April 29, 2013. At that time, the Commission directed the Applicant to file an application to modify the First-Stage PUD, which was designated as Z.C. Case No. 05-28K. The Applicant filed the requisite application on May 10, 2013. (April 29, 2013 Transcript ["Tr."] pp. 40-41.)
 9. Z.C. Case Nos. 05-28J and 05-28K were set down for a public hearing at the Commission's public meeting on June 24, 2013. The Commission simultaneously consolidated both cases and ordered that a single hearing be scheduled for the applications. The consolidated case is referred to as Z.C. Case No. 05-28J. Z.C. Case No. 05-28J incorporates all filings made in Z.C. Case No. 05-28K into the record of Case No. 05-28J. (June 24, 2013 Tr., p. 16.)
 10. The Department of Housing and Community Development ("DHCD") submitted a letter dated June 21, 2013, requesting that the Commission waive the hearing fee of \$33,800 in light of the fact that the development will provide 186 affordable housing units. (Ex. 11.)
 11. At its public meeting on July 29, 2013, the Commission voted to waive the hearing fee for the project pursuant to DHCD's request.
 12. The Applicant filed its pre-hearing statement in Z.C. Case No. 05-28J on August 8, 2013, and a public hearing was scheduled for October 28, 2013. (Ex. 14.)

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13. Notice of the public hearing for Z.C. Case No. 05-28J was published in the *D.C. Register* on September 13, 2013 (60 *D.C. Reg.* 12906) and was mailed to Advisory Neighborhood Commission (“ANC”) 7D and to owners of property within 200 feet of the second-stage PUD site. (Ex. 15, 16.)
14. A public hearing was conducted for Z.C. Case No. 05-28J on October 28, 2013. The Commission accepted Fernando Bonilla as an expert in architecture, and Rob Schiesel as an expert in traffic engineering. The Applicant provided testimony from Jon Carr and Robert Gilbane, Jr. (October 28, 2013 Tr., p. 8.)
15. In addition to the Applicant, ANC 7D was automatically a party in this proceeding. No additional requests for party status were filed.
16. At the hearing, the Commission heard testimony and received evidence from the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”) in support of the application, as well as a letter in support from ANC 7D, the Single Member District representative, and the Parkside Civic Association. (Ex. 10, 19, 21; October 28, 2013Tr., pp. 76-87.)
17. During the hearing, the Commission asked the Applicant for additional information regarding the interaction between the parking garage and the loading area, to reconsider the materials used for the fence surrounding the transformers, for a courtyard planting analysis, and for additional information regarding the integration of the louvers in the building façade. (October 28, 2013 Tr., pp. 87-90.)
18. The Commission closed the record at the end of the public hearing with the exception of the items it requested in Paragraph 17. The Commission then took proposed action to approve the application and plans that were submitted into the record. (October 28, 2013 Tr., pp. 91-92.)
19. The Applicant provided its list of final proffers and draft conditions required by 11 DCMR § 2403.16 on November 4, 2013, and its revised list of proffers and draft conditions required by 11 DCMR § 2403.19 on November 13, 2013. The Applicant filed its post-hearing submission on November 18, 2013, in response to the items the Commission requested. (Ex. 28.)
20. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. NCPC did not provide a report in this case.
21. The Commission took final action to approve the application on December 9, 2013.

Overview of the Property and Location

22. The Property is located in Ward 7, northwest of the intersection of Minnesota Avenue and Benning Road. Specifically, it is situated in the Parkside neighborhood and is

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- currently unimproved. The Subject Property is bounded by Kenilworth Terrace, N.E. on the south, Franklin Delano Roosevelt Street, N.E. on the east, Foote Street, N.E. on the west, and Parkside Place, NE on the north. The Property is comprised of approximately 34,663 square feet of land. (Ex. 2, p. 8.)
23. The Parkside neighborhood is partially constructed with streets and infrastructure in-place, 100 townhomes, three schools, streets, parkland, and just under 15 acres of remaining vacant land. As the northern anchor of the Anacostia Waterfront, adjacent to Kenilworth Avenue and the Minnesota Avenue Orange Line Metrorail Station, Parkside sits at a vital crossroads in the District of Columbia. (*Id.*)
 24. Land uses in the vicinity of the PUD Site include a PEPCO plant, Neval Thomas Elementary School, vacant land, and existing townhomes. Two blocks north of the PUD Site is the Mayfair/Paradise multifamily rental communities. Eastland Gardens is located a half mile to the north of the PUD Site. To the west of the PUD Site are Kenilworth Aquatic Gardens, Anacostia Park, the Anacostia River and the National Arboretum, forming a large green space and recreational complex. Parkside is adjacent to thousands of acres of parkland along the Anacostia Waterfront, including Kenilworth Park and the Aquatic Gardens. (*Id.*)
 25. The site enjoys easy access to the Downtown and the Baltimore/Washington corridor via Interstate 295. This six-lane highway provides quick, convenient access to downtown Washington, to Route 50 and points east, to the Baltimore-Washington Parkway to Howard County and Baltimore, and to the Capital Beltway. The Minnesota Avenue Metrorail Station (Orange Line) is located immediately across Interstate 295 from the site, within walking distance over a pedestrian bridge that connects to the Metrorail Station. (Ex. 2, p. 9.)
 26. Parkside has been adopted by America's Promise Alliance, a coalition of over 400 national organizations working collaboratively to bring comprehensive education and social services to underserved communities based upon the Harlem Children's Zone model. The Parkside community was accepted into the federal U.S. Department of Education's Promise Neighborhood Program, which is the centerpiece of President Barack Obama's urban initiatives. (*Id.*)
 27. The Promise Neighborhoods Program seeks to engage all resident children and their parents into an achievement program based on tangible goals and positive educational outcomes, including matriculation to college for each and every participating student, positive physical and mental health outcomes for children, and parenting classes. The program also seeks to provide employment training and counseling to provide meaningful employment opportunities for the parents. (Ex. 2, p. 10.)
 28. The DC Promise Neighborhood Initiative ("DCPNI") has formed a 501(c)(3) with a working group representing stakeholders, including Cesar Chavez Charter School, America's Promise Alliance, DC Appleseed, City Interests LLC, Georgetown University,

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Children's Hospital, and Local Initiatives Support Coalition ("LISC"). The District government endorsed the Kenilworth-Parkside application for the federal Promise Neighborhood Program. (*Id.*)

First Stage PUD Approval

29. The First-Stage PUD for Parkside was approved in September 2006 pursuant to Z.C. Order No. 05-28. The approval allowed for three million gross square feet of development to consist of approximately 1,500-2,000 residential units, 500,000-750,000 square feet of office space, and 30,000-50,000 square feet of retail, with approximately 2,400 total parking spaces. (Ex. 2, p. 5; Z.C. Case No. 05-28K, Ex. 2, p. 5.)
30. The entire project was approved for approximately 3,003,000 square feet of gross floor area resulting in an overall density of approximately 4.44 FAR. The total lot occupancy of the PUD was approved for approximately 62.4%. The maximum height of the PUD was approved for 110 feet, which was reserved solely for the buildings located in the center portion of Property fronting Kenilworth Avenue. The heights of the remaining buildings were not to exceed 90 feet and scaled down to lesser heights around the existing townhomes. The First-Stage PUD approval was subsequently modified in Z.C. Case No. 05-28E. (*Id.*)
31. In Z.C. Case No. 05-28, the Commission simultaneously approved a rezoning from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts. The Applicant is required to submit applications in connection with the second-stage approval that set forth the rezoning by Square and Lot. (*Id.*)
32. Z.C. Case No. 05-28E approved a modification of the First-Stage PUD to allow approximately 1,560,000 square feet of gross floor area to be developed on Blocks H and I. Of the approved gross floor area, 43,000 was reserved for health care uses, 260,000 was reserve for institutional uses, 750,000 was reserved for commercial use, and 504,700 square feet was reserved for residential use. The Commission simultaneously approved a maximum height of 110 feet, which was reserved solely for the two office towers and the institutional use. The health care use was approved for a height of 42 feet.
33. In the First-Stage PUD, the Commission approved a PUD-related Map Amendment for Block E from the R-5-A Zone District to the C-3-A Zone District. (Ex. 2, p. 6; Z.C. Case No. 05-28K, pp. 7, 11.)
34. The Commission also approved the Property for 140-160 residential units, a block occupancy of 63%, a maximum gross floor area of 183,000 square feet and a density of 4.6 FAR. The Property was to be developed to a maximum height of 90 feet along Kenilworth Terrace with step downs in height to 74 feet and then 54 feet along Parkside Place. Finally, the Property was approved with no parking spaces. (*Id.*; Ex. 14)

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35. The application modifies the first-stage approval to allow for 186 residential units, a lot occupancy of 63%, and a FAR of 5.2 (a gross floor area of 163,430 square feet). The Property includes 65 parking spaces and a maximum height of 80 feet, two inches along Kenilworth Terrace, with a step down to 74 feet, and a final step down to 64 feet, six inches along Parkside Place. (*Id.*; Ex. 18.)

First-Stage Modifications

36. The modifications of the first-stage approval are as follows:
- (a) **Height:** The residential building has a maximum height of 80 feet, two inches, and steps down to lesser heights of 74 feet and 64 feet, six inches as the building steps toward the townhouses across Parkside Place. The building was initially approved in 2007 with a maximum height of 90 feet, and stepping down to heights of 74 feet and then 54 feet. The approved project is consistent with the first-stage approval in that the building steps down from greater heights along Kenilworth Terrace, which is adjacent to mixed-residential and commercial uses, to lower heights along Parkside Place, which is adjacent to lower density residential uses. The building is generally consistent with the step-downs originally approved;
 - (b) **Gross Floor Area:** The building consists of 164,430 square feet of development, which is less than the 183,000 square feet that was approved in the First-Stage PUD;
 - (c) **Number of Units:** The First-Stage PUD approved 140-160 units; whereas, the Applicant is proposing 186 units. Since the PUD was first approved in 2007, there has been a shift in favored unit type and unit size. Whereas larger units were initially proposed, market studies have since confirmed that the market place favors smaller units. Consistent with this conclusion, the studies show that one-bedroom or studio units are the preferred unit type. Accordingly, the unit mix and size has been modified since the 2007 approval. Within roughly the same building envelope, the Applicant is increasing the number of units from 140-160 to 186 to reflect the changes in market demands, and will still be within the range (1,500-2,000) permitted in the original First-Stage PUD approval; and
 - (d) **Parking:** The First-Stage PUD did not provide any parking for the project; however, the approved project includes 65 vehicular spaces in a parking garage. The First-Stage PUD approved 581 parking spaces for Blocks F and J, which are the blocks to the east of Block E. Blocks F and J, however, would only be providing 470-525 residential units. The intent was that Blocks F and J would also park Block E. The Applicant believes it is more efficient and convenient to park the proposed building rather than provide parking off-site, accordingly, it is providing 65 spaces on-site rather than in a separate phase of development. The

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site plan includes two curb cuts: one from Parkside Place for resident entry into the garage and one curb cut from Foote Street for all loading and trash.

Otherwise, the project is designed in the same “u” shape the First-Stage PUD approved, providing a private courtyard at the center of the building. (*Id.*) The Applicant has submitted revised plans that replace those approved in the First-Stage PUD for this portion of the project. (Ex. 2B, 14A, 18A, 18D, 23, and 28.)

Project

37. The Second-Stage PUD project consists of a multifamily residential building. The residential building has a maximum height of 80 feet, two inches, and steps down to lower heights of 74 feet and 64 feet, six inches as the building steps toward the approved townhouses across Parkside Place. The building consists of 163,430 square feet of development and 65 vehicular spaces in a parking garage. The site plan includes two curb cuts: one from Parkside Place for resident entry into the garage and one curb cut from Foote Street for all loading and trash. (Ex. 18.)
38. The residential building is designed in a “u” shape providing a private courtyard at the center of the building. The central portion of the development contains a green roof courtyard overtop of the parking garage structure below. This courtyard serves as a gathering space for residents to use and enjoy the outdoor environment. Being placed on the parking garage roof, the courtyard will contain raised and mounded planters that provide the ability to plant a variety of plant material. These materials provide pedestrian scale and enhance the environment. The plantings are native plant species, specifically chosen to thrive and perform well in such an environment. Hardscaped areas are provided for gathering and organized social events for the residents. A landscape focal feature and lawn panel allows residents the ability to have a serene environment to read a book or relax. The courtyard is approximately four feet above grade, which affords the residents privacy from street level activity as they enjoy the privacy of the courtyard area. (*Id.*)
39. The courtyard, while serving the programmatic and aesthetic principles required for the space, also serves an important role in the green aspects of the development. The design allows for increased soil depths, over a conventional green roof, allowing for greater stormwater infiltration and absorption. With the majority of the courtyard being green, it can accommodate itself as well as other areas of the site including the roof. Permeable paving allows for additional stormwater infiltration and detention. All water that passes through the green roof courtyard, beyond what can be absorbed, is collected in a stormwater holding tank. (*Id.*)
40. In addition to providing a courtyard, the “u” shape design strategically minimizes the presence of the building as it fronts on Parkside Place, just across from the townhomes

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approved on Block C in Z.C. Case No. 05-28G. Block C was approved for 138,232 square feet of single family house development with a maximum height of 39 feet, six inches. The development on Block E steps the building height down to 64 feet, six inches along Parkside Place. In addition to reducing the height of the structures as it stretches toward the townhouses on Parkside Place, the building design also maximizes the setbacks along Parkside Place, as it strategically limits the building frontage to the two arms of the “u”. Accordingly, the proposed multifamily building is an appropriate height and mass as it extends toward the townhouses. (*Id.*)

Project Amenities and Public Benefits

41. **Special Value for Neighborhood:** This is a multifamily development that will bring full time residents to the Parkside PUD. The building serves as an important transition between commercial uses and lower density residential uses on the PUD Property. The proposed development enhances a site that has been vacant for several years and connects the existing Parkside Townhomes and senior housing to the greater community. (Ex. 2, pp. 19-20; Z.C. Case No. 05-28K, Ex. 2, pp. 22-23.)
42. **Affordable and Workforce Housing:** This Second-Stage PUD project will provide 186 rental units affordable to households with an income that is no greater than 60% of the AMI. (*Id.*) The overall PUD reserves 20% of the total residential component as affordable units to households having an income not exceeding 80% of AMI for the Washington, DC Metropolitan Statistical Area (adjusted for family size). The overall PUD further reserves 20% of the total residential component for workforce housing targeted to households that have an income between 80-120% of the AMI.
43. **First Source Employment Program:** According to § 2403.9(e), “employment and training opportunities” are representative public benefits and project amenities. To further this goal, the Applicant will also enter into an agreement to participate in the Department of Employment Services (“DOES”) First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (*Id.*)

Requested Flexibility

44. The Applicant requested flexibility and relief from the 55-foot loading berth, 200-square-foot loading platform, and 20-foot service and delivery requirements outlined in 11 DCMR § 2201.1. All loading activity will take place curb-side on Foote Street. There is a curb cut on Foote Street to accommodate trash and move-in activity. (Ex. 18, 19.)
45. The Applicant also requested flexibility and relief from 11 DCMR § 2116.12, which requires a 20 foot setback for all above-grade structured parking. The roof of the parking garage is out-of-grade and the parking area is not set back from the property line the requisite 20 feet. In order to comply with this section, the Applicant would have to set the building base back from the property line on each façade of the building. This would

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not only reduce the footprint of the building dramatically, but it would create aesthetic and architectural challenges in designing a building with a weak architectural base. (*Id.*)

46. The Applicant also seeks flexibility and relief from the side yard setback requirements of 11 DCMR § 775. The project generates a side yard requirement of 13.5 feet. The project does not provide the requisite side yard depth along Foote Street or Roosevelt Place. Nevertheless, the project is located on a through lot, and as such provides plenty of light and air for both the instant project and those on neighboring parcels. (*Id.*)
47. Finally, the Applicant seeks relief from the compact parking space requirements. The compact spaces are not provided in groups of five and thus, relief is required. (*Id.*)

Compliance with PUD Standards

48. 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.” During its consideration of the First-Stage PUD in Z.C. Case No. 05-28, the Commission determined that the development incentives and related rezoning for the Property were appropriate and fully justified by the superior benefits and amenities offered by the PUD. Here, the Commission finds that the Applicant has satisfied its burden of proof under the Regulations for this second-stage approval and PUD-related map amendment and modification to the First-Stage PUD. The application is justified in light of the superior benefits and amenities of the PUD, including the value of providing additional housing options in this community; the Commission does not find that other additional amenities and benefits are required to satisfy the standards for this PUD. It finds that the approval of the application will allow for the construction of housing to serve an underserved part of the District, which in and of itself and is a public benefit.
49. The Commission credits the testimony of the Applicant and its architectural expert and finds that the superior design, site planning, streetscape, sustainable design, and uses of special value of the project all constitute acceptable project amenities and public benefits consistent with the original approval of the First-Stage PUD and the subsequent modification.
50. The Commission finds that the character, scale, and proposed use is appropriate, and the project will add to the diversity of the area, increase its pedestrian nature and help stabilize this new community. It also finds that the site plan is consistent with the intent and purposes of the PUD process and the First-Stage PUD approval to encourage high quality developments that provide public benefits. In addition, the Commission finds that the site plan and features of the project, including the provision of affordable housing is a benefit for the community and consistent with the intent of the First-Stage PUD.

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51. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's traffic consultant 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.
52. As detailed in this Order, the Commission agrees with DDOT's analysis and believes that the Applicant has addressed the recommendations DDOT noted in its report, including the provision of short term and long term bicycle parking.
53. The Commission credits the testimony and submissions 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 as appropriate for medium-density residential uses on the Future Land Use Map;
 - b. Land Use Element policies recognizing the importance of concentrating redevelopment efforts on those Metrorail stations with the greatest opportunities for infill development and growth;
 - c. Transportation Element policies supporting transit-oriented development;
 - d. Housing Element policies encouraging new housing to meet the needs of present and future District residents;
 - e. Environmental Protection policies encouraging the use of landscaping to beautify the city and reduce stormwater runoff;
 - f. Urban Design policies to establish gradual transitions between large and small scale developments; and
 - g. Policies in the Far Northeast and Southeast regarding infill development, development of large parcels, and development near transit nodes.

Compliance with Comprehensive Plan

54. The PUD is consistent with and fosters numerous goals and policies enumerated in the District Elements of the Comprehensive Plan for the National Capital: ("Comprehensive Plan"), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300). The Project significantly advances social and economic development of the District through the construction of new residential units on underutilized land, including a senior housing facility, and on a site that has been deemed

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to be a development opportunity area for the transformation of the Kenilworth-Parkside neighborhoods. The project assists in the improvement and stabilization of the urban environment in the immediate neighborhood and the District as a whole.

55. The Project serves the goals of several of the citywide elements of the Comprehensive Plan Land Use Map:
- a. The Future Land Use Map designates the Property as appropriate for medium-density residential uses. The Medium Density Residential designation is used to define neighborhoods where mid-rise apartment buildings are the predominant use (four to seven). An apartment building with six floors of units is consistent with this designation;
 - b. Land Use Element: The Plan cites the importance of transit-oriented development and the importance of mixed-use developments on large sites. The Project is located a short walk to the Minnesota Avenue Metrorail station, which is less than one-half mile from the Property, and it is located even closer to the commercial center proposed along Kenilworth Terrace. As such, it fulfills the Plan's desire for infill development near the transportation infrastructure and provides the mass needed to support the commercial uses approved for the PUD. The Plan also seeks to achieve "land use compatibility" – specifically, the enhancement and stabilization of the District's neighborhoods by the protection of residential neighborhoods from non-residential and disruptive uses. The Property serves as an important transition between the commercial nature of Kenilworth Terrace and the lower-density residential along Parkside Place;
 - c. Transportation Element: The Plan encourages strengthening the linkage between land use and transportation as new development occurs and that is precisely what this proposal does. The Property is strategically located between the commercial center of Kenilworth Terrace and the lower-density residential uses in the Parkside community. The development not only transitions the uses and density, but it provides a connection between the uses. The project transforms the vacant lot into a contributing part of the Parkside community. Finally, the multifamily building adds one more use to the diverse mix of uses approved for the PUD site by the Commission;
 - d. Environmental Protection Element: The PUD landscape plan helps beautify the city, enhances streets and public spaces, reduces stormwater runoff, and creates a stronger sense of character and identity, thereby advancing these policies. There is an extensive landscape plan providing for abundant trees, retention of many existing trees, and comprehensive and creative stormwater treatment on the Property. The PUD includes elements to improve water quality through design features such as the use of a rain garden in the courtyard to treat runoff from impervious surfaces, including roofs and paved areas; and through the use of a

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vegetative swale (bio-filtration) to treat runoff from the Property. The Applicant is also providing an extensive buffer along Foote Street to buffer the multifamily building from the PEPCO plant immediately to the west. The Commission approved the buffer as a part of Z.C. Case No. 05-28A, but the Applicant is providing additional landscaping along the east side of Foote Street. Finally, the overall PUD has been selected as a LEED-ND (Leadership in Energy and Environmental Design for Neighborhood Developments) Pilot project and will seek at least Silver level certification for the overall master development;

- e. Parks, Recreation, and Open Space Element: The Comprehensive Plan specifically recognizes the value of functional open space. The greater PUD includes a linear park that serves as public recreation space between the Victory Square apartment building and 39 new townhouses. The PUD also includes a one-acre open park that was approved by the Commission in Z.C. Case Nos. 05-28A and 05-28F. The landscaping of the one-acre park is expected to take place in 2014. The park will serve as a relaxing amenity for residents and neighbors and will create an attractive resting point that District residents can appreciate while they take an evening stroll, walk the dog, or simply read a book outside;
- f. Urban Design Element: The Urban Design Element of the Plan seeks to, among other goals, strengthen civic identity through a renewed focus on public spaces and boulevards; designing for successful neighborhoods and large site reintegration; improving the public realm, particularly street and sidewalk space; and promoting design excellence throughout the District. The proposed development will reflect the beneficial architectural qualities of the surrounding residential neighborhoods. The project proposed for Block E includes an appropriate use, density and height and the overall PUD allows for sufficient private and public open space for the residents. The building provides an important connection between approved second-stage applications, providing the unity and cohesion of plan that the PUD needs; and
- g. Compliance with Area Element: The current condition of the Parkside neighborhood, with over 14 vacant acres of land, discourages an active connection between the Anacostia waterfront and the Ward 7 community. The development of the Parkside PUD creates a more inviting, accessible and active connection to the Anacostia waterfront. The urban design of the redevelopment encourages the Ward 7 community to use the waterfront and its new and existing amenities. The increased activity engendered by these first phases of development creates a friendlier, more inviting atmosphere for residents wanting to access the waterfront. The strong visual corridors and pedestrian pathways of the site design encourage use of the waterfront. The Parkside PUD also reflects the District's plan for concentrating a mix of uses at the Minnesota Avenue Metrorail Station. The addition of a multifamily building supports the concept of

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Parkside as a true mixed-use development. The heights and density proposed for development are also appropriate for the PUD's proximity to public transit and its role in transitioning between uses. Finally, the building design calls for an appropriate transition between the greater heights along Kenilworth Avenue to the lesser heights as the development stretches toward the Anacostia River.

Agency and Government Reports

56. By report dated October 18, 2013, and by testimony at the public hearing, OP recommended approval of the Second-Stage PUD and First-Stage PUD modification. It specifically stated its support for a 100% affordable project, with units made available to households with an annual income no greater than 60% of the AMI. (Ex. 19.)
57. OP noted that while it typically questions above-grade parking, it believed the placement of the first floor approximately one-half flight above grade would provide a sense of privacy to the residents and allow for prominent entrance stairs. (*Id.*)
58. OP fully supported the modification to the First-Stage PUD and found the project to be consistent with the intent of the initial approval. (*Id.*)
59. Finally, OP supported the requested flexibility from the zoning requirements for loading, side yards, compact parking and the location of the parking spaces. (*Id.*)
60. By letter dated October 8, 2013, DC Water noted that there is existing public water and sewer infrastructure located within 250 feet of the project site and that therefore the public water and sewer infrastructure is considered available. (*Id.*)
61. By report dated October 24, 2013, and by testimony at the hearing, DDOT noted its support of the project. It testified that it was comfortable with the requested loading relief and the requested flexibility regarding the compact spaces and the location of the parking spaces. It also noted it found 65 parking spaces to be adequate for the type and size of the project, particularly in light of the site's proximity to the future Streetcar station. (Ex. 21; October 28, 2013 Tr., pp. 77-86.)
62. DDOT recommended that the Applicant work with DDOT to upgrade the sidewalks and ADA-compatible ramps to current DDOT standards. It also suggested that the Applicant work with DDOT in the location of both the short term and long term bicycle spaces. The Commission notes that both of these comments were the subject of the Applicant's public space approval and as such, are not incorporated as conditions of this application. (*Id.*)

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Advisory Neighborhood Commission 7(D)

63. ANC 7D submitted a letter, dated February 12, 2013, into the record. The ANC indicated that at its public meeting on February 12, 2013, the Commissioners voted unanimously in support of the project with a vote of 6 in support and 0 commissioners in opposition. (Ex. 14E.)
64. Single Member District representative Willie Woods submitted a letter dated September 10, 2013, noting his support of the application. Specifically, he notes that project will be an asset to the Parkside community and it will support the growth of the community. (Ex. 18B.)

Persons in Support

65. Geraldine Bell, the President of the Parkside Civic Association, submitted a letter dated July 25, 2013, in support of the application. The Association stated their support for the project as a mechanism for introducing new individuals into the neighborhood. (Ex. 13.)

Persons and Parties in Opposition

66. There were no persons or parties in opposition to this application.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits. (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 two-stage PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will offer a variety of building uses and types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of 11 DCMR § 2401.1.
5. The Commission agrees with the testimony of the project architect, transportation consultant, and the representatives of the Applicant and believes that this project does in

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fact provide 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 quality affordable housing is a valuable asset for the Ward 7 community. The Commission further finds that occupation of the proposed design is sensitive to the surrounding uses, including the lower-density townhomes across Parkside Place from the project. The Commission notes that the step down in height and the placement of the courtyard along Parkside Place mitigate any potential impacts of the project on the townhomes. The Commission concludes that the design, including sustainable elements of design, bicycle parking, and site planning of the project promotes smart growth and encourages use of public transportation.

6. The Commission finds that the density and height of the Project is appropriate. The 80 foot building height will not have an adverse effect, particularly with respect to light and air, on neighboring uses as noted above.
7. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia and in conformity with the First-Stage PUD.
8. Approval of the application and the PUD-related Zoning Map Amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP in this case and finds that the proposed project is consistent with and fosters numerous policies and elements of the Comprehensive Plan. Specifically, the Commission believes that the proposed project furthers the following elements: land use, transportation, housing, environmental protection, urban design, and the area element.
9. The Commission believes that the proposed PUD-related rezoning of the Property to the C-3-A Zone District is appropriate given the Comprehensive Plan designation for the Property, the superior features of the PUD project, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
10. The Commission agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT, that the application is appropriate given its proximity to the Metrorail Station. It also agrees with DDOT's conclusion that the proposed amount of parking is adequate to accommodate the needs of the project without having a negative impact on the community and that the request for relief from the loading requirement will not have a detrimental impact on the community.
11. Any condition of approval requiring affordable housing shall automatically terminate if title to the mortgaged property is transferred following foreclosure by, or deed-in-lieu of foreclosure to, a mortgagee in the first position, or a mortgage in the first position is assigned to the Secretary of the US Department of Housing and Urban Development

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provided the Applicant has executed monitoring and enforcement documents per the requirements of 11 DCMR § 2409.10.

12. 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 gives great weight to the ANC's support of this project. The Commission also lends credence to support of the Single Member District representative, Willie Woods, and the Parkside Civic Association, as those individuals are located in the immediate vicinity of the Property and are the most immediately affected by the proposal and, yet, are very supportive of the project.
13. 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 (2001)), to give great weight to OP recommendations. The Commission concurs with OP's view that the application should be granted and that it is not inconsistent with the Comprehensive Plan or with the First Stage approval.
14. Notice of the public hearing was provided in accordance with the Zoning Regulations.
15. 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 for the District of Columbia **ORDERS APPROVAL** of the application for a modification of the First Stage PUD, a Second Stage PUD, and related a map amendment from the R-5-A to the C-3-A Zone District for property consisting of Square 5041, Lot 808 ("Property"). This approval is subject to the following guidelines, conditions, and standards:

1. The Second-Stage PUD shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 2B, 14A, 18A, 18D, 23, and 28 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall have flexibility with the design of the Second-Stage PUD in the following areas:
 - 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;
 - To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction;

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- To make minor refinements to exterior details and dimensions, including balcony enclosures, belts, courses, sills, bases, cornices, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems; and
 - To vary the size, location and design features of retail entrances, 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.
3. The Applicant shall reserve all the residential units in the Second-Stage PUD for households with an income no greater than 60% of the annual median income. The units shall remain at this level of affordability for at least 30 years.
 4. The Applicant shall enter into a First Source Agreement with the Department of Employment Services prior to the issuance of a building permit for Block E.
 5. No building permit shall be issued for this project until the Applicant 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 Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.
 6. The change in zoning from the R-5-A Zone District to the C-3-A Zone District shall be effective upon the recordation of the covenant referenced in Paragraph 5, pursuant to 11 DCMR § 2408.15.
 7. 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 of the project shall start within three years from the effective date of this Order.
 8. 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

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by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On October 28, 2013, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** the application at the close of the public hearing 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 December 9, 2013, upon the motion of Vice Chairman Cohen, seconded by Commissioner Miller, 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 approve).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on February 7, 2014.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28L
Z.C. Case No. 05-28L**

**Lano Parcel 12, LLC, Parkside Residential, LLC, Parkside Homes, LLC, and CI GD
Parkside 7, LLC
(Two-Year PUD and Zoning Map Amendment Time Extension @ Square 5041, Lots 48-70,
806-809, 814, 815, 818, 820, and 833-850; Square 5055, Lot 26; and Square 5056, Lots 41,
809-811, and 813)
November 18, 2013**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on November 18, 2013. At that meeting, the Commission approved the request of Lano Parcel 12 LLC, Parkside Residential LLC, Parkside Homes, LLC, and CI GD Parkside 7, LLC (collectively, the “Applicant”) for a two-year time extension of the first-stage planned unit development (“PUD”) for the Parkside project. The time extension request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

Case Background

1. The Commission granted first-stage PUD approval for the property on April 13, 2007, pursuant to Z.C. Order No. 05-28. (Z.C. Order No. 05-28.)
2. Z.C. Order No. 05-28 approved approximately three million square feet of mixed-use development on 10 building blocks on over 15 acres of vacant property east of the Anacostia River in Ward 7. Specifically, it approved 1,500-2,000 residential units; 500,000-750,000 square feet of office space, and 30,000-50,000 square feet of retail. It approved a maximum height of 110 feet for two office towers and a maximum height of 90 feet for the remainder of the property. The First-Stage PUD also approved the rezoning of the property from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts, subject to the requirement of § 3028.9 for the completion of the second-stage approval process and the filing of covenants for each second-stage approval.
3. The approval was valid for a period of one year, within which time an application for a second-stage PUD was required to be filed. If the second-stage application was for less than the entire property, the remaining second-stage applications were required to be filed within three years of the approval of the initial second-stage application. (Z.C. Order No. 05-28.)
4. Therefore, at least one second-stage application had to be filed by April 12, 2008.
5. The Applicant filed a second-stage application for a portion of the property in November 2007. It was approved on October 3, 2008. Accordingly, all subsequent second-stage applications for the property were required to be filed by October 3, 2011. (Z.C. Order No. 05-28A.)

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6. By October 3, 2011, second-stage applications had been filed for five of the PUD blocks. The First-Stage PUD approval was subsequently modified during the processing of those second-stage applications. Z.C. Case No. 05-28E, which was approved on June 27, 2011, approved a change of use, increased the approved maximum height, and approved a rezoning to the CR Zone District for a portion of the Property. (Z.C. Order Nos. 05-28 and 05-28E.)
7. On August 10, 2011, the Applicant filed a request to extend the First-Stage PUD approval through October 3, 2013 to allow for the remainder of the second-stage applications to be filed. The Commission approved the request in Z.C. Case No. 05-28H and the First-Stage PUD approval was extended through October 3, 2013. (Z.C. Order No. 05-28H.)
8. By October 3, 2013, the Applicant had filed second-stage applications for two additional blocks. On October 2, 2013, the Applicant filed a request for a second two-year extension of the First-Stage PUD approval, again, to allow for the remaining second-stage applications to be filed.
9. The request was placed on the Commission's November 18, 2013, meeting agenda, at which time the Commission took action to approve a two-year extension of the First-Stage PUD. The expiration of the First-Stage PUD approval was extended through October 3, 2015.
10. Since the issuance of Z.C. Order 05-28, the following second-stage applications have been approved:
 - Z.C. Case No. 05-28A: The Commission approved a second-stage application for Blocks A, B, and C. The approved project included an affordable senior housing facility and single-family townhomes. The affordable senior housing facility has been constructed and is currently operational. The Commission modified the approval for the townhouse development in Z.C. Case No. 05-28G. The project was approved for 100 townhomes, 58 of which will be sold at market-rate and 42 will be workforce housing;
 - Z.C. Case No. 05-28B: The Commission approved a second-stage application for the construction of a public health center on Block I. The approval was modified in Z.C. Case No. 05-28I; a 43,000 square-foot health center has been constructed on the property and is currently operational;
 - Z.C. Case No. 05-28C: The Commission approved a second-stage application to locate the Community College of the District of Columbia on a portion of Blocks H and I of the PUD;

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- Z.C. Case No. 05-28F: The Commission approved a second-stage application for the one-acre park at the center of the PUD; and
- Z.C. Case No. 05-28J/K: The Commission approved a second-stage application for 186 affordable residential units on Block E.

Extension Request

11. Subsection 2407.11 of the Zoning Regulations grants the Commission the authority to extend a first-stage PUD approval in accordance with the standards and process for second-stage PUD extensions set forth in § 2408.10 through 2408.12.
12. Pursuant to § 2408.10, the Commission must determine whether: (a) the extension request was served on all parties to the application by the Applicant and that parties were given at least 30 days to respond; (b) there was no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrated with substantial evidence that there was good cause for such extension.
13. The Applicant satisfied each of the three standards. With respect to the first prong, the request was served on the Advisory Neighborhood Commission ("ANC") 7D and the Parkside Townhomes Condominium, Inc., the only parties to the First-Stage PUD, on the same day as it was filed with the Commission. The request was considered by the Commission after the 30-day period had lapsed.
14. The Parkside neighborhood has not undergone any significant changes since the PUD was initially granted. In fact, the most substantial changes have been the result of the approved PUD, including construction of a senior housing facility and public health care facility.
15. The Comprehensive Plan designation and zoning designation for the property surrounding property remains unchanged since the granting of the First-Stage PUD in 2006 and the extension and modification granted in 2011.
16. The Applicant's failure to file the requisite second-stage applications within the requisite period of time was due to a confluence of factors, including the economic downturn that hit the country in 2008, just two years after the first-stage application was approved.
17. Ward 7, particularly the areas east of the Anacostia River, were particularly hard-hit by the recession. The Applicant has faced challenges in coordinating the timing of development with market demands. It has also faced financing challenges, particularly

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for the townhomes and for affordable housing. The Applicant has and continues to approach financial institutions to realize the project.

18. The Applicant included an affidavit with its extension request that outlined the efforts that had been taken to implement the First-Stage PUD approval:
 - a. The senior housing facility opened and is currently 98% occupied;
 - b. The District of Columbia Primary Care facility opened on October 16, 2013, and will serve an estimated 50,000 patients annually;
 - c. The Applicant will file for its building permit for the public park in December 2013;
 - d. The Applicant is finalizing its Funding Agreement with the District Department of Transportation (“DDOT”) and depositing its contribution into a Special Fund maintained by DDOT to fund the pedestrian bridge between the PUD and the Metrorail station. DDOT has finalized the project’s Contract Package and estimates to start construction in Q1 2014 with completion in year-end 2015;
 - e. The Commission approved a residential building for Block E;
 - f. The Applicant retained an architect to prepare schematic drawings for the development of Block F as a mixed-use residential and retail development;
 - g. The Applicant partnered with K Hovnanian Homebuilders on the townhomes approved for Blocks B and C and has completed 100% of the civil engineering permit plans and received approval from all the appropriate District agencies for a Public Space Permit, Stabilized Construction Entrance Permit, and Utility Permits;
 - h. The Applicant partnered with The Michaels Organization and The Warrenton Group for the DC Housing Authority’s (“DCHA”) Choice Neighborhoods Initiative Implementation Funding application in September 2013. The partnership seeks to develop Block J into multifamily housing if/when DCHA is awarded this grant from HUD;
 - i. The Applicant approached several financial institutions to partner with on the project’s financing; however, the state of the single-family lending market in the District and specifically in Ward 7 posed numerous challenges with respect to finding the right construction lender;

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- j. The Applicant made good faith efforts to attract a large office user on Block H. It approached several district agencies, including the Department of Homeland Security and DCHA. The conditions of the office market in Ward 7 as well as District-wide pose significant challenges to drawing such users east of the Anacostia River; and
 - k. The Applicant moved forward with applications for second-stage approval for seven of 10 building blocks approved in the Order, including the development of a 98-unit affordable senior housing building, 100 townhomes with a workforce housing component, a park to be made available to the public, the Community College of the District of Columbia (“CCDC”), a health care facility, and an affordable multi-family building.
19. The Parkside Civic Association (“PCA”) submitted a letter dated November 8, 2013, in support of the request. The PCA noted they supported the request because the Applicant has pursued a number of second-stage approvals and plays an important role in constructing several great projects in the neighborhood, including Victory Square, the senior housing facility, Educare of Washington DC and the Unity Health, the primary care clinic in the PUD. Other projects, like the community park and 600 Kenilworth Terrace (Block E) are due to start construction next year and when finished will be community assets. The Parkside PUD and Master Plan are still relevant and continue to drive the vision for the future of Parkside. The PCA also noted that the Applicant is committed to the Parkside community and to fulfilling its obligations and has attended numerous ANC 7D public meetings and local Parkside Civic Association meetings to keep the residents informed.
20. Willie Woods, the ANC Single Member District representative, submitted a letter dated November 8, 2013, in support of the request. Mr. Woods stated that he was still a proponent of the project and is looking forward to it coming to fruition. He also noted that there has been movement in the right direction since the initial approval of the First-Stage PUD. (Exhibit [“Ex.”] 11.)
21. ANC 7D did not submit a letter into the record to indicate its support or opposition.
22. The Office of Planning (“OP”) submitted a report dated November 1, 2013. OP recommended approval of the time extension request and noted the Applicant’s fulfillment of the standard promulgated in § 2408.10 of the Zoning Regulations. OP noted that the Applicant “has demonstrated with substantial evidence good cause for the extension and [OP] recommends that the Commission grant the request.” (Ex. 10.)

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CONCLUSIONS OF LAW

1. Subsection 2407.11 of the Zoning Regulations grants the Commission the authority to extend a first-stage PUD approval in accordance with the standard and process for second-stage PUD extensions set forth in § 2408.10 through 2408.12.
2. Subsection 2408.10(a) requires that the Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the Parties to the original PUD application, ANC 7D and the Parkside Townhome Condominiums, when it filed the first-stage PUD and Zoning Map Amendment and time extension application on October 2, 2013. Both parties were given 30 days to respond to the extension request.
3. Subsection 2408.10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. The Commission concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.
4. Finally, § 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. Pursuant to § 2408.11, an extension of validity of a PUD may be granted if the applicant has demonstrated with substantial evidence one or more of the following criteria:
 - a. An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;
 - b. An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
 - c. The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.
5. The Commission finds that there is good cause shown to extend the period of time of the validity of the First-Stage PUD based upon the Applicant's inability to obtain sufficient project financing for the remainder of the PUD. The Commission also finds that the Applicant has made good faith efforts to effectuate the First-Stage PUD and has pursued a significant number of Second Stage applications in a financially challenging time where economic and market conditions were beyond the Applicant's reasonable control.

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6. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in paragraph 22 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation.
7. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR §§ 2408.10 and 2408.11.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 05-28L for a two-year time extension of Z.C. Order No. 05-28. The validity of the First-Stage PUD is extended until October 3, 2015, within which time any outstanding second-stage PUD applications for the property must be filed.

On November 18, 2013, upon motion by Chairman Hood, 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 3028.8, this Order shall become final and effective upon publication in the *D.C. Register* on February 7, 2014.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-32A**

Z.C. Case No. 10-32A

Georgetown University

**(Application for Special Exception Approval of an Amendment to the 2010-2017 Campus Plan, Further Processing of the Campus Plan, and Variance Relief @ Northeast Triangle Residence Hall/Ryan, Mulledy, and Gervase Buildings)
January 13, 2014**

Application of Georgetown University (the “University”) requesting special exception approval under the campus plan provisions of the Zoning Regulations at 11 DCMR §§ 3104 and 210 for amendment of the approved 2010-2017 Campus Plan, further processing of the Campus Plan, and variance relief from § 400.9 of the Zoning Regulations, pursuant to 11 DCMR § 3103.2 of the Zoning Regulations, in order to allow the construction of the Northeast Triangle residence hall. The University also requested special exception approval for amendment and further processing of the Campus Plan for the renovation of the Ryan and Mulledy buildings as a residence hall. In accordance with § 3035.4 of the Zoning Regulations, this case was heard and decided by the D.C. Zoning Commission for the District of Columbia (“Commission”) using the rules of the D.C. Board of Zoning Adjustment at 11 DCMR §§ 3100 *et seq.* For the reasons stated below, the Commission hereby approves the applications, subject to conditions.

HEARING DATE: November 25, 2013

DECISION DATE: January 13, 2014

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

FINDINGS OF FACT

Applications, Parties, and Hearing

1. The property that is the subject of this application is part of the main campus of Georgetown University located at 3700 O Street, N.W. (Square 1321, Lot 1) (“Property” or “Main Campus”).
2. On June 28, 2013, the University submitted an application seeking special exception review for amendment to its 2010-2017 Campus Plan (“Campus Plan”) and further processing of the Campus Plan to construct a new residence hall in the northeast quadrant of the University’s Main Campus. (Exhibit [“Ex.”] 3.)
3. The public hearing was originally scheduled for September 23, 2013. By letter dated August 7, 2013, the University requested postponement of the public hearing in order to provide the University more time to engage members of the university and surrounding residential community in the design of the building, and review that design with the Old Georgetown Board (“OGB”). (Ex. 10.)

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4. On September 23, 2013, the University amended the initial application to include special exception approval for an amendment to the Campus Plan to designate the Ryan, Mulledy, and Gervase buildings for either residential/campus life/athletic or academic/administrative use in order to provide the University with flexibility to adapt the buildings for use as additional undergraduate student housing.¹ (Ex. 12.) On September 30, 2013, members of the Georgetown Community Partnership (“GCP”) filed a letter in support of the proposed change in use for the Ryan, Mulledy, and Gervase buildings.
5. Revised notice of the public hearing reflecting the postponed hearing date and the requested changes for the Ryan, Mulledy, and Gervase buildings was published in the *D.C. Register* on October 11, 2013 and was mailed to Advisory Neighborhood Commission (“ANC”) 2E and to owners of all property within 200 feet of the Property.
6. On November 8, 2013, the University filed a pre-hearing statement updating and supplementing the original application, as amended. (Ex. 18.)
7. The public hearing on the application was conducted on November 25, 2013. The hearing was conducted in accordance with the provisions of 11 DCMR §§ 3022 and 3117.
8. In addition to the Applicant, ANC 2E was automatically a party in this proceeding. ANC 2E submitted a report and resolution in support of the application. (Ex. 17, 32.) ANC 2E also provided detailed testimony at the public hearing.
9. Georgetown Visitation Preparatory School (“Georgetown Visitation”), which abuts the Property to the east, submitted a letter in support of the application. (Ex. 24.) At the hearing, the president of the Georgetown University Student Association provided testimony in support of the application.
10. At the November 25, 2013 public hearing, the University presented evidence and testimony from Vinicius Gorgati, who was qualified as an expert in architecture, as well as testimony from the University’s senior leadership.
11. The Office of Planning (“OP”) and the District Department of Transportation (“DDOT”) each submitted reports and provided testimony in support of the application. (Ex. 22, 23.)
12. On December 30, 2013, the University filed a post-hearing submission which provided a revised and updated landscape plan, an update on OGB’s review of the Northeast

¹ In its pre-hearing statement, the University also requested further processing approval for the use of the buildings as an undergraduate residence hall.

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Triangle residence hall, and revisions to the University's requested flexibility conditions. (Ex. 33.)

13. At a public meeting on January 13, 2013, the Commission took final action to approve the application in Z.C. Case No. 10-32A, subject to conditions.

Campus Plan Amendment – Northeast Triangle

14. In 2012, the Commission approved the University's Campus Plan with conditions that were jointly submitted and supported by the University, ANC 2E, the Citizens Association of Georgetown ("CAG"), the Burleith Citizens Association ("BCA"), and the Foxhall Community Citizens Association ("FCCA"). These conditions were incorporated by the Commission into Z.C. Order No. 10-32, which approved the Campus Plan ("Campus Plan Order").
15. In Summer 2012, the University retained Forest City Washington as master developer and Sasaki & Associates as master planner to assist with the University's master planning process and the redevelopment of the Main Campus as a more residential, living and learning community. The University, through an inclusive process led by Forest City and Sasaki, identified multiple sites on campus for new student housing. The planning team focused on sites located close to the core of the campus, along primary pedestrian routes, and near existing residential clusters, each of which were key criteria to promote increased residential density and on-campus community. (Ex. 3.)
16. One residential site identified by the planning team was the Northeast Triangle site. The Northeast Triangle site is located in the northeast quadrant of the campus, along the University's border with Georgetown Visitation. The site is triangular in shape, relatively narrow, and features a significant change in grade from northeast to southwest. The site is undeveloped. To the north is Henle Village, a residence hall. To the west is the Leavey Center, the student center. To the southwest is Reiss Hall, an academic building. (Ex. 3, 18.)
17. The Northeast Triangle site is adjacent to the Leavey student center and proximate to the northernmost cluster of residence halls. The Northeast Triangle site is also located in the centermost ring of campus density and along the campus' primary north-south pedestrian route. The site is undeveloped. The planning team recommended the Northeast Triangle site as a preferred site for undergraduate student housing because it met all key criteria and could be delivered more quickly than other sites. (Ex. 3.)
18. The Northeast Triangle site is located in the R-3 Zone District and in the Institutional land use category on the Future Land Use Map and the Generalized Policy Map of the District of Columbia Comprehensive Plan ("Comprehensive Plan").

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19. Currently, the site is not designated for any use in the Campus Plan. The University proposed amending the Campus Plan to designate the site for residential/campus life/athletic uses in order to permit the construction of the new residence hall.

Further Processing – Northeast Triangle

20. The University proposed to construct a new eight-story residence hall on the Northeast Triangle site (the “Project”). The proposed residence hall will contain seven stories of semi-suite style rooms over a ground floor of pedestrian-oriented uses and one basement level. (Ex. 3, 18, 27.)
21. As detailed in the University’s written submissions and testimony of the University’s architectural expert, the massing, materials, and detailing of the Northeast Triangle residence hall has been designed to integrate the Project into the surrounding campus fabric. The University added an eighth-story setback on the west side of the building to correspond with the height of the nearby Reiss building and revised the palette of building materials to incorporate stone and brick evocative of existing campus architecture. The ground-floor uses, which may include a combination of student gathering and study spaces, meeting spaces, or potential accessory retail space, are intended to activate the adjacent pedestrian pathway. (Ex. 3, 18, 27.)
22. The University proposed to develop the existing pedestrian pathway between the Project and Reiss building into a pedestrian plaza that will enhance the connection between the historic campus core to the south and the Leavey student center and student residential community to the north. Landscaping on the north and east sides of the building will feature a combination of terraced spaces to accommodate the significant change in grade. (Ex. 3, 18, 27.)
23. The Project will contain approximately 74,147 square feet of gross floor area and will be constructed to a maximum height of approximately 87’2” feet, as measured from the middle of the front of the existing grade at the Project’s west façade, which fronts on the internal campus roadway. The Project is set back 30 feet from the eastern property line with Visitation. To accommodate the height, the University requested variance relief from the height setback requirement for institutional buildings set forth in § 400.9 of the Zoning Regulations. (Ex. 3, 18, 27.)
24. The Project will not contain any vehicular parking spaces. Covered bicycle parking will be located within the building. The Project will be serviced through an underground tunnel that connects to the loading dock of the Reiss building. (Ex. 3, 18, 27.)

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25. Prior to the hearing, the University requested flexibility to revise the design of the Project, as well as limited flexibility to adjust the height, massing, and location of the building in order to respond to comments from OGB and other preservation officials, because it had not yet received feedback from OGB on the Project. (Ex. 18.) Subsequent to the hearing, the University presented the Project to OGB at its December 5, 2013 public meeting. In its post-hearing submission, the University indicated that OGB was supportive of the height, massing, and location of the Project. The University amended its request to ask for flexibility to revise the design of the Project in response to comments from OGB and other preservation officials, so long as such changes do not increase the height or density of the Project or increase the amount of the variance from the setback requirement. (Ex. 33.)

Campus Plan Amendment and Further Processing – Ryan, Mulledy, and Gervase Buildings

26. The Ryan, Mulledy, and Gervase buildings are located in the center of campus, immediately west of Healy Hall. To the south and west are a number of residence halls, the O'Donovan dining hall, and the under-construction Healey Family Student Center. To the north and east are academic and administrative spaces and Dahlgren Chapel. (Ex. 18, 27.)
27. The three buildings were formerly used as the Jesuit residence. The Ryan and Mulledy buildings are currently vacant. The Gervase building is currently used as administrative offices. The Mulledy and Gervase buildings were constructed between 1830 and 1848; the Ryan building was constructed in 1904. (Ex. 18.)
28. The planning team identified an opportunity to adaptively reuse the Ryan and Mulledy buildings as undergraduate student housing. (The Gervase building will likely remain as an administrative building for the near future, but a portion of the building may be required to facilitate the residential use of the other two buildings.) The site is located in the center of campus near other student housing as well as the dining hall and new student center, and proximate to the academic and spiritual core of the campus. (Ex. 18, 27.)
29. The buildings are also located in the R-3 Zone District and in the Institutional land use category on the Comprehensive Plan.
30. The buildings are currently designated for academic/administrative uses in the Campus Plan. The University proposed amending the Campus Plan to designate the buildings for either "academic/administrative" or "residential/campus life/athletic" uses in order to permit redevelopment of the Ryan and Mulledy buildings as a residence hall. The University also requested further processing approval for such redevelopment.

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31. Given the age of the buildings and their various uses over time, the University explained that their adaptive reuse could require significant renovation work, including building upgrades to address code and accessibility issues. Accordingly, the University requested limited flexibility to accommodate upgrades that are necessary to address building code and accessibility issues without additional further processing approval, even if the required changes result in additional gross floor area or lot coverage. (Ex. 18.)

Section 210 Evaluation

32. Pursuant to 11 DCMR § 210, the University demonstrated that the proposed campus plan amendment and further processing applications met the standards of § 210 as well as the general special exception standards of § 3104 of the Zoning Regulations:
- a. Subsection 210.1: The University is an educational institution of higher learning;
 - b. Subsection 210.2: The proposed residence halls are located so that they are not likely to become objectionable to neighboring properties because of noise, traffic, number of students or other objectionable conditions. Both residence halls are located within the core of the campus and away from surrounding neighborhood residential uses. The distance, combined with surrounding buildings and, in the case of the Northeast Triangle site, vegetation, will buffer and screen the noise and visual impacts of the residence halls. The residence halls will provide additional on-campus undergraduate residences, which will reduce the number of students in the surrounding neighborhoods. Finally, students who live on campus are prohibited from bringing cars to campus or parking them on the streets in the surrounding neighborhoods, so the residence halls will not generate objectionable impacts due to traffic or parking;
 - c. Subsections 210.3 and 210.8: The existing campus density is 1.22 floor area ratio (“FAR”), which is within the permitted maximum density of 1.8 FAR for a university in the R-3 Zone District. The proposed construction will result in an overall campus density of 1.23 FAR, which is still within the maximum 1.8 FAR;
 - d. Subsection 210.4: The Campus Plan called for additional student housing and further development of the Main Campus as a more residential, living and learning campus. In this application, the University amended the Campus Plan to identify the location for two new residence halls that would further these goals and meet the student housing requirements of the Campus Plan Order. The amendments are consistent with the approved plan for developing the campus as a whole and will increase the amount of square feet devoted to residential/campus

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life/athletic use on the campus by an additional approximate 130,600 square feet of gross floor area;

- e. Subsection 210.5: No interim use of land is proposed;
- f. Subsection 210.6: No new use of a previously approved building site is sought;
- g. Section 210.7: The proposed residence halls are consistent with the Property's Institutional land use designation in the Comprehensive Plan, and they will further goals in the Education and Near Northwest Area Element of the Comprehensive Plan related to the provision of additional on-campus student housing;
- h. Subsection 210.9: The applications were referred to OP and DDOT for comment, and each submitted a report in support of the applications; and
- i. Subsection 3104: The proposed residence halls are in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

(Ex. 3, 18, 27.)

- 33. Based on the foregoing, the Commission finds that the Northeast Triangle is an appropriate location for undergraduate student housing and concludes that designation of the site as residential/campus life/athletic use is consistent with the Campus Plan as a whole. The Commission also finds that the construction of the Project is not likely to generate objectionable impacts on neighboring property and furthers the goals of the Campus Plan.
- 34. Based on the foregoing, the Commission finds that the Ryan and Mulledy Buildings are an appropriate location for undergraduate student housing and concludes that the designation of the Ryan, Mulledy, and Gervase buildings for either academic/administrative or residential/campus life/athletic use is consistent with the Campus Plan as a whole. The Commission also finds that the redevelopment of the Ryan and Mulledy buildings as a residence hall is not likely to generate objectionable impacts on neighboring property and furthers the goals of the Campus Plan.

Variance Relief Evaluation

- 35. The Northeast Triangle Project will have a building height of approximately 87'2" and is set back 30 feet from the campus' eastern property line. Subsection 400.9 permits institutional buildings of up to 90 feet in height, provided that the structure is removed

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from all lot lines a distance of not less than one foot for each foot of height in excess of that authorized in the district in which it is located. Thus, it requires that the Project be set back from all property lines by at least 47'2" (since the R-3 Zone District permits a maximum building height of 40 feet). Accordingly, the Project's 30-foot setback from the eastern property line with Georgetown Visitation requires a variance of 17'2".

36. In satisfaction of the variance relief standard described in conclusions of law number 3 of this Order, the Applicant demonstrated the following:

- a. The site is unique because of its narrowness, topography, and triangular shape. Furthermore, the campus context and need to co-locate undergraduate student housing with other residence halls on campus create a unique condition;
- b. Strict compliance with the setback requirement of § 400.9 would be unnecessarily burdensome on the University, because it would reduce the total number of beds and threaten the programming and economic viability of the residence hall. Constraints on the building location and design requirements, such as the need to set back the building from other nearby campus buildings and introduce the eighth-story setback on the western side of the project, further complicate the ability to comply with the setback requirement. Accordingly, the Commission finds that there is a practical difficulty in complying with § 400.9 that results from the exceptional and unique conditions that affect the Property; and
- c. Granting the requested variance relief will not impair the Zone Plan. The Project is harmonious with adjacent campus buildings. Although the proposed setback from the Georgetown Visitation property line is 17'2" shorter than what is required, the proposed 30-foot setback along this property line provides a significant visual buffer to the adjacent institutional property. The Project is well over 500 feet from the nearest building on the Georgetown Visitation campus and is buffered by a berm of mature trees. Granting this requested relief will not cause substantial detriment to the public good and will not impair the intent, purpose or integrity of the Zone Plan.

(Ex. 3, 18, 27.)

37. For the reasons set forth above, the Commission finds that the variance relief standards of 11 DCMR § 3103.2 have been satisfied with regard to the setback requirements of 11 DCMR § 400.9.

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Office of Planning

38. By report dated November 18, 2013, and by testimony at the public hearing, OP recommended approval of the University's campus plan amendments, further processing of the campus plan for both residence halls, and related variance relief for the Project. OP reviewed the application under the standards for special exception approval for a campus plan and further processing under § 210, the general standards for special exception approval under § 3104 and the variance approval standards under § 3103.2. OP concluded that the University satisfied the burden of proof for the special exception and variance relief requested. (Ex. 23.)

District Department of Transportation

39. By report dated November 15, 2013, DDOT expressed no objection to the requested campus plan or variance requests and found that the requested action would have no adverse impacts on the District's transportation network. (Ex. 22.)

ANC 2E

40. By report dated November 9, 2013, ANC 2E indicated that at a meeting held on November 4, 2013, with a quorum present, ANC 2E voted to support the application. (Ex. 17.) The vote was unanimous. (Ex. 32.) ANC 2E supported the requests to amend the Campus Plan and approve further processing of the Campus Plan to permit the development of both residence halls and provide additional undergraduate student housing. ANC 2E also concluded that the requested variance was in the public interest.

Letters and Testimony in Support

41. Georgetown Visitation submitted a letter in support of the application into the record. (Ex. 24.)
42. The president of the Georgetown University Student Association, Nate Tisa, presented testimony in support of the application.

Letters in Opposition

43. There were no letters in opposition to the application submitted into the record.

CONCLUSIONS OF LAW

1. The University requested special exception approval, pursuant to 11 DCMR §§ 210 and 3104, and variance approval, pursuant to 11 DCMR § 3103.2 from the setback

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requirements of 11 DCMR § 400.9, for the construction of the Northeast Triangle residence hall as well as special exception approval pursuant to §§ 210 and 3104 to adaptively reuse Ryan and Mulledy Halls as a residence hall. The Commission is authorized under the aforementioned provisions to grant a special exception when, in the judgment of the Commission based on a showing through substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. A special exception to allow use as a college or university in a residential zone district may be granted subject to the provisions contained in § 210, including that the university use must be “located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions,” and that maximum bulk requirements may be increased for specific buildings, subject to restrictions based on the total bulk of all buildings and structures on the campus. (D.C. Official Code § 6-641.07(g)(2); 11 DCMR §§ 210.2 – 210.9.)

2. Based on the above Findings of Fact, the Commission concludes that the University has satisfied the burden of proof for special exception approval of (a) amendment of the Campus Plan to designate the Northeast Triangle site for “residential/campus life/athletic” use; (b) amendment of the Campus Plan to designate the Ryan, Mulledy, and Gervase buildings for either “academic/administrative” or “residential/campus life/athletic” uses; (c) construction of the proposed Northeast Triangle residence hall; and (d) redevelopment of the Ryan and Mulledy buildings as a residence hall, in accordance with § 210. The residence halls have been located and designed so that they are not likely to become objectionable because of noise, traffic, number of students, or other objectionable impacts. They will further the goals of the Campus Plan as well as the relevant goals of the Comprehensive Plan.
3. The Commission is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (D.C. Official Code §6-641.07(g)(3); 11 DCMR § 3103.2.) The District of Columbia Court of Appeals has held that “an exceptional or extraordinary situation or condition” may encompass the buildings on a property, not merely the land itself, and may arise due to a “confluence of factors.” See *Clerics of St. Viator v. District of Columbia Bd. of Zoning*

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Adjustment, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

4. Based on the above Findings of Fact, the Commission concludes that the University has satisfied the burden of proof for variance relief from the setback requirements of § 400.9. The Commission concludes that the Northeast Triangle site is affected by an exceptional situation or condition due to a confluence of factors, and that those factors create a practical difficulty that impacts the University's ability to develop the Project in a manner that is consistent with the setback requirements along the shared property line with Georgetown Visitation. Finally, the Commission finds that due to the significant distance and buffer between the Project and the uses at Georgetown Visitation, granting the proposed variance relief will not result in substantial detriment to the public good or impair the intent, purpose or integrity of the zone plan.
5. The Commission accorded the recommendation of OP the "great weight" to which it was entitled pursuant to § 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). As discussed in this Order, OP recommended approval of the University's proposed application.
6. The Commission accorded the issues and concerns raised by ANC 2E the "great weight" to which they are entitled pursuant to § 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)). In doing so, the Commission fully credited the unique vantage point that ANC 2E holds with respect to the impact of the proposed residence halls on the ANC's constituents. As discussed in this Order, ANC 2E recommended approval of the University's proposed application.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia concludes that the University has met the burden of proof pursuant to 11 DCMR §§ 210, 3104 and 3103.2 and it is therefore **ORDERED** that Georgetown University's proposed campus plan amendments, further processing approval, and variance relief be **GRANTED**, subject to the following conditions:

1. The Northeast Triangle residence hall ("Project") shall be constructed in accordance with the plans included as Exhibit 18, Tab A of the University's November 8, 2013 pre-hearing submission, and as modified by the plans included as Exhibit 33, Tab A of the University's December 30, 2013 post-hearing submission, provided that the University shall have flexibility to modify the design of the Project in response to comments from the Old Georgetown Board and other Preservation officials, so long as the changes do not

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increase height or density of the Project or increase the amount of the variance from the height setback requirement as set forth on Exhibit 18, Tab A.

2. The University shall have flexibility to modify the design of Ryan, Muledy, and Gervase Halls to accommodate upgrades that are necessary to address building code and accessibility issues without additional further processing approval, even if such changes result in additional gross floor area or lot coverage.

Vote: 5-0-0

(Robert E. Miller, Marcie I. Cohen, Anthony J. Hood, Peter G. May, and Michael G. Turnbull)

BY ORDER OF THE D.C. ZONING COMMISSION
Each concurring member approved the issuance of this Order.

FINAL DATE OF ORDER: January 30, 2014

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-05**

Z.C. Case No. 13-05

Forest City Washington

**(First-Stage Planned Unit Development and Related Zoning Map Amendment: G1, G2, &
G3 Parcels and Consolidated Planned Unit Development and Related Zoning Map
Amendment: F1 Parcel @ D.C. Water Sites – Near Southeast)**

December 9, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on September 19, 2013, to consider an application by Forest City Washington (“Applicant”) on behalf of the District of Columbia, the owner of the subject property, for approval of a first-stage planned unit development (“PUD”) and related amendment to the Zoning Map of the District of Columbia for part of Lot 805 in Square 744S and part of Lot 801 in Square 744SS. The Applicant also sought approval of a consolidated PUD and related Map Amendment for the first phase of the proposed PUD. The Commission considered the application pursuant to Chapters 24 and 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 part of Lot 805 in Square 744S and part of Lot 801 in Square 744SS (the “Property”) and is located at 1st Street, S,E, and N Place, S.E., just east of Nationals Park.
2. On February 27, 2013, the Applicant filed an application for a first-stage PUD and related amendment to the Zoning Map of the District of Columbia from the CG/W-2 Zone District to the CG/CR and CG/W-1 Zone Districts. The Applicant also requested consolidated¹ PUD approval for the first phase of the PUD (together with the first-stage PUD and map amendment, the “Application”). (Exhibit [“Ex.”] 2.)
3. During its public meeting on April 29, 2013, the Commission voted to set down the Application for a public hearing. Notice of the public hearing was published in the *D.C. Register* on July 19, 2013 and was mailed to Advisory Neighborhood Commission (“ANC”) 6D and to owners of property within 200 feet of the Property. (Ex. 12, 13.)
4. The Application was further updated by pre-hearing submissions filed on June 28, 2013 and August 30, 2013. (Ex. 10, 17.)

¹ The Applicant filed for “second-stage” PUD approval for the first phase of the PUD, but the Office of Zoning elected to describe the request as a “consolidated” PUD for this component of the PUD and a first-stage PUD for the remainder of the PUD.

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5. A public hearing was conducted on September 19, 2013. The Commission accepted Mark Gilliland and Gerry Renaud as experts in the field of architecture, Rick Parisi as an expert in the field of landscape architecture, and Erwin Andres as an expert in the field of traffic engineering. The Applicant provided testimony from these experts as well as from Alex Nyhan of Forest City Washington and Bob Gallivan of Kerasotes Showplace Theaters.
6. In addition to the Applicant, ANC 6D was automatically a party in the proceeding and submitted a report in support of the Application. (Ex. 21.) The Commission also granted DC Water's request for status as a party in support of the Application; DC Water submitted a letter in conditional support of the Application. (Ex. 18, 22.)
7. At the hearing, the Commission heard testimony and received evidence from the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), and the Office of the Deputy Mayor for Planning and Economic Development ("DMPED"). (Ex. 19, 20.)
8. At the close of the hearing, the Commission took proposed action to approve the Application and the plans that were submitted into the record. The Commission also asked the Applicant to address certain design issues related to the consolidated PUD, resolve certain outstanding transportation issues with DDOT, provide an update on DC Water relocation efforts, and provide additional information on the Applicant's track record on Certified Business Enterprise ("CBE") commitments. The Applicant addressed these issues and concerns in a post-hearing submission dated November 12, 2013. (Ex. 31.)
9. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. NCPC did not provide a report on this case.
10. The Commission took final action to approve the Application on December 9, 2013.

THE MERITS OF THE APPLICATION

Overview of the Property

11. The Property consists of approximately 235,130 square feet of land area and is located across 1st Street, S.E. from the Washington Nationals ballpark in Ward 6. The property is currently improved with multiple low-scale structures and surface parking used by D.C. Water for a variety of light industrial uses. The Property is bounded by N Place, S.E. on the north, 1st Street, S.E. on the west, Diamond Teague Park on the south, and DC Water's Main and O Street pumping stations to the east. (Ex. 2.)

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12. The entrance to the Navy Yard Metrorail station is located approximately three blocks north of the Property. (Ex. 2.)
13. To the west of the Property is the Washington Nationals ballpark. To the southwest is the Florida Rock redevelopment approved by Z.C. Order No. 04-14B, which will consist of two residential buildings, a hotel and an office building ranging from 95 to 130 feet in height, and to the northwest is the Ballpark Square redevelopment approved by Z.C. Order No. 12-05, which will consist of a new 130-foot tall residential, hotel, and office building. (Ex. 2.)
14. The Property is also adjacent to The Yards, which is the mixed-use neighborhood being redeveloped by the Applicant in conjunction with the General Services Administration (“GSA”). Two parcels within The Yards, Parcels H and I, are located immediately to the north of the Property. Each parcel is intended to be redeveloped with residential uses, bisected by an extension of the proposed 1 ½ Street, S.E. that is also contemplated for this PUD. (Ex. 2.)
15. The Property is also proximate to Diamond Teague Park, a new public plaza with water taxi and public piers that is located at the terminus of 1st Street, S.E. at the Anacostia River. (Ex. 2.)
16. The Property is located in the CG/W-2 Zone District. Property to the north is located in the SEFC/CR Zone District. Property to the west and northwest is located in the CG/CR Zone District. The Florida Rock site to the southwest was rezoned to the C-3-C Zone District as part of the approved PUD. DC Water’s Main Pumping Station to the east of the Property is located in the M Zone District. (Ex. 2.)
17. The Future Land Use Map designates the Property in the Medium Density Residential/Medium Density Commercial land use category on the Future Land Use Map. The Property is designated as a Land Use Change area on the Generalized Policy Map. The Property is also located within the Central Employment Area. (Ex. 2.)

The First-Stage PUD

18. The Applicant requested approval to redevelop the Property into four new city blocks with a new 16-screen movie theater and parking garage, two new apartment buildings, an expansion of Diamond Teague Park, and a total of approximately 35,000-50,000 square feet of ground-floor retail, arts, and entertainment uses throughout the PUD (the “Redevelopment Plan”). (Ex. 2.)
19. As a part of the Redevelopment Plan, the Applicant will reintroduce the street grid to the Property through a series of private streets: O Street, S.E. and Potomac Avenue, S.E. as new east-west streets, and 1½ Street, S.E. as a new north-south street. The proposed

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street network will divide the Property into four city blocks: the F1 Parcel, which is located in the northeast corner of the Property, and the G1, G2, and G3 Parcels, which are located along 1st Street, S.E. (Ex. 2.)

20. The Redevelopment Plan will provide approximately 600 residential units, including approximately 350 units in the G1 building and approximately 250 units in the G2 building. The Applicant noted that the final number of units would be determined with future second-stage submissions and could vary depending on building efficiency and market conditions. (Ex. 2.)
21. The Redevelopment Plan will activate the existing and proposed street grid through street-level activating uses, including ground-floor preferred retail, service, entertainment, and arts uses along 1st Street and 1½ Street, as well as potentially along Potomac Avenue. (Ex. 2.)
22. The Redevelopment Plan will significantly improve the sustainability of the site over existing conditions, from 100% impervious surface parking and buildings to over 53% permeable area, with new street trees, green roofs, low-impact development planters, and the expanded Diamond Teague Park to increase site porosity and control stormwater runoff. (Ex. 2; Tr. Sept. 19, 2013 at p. 83.)
23. The Redevelopment Plan calls for approximately one vehicular parking space for every two residential units and approximately one bicycle parking space for every three residential units in the G1 and G2 buildings, but the Applicant noted that the final number of parking spaces would be determined in conjunction with future second-stage PUD submissions. The Redevelopment Plan also calls for approximately 331 parking spaces on the F1 Parcel as described herein. Parking for the retail uses in the G1 and G2 building as well as parking for the G3 building will be accommodated within the F1 Parcel's parking garage. The Redevelopment Plan also calls for on-street parking spaces on the private streets within the PUD. (Ex. 2.)
24. The Redevelopment Plan will provide a total of approximately 600 residential dwelling units and 131,000–146,000 square feet of retail, arts, and entertainment space, and above- and below-grade parking, for a total density of approximately 5.87 floor area ratio ("FAR") across the entire PUD site, including approximately 1.76 FAR devoted to nonresidential uses. The Applicant excluded the private streets from the total site area for purposes of calculating FAR. The Redevelopment Plan will have a maximum height of 130 feet, with each residential building stepping down to 110 feet toward the Anacostia River. (Ex. 2, 17.)

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Zoning Map Amendment

25. The Property is located in the CG/W-2 Zone District. The maximum height allowed in the CG/W-2 Zone District is 70 feet and the maximum density is 5.0 FAR (with the bonus for residential uses). (Ex. 2.)
26. Property to the north is located in the SEFC/CR Zone District. Property to the west and northwest is located in the CG/CR Zone District. Property to the southwest was rezoned to the C-3-C Zone District through the PUD process. (Ex. 2.)
27. The Applicant requested a PUD-related Zoning Map amendment to the CG/CR Zone District for the F1, G1, and G2 Parcels to permit the structures to reach the requested height and density. The maximum height permitted for a PUD in the CG/CR Zone District is the maximum height permitted under the Height Act (130 feet for the G parcels, and 100 feet for the F1 parcel), and the maximum permitted density is 8.0 FAR. (Ex. 2.)
28. The Applicant requested a PUD-related Zoning Map amendment to the CG/W-1 Zone District for the G3 Parcel, to recognize the parcel's proximity to the waterfront yet also permit the construction of the G3 Building. The maximum height permitted for a PUD in the CG/W-1 Zone District is 50 feet and the maximum permitted nonresidential density is 1.0 FAR. (Ex. 2.)

Consolidated PUD

29. The Applicant requested consolidated approval to construct a 16-screen movie theater above a four-story parking garage on the F1 Parcel (the "Project"). The movie theater consists of two stories plus a mezzanine level with up to 2,500 seats. The F1 Parcel will also contain approximately 2,000 square feet of potential retail or artist studio space along N Place, S.E. The movie theater will serve as an entertainment anchor for the proposed retail and arts node at N Place and 1 ½ Street. (Ex. 2, 17.)
30. The Project is composed primarily of articulated metal panels that include a color-shifting iridescence that will vary the façade with color movement and varying hues in both cool and warm color temperatures. A series of accent lights within the metal panel system will provide additional variation and articulation. Furthermore, the Applicant has also proposed a separate illuminated panel system along the southeast and east portions of the building as well as along the lower portion of the north façade to create further visual interest. Finally, the façades are broken up at both the northwest corner and southeast corner by a glass curtainwall that brings light and visual transparency into the public portions of the theater. The northwest corner features a multi-story clear glass element that permits views into and out of the lobby entrance. The southeast corner features a

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two-story window element that corresponds to the theater's lounge and dining area. (Ex. 2, 10, 17, 31.)

31. The Project includes approximately 331 parking spaces in the garage. Vehicles will enter the garage from 1½ Street, S.E. and exit the garage on N Place, S.E. Loading for the Project will be located to the south of the Project and will be accessed from a second curb cut on 1½ Street, S.E. (Ex. 2, 17.)
32. The Project will include a green roof that covers approximately 75% of the green roof, a green wall on lower portions of the Project along 1½ Street S.E., and low-impact development tree pits in both the public streetscape on N Place, S.E. and the private streetscape on 1½ Street, S.E. (Ex. 2, 17.) The Applicant's landscape architect testified that the Project would achieve a green area ratio of 0.43, more than double the minimum requirement. (Tr. Sept. 19, 2013 at p. 82.)
33. The total gross floor area included in the Project is approximately 239,225 square feet, for a total density of 5.73 FAR and a total lot occupancy of 93%. The Project will have a maximum height of approximately 100 feet. (Ex. 17.)

PUD Flexibility Requested

34. The Applicant proposes to construct the entire PUD on a single lot of record, with multiple buildings on the single record lot, which is permitted under § 2517 of the Zoning Regulations.
35. For the Project, the Applicant requested flexibility from the public space at ground level and court requirements of the Zoning Regulations. The Applicant also requested flexibility from the requirement to set back parking within an above-grade structure at least 20 feet from a lot line that abuts a public street and flexibility to permit the Project's loading to project across the lot line and be located on DC Water's property. The flexibility was requested to accommodate the design of the Project as detailed in the Applicant's written submission and the OP Final Report. (Ex. 2, 19.)
36. The Applicant stated that flexibility for the remaining phases of the PUD would be identified with future second-stage PUD submissions. The Applicant requested flexibility to phase the construction of the PUD as set forth in the conditions of approval. (Ex. 2, 10.)
37. The Applicant requested flexibility to modify the design of PUD-related improvements in public space to correspond with design changes requested by DDOT, including (a) streetscape improvements, (b) the location of the Project's N Place curb cut, and (c) the final design of the proposed intersection of Potomac Avenue and 1st Street, S.E. To the extent that the design of streetscape improvements in public space are modified,

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- the Applicant also requested flexibility to modify the design of corresponding elements in private space on the PUD's private streets to align with the final design of streetscape improvements in public space. (Tr. Sept. 19, 2013 at pp. 89-90.)
38. The Applicant requested flexibility to change the alignment of Potomac Avenue and the shape and amount of development on the G2 and G3 Parcels based on further discussions with DDOT, OP and HPO. (Tr. Sept. 19, 2013 at pp. 89-90.)
 39. The Applicant requested flexibility to modify certain elements of the PUD in response to further discussions with DC Water, including modification of the design of the Project to respond to continued coordination efforts with DC Water regarding the Project's loading. (Tr. Sept. 19, 2013 at p. 88.)
 40. Finally, the Applicant requested flexibility to modify the interior and exterior design elements of the Project as set forth in the conditions of approval.

Project Amenities and Public Benefits

41. As detailed in the Applicant's testimony and written submissions, the proposed Redevelopment Plan will provide the following project amenities and public benefits:
 - a. Site Planning and Efficient Land Utilization, through the replacement of a fenced-off surface parking lot and low-scale structures with a mixed-use transit-oriented development that restores the street grid, provides connections to the Anacostia riverfront, and strengthens the emerging Ballpark and Yards neighborhoods;
 - b. Housing and Affordable Housing, through the provision of approximately 600 new residential units, including approximately 48 affordable housing units set aside for households earning up to 80% of the Area Median Income. The PUD will result in approximately 22 affordable housing units above what would be delivered as a matter of right;
 - c. Ground Floor Retail Space, including retail space along both 1st Street and 1½ Street as well as potential additional retail space along Potomac Avenue. As agreed to with ANC 6D, the northeast and southeast corners of the G1 Parcel shall be programmed for retail use;
 - d. An Expanded Diamond Teague Park on the G3 Parcel, including playground equipment;
 - e. Environmental Benefits that provide a drastic improvement over existing conditions including green roofs, LID tree pits, and the expansion of Diamond Teague Park;

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- f. Effective and Safe Vehicular and Pedestrian Access and Transportation Management Measures, including restoration of the street grid, pedestrian-friendly streets, and on-street electric car-charging stations; and
- g. Historic Preservation, through the retention of portions of the Fleet Maintenance Building and restoration of the historic Potomac Avenue right-of-way.

(Ex. 2.)

42. 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 and Architecture, through the use of high-quality materials, pedestrian-oriented street grid patterns, streetscape improvements, and clear separation of pedestrian and vehicular circulation patterns;
 - b. Movie Theater and ground-floor retail and arts uses (uses of special value);
 - c. Loading and continued coordination with DC Water;
 - d. Environmental Benefits that provide a drastic improvement over existing conditions including a green roof and LID tree pits;
 - e. Effective and Safe Vehicular and Pedestrian Access and Transportation Management Measures, including restoration of the street grid, pedestrian-friendly streets, and bicycle parking amenities; and
 - f. Employment Opportunities, including a First Source Employment Agreement and a workforce intermediary program.

(Ex. 2; Tr. Sept. 19, 2013 at pp. 36-38, 85-87.)

Transportation Issues

43. The Property is located near several modes of transportation, including the nearby Navy Yard Metrorail station, Metrobus and D.C. Circulator routes, and bicycle facilities.
44. The Applicant's traffic expert submitted a detailed transportation impact analysis that concluded the Redevelopment Plan and the Project would not generate an adverse traffic impact on the surrounding roadway network due to traffic or parking impacts. (Ex. 10, Tab A.) The Applicant's traffic expert revised and supplemented this analysis in response to initial feedback from DDOT. (Ex. 17, Tab D.) 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

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loading needs for the PUD and not generate adverse impacts on neighboring property. (Ex. 17, Tab D.)

45. DDOT submitted reports and provided testimony recommending approval of the PUD provided that the Applicant agree to certain conditions related to (1) the design of the intersection of Potomac Avenue and 1st Street, (2) the location of the driveway for the Project on N Place, (3) onsite facility with showers and lockers for bicyclists, (4) updated transportation studies for future second-stage PUD submissions and (5) funding for a new traffic signal at 1st Street and N Place in order to address concerns about the use of the Project's parking garage during the day. (Ex. 20, 30.)
46. The Commission finds that the PUD will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the Applicant's traffic expert and DDOT:
 - a. The Commission finds that the PUD will not impose adverse impacts on the surrounding transportation network and that the number of vehicular parking spaces will not result in adverse conditions, provided that the Applicant provide the mitigation measures recommended by DDOT and agreed to by the Applicant;
 - b. The Commission finds that the location of the parking and loading entrances, including the proposed loading location for the Project, will not generate adverse conditions. The Commission recognizes that DDOT will determine the final location of parking and loading entrances to be located in public space through the public space process; and
 - c. The Commission finds that the Project will not generate adverse impacts on the surrounding pedestrian network. The Commission recognizes that DDOT will determine the final measures to be installed in public space through the public space process.

Compliance with PUD Standards

47. 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 height, density, flexibility, and related rezoning to CG/CR and CG/W-1 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.

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48. The Commission credits the testimony of the Applicant and its architectural experts as well as OP, DDOT, and ANC 6D, and finds that the superior design, site planning, streetscape, sustainable design features, transportation infrastructure improvements, housing and affordable housing, historic preservation, uses of special value, and tax revenue features of the PUD all constitute acceptable project amenities and public benefits.
49. 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, historic preservation, site planning, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole. The Commission credits the testimony of OP and ANC 6D that the PUD provides significant and sufficient public benefits and project amenities.
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 an efficient and economical redevelopment of a strategic and transit-oriented parcel three blocks from a Metrorail station entrance.
51. The Commission credits the testimony of OP and the Applicant regarding the Property's designation as Mixed-Use Medium Density Commercial/Medium Density Residential on the Future Land Use Map of the District of Columbia. The Framework Element lays out "interpretation guidelines" for the Future Land Use Map, and many of these guidelines are reprinted on the map itself. The Interpretation Guidelines state that the Future Land Use Map is not a zoning map and does not specify allowable uses or dimensional standards. The Guidelines also indicate that the typical building heights and densities included in the land use category simply describe the "general character" of the area, and state that the "granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited here." Finally, the Guidelines indicate that the Future Land Use Map designations are not parcel-specific and should be interpreted in conjunction with the text of the Plan:
 - a. The Future Land Use Map identifies the Property as appropriate for mixed-use development supporting Medium Density Commercial and Medium Density Residential uses. The Medium Density Commercial category defines shopping and service areas that draw from a citywide market area, with buildings that are taller than moderate density areas but generally do not exceed eight stories. The Medium Density Residential category defines similarly-sized buildings in neighborhoods where mid-rise (four to seven stories) apartment buildings are the

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predominant use. The Framework Element lists certain corresponding zone districts for each category that include the C-2-B, C-2-C, C-3-A, and C-3-B zones (for Medium Density Commercial) and R-5-B and R-5-C zones (for Medium Density Residential), but notes that “other districts may apply”; and

- b. The proposed rezoning to the CG/CR and CG/W-1 Zone Districts is consistent with the Future Land Use Map. The Zoning Regulations define the CR District as a zone that should be applied to areas where “a mixture of uses and building densities is intended to carry out elements of the District of Columbia development plans, including goals in employment, population, transportation, [and housing]” (11 DCMR § 600.4.) Although the proposed Project’s height exceeds the upper limits listed in the definitions in the Medium Density Residential and Medium Density Commercial areas, the Future Land Use map notes that “heights may exceed the typical ranges” when bonuses are granted through a PUD.
52. The Commission finds that the proposed Map Amendment to the CG/CR and CG/W-1 Zone Districts is not inconsistent with the Comprehensive Plan or the character of the surrounding area. The Commission notes that the proposed zoning is consistent with the Property’s location near a Metrorail station, and property across the street is located in the same zone district. The rezoning is necessary to permit the mix and density of uses appropriate for this strategic, transit-oriented site. Further, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility.
 53. The Commission credits the testimony of OP and ANC 6D that the Project will provide benefits and amenities of substantial value to the community and the District commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP’s testimony that the impact of the PUD on the level of services will not be unacceptable.
 54. For the reasons detailed in this Order, 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.
 55. 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:

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- a. Designation of the Property as Mixed Use Medium Density Residential / Medium 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;
- b. Land Use Element policies promoting development within the Central Employment Area, the redevelopment of large sites, transit-oriented development, and the redevelopment of industrial land;
- c. Policies in the Lower Anacostia and Near Southwest Area Element regarding redevelopment of waterfront sites, creation of an entertainment district near the ballpark, more retail and housing, and elimination of barriers to the Anacostia River; and
- d. Other policies in the Urban Design, Housing, Economic Development, Transportation, and Environmental Protection Elements related to the Land Use policies and goals stated above.

Agency Reports

56. By report dated September 9, 2013 and by testimony at the public hearing, OP recommended approval of the Application and concluded that the Project's design was exemplary. OP stated that it was "very supportive" of the additional height, which would allow for improved open spaces and greater public views and access to the waterfront. OP concluded that the PUD and related rezoning was not inconsistent with the Property's Future Land Use or Policy Map designations in the Comprehensive Plan and would further the Land Use, Transportation, Housing, Environmental Protection, Economic Development, Parks, and Lower Anacostia Waterfront Elements of the Comprehensive Plan OP evaluated the PUD and related rezoning under the evaluation standards set forth in Chapter 24 of the Zoning Regulations and concluded that the PUD's benefits and amenities were appropriate given the size and nature of the PUD and related requests for rezoning and flexibility. (Ex. 19.)
57. OP requested that the Applicant provide written agreement with DC Water regarding loading access, and evidence of such agreement was provided by DC Water in its conditional support letter dated September 17, 2013. (Ex. 22.)
58. By report dated September 9, 2013 and by testimony at the public hearing, DDOT recommended approval of the PUD provided that the Applicant: (1) redesign the intersection of Potomac Avenue and 1st Street and commit to cover the design and construction of new signal hardware; (2) relocate the driveway for the Project on N Place; (3) provide an onsite facility with showers and lockers for employees who bicycle; and (4) provide an updated transportation study for future second-stage PUD submissions.

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(Ex. 20.) The Applicant agreed to all of these requests and they are reflected in the conditions of approval.

59. At the hearing, DDOT and the Applicant testified that they were continuing to discuss two additional proposed conditions of approval related to the amount of proposed parking in the Project and the use of such parking by non-theater goers. Following the public hearing, DDOT issued a supplemental report dated November 13, 2013 that approved the use of the Project's parking garage as proposed by the Applicant, provided that the Applicant agreed to fund the design and installation of a traffic signal for the intersection of 1st Street and N Place. (Ex. 30.) The Applicant agreed to this request, as reflected in the conditions of approval.
60. By letters dated September 17, 2013, and November 19, 2013, DC Water submitted comments in conditional support of the PUD that recognized the Applicant's continuing efforts to coordinate development of the PUD with DC Water. The letter listed a series of design and operational commitments by the Applicant regarding loading access for the Project and other issues. (Ex. 22, 33.) The Applicant's design and operational commitments have been incorporated as conditions of approval. The letter also requested the Commission add a condition requiring the Mayor to comply with a December 31, 2013 reporting deadline included in the Budget Support Act of 2014 and for an independent consulting engineer to certify that there would be no negative impact of the proposed land disposition upon DC Water's viability as required by its Master Indenture. The Commission declines to make existing statutory and contractual requirements conditions of this Order. Moreover the Commission has no authority to compel anyone other than the applicant to abide by its conditions of approval.

ANC Report

61. ANC 6D submitted a written report in support of the proposed PUD and related rezoning. ANC 6D noted that the Applicant had refined the design of the Project in response to the ANC's requests and the ANC conditioned its support on the Applicant's agreement to a series of design and mitigation measures that were requested by the ANC. (Ex. 21.) These measures have been incorporated into the conditions of approval.

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

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- 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 a portion of 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, open space, 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 and related rezoning 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. The proposed redevelopment of the Property, with a mix of residential and commercial uses, including the first phase of construction as a movie theater with a screened parking garage, capitalizes on the Property’s strategic and transit-oriented location and is compatible with the citywide and area plans of the District of Columbia.
 6. The Applicant seeks a PUD-related zoning map amendment to the CG/CR and the CG/W-1 Zone Districts as well as, for the consolidated portion of the PUD, flexibility from the requirement for public space at ground level, court, and parking and loading requirements. 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 at a strategic location next to the Washington Nationals ballpark and near the Navy Yard Metrorail station. The mix of residential and retail 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

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- provide. The Commission finds that the urban design, site planning, efficient and safe traffic circulation, sustainable features, housing and affordable housing, historic preservation, ground-floor retail, and 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 is 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 and rezoning 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 Mixed-Use Medium Density Commercial/Medium Density Residential Designation on the Future Land Use Map and furthers numerous goals and policies of the Comprehensive Plan in the Land Use Element, Housing Element, and other citywide elements and policies as well as policies in the Lower Anacostia and Near Southeast Area Element as delineated in the OP Report.
 11. The Commission concludes that the proposed PUD-related Zoning Map Amendment for the Property from the CG/W-2 to the CG/CR and CG/W-1 Zone Districts is not inconsistent with the Comprehensive Plan, including the Property's designation as Mixed-Use Medium Density Commercial/Medium Density Residential on the Future Land Use Map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
 12. The PUD and rezoning 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.
 13. 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 of the Application and accordingly, approval of the PUD and related rezoning should be granted.
 14. 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 6D the "great

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weight” to which they are entitled, and in so doing fully credited the unique vantage point that ANC 6D holds with respect to the impact of the proposed application on the ANC’s constituents. ANC 6D recommended approval of the PUD subject to conditions that have been agreed to by the Applicant. The Commission concludes that the Applicant has addressed the ANC’s conditions and, accordingly, the PUD and related rezoning should be approved.

15. 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 approval of a first-stage PUD and related rezoning from the CG/W-2 Zone District to the CG/CR and CG/W-1 Zone Districts for property consisting of part of Lot 805 in Square 771S and part of Lot 801 in Square 771SS (“Property”) as well as approval of a consolidated PUD for the first phase of development within the PUD on the F1 Parcel. This approval is subject to the following guidelines, conditions, and standards of this Order:

A. First-Stage PUD Conditions

1. The G1, G2, and G3 Parcels shall be developed in accordance with the Master Plan prepared by Shalom Baranes Associates marked as Tab A of Exhibit 17 of the record (the “Master Plan”), as modified by guidelines, conditions, and standards herein and the Zoning Commission’s second-stage approval.
2. The G1 and G2 Parcels shall be rezoned to the CG/CR Zone District, and the G3 Parcel shall be rezoned to the CG/W-1 Zone District, as shown on page S09 of the Master Plan. Pursuant to § 3028.9, the rezoning of each parcel shall not become effective unless and until a second-stage application and the related plans for the parcel has been approved and “upon filing with the District of Columbia a covenant ensuring compliance with the approved plans.”
3. The G1 and G2 Parcels shall provide approximately 600 residential units and set aside eight percent of the residential gross floor area on each Parcel as affordable housing (estimated as approximately 48 units) for households earning up to 80% of the Area Median Income. The Applicant shall have flexibility to revise the number and type of residential units in conjunction with future second-stage PUD submissions to accommodate the final design of each building.

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4. The expanded Diamond Teague Park shall include dedicated playground equipment, at the high level of design expected on the waterfront. Such features could include one or preferably more features such as: slides, swings, and climbing equipment. The Applicant shall request second-stage PUD approval for the expanded park as a part of the second-stage PUD application for either the G1 or G2 Parcel. The Applicant shall construct such park improvements no later than the issuance of a certificate of occupancy for the G1 or G2 building approved in that same second-stage application. The Applicant shall also be permitted to seek approval for temporary, interim uses and structures on the G3 Parcel in conjunction with such park improvements
5. The Applicant shall provide approximately 35,000-50,000 square feet of retail space as shown on page MP-07 of the Master Plan; provided that the Applicant shall reserve the northeast and southeast corners of the G1 Parcel for retail use.
6. In connection with the second-stage PUD applications for each of the G1 and G2 Parcels, the Applicant shall provide evidence that each building will be designed to the equivalent of LEED-NC Silver rating.
7. The Applicant shall design the proposed private street network as shown on the Master Plan. The private street network will be constructed in association with each second-stage PUD; each second-stage PUD application will identify the specific segments of the road and streetscape that will be constructed as a part of that phase of the PUD, and issuance of a certificate of occupancy for that phase of the PUD will be conditioned on the completion of the identified road and streetscape improvements, subject to the following:
 - a. The private street network shall include the LID and tree planting details included on pages L04-L08 and L10-L13 in the Master Plan, provided that the Applicant shall have flexibility to modify the design of such improvements to correspond with any design changes requested by DDOT within the public space associated with the PUD;
 - b. The Applicant shall program the proposed private streets Potomac Avenue, S.E. and 1½ Street, S.E. within the PUD as “complete streets” that are shared among a variety of users, most notably bicyclists and automobile drivers. Among other measures, the Applicant shall consider the use of “sharrows” along Potomac Avenue, S.E. Such detail shall be incorporated into future second-stage PUD applications;
 - c. The Applicant shall provide two on-street dedicated electric car-charging stations either (a) on public space adjacent to the PUD on 1st Street and N

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- Place, S.E. or (b) on the proposed private streets within the PUD that include 1½ Street, S.E., Potomac Avenue, S.E., or O Street, S.E. The specific location and timing for provision of such spaces shall be detailed no later than the second-stage PUD submission for the latter of the G1 or the G2 Parcels, and installation of the car-charging stations shall be completed prior to the issuance of a certificate of occupancy for such second-stage PUD;
- d. The Applicant shall have flexibility to redesign the proposed intersection of Potomac Avenue and 1st Street as well as make related changes to the alignment of Potomac Avenue and the shape and amount of development on the G2 and G3 Parcels, based on further discussions with DDOT, OP, and HPO; and
 - e. The Applicant agrees to contribute 100% of the design and construction costs for appropriate new signal hardware for the Potomac Avenue and 1st Street intersection that is required to accommodate new traffic movements through the intersection triggered by the extension of Potomac Avenue. Such contribution shall be made prior to the issuance of a certificate of occupancy for the G2 Parcel.
8. The Applicant shall provide a Comprehensive Transportation Review for each second-stage PUD submission.
 9. The Applicant shall retain and incorporate portions of the Fleet Maintenance Building into the G1 Parcel as shown on Page B-02 of the Master Plan:
 - a. The Applicant shall develop a preservation program on the preserved Fleet Maintenance Building façade that shall include preservation of the existing brick, walls and window and door openings – with allowances made to retrofit this into a viable retail building, and preservation of some of the existing diverse and mottled window-pane look. The Applicant shall provide its specific preservation plan with the future second-stage application for the G1 Building;
 - b. The Applicant shall seriously consider the preservation of the windows, bricks, and other “character-defining” building materials of the existing industrial heritage buildings proposed to be demolished on the site (that is, the Welding Shop, the Concrete Prefabrication Shop, and the Carpenter Shop), and to reuse such materials elsewhere as interior or exterior elements within the PUD. Details on such efforts shall be included in future second-stage PUD applications; and

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- c. The Applicant shall seriously consider the relocation of one or more of the existing smaller industrial heritage buildings proposed to be demolished on the site (that is, the Concrete Prefabrication Shop and/or the Carpenter Shop) – to the G3 Parcel. Details on such efforts shall be included in future second-stage PUD applications.

B. Consolidated PUD Conditions

1. The F1 Parcel shall be developed in accordance with the plans prepared by RTKL marked as Tab B of Exhibit 17 of the record (“Approved F1 Plans”), as modified by guidelines, conditions, and standards herein.
2. The F1 Parcel shall be rezoned to the CG/CR Zone District as shown on page S09 of the Master Plan.
3. The change of zoning from shall be effective upon the recordation of the covenant discussed in Condition No. C.1, pursuant to 11 DCMR § 3028.9.
4. The Applicant shall have flexibility from the public space at ground level, court, parking, and loading requirements of the Zoning Regulations as shown on the Approved F1 Plans.
5. The F1 Parcel shall be used for ground-floor retail and arts uses, a movie theater, and commercial parking uses with approximately 331 parking spaces, as shown on the Approved F1 Plans.
6. The Project shall provide loading consistent with the Approved F1 Plans, provided that the Applicant shall be have the following flexibility to modify such plans in response to continued coordination efforts with DC Water:
 - a. The Applicant shall refrain from using WB-50 trucks to service the F1 Parcel, if required by DC Water to accommodate the design of DC Water’s proposed new administrative headquarters building;
 - b. The Applicant shall modify the location and design of the trash berth, if required to accommodate the design of DC Water’s proposed new administrative headquarters building; and
 - c. The Applicant shall coordinate the time for such deliveries and trash service with DC Water.

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7. The Applicant shall design the F1 Parcel to achieve the equivalent of certification or higher under the LEED-CS rating system.
8. The F1 Parcel shall include a green roof and LID tree pits as shown on the Approved F1 Plans, provided that the Applicant shall have flexibility to modify the final design of improvements in public space in response to DDOT direction and to modify the corresponding elements in private space to align with the final design of streetscape improvements in public space.
9. The F1 Parcel shall provide a minimum of 40 bicycle parking spaces within the building and 12 bicycle parking spaces on racks outside the building, as well as an on-site facility with showers and lockers for employees of the movie theater. The final number and location of improvements in public space shall be subject to the discretion of DDOT.
10. Prior to the issuance of a certificate of occupancy for the F1 Parcel, the Applicant shall demonstrate that it has constructed the streetscape improvements along the south side of N Place and the east side of 1½ Street adjacent to the F1 Parcel as shown on the Approved F1 Plans. The final design of any improvements in public space shall be subject to final approval from DDOT and the Applicant shall have flexibility to modify such improvements in response to DDOT direction as well as modify the corresponding elements in private space to align with the final design of streetscape improvements in public space. The Applicant shall also have flexibility to modify the location of the proposed N Place curb cut in response to DDOT direction as well as modify the design of the F1 Parcel to accommodate any change to the location of the curb cut.
11. Prior to the issuance of a building permit for the Project, the Applicant shall demonstrate that it has contributed 100% of the traffic engineering and construction costs of the signalization of the intersection of 1st Street and N Place, S.E.
12. Prior to the issuance of a building permit for the F1 Parcel, the Applicant shall provide evidence that it has amended its existing First Source Agreement or signed a new First Source Agreement with the D.C. Department of Employment Services.
13. Prior to the issuance of a certificate of occupancy for the F1 Parcel, the Applicant shall provide evidence that it has entered into a Memorandum of Understanding with ANC 6D and/or the Community Benefits Coordinating Council regarding a Workforce Intermediary Program that will provided supported employment and jobs for ANC 6D residents (20003 and 20024 Zip Codes) to the extent permitted

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by District of Columbia law with a focus on training, placement, and retention of candidates for jobs created by the PUD.

14. 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, signage, 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 and materials types as proposed, based on availability at the time of construction;
 - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belts, courses, sills, bases, cornices, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - d. To vary the size, location and design features of the retail/arts component of the Project, including the size, location, and design of windows, doors, awnings, canopies, signage, and similar features, to accommodate the needs of specific retail tenants and storefront design;
 - e. To vary the size, location, type, and other features of proposed building signage related to the proposed retail and theater uses; and
 - f. To vary the design of the parking garage, which need not conform to the parking garage requirements of the Zoning Regulations regarding aisle width and parking space width, provided that the parking garage contain approximately 331 vehicular parking spaces, which requirement may be satisfied through any combination of accessible and full and compact parking spaces.

C. Miscellaneous Conditions

1. No building permit shall be issued for the 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

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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 Zoning Commission.

2. The consolidated PUD 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 must begin within three years of the effective date of this Order.
3. The First-Stage PUD shall be valid for a period of 12 years. Within such time, the Applicant shall:
 - a. File an application for second-stage PUD approval of either the G1 or G2 Parcel no later than two years after the issuance of a Certificate of Occupancy (“CO”) for the F1 Parcel;
 - b. File an application for second-stage PUD approval of the remaining residential building no later than two years after the issuance of the CO for the initial residential building; and
 - c. File an application for second-stage PUD approval for the proposed permanent structure on the G3 Parcel no later than five years after the issuance of a certificate of occupancy for the G1 or G2 Parcels, whichever occurs last.

The 12 year time period shall not be deemed to be extended because there is time remaining for the Applicant to file for a second stage application under 2 (a), (b), or (c).

4. 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.

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On September 19, 2013, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the Application at the conclusion of the public hearing 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 December 9, 2013, upon the motion of Vice Chairman Cohen, as seconded by Commissioner Miller, 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 February 7, 2014.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 14-01
(Jemal's Hecht's, LLC – Consolidated PUD and Related Map Amendment @
Square 4037, Parts of Lots 7 and 804)
January 31, 2014

THIS CASE IS OF INTEREST TO ANC 5D

On January 27, 2014, the Office of Zoning received an application from Jemal's Hecht's, LLC (the "Applicant") for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of parts of Lots 7 and 804 in Square 4037 in Northeast Washington, D.C. (Ward 5), which is located at 1401-1535 New York Avenue, N.E. The property is currently zoned C-M-2. The Applicant proposes a PUD-related map amendment to rezone the property, for the purposes of this project, to C-3-C.

The Applicant proposes to redevelop the existing historic Hecht's Company Warehouse Building into a mixed-use development composed of retail and residential uses. The overall density of the project will be 4.2 floor area ratio ("FAR") and a maximum height of 87.65 feet. The project will have approximately 229,246 square feet of residential uses and 166,425 square feet of retail/service uses.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

District of Columbia REGISTER – February 7, 2014 – Vol. 61 - No. 6 962 – 1183